

1 **RECODIFICATION OF TITLE 63 STATE**

2 **AFFAIRS IN GENERAL**

3 2008 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Douglas C. Aagard**

6 Senate Sponsor: Gregory S. Bell

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies Title 63, State Affairs in General, by recodifying and renumbering the
11 content of the title to other parts of the code.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ renumbers and moves almost all chapters in Title 63 to different or new titles,
15 chapters, and parts of the code;
- 16 ▶ creates new titles into which many chapters of Title 63 are renumbered and moved;
- 17 ▶ renumbers and moves several other chapters to related titles of the code;
- 18 ▶ amends cross-references to coincide with renumbering of sections;
- 19 ▶ repeals certain redundant provisions; and
- 20 ▶ makes technical changes.

21 **Monies Appropriated in this Bill:**

22 None

23 **Other Special Clauses:**

24 None

25 **Utah Code Sections Affected:**

26 **AMENDS:**

27 **3-1-6**, as last amended by Laws of Utah 1994, Chapter 313

28 **3-1-36**, as last amended by Laws of Utah 1994, Chapters 203, and 313

29 **4-1-3.5**, as last amended by Laws of Utah 1997, Chapter 82

30 **4-2-2**, as last amended by Laws of Utah 2007, Chapter 179
31 **4-2-8.5**, as enacted by Laws of Utah 2006, Chapter 71
32 **4-3-2**, as last amended by Laws of Utah 1995, Chapter 20
33 **4-3-14**, as last amended by Laws of Utah 2007, Chapters 165, and 179
34 **4-4-2**, as last amended by Laws of Utah 1995, Chapter 20
35 **4-5-9**, as last amended by Laws of Utah 2004, Chapter 358
36 **4-5-9.5**, as enacted by Laws of Utah 2007, Chapter 334
37 **4-9-2**, as last amended by Laws of Utah 1995, Chapter 20
38 **4-9-15**, as last amended by Laws of Utah 2005, Chapter 226
39 **4-10-3**, as last amended by Laws of Utah 1995, Chapter 20
40 **4-11-3**, as last amended by Laws of Utah 1995, Chapter 20
41 **4-12-3**, as last amended by Laws of Utah 1995, Chapter 20
42 **4-14-3**, as last amended by Laws of Utah 2007, Chapters 179, and 370
43 **4-14-6**, as last amended by Laws of Utah 2007, Chapter 370
44 **4-14-13**, as enacted by Laws of Utah 2007, Chapter 370
45 **4-15-3**, as last amended by Laws of Utah 1995, Chapter 20
46 **4-16-3**, as last amended by Laws of Utah 1995, Chapter 20
47 **4-18-5**, as last amended by Laws of Utah 2007, Chapter 179
48 **4-18-6.5**, as enacted by Laws of Utah 2001, Chapter 326
49 **4-20-1.5**, as last amended by Laws of Utah 2007, Chapter 179
50 **4-22-4.5**, as last amended by Laws of Utah 1996, Chapter 79
51 **4-23-5**, as last amended by Laws of Utah 1995, Chapter 20
52 **4-24-3**, as last amended by Laws of Utah 1995, Chapter 20
53 **4-25-3**, as last amended by Laws of Utah 1995, Chapter 20
54 **4-29-1**, as last amended by Laws of Utah 1995, Chapter 20
55 **4-30-3**, as last amended by Laws of Utah 1995, Chapter 20
56 **4-31-16.5**, as last amended by Laws of Utah 2004, Chapter 325
57 **4-31-21**, as enacted by Laws of Utah 2000, Chapter 96

- 58 **4-32-7**, as last amended by Laws of Utah 1997, Chapter 302
- 59 **4-33-4**, as last amended by Laws of Utah 1995, Chapter 20
- 60 **4-37-109**, as last amended by Laws of Utah 2007, Chapter 191
- 61 **4-37-201**, as last amended by Laws of Utah 1995, Chapter 28
- 62 **4-37-301**, as last amended by Laws of Utah 1995, Chapter 28
- 63 **4-37-602**, as last amended by Laws of Utah 2007, Chapter 191
- 64 **4-38-4**, as last amended by Laws of Utah 1997, Chapter 135
- 65 **4-38-6**, as enacted by Laws of Utah 1992, Chapter 296
- 66 **4-38-14**, as last amended by Laws of Utah 1993, Chapter 4
- 67 **4-39-106**, as last amended by Laws of Utah 1999, Chapter 378
- 68 **4-39-203**, as enacted by Laws of Utah 1997, Chapter 302
- 69 **4-39-502**, as enacted by Laws of Utah 1997, Chapter 302
- 70 **7-1-105**, as last amended by Laws of Utah 1994, Chapter 200
- 71 **7-1-301**, as last amended by Laws of Utah 2004, Chapter 92
- 72 **7-1-323**, as last amended by Laws of Utah 2005, Chapter 25
- 73 **7-1-324**, as last amended by Laws of Utah 2004, Chapter 92
- 74 **7-1-325**, as enacted by Laws of Utah 2006, Chapter 165
- 75 **7-1-704**, as last amended by Laws of Utah 1994, Chapter 200
- 76 **7-1-810**, as last amended by Laws of Utah 2007, Chapter 277
- 77 **7-2-9**, as last amended by Laws of Utah 2004, Chapter 267
- 78 **7-2-21**, as enacted by Laws of Utah 1986, Fourth Special Session, Chapter 1
- 79 **7-9-59**, as enacted by Laws of Utah 2003, Chapter 177
- 80 **7-23-103**, as last amended by Laws of Utah 2007, Chapter 87
- 81 **7-23-106**, as last amended by Laws of Utah 2007, Chapter 87
- 82 **7-23-108**, as last amended by Laws of Utah 2007, Chapter 87
- 83 **7-24-201**, as last amended by Laws of Utah 2007, Chapter 87
- 84 **7-24-203**, as enacted by Laws of Utah 2003, Chapter 236
- 85 **7-24-301**, as last amended by Laws of Utah 2007, Chapter 87

86 **7-24-303**, as last amended by Laws of Utah 2007, Chapter 87
87 **9-1-203**, as renumbered and amended by Laws of Utah 1992, Chapter 241
88 **9-1-809**, as last amended by Laws of Utah 2004, Chapter 352
89 **9-3-308**, as last amended by Laws of Utah 1997, Chapter 10
90 **9-3-410**, as last amended by Laws of Utah 2003, Chapter 8
91 **9-4-202**, as last amended by Laws of Utah 2005, Chapter 170
92 **9-4-306**, as last amended by Laws of Utah 2002, Chapter 286
93 **9-4-307**, as last amended by Laws of Utah 2007, Chapter 303
94 **9-4-509**, as renumbered and amended by Laws of Utah 1992, Chapter 241
95 **9-4-704**, as last amended by Laws of Utah 2006, Chapter 359
96 **9-4-906**, as last amended by Laws of Utah 2006, Chapter 14
97 **9-4-917**, as last amended by Laws of Utah 2005, Chapter 102
98 **9-4-1103**, as last amended by Laws of Utah 2000, Chapter 231
99 **9-4-1301**, as last amended by Laws of Utah 2001, Chapter 273
100 **9-4-1404**, as last amended by Laws of Utah 2001, Chapter 162
101 **9-4-1406**, as enacted by Laws of Utah 2000, Chapter 286
102 **9-6-205**, as last amended by Laws of Utah 2005, Chapter 48
103 **9-6-504**, as renumbered and amended by Laws of Utah 1992, Chapter 241
104 **9-6-605**, as renumbered and amended by Laws of Utah 2006, Chapter 24
105 **9-7-213**, as last amended by Laws of Utah 2000, Chapter 136
106 **9-7-302**, as renumbered and amended by Laws of Utah 1992, Chapter 241
107 **9-8-203**, as last amended by Laws of Utah 1997, Chapters 353, and 371
108 **9-8-305**, as last amended by Laws of Utah 2006, Chapter 292
109 **9-8-309**, as enacted by Laws of Utah 2007, Chapter 231
110 **9-8-405**, as last amended by Laws of Utah 2004, Chapter 352
111 **9-8-704**, as last amended by Laws of Utah 1993, Chapter 4
112 **9-9-104**, as last amended by Laws of Utah 1999, Chapter 50
113 **9-10-105**, as last amended by Laws of Utah 2006, Chapter 14

- 114 **9-11-102**, as last amended by Laws of Utah 2004, Chapter 18
- 115 **9-11-105**, as last amended by Laws of Utah 1998, Chapter 48
- 116 **9-11-106**, as last amended by Laws of Utah 2006, Chapter 14
- 117 **9-11-107**, as last amended by Laws of Utah 2007, Chapter 104
- 118 **9-12-103**, as enacted by Laws of Utah 1998, Chapter 336
- 119 **9-12-105**, as renumbered and amended by Laws of Utah 1998, Chapter 336
- 120 **10-1-306**, as enacted by Laws of Utah 1996, Chapter 280
- 121 **10-1-308**, as enacted by Laws of Utah 1996, Chapter 280
- 122 **10-1-405**, as last amended by Laws of Utah 2007, Chapters 9, and 250
- 123 **10-3-208**, as last amended by Laws of Utah 2007, Chapter 256
- 124 **10-3-1303**, as last amended by Laws of Utah 2006, Chapter 359
- 125 **10-3-1304**, as last amended by Laws of Utah 2005, Chapter 25
- 126 **10-3-1305**, as last amended by Laws of Utah 2005, Chapter 25
- 127 **10-7-86**, as last amended by Laws of Utah 1997, Chapter 123
- 128 **10-7-87**, as last amended by Laws of Utah 2005, Chapter 25
- 129 **10-8-2**, as last amended by Laws of Utah 2007, Chapters 291, and 306
- 130 **10-8-58.5**, as last amended by Laws of Utah 2005, Chapter 102
- 131 **10-9a-203**, as last amended by Laws of Utah 2005, Chapters 169, 245 and renumbered
- 132 and amended by Laws of Utah 2005, Chapter 254
- 133 **10-9a-402**, as renumbered and amended by Laws of Utah 2005, Chapter 254
- 134 **10-18-302**, as last amended by Laws of Utah 2005, Chapter 105
- 135 **11-13-222**, as last amended by Laws of Utah 2005, Chapter 102
- 136 **11-13-302**, as last amended by Laws of Utah 2007, Chapter 108
- 137 **11-13-303**, as last amended by Laws of Utah 2006, Chapter 221
- 138 **11-17-20**, as enacted by Laws of Utah 2007, Chapter 167
- 139 **11-36-201**, as last amended by Laws of Utah 2007, Chapter 329
- 140 **11-36-402**, as last amended by Laws of Utah 2004, Chapter 90
- 141 **11-37-101**, as last amended by Laws of Utah 2005, Chapter 25

142 **11-38-102**, as last amended by Laws of Utah 2006, Chapter 278
143 **11-38-303**, as enacted by Laws of Utah 1999, Chapter 24
144 **11-39-101**, as last amended by Laws of Utah 2007, Chapter 329
145 **11-39-107**, as last amended by Laws of Utah 2007, Chapter 329
146 **11-42-205**, as enacted by Laws of Utah 2007, Chapter 329
147 **12-1-10**, as enacted by Laws of Utah 1999, Chapter 235
148 **13-1-2**, as last amended by Laws of Utah 2005, Chapter 98
149 **13-1-8.5**, as last amended by Laws of Utah 1989, Chapter 225
150 **13-1a-5**, as enacted by Laws of Utah 1990, Chapter 9
151 **13-1a-6**, as last amended by Laws of Utah 1997, Chapter 10
152 **13-1a-7**, as enacted by Laws of Utah 1990, Chapter 9
153 **13-1a-9**, as renumbered and amended by Laws of Utah 2001, Chapter 46
154 **13-2-5**, as last amended by Laws of Utah 1994, Chapter 177
155 **13-2-6**, as last amended by Laws of Utah 1997, Chapter 92
156 **13-2-8**, as last amended by Laws of Utah 2005, Chapter 18
157 **13-2-9**, as enacted by Laws of Utah 2005, Chapter 281
158 **13-14-104**, as last amended by Laws of Utah 2005, Chapter 249
159 **13-14-105**, as last amended by Laws of Utah 2005, Chapter 249
160 **13-14-106**, as last amended by Laws of Utah 2005, Chapter 249
161 **13-14-107**, as last amended by Laws of Utah 2005, Chapter 249
162 **13-15-4**, as last amended by Laws of Utah 1995, Chapter 85
163 **13-15-4.5**, as enacted by Laws of Utah 1995, Chapter 85
164 **13-21-3**, as last amended by Laws of Utah 2001, Chapter 196
165 **13-22-3**, as last amended by Laws of Utah 1994, Chapter 185
166 **13-22-6**, as last amended by Laws of Utah 2004, Chapter 55
167 **13-22-8**, as last amended by Laws of Utah 2004, Chapter 55
168 **13-22-9**, as last amended by Laws of Utah 2001, Chapter 210
169 **13-22-12**, as last amended by Laws of Utah 2001, Chapter 210

- 170 **13-23-5**, as last amended by Laws of Utah 2005, Chapter 18
- 171 **13-25a-109**, as last amended by Laws of Utah 2004, Chapter 263
- 172 **13-26-3**, as last amended by Laws of Utah 2005, Chapter 18
- 173 **13-32a-106.5**, as enacted by Laws of Utah 2005, Chapter 256
- 174 **13-32a-111**, as last amended by Laws of Utah 2007, Chapter 352
- 175 **13-34-104**, as last amended by Laws of Utah 2005, Chapter 242
- 176 **13-34-107**, as last amended by Laws of Utah 2005, Chapter 242
- 177 **13-34-113**, as last amended by Laws of Utah 2005, Chapter 242
- 178 **13-35-104**, as last amended by Laws of Utah 2005, Chapter 268
- 179 **13-35-105**, as last amended by Laws of Utah 2005, Chapter 268
- 180 **13-35-106**, as last amended by Laws of Utah 2005, Chapter 268
- 181 **13-35-107**, as last amended by Laws of Utah 2005, Chapter 268
- 182 **13-39-201**, as last amended by Laws of Utah 2006, Chapter 336
- 183 **13-39-203**, as last amended by Laws of Utah 2006, Chapter 336
- 184 **13-41-102**, as last amended by Laws of Utah 2006, Chapter 153
- 185 **13-42-105**, as enacted by Laws of Utah 2006, Chapter 154
- 186 **13-42-109**, as enacted by Laws of Utah 2006, Chapter 154
- 187 **13-42-110**, as enacted by Laws of Utah 2006, Chapter 154
- 188 **13-42-111**, as enacted by Laws of Utah 2006, Chapter 154
- 189 **13-42-112**, as enacted by Laws of Utah 2006, Chapter 154
- 190 **13-42-132**, as enacted by Laws of Utah 2006, Chapter 154
- 191 **13-42-134**, as enacted by Laws of Utah 2006, Chapter 154
- 192 **13-43-203**, as enacted by Laws of Utah 2006, Chapter 258
- 193 **13-43-204**, as enacted by Laws of Utah 2006, Chapter 258
- 194 **13-43-206**, as enacted by Laws of Utah 2006, Chapter 258
- 195 **14-1-18**, as last amended by Laws of Utah 2007, Chapter 329
- 196 **15-9-103**, as enacted by Laws of Utah 2001, Chapter 237
- 197 **15-9-105**, as enacted by Laws of Utah 2001, Chapter 237

198 **15-9-106**, as enacted by Laws of Utah 2001, Chapter 237
199 **15-9-107**, as enacted by Laws of Utah 2001, Chapter 237
200 **15-9-109**, as enacted by Laws of Utah 2001, Chapter 237
201 **16-6a-107**, as last amended by Laws of Utah 2002, Chapter 197
202 **16-6a-111**, as enacted by Laws of Utah 2000, Chapter 300
203 **16-6a-1413**, as enacted by Laws of Utah 2000, Chapter 300
204 **16-6a-1502**, as last amended by Laws of Utah 2002, Chapter 197
205 **16-6a-1517**, as enacted by Laws of Utah 2000, Chapter 300
206 **16-7-11**, as last amended by Laws of Utah 1994, Chapter 313
207 **16-10a-122**, as last amended by Laws of Utah 1994, Chapter 313
208 **16-10a-1423**, as last amended by Laws of Utah 2000, Chapter 131
209 **16-12-3**, as last amended by Laws of Utah 1994, Chapter 313
210 **16-13-12**, as last amended by Laws of Utah 1994, Chapter 313
211 **16-15-105**, as enacted by Laws of Utah 1995, Chapter 310
212 **16-15-107**, as enacted by Laws of Utah 1995, Chapter 310
213 **16-15-108**, as enacted by Laws of Utah 1995, Chapter 310
214 **17-15-24**, as last amended by Laws of Utah 2005, Chapter 25
215 **17-16-21**, as last amended by Laws of Utah 2001, Chapter 9 and renumbered and
216 amended by Laws of Utah 2001, Chapter 46
217 **17-16a-4**, as last amended by Laws of Utah 2005, Chapters 25, and 45
218 **17-21-17**, as last amended by Laws of Utah 2006, Chapter 38
219 **17-21-19**, as last amended by Laws of Utah 2002, Chapter 191
220 **17-27a-203**, as last amended by Laws of Utah 2005, Chapters 169, 245 and renumbered
221 and amended by Laws of Utah 2005, Chapter 254
222 **17-27a-402**, as renumbered and amended by Laws of Utah 2005, Chapter 254
223 **17-43-202**, as renumbered and amended by Laws of Utah 2003, Chapter 22
224 **17-43-302**, as renumbered and amended by Laws of Utah 2003, Chapter 22
225 **17-50-302**, as last amended by Laws of Utah 2005, Chapter 254

- 226 **17-50-401**, as last amended by Laws of Utah 2005, Chapter 228
- 227 **17-53-225**, as last amended by Laws of Utah 2004, Chapter 206
- 228 **17-53-311**, as last amended by Laws of Utah 2005, Chapter 102
- 229 **17-53-313**, as renumbered and amended by Laws of Utah 2000, Chapter 133
- 230 **17B-1-106**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 231 **17B-1-108**, as renumbered and amended by Laws of Utah 2007, Chapter 329
- 232 **17B-2a-818**, as enacted by Laws of Utah 2007, Chapter 329
- 233 **17C-2-602**, as enacted by Laws of Utah 2007, Chapter 379
- 234 **19-1-201**, as last amended by Laws of Utah 1995, Chapters 28, and 324
- 235 **19-1-301**, as enacted by Laws of Utah 1991, Chapter 112
- 236 **19-1-305**, as last amended by Laws of Utah 2007, Chapter 151
- 237 **19-1-306**, as enacted by Laws of Utah 1992, Chapter 280
- 238 **19-1-403**, as last amended by Laws of Utah 2006, Chapters 136, and 223
- 239 **19-1-404**, as last amended by Laws of Utah 2006, Chapters 136, and 223
- 240 **19-1-405**, as enacted by Laws of Utah 2006, Chapter 136
- 241 **19-2-104**, as last amended by Laws of Utah 2006, Chapter 223
- 242 **19-2-105.3**, as last amended by Laws of Utah 2005, Chapter 2
- 243 **19-2-109.1**, as last amended by Laws of Utah 1995, Chapter 28
- 244 **19-2-109.3**, as enacted by Laws of Utah 1992, Chapter 105
- 245 **19-2-109.5**, as enacted by Laws of Utah 1996, Chapter 75
- 246 **19-2-112**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 247 **19-2-115**, as last amended by Laws of Utah 2003, Chapter 138
- 248 **19-3-104**, as last amended by Laws of Utah 2007, Chapter 26
- 249 **19-3-106.4**, as enacted by Laws of Utah 2001, Chapter 314
- 250 **19-3-109**, as renumbered and amended by Laws of Utah 1991, Chapter 112
- 251 **19-3-111**, as last amended by Laws of Utah 1991, Chapter 87 and renumbered and
- 252 amended by Laws of Utah 1991, Chapter 112
- 253 **19-3-303**, as last amended by Laws of Utah 2001, Chapter 107

254 **19-3-308**, as last amended by Laws of Utah 2001, Chapter 107
255 **19-3-315**, as last amended by Laws of Utah 1999, Chapter 190
256 **19-4-104**, as last amended by Laws of Utah 2002, Chapter 295
257 **19-4-109**, as last amended by Laws of Utah 1998, Chapter 174
258 **19-5-104**, as last amended by Laws of Utah 2006, Chapter 179
259 **19-5-113**, as last amended by Laws of Utah 1995, Chapter 114
260 **19-5-120**, as enacted by Laws of Utah 1995, Chapter 114
261 **19-5-121**, as enacted by Laws of Utah 2001, Chapter 274
262 **19-5-122**, as enacted by Laws of Utah 2001, Chapter 274
263 **19-6-102.6**, as last amended by Laws of Utah 1996, Chapter 134
264 **19-6-105**, as last amended by Laws of Utah 1992, Chapter 282
265 **19-6-108.3**, as enacted by Laws of Utah 2007, Chapter 72
266 **19-6-303**, as last amended by Laws of Utah 1992, Chapter 280
267 **19-6-321**, as last amended by Laws of Utah 2005, Chapter 102
268 **19-6-326**, as enacted by Laws of Utah 2005, Chapter 200
269 **19-6-403**, as last amended by Laws of Utah 1997, Chapter 172
270 **19-6-405.3**, as enacted by Laws of Utah 1994, Chapter 297
271 **19-6-408**, as last amended by Laws of Utah 1997, Chapter 172
272 **19-6-410.5**, as last amended by Laws of Utah 2006, Chapter 107
273 **19-6-427**, as last amended by Laws of Utah 2005, Chapter 102
274 **19-6-704**, as enacted by Laws of Utah 1993, Chapter 283
275 **19-6-721**, as last amended by Laws of Utah 1994, Chapter 40
276 **19-6-803**, as last amended by Laws of Utah 2002, Chapters 249, and 256
277 **19-6-806**, as renumbered and amended by Laws of Utah 2000, Chapter 51
278 **19-6-818**, as renumbered and amended by Laws of Utah 2000, Chapter 51
279 **19-6-819**, as last amended by Laws of Utah 2001, Chapter 165
280 **19-6-821**, as last amended by Laws of Utah 2002, Chapter 256
281 **19-6-906**, as enacted by Laws of Utah 2004, Chapter 249

- 282 **19-6-1003**, as enacted by Laws of Utah 2006, Chapter 187
- 283 **19-7-103**, as enacted by Laws of Utah 1995, Chapter 304
- 284 **19-7-104**, as last amended by Laws of Utah 1997, Chapter 387
- 285 **19-8-112**, as enacted by Laws of Utah 1997, Chapter 247
- 286 **19-8-117**, as enacted by Laws of Utah 1997, Chapter 247
- 287 **19-8-120**, as enacted by Laws of Utah 2005, Chapter 200
- 288 **19-9-105**, as renumbered and amended by Laws of Utah 2003, Chapter 184
- 289 **19-10-108**, as enacted by Laws of Utah 2003, Chapter 44
- 290 **20A-1-204**, as last amended by Laws of Utah 2004, Chapter 371
- 291 **20A-2-104**, as last amended by Laws of Utah 2007, Chapter 75
- 292 **20A-3-304.1**, as last amended by Laws of Utah 2006, Chapter 264
- 293 **20A-3-408.5**, as enacted by Laws of Utah 2006, Chapter 273
- 294 **20A-9-206**, as enacted by Laws of Utah 2006, Chapter 226
- 295 **20A-12-104**, as last amended by Laws of Utah 2006, Chapter 14
- 296 **23-14-2.1**, as enacted by Laws of Utah 1987, Chapter 161
- 297 **23-14-18**, as last amended by Laws of Utah 2001, Chapter 22
- 298 **23-14-21**, as last amended by Laws of Utah 2003, Chapters 16, and 128
- 299 **23-16-3.2**, as enacted by Laws of Utah 2003, Chapter 228
- 300 **23-16-4**, as last amended by Laws of Utah 2003, Chapter 228
- 301 **23-19-9**, as last amended by Laws of Utah 2007, Chapter 136
- 302 **23-19-38.2**, as last amended by Laws of Utah 2007, Chapter 187
- 303 **23-21-2.3**, as last amended by Laws of Utah 2003, Chapter 16
- 304 **23-24-1**, as last amended by Laws of Utah 2006, Chapter 140
- 305 **24-1-19**, as enacted by Laws of Utah 2004, Chapter 296
- 306 **26-1-4.1**, as enacted by Laws of Utah 1987, Chapter 161
- 307 **26-1-5**, as last amended by Laws of Utah 2001, Chapter 138
- 308 **26-1-6**, as last amended by Laws of Utah 2001, Chapter 49
- 309 **26-1-7.1**, as enacted by Laws of Utah 1987, Chapter 161

- 310 **26-1-17.5**, as last amended by Laws of Utah 1994, Chapter 312
311 **26-1-21**, as last amended by Laws of Utah 1990, Chapter 93
312 **26-2-22**, as last amended by Laws of Utah 2006, Chapters 55, and 56
313 **26-6b-1**, as last amended by Laws of Utah 2006, Chapter 185
314 **26-8a-104**, as enacted by Laws of Utah 1999, Chapter 141
315 **26-8a-105**, as enacted by Laws of Utah 1999, Chapter 141
316 **26-8a-207**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 17
317 **26-8a-310**, as last amended by Laws of Utah 2007, Chapter 43
318 **26-8a-404**, as last amended by Laws of Utah 2003, Chapter 213
319 **26-8a-405.3**, as enacted by Laws of Utah 2005, Chapter 205
320 **26-8a-407**, as enacted by Laws of Utah 1999, Chapter 141
321 **26-8a-414**, as last amended by Laws of Utah 2004, Chapter 350
322 **26-8a-503**, as enacted by Laws of Utah 1999, Chapter 141
323 **26-8a-504**, as enacted by Laws of Utah 1999, Chapter 141
324 **26-15a-102**, as last amended by Laws of Utah 2005, Chapter 192
325 **26-15a-104**, as last amended by Laws of Utah 2005, Chapter 192
326 **26-15a-105**, as last amended by Laws of Utah 2005, Chapter 192
327 **26-18-3**, as last amended by Laws of Utah 2006, Chapter 116
328 **26-18-103**, as enacted by Laws of Utah 1992, Chapter 273
329 **26-18-104**, as enacted by Laws of Utah 1992, Chapter 273
330 **26-18-304**, as enacted by Laws of Utah 1993, Chapter 255
331 **26-18-504**, as last amended by Laws of Utah 2006, Chapter 170
332 **26-18a-4**, as last amended by Laws of Utah 1997, Chapter 1
333 **26-21-5**, as last amended by Laws of Utah 1997, Chapter 209
334 **26-21-9.5**, as last amended by Laws of Utah 2007, Chapter 43
335 **26-21-23**, as enacted by Laws of Utah 2007, Chapter 24
336 **26-21a-203**, as last amended by Laws of Utah 2001, Chapter 286
337 **26-21a-205**, as last amended by Laws of Utah 1995, Chapter 28

- 338 **26-23-2**, as last amended by Laws of Utah 1988, Chapter 72
- 339 **26-23b-110**, as last amended by Laws of Utah 2007, Chapter 66
- 340 **26-25-2**, as last amended by Laws of Utah 2003, Chapter 242
- 341 **26-33a-104**, as last amended by Laws of Utah 2007, Chapter 29
- 342 **26-35a-106**, as enacted by Laws of Utah 2004, Chapter 284
- 343 **26-38-9**, as enacted by Laws of Utah 1994, Chapter 281
- 344 **26-39-108**, as enacted by Laws of Utah 1997, Chapter 196
- 345 **26-39-109**, as last amended by Laws of Utah 2006, Chapter 37
- 346 **26-40-103**, as last amended by Laws of Utah 2003, Chapter 16
- 347 **26-40-110**, as last amended by Laws of Utah 2001, Chapter 53
- 348 **26-41-104**, as last amended by Laws of Utah 2007, Chapter 37
- 349 **26-42-104**, as enacted by Laws of Utah 1998, Chapter 319
- 350 **26-43-103**, as enacted by Laws of Utah 1998, Chapter 73
- 351 **26-46-102**, as enacted by Laws of Utah 2002, Chapter 307
- 352 **26-47-103**, as enacted by Laws of Utah 2005, Chapter 273
- 353 **26-48-102**, as enacted by Laws of Utah 2006, Chapter 280
- 354 **26A-1-108.7**, as last amended by Laws of Utah 2005, Chapter 25
- 355 **30-2-11**, as last amended by Laws of Utah 2005, Chapter 102
- 356 **30-3-11.3**, as last amended by Laws of Utah 2006, Chapter 173
- 357 **30-3-11.4**, as enacted by Laws of Utah 2007, Chapter 301
- 358 **30-3-38**, as last amended by Laws of Utah 2004, Chapter 352
- 359 **31A-1-103**, as last amended by Laws of Utah 2005, Chapter 102
- 360 **31A-1-301**, as last amended by Laws of Utah 2007, Chapter 307
- 361 **31A-2-201**, as last amended by Laws of Utah 2005, Chapter 123
- 362 **31A-2-201.1**, as enacted by Laws of Utah 2000, Chapter 114
- 363 **31A-2-203**, as last amended by Laws of Utah 2007, Chapter 309
- 364 **31A-2-203.5**, as enacted by Laws of Utah 1987, Chapter 161
- 365 **31A-2-204**, as last amended by Laws of Utah 2007, Chapter 309

366 **31A-2-207**, as last amended by Laws of Utah 2007, Chapter 309
367 **31A-2-209**, as last amended by Laws of Utah 1991, Chapter 259
368 **31A-2-217**, as last amended by Laws of Utah 2002, Chapter 65
369 **31A-2-302**, as last amended by Laws of Utah 1991, Chapter 5
370 **31A-2-306.5**, as enacted by Laws of Utah 2003, Chapter 252
371 **31A-2-404**, as last amended by Laws of Utah 2007, Chapter 325
372 **31A-3-101**, as last amended by Laws of Utah 2005, Chapter 124
373 **31A-3-103**, as last amended by Laws of Utah 2006, Chapter 117
374 **31A-3-304**, as last amended by Laws of Utah 2006, Chapter 320
375 **31A-4-103**, as last amended by Laws of Utah 2003, Chapter 252
376 **31A-5-204**, as last amended by Laws of Utah 1996, Second Special Session, Chapter 9
377 **31A-6a-110**, as last amended by Laws of Utah 2001, Chapter 116
378 **31A-8a-203**, as enacted by Laws of Utah 2005, Chapter 58
379 **31A-8a-210**, as enacted by Laws of Utah 2005, Chapter 58
380 **31A-12-107**, as last amended by Laws of Utah 2004, Chapter 267
381 **31A-14-217**, as last amended by Laws of Utah 2007, Chapter 309
382 **31A-17-503**, as enacted by Laws of Utah 1993, Chapter 305
383 **31A-19a-211 (Superseded 07/01/08)**, as renumbered and amended by Laws of Utah
384 1999, Chapter 130
385 **31A-19a-211 (Effective 07/01/08)**, as last amended by Laws of Utah 2007, Chapter
386 338
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- 473 **34A-1-104**, as enacted by Laws of Utah 1997, Chapter 375
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- 494 amended by Laws of Utah 1997, Chapter 375
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- 496 **34A-6-304**, as renumbered and amended by Laws of Utah 1997, Chapter 375
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- 504 **35A-1-301**, as last amended by Laws of Utah 1997, Chapter 375
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- 585 amended by Laws of Utah 1992, Chapter 234
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- 604 amended by Laws of Utah 2005, Chapter 2
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- 608 amended by Laws of Utah 2005, Chapter 2
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- 614 **41-12a-202**, as last amended by Laws of Utah 2005, Chapter 2
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- 641 **51-5-7**, as last amended by Laws of Utah 2002, Chapter 256
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- 644 amended by Laws of Utah 2006, Chapter 14
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649 **53-1-110**, as last amended by Laws of Utah 1995, Chapter 28
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- 674 **53-3-510**, as enacted by Laws of Utah 2000, Chapter 239
- 675 **53-3-805**, as last amended by Laws of Utah 2007, Chapters 60, and 173
- 676 **53-3-903**, as last amended by Laws of Utah 1994, Chapter 12
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- 680 **53-6-105**, as last amended by Laws of Utah 1995, Chapter 134
- 681 **53-6-213**, as last amended by Laws of Utah 2002, Chapter 256
- 682 **53-7-204**, as last amended by Laws of Utah 2007, Chapter 96
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- 691 **53-9-103**, as last amended by Laws of Utah 2007, Chapter 290
- 692 **53-9-108**, as last amended by Laws of Utah 2007, Chapter 290
- 693 **53-9-113**, as last amended by Laws of Utah 1998, Chapter 212
- 694 **53-9-115**, as last amended by Laws of Utah 1998, Chapter 212
- 695 **53-9-118**, as last amended by Laws of Utah 1998, Chapters 212, and 282
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- 697 **53-10-406**, as last amended by Laws of Utah 2003, Chapter 120
- 698 **53-10-602**, as enacted by Laws of Utah 2004, Chapter 313
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716 **53A-1a-808**, as enacted by Laws of Utah 2007, Chapter 30
717 **53A-1a-902**, as enacted by Laws of Utah 2007, Chapter 386
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721 **53A-3-402.11**, as last amended by Laws of Utah 2002, Chapter 210
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725 **53A-6-105**, as last amended by Laws of Utah 2004, Chapter 19
726 **53A-6-112**, as enacted by Laws of Utah 2006, Chapter 149
727 **53A-6-503**, as enacted by Laws of Utah 2000, Chapter 226
728 **53A-11-102.5**, as last amended by Laws of Utah 2007, Chapter 81
729 **53A-12-103**, as last amended by Laws of Utah 2005, Chapter 119

- 730 **53A-13-101.6**, as last amended by Laws of Utah 2003, Chapter 57
- 731 **53A-13-106**, as last amended by Laws of Utah 1998, Chapters 278, and 282
- 732 **53A-13-201**, as last amended by Laws of Utah 2006, Chapter 201
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- 734 **53A-13-209**, as enacted by Laws of Utah 2003, Chapter 23
- 735 **53A-15-101.5**, as enacted by Laws of Utah 2001, Chapter 99
- 736 **53A-15-104**, as enacted by Laws of Utah 2007, Chapter 221
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- 738 **53A-17a-105**, as last amended by Laws of Utah 1994, Chapter 268
- 739 **53A-17a-107**, as last amended by Laws of Utah 2007, Chapter 306
- 740 **53A-17a-111**, as last amended by Laws of Utah 2003, Chapter 320
- 741 **53A-17a-120**, as last amended by Laws of Utah 2007, Chapter 368
- 742 **53A-17a-121**, as last amended by Laws of Utah 2003, Chapter 320
- 743 **53A-17a-131.9**, as last amended by Laws of Utah 2002, Chapters 258, and 279
- 744 **53A-17a-131.15**, as last amended by Laws of Utah 2003, Chapter 320
- 745 **53A-17a-131.17**, as last amended by Laws of Utah 2005, Chapter 166
- 746 **53A-17a-153**, as enacted by Laws of Utah 2007, Chapter 380
- 747 **53A-19-105**, as last amended by Laws of Utah 2003, Chapter 122
- 748 **53A-20-101**, as last amended by Laws of Utah 2005, Chapter 25
- 749 **53A-20c-102**, as enacted by Laws of Utah 2007, Chapter 335
- 750 **53A-21-103**, as last amended by Laws of Utah 2003, Chapter 320
- 751 **53A-21-103.5**, as last amended by Laws of Utah 2005, Chapters 171, and 184
- 752 **53A-24-114**, as last amended by Laws of Utah 2006, Chapter 139
- 753 **53A-26a-302**, as last amended by Laws of Utah 1995, Chapter 28
- 754 **53B-2-107**, as enacted by Laws of Utah 2002, Chapter 315
- 755 **53B-2-108**, as enacted by Laws of Utah 2002, Fifth Special Session, Chapter 22
- 756 **53B-6-105**, as enacted by Laws of Utah 2001, Chapter 238
- 757 **53B-6-105.7**, as enacted by Laws of Utah 2001, Chapter 238

758 **53B-6-105.9**, as last amended by Laws of Utah 2002, Chapter 210
759 **53B-6-106**, as enacted by Laws of Utah 2005, Chapter 147
760 **53B-7-502**, as last amended by Laws of Utah 2007, Chapters 247, and 356
761 **53B-12-101**, as last amended by Laws of Utah 2005, Chapter 81
762 **53B-16-302**, as last amended by Laws of Utah 2005, Chapter 201
763 **53B-16-303**, as enacted by Laws of Utah 1992, Chapter 280
764 **53B-16-304**, as last amended by Laws of Utah 2005, Chapter 201
765 **53B-16-305**, as enacted by Laws of Utah 1992, Chapter 280
766 **53B-17-603**, as last amended by Laws of Utah 1994, Chapter 294
767 **53C-1-201**, as last amended by Laws of Utah 2007, Chapter 306
768 **53C-1-202**, as last amended by Laws of Utah 2003, Chapter 192
769 **53C-1-304**, as last amended by Laws of Utah 1997, Chapter 72
770 **53C-2-201**, as last amended by Laws of Utah 2004, Chapter 63
771 **54-1-2.5**, as enacted by Laws of Utah 1987, Chapter 161
772 **54-3-28**, as last amended by Laws of Utah 2007, Chapter 329
773 **54-5-1.5**, as last amended by Laws of Utah 2001, Chapter 212
774 **54-7-15**, as last amended by Laws of Utah 2003, Chapter 200
775 **54-8b-2.1**, as enacted by Laws of Utah 1995, Chapter 269
776 **54-8b-10**, as last amended by Laws of Utah 2007, Chapter 68
777 **54-14-104**, as enacted by Laws of Utah 1997, Chapter 197
778 **54-14-307**, as enacted by Laws of Utah 1997, Chapter 197
779 **54-17-102**, as enacted by Laws of Utah 2005, Chapter 11
780 **54-17-103**, as enacted by Laws of Utah 2005, Chapter 11
781 **54-17-201**, as last amended by Laws of Utah 2007, Chapter 289
782 **54-17-202**, as enacted by Laws of Utah 2005, Chapter 11
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784 **54-17-301**, as enacted by Laws of Utah 2005, Chapter 11
785 **54-17-302**, as last amended by Laws of Utah 2007, Chapter 289

- 786 **54-17-304**, as enacted by Laws of Utah 2005, Chapter 11
- 787 **54-17-401**, as enacted by Laws of Utah 2005, Chapter 11
- 788 **54-17-402**, as enacted by Laws of Utah 2005, Chapter 11
- 789 **54-17-404**, as enacted by Laws of Utah 2005, Chapter 11
- 790 **54-17-501**, as enacted by Laws of Utah 2007, Chapter 289
- 791 **56-1-22.5**, as enacted by Laws of Utah 1987, Chapter 161
- 792 **56-2-8**, as last amended by Laws of Utah 1987, Chapter 161
- 793 **57-11-3.5**, as enacted by Laws of Utah 1987, Chapter 161
- 794 **57-11-10**, as last amended by Laws of Utah 1990, Chapter 199
- 795 **57-11-13**, as repealed and reenacted by Laws of Utah 1991, Chapter 165
- 796 **57-11-14**, as last amended by Laws of Utah 1991, Chapter 165
- 797 **57-12-9**, as last amended by Laws of Utah 2004, Chapter 223
- 798 **57-19-20**, as last amended by Laws of Utah 1991, Chapter 165
- 799 **57-21-2**, as last amended by Laws of Utah 1997, Chapter 375
- 800 **57-21-8**, as last amended by Laws of Utah 1999, Chapter 82
- 801 **57-21-9**, as last amended by Laws of Utah 1999, Chapters 82, and 160
- 802 **57-21-10**, as last amended by Laws of Utah 1999, Chapter 160
- 803 **57-23-8**, as enacted by Laws of Utah 1992, Chapter 169
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- 805 **57-25-109**, as enacted by Laws of Utah 2006, Chapter 51
- 806 **58-1-106**, as last amended by Laws of Utah 2003, Chapter 54
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- 810 **58-1-308**, as last amended by Laws of Utah 2003, Chapter 43
- 811 **58-1-402**, as last amended by Laws of Utah 1996, Chapter 243
- 812 **58-1-404**, as last amended by Laws of Utah 2006, Chapter 14
- 813 **58-3a-103**, as last amended by Laws of Utah 2002, Chapter 256

814 **58-3a-302**, as enacted by Laws of Utah 1996, Chapter 260
815 **58-3a-502**, as last amended by Laws of Utah 1997, Chapter 10
816 **58-5a-302**, as last amended by Laws of Utah 1995, Chapter 28
817 **58-9-302**, as last amended by Laws of Utah 2007, Chapter 144
818 **58-9-504**, as enacted by Laws of Utah 2003, Chapter 49
819 **58-9-701**, as last amended by Laws of Utah 2007, Chapter 144
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822 **58-11a-503**, as last amended by Laws of Utah 2007, Chapter 209
823 **58-13-5**, as enacted by Laws of Utah 1996, Chapter 248
824 **58-15-4**, as last amended by Laws of Utah 1994, Chapter 313
825 **58-16a-302**, as last amended by Laws of Utah 2001, Chapter 268
826 **58-17b-303**, as last amended by Laws of Utah 2005, Chapter 160
827 **58-17b-304**, as last amended by Laws of Utah 2007, Chapter 279
828 **58-17b-305**, as enacted by Laws of Utah 2004, Chapter 280
829 **58-17b-306**, as enacted by Laws of Utah 2004, Chapter 280
830 **58-17b-307**, as enacted by Laws of Utah 2004, Chapter 280
831 **58-17b-504**, as last amended by Laws of Utah 2007, Chapters 279, and 306
832 **58-17b-701**, as enacted by Laws of Utah 2004, Chapter 280
833 **58-20a-302**, as last amended by Laws of Utah 1996, Chapter 191
834 **58-22-103**, as last amended by Laws of Utah 2002, Chapter 256
835 **58-22-302**, as last amended by Laws of Utah 2003, Chapter 50
836 **58-22-503**, as last amended by Laws of Utah 1997, Chapter 10
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848 **58-31b-401**, as last amended by Laws of Utah 2006, Chapter 291
849 **58-31b-402**, as last amended by Laws of Utah 2002, Chapter 290
850 **58-31b-601**, as last amended by Laws of Utah 2006, Chapter 291
851 **58-37-2**, as last amended by Laws of Utah 2006, Chapter 8
852 **58-37-6**, as last amended by Laws of Utah 2006, Chapters 21, and 281
853 **58-37-21**, as enacted by Laws of Utah 1995, Chapter 163
854 **58-37c-3**, as last amended by Laws of Utah 2000, Chapters 271, and 272
855 **58-37c-6**, as repealed and reenacted by Laws of Utah 1992, Chapter 155
856 **58-37c-8**, as last amended by Laws of Utah 2007, Chapter 358
857 **58-37c-14**, as enacted by Laws of Utah 1992, Chapter 155
858 **58-39a-5**, as last amended by Laws of Utah 1994, Chapter 313
859 **58-40-5**, as last amended by Laws of Utah 2004, Chapter 11
860 **58-40a-302**, as enacted by Laws of Utah 2006, Chapter 206
861 **58-40a-304**, as enacted by Laws of Utah 2006, Chapter 206
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863 **58-41-13**, as last amended by Laws of Utah 1994, Chapter 313
864 **58-42a-302**, as last amended by Laws of Utah 2004, Chapter 9
865 **58-44a-102**, as last amended by Laws of Utah 1998, Chapter 288
866 **58-44a-302**, as last amended by Laws of Utah 2007, Chapter 57
867 **58-44a-402**, as enacted by Laws of Utah 1998, Chapter 288
868 **58-46a-302**, as last amended by Laws of Utah 2002, Chapter 50
869 **58-47b-302**, as last amended by Laws of Utah 2000, Chapter 309

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871 **58-53-302**, as renumbered and amended by Laws of Utah 1998, Chapter 191
872 **58-53-502**, as renumbered and amended by Laws of Utah 1998, Chapter 191
873 **58-54-2**, as last amended by Laws of Utah 1996, Chapter 232
874 **58-54-5**, as last amended by Laws of Utah 1994, Chapters 163, and 313
875 **58-55-103**, as last amended by Laws of Utah 2004, Chapters 61, and 90
876 **58-55-302**, as last amended by Laws of Utah 2006, Chapter 122
877 **58-55-307**, as last amended by Laws of Utah 2002, Chapter 241
878 **58-55-308**, as last amended by Laws of Utah 2006, Chapter 73
879 **58-55-503**, as last amended by Laws of Utah 2007, Chapter 98
880 **58-56-4**, as last amended by Laws of Utah 2005, Chapter 254
881 **58-56-7**, as last amended by Laws of Utah 2002, Chapter 75
882 **58-56-9.3**, as enacted by Laws of Utah 2007, Chapter 145
883 **58-56-9.5**, as enacted by Laws of Utah 2007, Chapter 145
884 **58-56-16**, as last amended by Laws of Utah 1999, Chapter 42
885 **58-57-4**, as last amended by Laws of Utah 2006, Chapter 106
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888 **58-59-302.5**, as enacted by Laws of Utah 2007, Chapter 134
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891 **58-60-115**, as last amended by Laws of Utah 2003, Chapter 201
892 **58-60-117**, as last amended by Laws of Utah 2004, Chapter 143
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- 898 **58-63-302**, as last amended by Laws of Utah 2005, Chapter 81
- 899 **58-63-304**, as last amended by Laws of Utah 2005, Chapter 307
- 900 **58-63-503**, as enacted by Laws of Utah 2003, Chapter 308
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- 902 **58-67-102**, as last amended by Laws of Utah 2000, Chapter 1
- 903 **58-67-302**, as last amended by Laws of Utah 2006, Chapter 53
- 904 **58-67-402**, as enacted by Laws of Utah 1996, Chapter 248
- 905 **58-67-601**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
- 906 **58-68-102**, as last amended by Laws of Utah 2000, Chapter 1
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- 909 **58-68-601**, as last amended by Laws of Utah 2002, Fifth Special Session, Chapter 8
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- 917 **58-72-302**, as last amended by Laws of Utah 2007, Chapter 90
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- 919 amended by Laws of Utah 1996, Chapter 253
- 920 **58-73-701**, as last amended by Laws of Utah 2005, Chapter 102
- 921 **58-74-302**, as last amended by Laws of Utah 2004, Chapter 77
- 922 **58-75-102**, as enacted by Laws of Utah 2001, Chapter 100
- 923 **58-75-302**, as last amended by Laws of Utah 2002, Chapter 305
- 924 **58-76-103**, as enacted by Laws of Utah 2002, Chapter 218
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926 **58-76-502**, as last amended by Laws of Utah 2003, Chapter 131
927 **58-77-302**, as enacted by Laws of Utah 2005, Chapter 299
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929 **59-1-302**, as last amended by Laws of Utah 2005, Chapter 198
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931 **59-1-305**, as enacted by Laws of Utah 2007, Chapter 281
932 **59-1-401**, as last amended by Laws of Utah 2007, Chapters 175, and 269
933 **59-1-403**, as last amended by Laws of Utah 2007, Chapter 250
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935 **59-1-502.5**, as last amended by Laws of Utah 1995, Chapter 55
936 **59-1-601**, as last amended by Laws of Utah 1998, Chapter 326
937 **59-1-602**, as last amended by Laws of Utah 1998, Chapter 326
938 **59-1-610**, as enacted by Laws of Utah 1993, Chapter 248
939 **59-1-1302**, as enacted by Laws of Utah 2006, Chapter 237
940 **59-1-1303**, as enacted by Laws of Utah 2006, Chapter 237
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943 **59-2-102**, as last amended by Laws of Utah 2007, Chapters 107, 234, and 329
944 **59-2-103.5**, as enacted by Laws of Utah 2002, Chapter 169
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946 **59-2-202**, as last amended by Laws of Utah 1999, Chapter 71
947 **59-2-207**, as last amended by Laws of Utah 1999, Chapter 71
948 **59-2-307**, as last amended by Laws of Utah 2006, Chapter 39
949 **59-2-309**, as last amended by Laws of Utah 1992, Chapter 237
950 **59-2-405.2**, as last amended by Laws of Utah 2006, Fifth Special Session, Chapter 3
951 **59-2-406**, as last amended by Laws of Utah 2005, Chapters 217, and 244
952 **59-2-503**, as last amended by Laws of Utah 2003, Chapter 208
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- 954 **59-2-704.5**, as enacted by Laws of Utah 1993, Chapter 243
- 955 **59-2-801**, as last amended by Laws of Utah 1999, Chapter 134
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- 962 **59-2-1105**, as last amended by Laws of Utah 2006, Chapter 114
- 963 **59-2-1115**, as last amended by Laws of Utah 2007, Chapter 8
- 964 **59-2-1202**, as last amended by Laws of Utah 2006, Chapter 363
- 965 **59-5-101**, as last amended by Laws of Utah 2006, Chapter 346
- 966 **59-5-110**, as repealed and reenacted by Laws of Utah 1988, Chapter 4
- 967 **59-5-203**, as last amended by Laws of Utah 2005, Chapter 238
- 968 **59-5-204**, as last amended by Laws of Utah 1988, Chapter 183
- 969 **59-5-210**, as enacted by Laws of Utah 1988, Chapter 4
- 970 **59-6-104**, as last amended by Laws of Utah 1988, Chapter 3
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- 977 **59-7-703**, as last amended by Laws of Utah 2006, Chapter 223
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- 980 **59-10-114**, as last amended by Laws of Utah 2007, Chapter 100
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983 **59-10-117**, as last amended by Laws of Utah 2006, Fourth Special Session, Chapter 2
984 **59-10-202**, as last amended by Laws of Utah 2007, Chapter 100
985 **59-10-209.1**, as enacted by Laws of Utah 2006, Chapter 223
986 **59-10-210**, as last amended by Laws of Utah 2006, Chapter 223
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988 **59-10-514**, as last amended by Laws of Utah 2007, Chapter 28
989 **59-10-514.1**, as enacted by Laws of Utah 2005, Chapter 121
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992 **59-10-1012**, as last amended by Laws of Utah 2007, Chapter 288
993 **59-10-1013**, as renumbered and amended by Laws of Utah 2006, Chapter 223
994 **59-10-1015**, as renumbered and amended by Laws of Utah 2006, Chapter 223
995 **59-10-1105**, as last amended by Laws of Utah 2007, Chapter 122
996 **59-10-1205**, as enacted by Laws of Utah 2006, Fourth Special Session, Chapter 2
997 **59-11-113**, as last amended by Laws of Utah 1998, Chapter 299
998 **59-12-102**, as last amended by Laws of Utah 2007, Chapters 9, 214, 224, and 288
999 **59-12-104**, as last amended by Laws of Utah 2007, Chapters 76, 195, 214, 224, 288,
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- 1010 **59-12-209**, as enacted by Laws of Utah 1994, Chapter 259
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- 1015 **59-12-703**, as last amended by Laws of Utah 2007, Chapter 288
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- 1017 **59-12-902**, as last amended by Laws of Utah 2004, Chapter 18
- 1018 **59-12-1001**, as last amended by Laws of Utah 2007, Chapters 288, and 329
- 1019 **59-12-1102**, as last amended by Laws of Utah 2006, Chapter 253
- 1020 **59-12-1302**, as last amended by Laws of Utah 2007, Chapter 288
- 1021 **59-12-1402**, as last amended by Laws of Utah 2007, Chapter 288
- 1022 **59-12-1503**, as last amended by Laws of Utah 2007, Chapters 10, 202, 288, and 329
- 1023 **59-12-1703**, as last amended by Laws of Utah 2007, Chapters 201, 288, and 329
- 1024 **59-12-1803**, as enacted by Laws of Utah 2007, Chapter 288
- 1025 **59-13-201**, as last amended by Laws of Utah 2004, Chapter 237
- 1026 **59-13-201.5**, as enacted by Laws of Utah 2000, Chapter 258
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- 1028 **59-13-203.1**, as last amended by Laws of Utah 2007, Chapter 194
- 1029 **59-13-301**, as last amended by Laws of Utah 2003, Chapters 7, and 268
- 1030 **59-13-301.5**, as last amended by Laws of Utah 2001, Chapter 9
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- 1032 **59-13-322**, as last amended by Laws of Utah 2003, Chapter 178
- 1033 **59-13-404**, as enacted by Laws of Utah 2001, Chapter 235
- 1034 **59-13-502**, as enacted by Laws of Utah 1990, Chapter 11
- 1035 **59-14-204**, as last amended by Laws of Utah 2007, Chapter 6
- 1036 **59-14-407**, as last amended by Laws of Utah 2002, Chapters 52, and 175
- 1037 **59-14-409**, as enacted by Laws of Utah 2005, Chapter 135

- 1038 **59-14-603**, as enacted by Laws of Utah 2005, Chapter 204
- 1039 **59-19-105**, as last amended by Laws of Utah 1989, Chapter 242
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- 1041 **59-24-108**, as enacted by Laws of Utah 2001, Chapter 314
- 1042 **59-25-108**, as enacted by Laws of Utah 2003, Chapter 295
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- 1044 **59-26-108**, as enacted by Laws of Utah 2004, Chapter 300
- 1045 **59-27-104**, as enacted by Laws of Utah 2004, Chapter 214
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- 1047 **61-1-6**, as last amended by Laws of Utah 2003, Chapter 36
- 1048 **61-1-11.1**, as enacted by Laws of Utah 2003, Chapter 245
- 1049 **61-1-12**, as last amended by Laws of Utah 1990, Chapter 133
- 1050 **61-1-13**, as last amended by Laws of Utah 2007, Chapters 292, and 307
- 1051 **61-1-14**, as last amended by Laws of Utah 1997, Chapter 160
- 1052 **61-1-15.5**, as enacted by Laws of Utah 1997, Chapter 160
- 1053 **61-1-18.4**, as last amended by Laws of Utah 1994, Chapter 313
- 1054 **61-1-18.6**, as enacted by Laws of Utah 1987, Chapter 161
- 1055 **61-1-18.7**, as last amended by Laws of Utah 2002, Chapter 256
- 1056 **61-1-23**, as last amended by Laws of Utah 1990, Chapter 133
- 1057 **61-2-5.1**, as last amended by Laws of Utah 1997, Chapter 351
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- 1059 **61-2-7.1**, as last amended by Laws of Utah 2005, Chapter 199
- 1060 **61-2-9**, as last amended by Laws of Utah 2007, Chapter 325
- 1061 **61-2-10**, as last amended by Laws of Utah 1996, Chapter 102
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- 1065 **61-2-28**, as enacted by Laws of Utah 2007, Chapter 325

- 1066 **61-2b-2**, as last amended by Laws of Utah 2005, Chapter 199
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- 1070 **61-2b-21**, as last amended by Laws of Utah 2005, Chapter 199
- 1071 **61-2b-22**, as last amended by Laws of Utah 2005, Chapter 199
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- 1073 **61-2b-28**, as last amended by Laws of Utah 2007, Chapter 325
- 1074 **61-2b-30**, as enacted by Laws of Utah 1990, Chapter 212
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- 1076 **61-2c-102**, as last amended by Laws of Utah 2007, Chapter 325
- 1077 **61-2c-103**, as last amended by Laws of Utah 2005, Chapter 199
- 1078 **61-2c-104**, as last amended by Laws of Utah 2007, Chapter 325
- 1079 **61-2c-105**, as last amended by Laws of Utah 2007, Chapter 173
- 1080 **61-2c-201**, as last amended by Laws of Utah 2007, Chapter 325
- 1081 **61-2c-202**, as last amended by Laws of Utah 2007, Chapter 325
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- 1084 **61-2c-207**, as enacted by Laws of Utah 2004, Chapter 297
- 1085 **61-2c-208**, as last amended by Laws of Utah 2007, Chapter 325
- 1086 **61-2c-402.1**, as enacted by Laws of Utah 2005, Chapter 199
- 1087 **61-2c-403**, as last amended by Laws of Utah 2007, Chapter 325
- 1088 **62A-1-106**, as enacted by Laws of Utah 1988, Chapter 1
- 1089 **62A-1-108.5**, as last amended by Laws of Utah 2003, Chapter 11
- 1090 **62A-1-111**, as last amended by Laws of Utah 2005, Chapter 212
- 1091 **62A-1-112**, as last amended by Laws of Utah 2004, Chapter 352
- 1092 **62A-1-118**, as last amended by Laws of Utah 2006, Chapter 77
- 1093 **62A-2-105**, as last amended by Laws of Utah 2005, Chapter 188

- 1094 **62A-2-106**, as last amended by Laws of Utah 2005, Chapters 188, and 212
- 1095 **62A-2-108.2**, as enacted by Laws of Utah 2005, Chapter 188
- 1096 **62A-2-108.3**, as enacted by Laws of Utah 2005, Chapter 188
- 1097 **62A-2-109**, as last amended by Laws of Utah 2005, Chapter 188
- 1098 **62A-2-111**, as last amended by Laws of Utah 2005, Chapter 188
- 1099 **62A-2-120**, as last amended by Laws of Utah 2007, Chapter 152
- 1100 **62A-2-121**, as last amended by Laws of Utah 2007, Chapter 152
- 1101 **62A-2-122**, as last amended by Laws of Utah 2005, Chapters 60, 107, and 188
- 1102 **62A-3-104**, as last amended by Laws of Utah 2005, Chapter 107
- 1103 **62A-3-104.1**, as last amended by Laws of Utah 2005, Chapters 71, and 107
- 1104 **62A-3-106.5**, as enacted by Laws of Utah 2006, Chapter 31
- 1105 **62A-3-109**, as enacted by Laws of Utah 1988, Chapter 1
- 1106 **62A-3-205**, as enacted by Laws of Utah 1988, Chapter 1
- 1107 **62A-3-311**, as repealed and reenacted by Laws of Utah 2002, Chapter 108
- 1108 **62A-3-311.1**, as last amended by Laws of Utah 2005, Chapter 50
- 1109 **62A-3-312**, as repealed and reenacted by Laws of Utah 2002, Chapter 108
- 1110 **62A-4a-102**, as last amended by Laws of Utah 2005, Chapter 188
- 1111 **62A-4a-112**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 1112 **62A-4a-115**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 1113 **62A-4a-119**, as enacted by Laws of Utah 2000, Chapter 274
- 1114 **62A-4a-120**, as last amended by Laws of Utah 2006, Chapter 281
- 1115 **62A-4a-206**, as last amended by Laws of Utah 2002, Chapter 306
- 1116 **62A-4a-207**, as last amended by Laws of Utah 2006, Chapter 14
- 1117 **62A-4a-208**, as enacted by Laws of Utah 1998, Chapter 274
- 1118 **62A-4a-303**, as renumbered and amended by Laws of Utah 1994, Chapter 260
- 1119 **62A-4a-304**, as last amended by Laws of Utah 1996, Chapter 242
- 1120 **62A-4a-410**, as last amended by Laws of Utah 2005, Chapter 102
- 1121 **62A-4a-412**, as last amended by Laws of Utah 2006, Chapters 77, and 281

- 1122 **62A-4a-906**, as enacted by Laws of Utah 2001, Chapter 115
- 1123 **62A-4a-1003**, as last amended by Laws of Utah 2007, Chapter 152
- 1124 **62A-4a-1006**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 1125 **62A-4a-1009**, as renumbered and amended by Laws of Utah 2006, Chapter 77
- 1126 **62A-5-103**, as last amended by Laws of Utah 2005, Chapter 60
- 1127 **62A-5-103.1**, as enacted by Laws of Utah 2006, Chapter 133
- 1128 **62A-5-103.2**, as enacted by Laws of Utah 2007, Chapter 135
- 1129 **62A-5-105**, as last amended by Laws of Utah 2004, Chapter 114
- 1130 **62A-5-313**, as last amended by Laws of Utah 1991, Chapter 207
- 1131 **62A-5a-104**, as last amended by Laws of Utah 1996, Chapter 179
- 1132 **62A-7-202**, as last amended by Laws of Utah 2005, Chapter 13
- 1133 **62A-11-104.1**, as last amended by Laws of Utah 1995, Chapter 258
- 1134 **62A-11-105**, as enacted by Laws of Utah 1988, Chapter 1
- 1135 **62A-11-303**, as last amended by Laws of Utah 2000, Chapter 161
- 1136 **62A-11-304.1**, as repealed and reenacted by Laws of Utah 1997, Chapter 232
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- 1139 **62A-11-326.3**, as enacted by Laws of Utah 1990, Chapter 166
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- 1141 **62A-11-407**, as last amended by Laws of Utah 1997, Chapter 232
- 1142 **62A-11-603 (Effective 07/01/08)**, as enacted by Laws of Utah 2007, Chapter 338
- 1143 **62A-13-105**, as last amended by Laws of Utah 2003, Chapter 246
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- 1146 **62A-14-108**, as enacted by Laws of Utah 1999, Chapter 69
- 1147 **62A-14-109**, as enacted by Laws of Utah 1999, Chapter 69
- 1148 **62A-15-103**, as last amended by Laws of Utah 2003, Chapters 22, 100, and 303
- 1149 **62A-15-105**, as last amended by Laws of Utah 2005, Chapter 2

- 1150 **62A-15-401**, as last amended by Laws of Utah 2007, Chapter 284
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- 1154 Chapter 8
- 1155 **62A-15-902**, as last amended by Laws of Utah 2004, Chapter 49
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- 1160 **63-34-5 (Contingently Effective)**, as last amended by Laws of Utah 2003, Chapter 144
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- 1164 **63-73-4**, as enacted by Laws of Utah 1988, Chapter 137
- 1165 **63-73-6**, as last amended by Laws of Utah 2005, Chapter 294
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- 1169 **63A-2-103**, as last amended by Laws of Utah 2004, Chapter 34
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- 1171 **63A-4-102**, as last amended by Laws of Utah 2004, Chapter 34
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- 1175 **63A-5-103**, as last amended by Laws of Utah 2007, Chapter 322
- 1176 **63A-5-104**, as last amended by Laws of Utah 2007, Chapter 12
- 1177 **63A-5-204**, as last amended by Laws of Utah 2006, Chapters 123, and 278

- 1178 **63A-5-205**, as last amended by Laws of Utah 2004, Chapter 347
- 1179 **63A-5-206**, as last amended by Laws of Utah 2007, Chapter 12
- 1180 **63A-5-208**, as last amended by Laws of Utah 2005, Chapter 25
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- 1185 **63A-9-801**, as last amended by Laws of Utah 2006, Chapter 139
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- 1192 **63B-2-105**, as enacted by Laws of Utah 1993, Chapter 304
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- 1194 **63B-2-301**, as last amended by Laws of Utah 2003, Chapter 16
- 1195 **63B-3-102**, as last amended by Laws of Utah 2005, Chapter 25
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- 1198 **63B-3-301**, as last amended by Laws of Utah 2003, Chapter 171
- 1199 **63B-4-102**, as last amended by Laws of Utah 2005, Chapter 25
- 1200 **63B-4-105**, as enacted by Laws of Utah 1995, Chapter 329
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- 1208 **63B-6-402**, as last amended by Laws of Utah 2005, Chapter 25
- 1209 **63B-6-405**, as enacted by Laws of Utah 1997, Chapter 391
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- 1211 **63B-7-102**, as last amended by Laws of Utah 2005, Chapter 25
- 1212 **63B-7-105**, as enacted by Laws of Utah 1998, Chapter 67
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- 1228 **63B-10-301**, as last amended by Laws of Utah 2001, Second Special Session, Chapter 8
- 1229 **63B-10-302**, as enacted by Laws of Utah 2001, Chapter 239
- 1230 **63B-11-105**, as enacted by Laws of Utah 2002, Chapter 199
- 1231 **63B-11-202**, as last amended by Laws of Utah 2006, Chapter 169
- 1232 **63B-11-205**, as enacted by Laws of Utah 2002, Chapter 252
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- 1263 **63F-1-301**, as enacted by Laws of Utah 2005, Chapter 169
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- 1267 **64-13-10**, as last amended by Laws of Utah 1994, Chapter 48
- 1268 **64-13-14.7**, as last amended by Laws of Utah 1996, Chapter 242
- 1269 **64-13-17**, as last amended by Laws of Utah 2004, Chapter 36
- 1270 **64-13-20**, as last amended by Laws of Utah 1995, Chapter 352
- 1271 **64-13-21**, as last amended by Laws of Utah 2002, Chapter 140
- 1272 **64-13-25**, as last amended by Laws of Utah 1987, Chapter 116
- 1273 **64-13-38**, as last amended by Laws of Utah 1997, Chapter 110
- 1274 **64-13-39.5**, as last amended by Laws of Utah 2007, Chapter 343
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- 1277 **65A-1-4**, as last amended by Laws of Utah 2007, Chapter 136
- 1278 **65A-8-105**, as renumbered and amended by Laws of Utah 2007, Chapter 136
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- 1286 **67-5-18**, as last amended by Laws of Utah 2002, Chapter 130
- 1287 **67-5a-8**, as last amended by Laws of Utah 2002, Chapter 256
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- 1289 **67-16-3**, as last amended by Laws of Utah 1992, Chapter 280

- 1290 **67-16-4**, as last amended by Laws of Utah 2005, Chapters 25, and 45
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- 1306 **69-2-5.6**, as last amended by Laws of Utah 2007, Chapter 241
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- 1310 **70A-9a-526**, as enacted by Laws of Utah 2000, Chapter 252
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- 1325 **72-2-117**, as last amended by Laws of Utah 2007, Chapter 201
- 1326 **72-2-122**, as enacted by Laws of Utah 2002, Chapter 98
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- 1328 **72-2-202**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 1329 **72-2-203**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 1330 **72-2-204**, as last amended by Laws of Utah 2005, Chapter 105
- 1331 **72-3-109**, as last amended by Laws of Utah 2001, Chapter 61
- 1332 **72-3-207**, as last amended by Laws of Utah 2007, Chapter 126
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- 1338 **72-5-309**, as last amended by Laws of Utah 2006, Chapter 9
- 1339 **72-5-405**, as enacted by Laws of Utah 2000, Chapter 34
- 1340 **72-5-406**, as enacted by Laws of Utah 2000, Chapter 34
- 1341 **72-6-107**, as last amended by Laws of Utah 2005, Chapter 25
- 1342 **72-6-108**, as last amended by Laws of Utah 1999, Chapter 365
- 1343 **72-6-111**, as last amended by Laws of Utah 1998, Chapter 335 and renumbered and
- 1344 amended by Laws of Utah 1998, Chapter 270
- 1345 **72-6-116**, as last amended by Laws of Utah 2000, Chapter 347

- 1346 **72-6-118**, as last amended by Laws of Utah 2006, Chapter 36
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- 1360 **72-7-402**, as last amended by Laws of Utah 2002, Chapter 151
- 1361 **72-7-406**, as last amended by Laws of Utah 2006, Chapter 212
- 1362 **72-7-407**, as last amended by Laws of Utah 2005, Chapter 2
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- 1367 **72-9-103**, as renumbered and amended by Laws of Utah 1998, Chapter 270
- 1368 **72-9-502**, as last amended by Laws of Utah 2005, Chapter 161
- 1369 **72-9-602**, as last amended by Laws of Utah 2005, Chapter 2
- 1370 **72-9-603**, as last amended by Laws of Utah 2005, Chapter 2
- 1371 **72-10-103**, as last amended by Laws of Utah 1998, Chapter 365 and renumbered and
- 1372 amended by Laws of Utah 1998, Chapter 270
- 1373 **72-10-107**, as renumbered and amended by Laws of Utah 1998, Chapter 270

1374 **72-10-116**, as last amended by Laws of Utah 1998, Chapter 365 and renumbered and
1375 amended by Laws of Utah 1998, Chapter 270

1376 **72-10-117**, as last amended by Laws of Utah 1998, Chapter 365 and renumbered and
1377 amended by Laws of Utah 1998, Chapter 270

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1380 **72-11-210**, as renumbered and amended by Laws of Utah 1999, Chapter 195

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1382 **73-2-1**, as last amended by Laws of Utah 2007, Chapter 329

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1385 **73-2-25**, as last amended by Laws of Utah 2007, Chapter 136

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1387 **73-3-25**, as last amended by Laws of Utah 2004, Chapter 191

1388 **73-3-29**, as last amended by Laws of Utah 2005, Chapter 215

1389 **73-3a-104**, as enacted by Laws of Utah 1991, Chapter 234

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1392 **73-3b-105**, as enacted by Laws of Utah 1991, Chapter 146

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1394 **73-3b-204**, as last amended by Laws of Utah 1995, Chapter 28

1395 **73-3b-302**, as last amended by Laws of Utah 1995, Chapter 28

1396 **73-3c-301**, as enacted by Laws of Utah 2006, Chapter 179

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- 1407 **73-18-13.5**, as last amended by Laws of Utah 2006, Chapter 211
- 1408 **73-18-19**, as last amended by Laws of Utah 1987, Chapter 99
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- 1410 **73-18a-4**, as last amended by Laws of Utah 1991, Chapter 112
- 1411 **73-18a-5**, as last amended by Laws of Utah 1991, Chapter 112
- 1412 **73-18a-12**, as last amended by Laws of Utah 1991, Chapter 112
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- 1414 **73-18c-306**, as last amended by Laws of Utah 2006, Chapter 211
- 1415 **73-22-5**, as last amended by Laws of Utah 1987, Chapter 161
- 1416 **73-23-3**, as enacted by Laws of Utah 1986, Second Special Session, Chapter 6
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- 1423 **76-7-317.1**, as enacted by Laws of Utah 1991, Chapter 288
- 1424 **76-8-311.3**, as last amended by Laws of Utah 2004, Chapters 36, and 280
- 1425 **76-8-317**, as enacted by Laws of Utah 2006, Chapter 286
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- 1428 **76-10-1209**, as last amended by Laws of Utah 1995, Chapter 28
- 1429 **76-10-1231**, as last amended by Laws of Utah 2007, Chapter 337

- 1430 **76-10-1234**, as enacted by Laws of Utah 2007, Chapter 322
- 1431 **76-10-1311**, as last amended by Laws of Utah 2005, Chapter 102
- 1432 **76-10-1602**, as last amended by Laws of Utah 2007, Chapter 129
- 1433 **77-2-4.2**, as last amended by Laws of Utah 2006, Chapter 315
- 1434 **77-2a-3**, as last amended by Laws of Utah 2006, Chapter 341
- 1435 **77-10a-5**, as repealed and reenacted by Laws of Utah 1994, Chapter 218
- 1436 **77-18-1**, as last amended by Laws of Utah 2007, Chapter 218
- 1437 **77-18-11**, as last amended by Laws of Utah 2004, Chapter 228
- 1438 **77-18-15**, as last amended by Laws of Utah 1999, Chapter 227
- 1439 **77-19-6**, as last amended by Laws of Utah 2004, Chapters 6, and 51
- 1440 **77-19-9**, as last amended by Laws of Utah 2004, Chapter 6
- 1441 **77-19-202**, as last amended by Laws of Utah 2004, Chapter 6 and renumbered and
- 1442 amended by Laws of Utah 2004, Chapter 137
- 1443 **77-22-2**, as last amended by Laws of Utah 2000, Chapter 223
- 1444 **77-27-7**, as last amended by Laws of Utah 2001, First Special Session, Chapter 4
- 1445 **77-27-9**, as last amended by Laws of Utah 2007, Chapter 218
- 1446 **77-27-10**, as last amended by Laws of Utah 1996, Chapter 100
- 1447 **77-27-21.5**, as last amended by Laws of Utah 2007, Chapter 337
- 1448 **77-28c-104**, as enacted by Laws of Utah 2004, Chapter 239
- 1449 **77-37-3**, as last amended by Laws of Utah 2005, Chapter 13
- 1450 **77-37-5**, as last amended by Laws of Utah 2007, Chapter 300
- 1451 **77-38-3**, as last amended by Laws of Utah 2003, Chapter 171
- 1452 **77-38a-401**, as enacted by Laws of Utah 2001, Chapter 137
- 1453 **78-2-2**, as last amended by Laws of Utah 2001, Chapter 302
- 1454 **78-2a-3**, as last amended by Laws of Utah 2001, Chapters 255, and 302
- 1455 **78-2a-6**, as last amended by Laws of Utah 2005, Chapter 102
- 1456 **78-3-4**, as last amended by Laws of Utah 2004, Chapter 201
- 1457 **78-3-24.1**, as enacted by Laws of Utah 2005, First Special Session, Chapter 4

- 1458 **78-3a-104**, as last amended by Laws of Utah 2006, Chapters 55, 132, and 281
- 1459 **78-3a-113**, as last amended by Laws of Utah 2006, Chapter 281
- 1460 **78-3a-114**, as last amended by Laws of Utah 2006, Chapter 281
- 1461 **78-3a-116**, as last amended by Laws of Utah 2006, Chapters 55, and 281
- 1462 **78-3a-118**, as last amended by Laws of Utah 2006, Chapters 75, and 281
- 1463 **78-3a-504**, as last amended by Laws of Utah 2005, Chapter 156
- 1464 **78-3a-505**, as repealed and reenacted by Laws of Utah 1997, Chapter 365
- 1465 **78-3a-904**, as last amended by Laws of Utah 2006, Chapter 281
- 1466 **78-3a-912**, as last amended by Laws of Utah 2006, Chapter 281
- 1467 **78-3g-102**, as last amended by Laws of Utah 2003, Chapter 94
- 1468 **78-5-116**, as last amended by Laws of Utah 2004, Chapters 273, and 349
- 1469 **78-5-116.5**, as enacted by Laws of Utah 2004, Chapter 301
- 1470 **78-6-14**, as last amended by Laws of Utah 2001, Chapter 46
- 1471 **78-7-35**, as last amended by Laws of Utah 2007, Chapters 301, and 326
- 1472 **78-8-107**, as last amended by Laws of Utah 2006, Chapter 34
- 1473 **78-12-29**, as last amended by Laws of Utah 2006, Chapter 274
- 1474 **78-14-12**, as last amended by Laws of Utah 2002, Chapter 256
- 1475 **78-17-3**, as last amended by Laws of Utah 2004, Chapter 267
- 1476 **78-19-1**, as last amended by Laws of Utah 2004, Chapter 267
- 1477 **78-27-37**, as last amended by Laws of Utah 2005, Chapter 102
- 1478 **78-27-43**, as last amended by Laws of Utah 2005, Chapter 102
- 1479 **78-27a-6**, as enacted by Laws of Utah 1983, Chapter 298
- 1480 **78-31b-8**, as last amended by Laws of Utah 2004, Chapter 90
- 1481 **78-31c-106**, as enacted by Laws of Utah 2006, Chapter 33
- 1482 **78-31c-108**, as enacted by Laws of Utah 2006, Chapter 33
- 1483 **78-32-17**, as last amended by Laws of Utah 2001, Chapter 255
- 1484 **78-35a-202**, as enacted by Laws of Utah 1997, Chapter 76
- 1485 **78-45-7.3**, as last amended by Laws of Utah 2000, Chapter 161

- 1486 **78-45g-104**, as enacted by Laws of Utah 2005, Chapter 150
- 1487 **78-45g-313**, as enacted by Laws of Utah 2005, Chapter 150
- 1488 **78-45g-407**, as enacted by Laws of Utah 2005, Chapter 150
- 1489 **78-45g-511**, as enacted by Laws of Utah 2005, Chapter 150
- 1490 **78-45g-601**, as enacted by Laws of Utah 2005, Chapter 150
- 1491 **78-57-108**, as enacted by Laws of Utah 1999, Chapter 94
- 1492 **78-61-101**, as enacted by Laws of Utah 2004, Chapter 368

1493 ENACTS:

- 1494 **51-9-101**, Utah Code Annotated 1953
- 1495 **52-6-101**, Utah Code Annotated 1953
- 1496 **52-7-101**, Utah Code Annotated 1953
- 1497 **63G-1-101**, Utah Code Annotated 1953
- 1498 **63G-6-101**, Utah Code Annotated 1953
- 1499 **63G-8-101**, Utah Code Annotated 1953
- 1500 **63G-9-101**, Utah Code Annotated 1953
- 1501 **63G-10-101**, Utah Code Annotated 1953
- 1502 **63I-2-101**, Utah Code Annotated 1953
- 1503 **63I-4-101**, Utah Code Annotated 1953
- 1504 **63J-5-101**, Utah Code Annotated 1953
- 1505 **63J-6-101**, Utah Code Annotated 1953
- 1506 **63K-2-101**, Utah Code Annotated 1953
- 1507 **63K-3-101**, Utah Code Annotated 1953
- 1508 **63K-4-101**, Utah Code Annotated 1953
- 1509 **63L-1-101**, Utah Code Annotated 1953
- 1510 **63L-2-101**, Utah Code Annotated 1953
- 1511 **63L-4-101**, Utah Code Annotated 1953
- 1512 **63M-3-101**, Utah Code Annotated 1953
- 1513 **63M-5-101**, Utah Code Annotated 1953

- 1514 **63M-6-101**, Utah Code Annotated 1953
- 1515 **63M-7-101**, Utah Code Annotated 1953
- 1516 **63M-8-101**, Utah Code Annotated 1953
- 1517 RENUMBERS AND AMENDS:
- 1518 **19-11-101**, (Renumbered from 63-41-1, as enacted by Laws of Utah 1969, First Special
- 1519 Session, Chapter 6)
- 1520 **19-11-102**, (Renumbered from 63-41-2, as enacted by Laws of Utah 1969, First Special
- 1521 Session, Chapter 6)
- 1522 **19-11-201**, (Renumbered from 63-41-3, as enacted by Laws of Utah 1969, First Special
- 1523 Session, Chapter 6)
- 1524 **19-11-301**, (Renumbered from 63-41-4, as last amended by Laws of Utah 1979,
- 1525 Chapter 220)
- 1526 **19-11-302**, (Renumbered from 63-41-5, as last amended by Laws of Utah 1984,
- 1527 Chapter 67)
- 1528 **19-11-401**, (Renumbered from 63-41-6, as enacted by Laws of Utah 1969, First Special
- 1529 Session, Chapter 6)
- 1530 **51-7-3.5**, (Renumbered from 63-13-1, Utah Code Annotated 1953)
- 1531 **51-9-201**, (Renumbered from 63-97-201, as last amended by Laws of Utah 2005,
- 1532 Chapter 275)
- 1533 **51-9-202**, (Renumbered from 63-97-301, as last amended by Laws of Utah 2007,
- 1534 Chapter 384)
- 1535 **51-9-203**, (Renumbered from 63-97-401, as last amended by Laws of Utah 2002,
- 1536 Chapter 119)
- 1537 **51-9-301**, (Renumbered from 63-97a-101, as enacted by Laws of Utah 2007, Chapter
- 1538 384)
- 1539 **51-9-302**, (Renumbered from 63-97a-102, as enacted by Laws of Utah 2007, Chapter
- 1540 384)
- 1541 **51-9-303**, (Renumbered from 63-97a-201, as enacted by Laws of Utah 2007, Chapter

1542 384)
1543 **51-9-304**, (Renumbered from 63-97a-202, as enacted by Laws of Utah 2007, Chapter
1544 384)
1545 **51-9-401**, (Renumbered from 63-63a-1, as last amended by Laws of Utah 2005, Chapter
1546 2)
1547 **51-9-402**, (Renumbered from 63-63a-2, as last amended by Laws of Utah 2007, Chapter
1548 330)
1549 **51-9-403**, (Renumbered from 63-63a-3, as last amended by Laws of Utah 1999, Chapter
1550 141)
1551 **51-9-404**, (Renumbered from 63-63a-4, as last amended by Laws of Utah 2002, Fifth
1552 Special Session, Chapter 12)
1553 **51-9-405**, (Renumbered from 63-63a-5, as last amended by Laws of Utah 1998, Chapter
1554 171)
1555 **51-9-406**, (Renumbered from 63-63a-6, as last amended by Laws of Utah 1993, Chapter
1556 156)
1557 **51-9-407**, (Renumbered from 63-63a-7, as last amended by Laws of Utah 2002, Fifth
1558 Special Session, Chapter 8)
1559 **51-9-408**, (Renumbered from 63-63a-8, as last amended by Laws of Utah 2007, Chapter
1560 326)
1561 **51-9-409**, (Renumbered from 63-63a-8.5, as enacted by Laws of Utah 1997, Chapter
1562 194)
1563 **51-9-410**, (Renumbered from 63-63a-9, as last amended by Laws of Utah 1998, Chapter
1564 263)
1565 **51-9-411**, (Renumbered from 63-63a-10, as enacted by Laws of Utah 2007, Chapter
1566 330)
1567 **51-9-501**, (Renumbered from 63-88-101, as last amended by Laws of Utah 2000,
1568 Chapter 281)
1569 **51-9-502**, (Renumbered from 63-88-102, as last amended by Laws of Utah 2001,

- 1570 Chapter 175)
- 1571 **51-9-503**, (Renumbered from 63-88-103, as last amended by Laws of Utah 2005,
- 1572 Chapter 258)
- 1573 **51-9-504**, (Renumbered from 63-88-104, as last amended by Laws of Utah 1993,
- 1574 Chapter 4)
- 1575 **51-9-505**, (Renumbered from 63-88-105, as last amended by Laws of Utah 2000,
- 1576 Chapter 281)
- 1577 **51-9-506**, (Renumbered from 63-88-106, as last amended by Laws of Utah 2000,
- 1578 Chapter 281)
- 1579 **51-9-507**, (Renumbered from 63-88-107, as last amended by Laws of Utah 2006,
- 1580 Chapters 14, and 296)
- 1581 **51-9-601**, (Renumbered from 63-12-1, Utah Code Annotated 1953)
- 1582 **51-9-602**, (Renumbered from 63-12-2, Utah Code Annotated 1953)
- 1583 **51-9-603**, (Renumbered from 63-12-4, as last amended by Laws of Utah 1993, Chapter
- 1584 227)
- 1585 **52-6-102**, (Renumbered from 63-30a-1, as enacted by Laws of Utah 1977, Chapter 245)
- 1586 **52-6-201**, (Renumbered from 63-30a-2, as last amended by Laws of Utah 1998, Chapter
- 1587 307)
- 1588 **52-6-202**, (Renumbered from 63-30a-3, as last amended by Laws of Utah 2004, Chapter
- 1589 267)
- 1590 **52-7-102**, (Renumbered from 63-30c-1, as last amended by Laws of Utah 1996, Chapter
- 1591 198)
- 1592 **52-7-201**, (Renumbered from 63-30c-2, as enacted by Laws of Utah 1987, First Special
- 1593 Session, Chapter 19)
- 1594 **52-7-202**, (Renumbered from 63-30c-3, as enacted by Laws of Utah 1987, First Special
- 1595 Session, Chapter 19)
- 1596 **52-7-203**, (Renumbered from 63-30c-4, as enacted by Laws of Utah 1987, First Special
- 1597 Session, Chapter 19)

1598 **52-7-204**, (Renumbered from 63-30c-5, as enacted by Laws of Utah 1987, First Special
1599 Session, Chapter 19)
1600 **52-7-301**, (Renumbered from 63-30c-6, as enacted by Laws of Utah 1987, First Special
1601 Session, Chapter 19)
1602 **52-8-101**, (Renumbered from 63-93-101, as enacted by Laws of Utah 1997, Chapter
1603 256)
1604 **52-8-102**, (Renumbered from 63-93-102, as last amended by Laws of Utah 2007,
1605 Chapter 329)
1606 **52-8-201**, (Renumbered from 63-93-201, as last amended by Laws of Utah 1998,
1607 Chapter 310)
1608 **52-8-202**, (Renumbered from 63-93-202, as last amended by Laws of Utah 1998,
1609 Chapter 310)
1610 **52-9-101**, (Renumbered from 63-96-101, as enacted by Laws of Utah 1998, Chapter
1611 341)
1612 **52-9-102**, (Renumbered from 63-96-102, as last amended by Laws of Utah 2007,
1613 Chapter 329)
1614 **52-9-201**, (Renumbered from 63-96-103, as last amended by Laws of Utah 1999,
1615 Chapter 45)
1616 **53-5a-101**, (Renumbered from 63-98-101, as enacted by Laws of Utah 2004, Chapter
1617 264)
1618 **53-5a-102**, (Renumbered from 63-98-102, as enacted by Laws of Utah 2004, Chapter
1619 264)
1620 **53-15-101**, (Renumbered from 63-94-101, as enacted by Laws of Utah 1997, Chapter
1621 320)
1622 **53-15-102**, (Renumbered from 63-94-102, as enacted by Laws of Utah 1997, Chapter
1623 320)
1624 **53-15-201**, (Renumbered from 63-94-103, as enacted by Laws of Utah 1997, Chapter
1625 320)

1626 **53-15-202**, (Renumbered from 63-94-104, as enacted by Laws of Utah 1997, Chapter
1627 320)
1628 **63A-5-501**, (Renumbered from 63-9-21, as enacted by Laws of Utah 1965, Chapter
1629 146)
1630 **63A-5-502**, (Renumbered from 63-9-22, as enacted by Laws of Utah 1965, Chapter
1631 146)
1632 **63A-5-601**, (Renumbered from 63-9-63, as last amended by Laws of Utah 2006,
1633 Chapter 278)
1634 **63A-5-701**, (Renumbered from 63-9-67, as last amended by Laws of Utah 2006,
1635 Chapter 278)
1636 **63A-5-801**, (Renumbered from 63-9-68, as enacted by Laws of Utah 2007, Chapter
1637 118)
1638 **63A-12-101**, (Renumbered from 63-2-901, as last amended by Laws of Utah 2007,
1639 Chapter 249)
1640 **63A-12-102**, (Renumbered from 63-2-902, as last amended by Laws of Utah 1996,
1641 Chapter 31)
1642 **63A-12-103**, (Renumbered from 63-2-903, as last amended by Laws of Utah 2006,
1643 Chapter 300)
1644 **63A-12-104**, (Renumbered from 63-2-904, as last amended by Laws of Utah 1992,
1645 Chapter 280)
1646 **63A-12-105**, (Renumbered from 63-2-905, as last amended by Laws of Utah 1994,
1647 Chapter 99)
1648 **63A-12-106**, (Renumbered from 63-2-906, as last amended by Laws of Utah 1992,
1649 Chapter 280)
1650 **63A-12-107**, (Renumbered from 63-2-907, as enacted by Laws of Utah 1991, Chapter
1651 259)
1652 **63A-12-108**, (Renumbered from 63-2-908, as last amended by Laws of Utah 1997,
1653 Chapter 135)

1654 **63B-1b-101**, (Renumbered from 63-65-1, as enacted by Laws of Utah 1986, Chapter
1655 35)
1656 **63B-1b-102**, (Renumbered from 63-65-2, as last amended by Laws of Utah 2007,
1657 Chapter 306)
1658 **63B-1b-201**, (Renumbered from 63-65-3, as last amended by Laws of Utah 2003,
1659 Chapter 313)
1660 **63B-1b-202**, (Renumbered from 63-65-4, as last amended by Laws of Utah 2005,
1661 Chapters 151, and 200)
1662 **63B-1b-301**, (Renumbered from 63-65-5, as last amended by Laws of Utah 2003,
1663 Chapter 313)
1664 **63B-1b-302**, (Renumbered from 63-65-6, as last amended by Laws of Utah 2003,
1665 Chapter 313)
1666 **63B-1b-401**, (Renumbered from 63-65-7, as last amended by Laws of Utah 2003,
1667 Chapter 313)
1668 **63B-1b-402**, (Renumbered from 63-65-8, as last amended by Laws of Utah 2003,
1669 Chapter 313)
1670 **63B-1b-501**, (Renumbered from 63-65-8.1, as enacted by Laws of Utah 2003, Chapter
1671 313)
1672 **63B-1b-601**, (Renumbered from 63-65-8.2, as last amended by Laws of Utah 2004,
1673 Chapter 25)
1674 **63B-1b-701**, (Renumbered from 63-65-9, as last amended by Laws of Utah 2003,
1675 Chapter 313)
1676 **63G-1-201**, (Renumbered from 63-13-1.5, as enacted by Statewide Initiative A, Nov. 7,
1677 2000)
1678 **63G-1-301**, (Renumbered from 63-13-2, as last amended by Laws of Utah 2006,
1679 Chapter 139)
1680 **63G-1-401**, (Renumbered from 63-13-5.6, as last amended by Laws of Utah 2007,
1681 Chapters 16, and 173)

- 1682 **63G-1-501**, (Renumbered from 63-13-5, Utah Code Annotated 1953)
- 1683 **63G-1-601**, (Renumbered from 63-13-5.5, as last amended by Laws of Utah 2003,
- 1684 Chapter 152)
- 1685 **63G-2-101**, (Renumbered from 63-2-101, as enacted by Laws of Utah 1991, Chapter
- 1686 259)
- 1687 **63G-2-102**, (Renumbered from 63-2-102, as last amended by Laws of Utah 1992,
- 1688 Chapter 280)
- 1689 **63G-2-103**, (Renumbered from 63-2-103, as last amended by Laws of Utah 2007,
- 1690 Chapter 329)
- 1691 **63G-2-104**, (Renumbered from 63-2-104, as last amended by Laws of Utah 1992,
- 1692 Chapter 280)
- 1693 **63G-2-105**, (Renumbered from 63-2-105, as enacted by Laws of Utah 1992, Chapter
- 1694 280)
- 1695 **63G-2-106**, (Renumbered from 63-2-106, as enacted by Laws of Utah 2002, Chapter
- 1696 166)
- 1697 **63G-2-107**, (Renumbered from 63-2-107, as enacted by Laws of Utah 2003, Chapter
- 1698 64)
- 1699 **63G-2-201**, (Renumbered from 63-2-201, as last amended by Laws of Utah 2006,
- 1700 Chapter 174)
- 1701 **63G-2-202**, (Renumbered from 63-2-202, as last amended by Laws of Utah 2005,
- 1702 Chapter 201)
- 1703 **63G-2-203**, (Renumbered from 63-2-203, as last amended by Laws of Utah 2006,
- 1704 Chapter 174)
- 1705 **63G-2-204**, (Renumbered from 63-2-204, as last amended by Laws of Utah 2006,
- 1706 Chapter 64)
- 1707 **63G-2-205**, (Renumbered from 63-2-205, as last amended by Laws of Utah 1992,
- 1708 Chapter 280)
- 1709 **63G-2-206**, (Renumbered from 63-2-206, as last amended by Laws of Utah 2006,

- 1710 Chapter 174)
- 1711 **63G-2-207**, (Renumbered from 63-2-207, as last amended by Laws of Utah 1998,
- 1712 Chapter 303)
- 1713 **63G-2-301**, (Renumbered from 63-2-301, as last amended by Laws of Utah 2006,
- 1714 Chapters 2, and 14)
- 1715 **63G-2-302**, (Renumbered from 63-2-302, as last amended by Laws of Utah 2006,
- 1716 Chapter 2)
- 1717 **63G-2-303**, (Renumbered from 63-2-302.5, as last amended by Laws of Utah 2003,
- 1718 Chapter 216)
- 1719 **63G-2-304**, (Renumbered from 63-2-303, as last amended by Laws of Utah 1992,
- 1720 Chapter 280)
- 1721 **63G-2-305**, (Renumbered from 63-2-304, as last amended by Laws of Utah 2007,
- 1722 Chapters 66, and 352)
- 1723 **63G-2-306**, (Renumbered from 63-2-305, as last amended by Laws of Utah 1992,
- 1724 Chapter 280)
- 1725 **63G-2-307**, (Renumbered from 63-2-306, as last amended by Laws of Utah 1992,
- 1726 Chapter 280)
- 1727 **63G-2-308**, (Renumbered from 63-2-307, as last amended by Laws of Utah 1992,
- 1728 Chapter 280)
- 1729 **63G-2-309**, (Renumbered from 63-2-308, as last amended by Laws of Utah 2005,
- 1730 Chapter 201)
- 1731 **63G-2-310**, (Renumbered from 63-2-909, as last amended by Laws of Utah 1995,
- 1732 Chapter 198)
- 1733 **63G-2-401**, (Renumbered from 63-2-401, as last amended by Laws of Utah 1992,
- 1734 Chapter 280)
- 1735 **63G-2-402**, (Renumbered from 63-2-402, as last amended by Laws of Utah 1992,
- 1736 Chapter 280)
- 1737 **63G-2-403**, (Renumbered from 63-2-403, as last amended by Laws of Utah 2006,

- 1738 Chapter 284)
- 1739 **63G-2-404**, (Renumbered from 63-2-404, as last amended by Laws of Utah 1995,
- 1740 Chapter 133)
- 1741 **63G-2-405**, (Renumbered from 63-2-405, as enacted by Laws of Utah 1992, Chapter
- 1742 280)
- 1743 **63G-2-501**, (Renumbered from 63-2-501, as last amended by Laws of Utah 2003,
- 1744 Chapter 153)
- 1745 **63G-2-502**, (Renumbered from 63-2-502, as last amended by Laws of Utah 1995,
- 1746 Chapter 133)
- 1747 **63G-2-601**, (Renumbered from 63-2-601, as last amended by Laws of Utah 2006,
- 1748 Chapter 261)
- 1749 **63G-2-602**, (Renumbered from 63-2-602, as last amended by Laws of Utah 1992,
- 1750 Chapter 280)
- 1751 **63G-2-603**, (Renumbered from 63-2-603, as last amended by Laws of Utah 1992,
- 1752 Chapter 280)
- 1753 **63G-2-604**, (Renumbered from 63-2-604, as enacted by Laws of Utah 2006, Chapter
- 1754 261)
- 1755 **63G-2-701**, (Renumbered from 63-2-701, as last amended by Laws of Utah 1994,
- 1756 Chapter 99)
- 1757 **63G-2-702**, (Renumbered from 63-2-702, as last amended by Laws of Utah 2006,
- 1758 Chapter 261)
- 1759 **63G-2-703**, (Renumbered from 63-2-703, as last amended by Laws of Utah 2006,
- 1760 Chapter 261)
- 1761 **63G-2-801**, (Renumbered from 63-2-801, as last amended by Laws of Utah 2006,
- 1762 Chapter 174)
- 1763 **63G-2-802**, (Renumbered from 63-2-802, as last amended by Laws of Utah 2005,
- 1764 Chapter 102)
- 1765 **63G-2-803**, (Renumbered from 63-2-803, as last amended by Laws of Utah 2002,

- 1766 Chapter 191)
- 1767 **63G-2-804**, (Renumbered from 63-2-804, as enacted by Laws of Utah 1992, Chapter
1768 280)
- 1769 **63G-2-901**, (Renumbered from 63-2-1001, as enacted by Laws of Utah 2001, Chapter
1770 254)
- 1771 **63G-3-101**, (Renumbered from 63-46a-1, as enacted by Laws of Utah 1985, Chapter
1772 158)
- 1773 **63G-3-102**, (Renumbered from 63-46a-2, as last amended by Laws of Utah 2007,
1774 Chapter 102)
- 1775 **63G-3-201**, (Renumbered from 63-46a-3, as last amended by Laws of Utah 2001,
1776 Chapter 138)
- 1777 **63G-3-202**, (Renumbered from 63-46a-3.5, as enacted by Laws of Utah 2003, Chapter
1778 197)
- 1779 **63G-3-301**, (Renumbered from 63-46a-4, as last amended by Laws of Utah 2007,
1780 Chapters 102, and 168)
- 1781 **63G-3-302**, (Renumbered from 63-46a-5, as last amended by Laws of Utah 1987,
1782 Chapter 241)
- 1783 **63G-3-303**, (Renumbered from 63-46a-6, as last amended by Laws of Utah 2001,
1784 Chapter 138)
- 1785 **63G-3-304**, (Renumbered from 63-46a-7, as last amended by Laws of Utah 2005,
1786 Chapter 48)
- 1787 **63G-3-305**, (Renumbered from 63-46a-9, as last amended by Laws of Utah 1998,
1788 Chapters 13, and 332)
- 1789 **63G-3-401**, (Renumbered from 63-46a-9.5, as enacted by Laws of Utah 1987, Chapter
1790 241)
- 1791 **63G-3-402**, (Renumbered from 63-46a-10, as last amended by Laws of Utah 2001,
1792 Chapter 138)
- 1793 **63G-3-403**, (Renumbered from 63-46a-10.5, as last amended by Laws of Utah 2005,

- 1794 Chapter 48)
- 1795 **63G-3-501**, (Renumbered from 63-46a-11, as last amended by Laws of Utah 2002,
1796 Chapter 185)
- 1797 **63G-3-502**, (Renumbered from 63-46a-11.5, as last amended by Laws of Utah 1998,
1798 Chapter 332)
- 1799 **63G-3-601**, (Renumbered from 63-46a-12, as last amended by Laws of Utah 2006,
1800 Chapter 141)
- 1801 **63G-3-602**, (Renumbered from 63-46a-12.1, as last amended by Laws of Utah 2001,
1802 Chapter 138)
- 1803 **63G-3-603**, (Renumbered from 63-46a-14, as last amended by Laws of Utah 1998,
1804 Chapter 332)
- 1805 **63G-3-701**, (Renumbered from 63-46a-16, as last amended by Laws of Utah 1992,
1806 Chapter 261)
- 1807 **63G-3-702**, (Renumbered from 63-46a-9.6, as enacted by Laws of Utah 1996, Chapter
1808 60)
- 1809 **63G-4-101**, (Renumbered from 63-46b-0.5, as enacted by Laws of Utah 1991, Chapter
1810 87)
- 1811 **63G-4-102**, (Renumbered from 63-46b-1, as last amended by Laws of Utah 2006,
1812 Chapter 187)
- 1813 **63G-4-103**, (Renumbered from 63-46b-2, as last amended by Laws of Utah 1988,
1814 Chapter 169)
- 1815 **63G-4-104**, (Renumbered from 63-46b-2.1, as enacted by Laws of Utah 2004, Chapter
1816 344)
- 1817 **63G-4-105**, (Renumbered from 63-46b-22, as last amended by Laws of Utah 1991,
1818 Chapter 5)
- 1819 **63G-4-201**, (Renumbered from 63-46b-3, as last amended by Laws of Utah 2007,
1820 Chapter 306)
- 1821 **63G-4-202**, (Renumbered from 63-46b-4, as enacted by Laws of Utah 1987, Chapter

1822 161)
1823 **63G-4-203**, (Renumbered from 63-46b-5, as last amended by Laws of Utah 1988,
1824 Chapter 72)
1825 **63G-4-204**, (Renumbered from 63-46b-6, as last amended by Laws of Utah 2001,
1826 Chapter 138)
1827 **63G-4-205**, (Renumbered from 63-46b-7, as enacted by Laws of Utah 1987, Chapter
1828 161)
1829 **63G-4-206**, (Renumbered from 63-46b-8, as last amended by Laws of Utah 2007,
1830 Chapter 306)
1831 **63G-4-207**, (Renumbered from 63-46b-9, as last amended by Laws of Utah 2001,
1832 Chapter 138)
1833 **63G-4-208**, (Renumbered from 63-46b-10, as last amended by Laws of Utah 2001,
1834 Chapter 138)
1835 **63G-4-209**, (Renumbered from 63-46b-11, as last amended by Laws of Utah 1988,
1836 Chapter 72)
1837 **63G-4-301**, (Renumbered from 63-46b-12, as last amended by Laws of Utah 2001,
1838 Chapter 138)
1839 **63G-4-302**, (Renumbered from 63-46b-13, as last amended by Laws of Utah 2001,
1840 Chapter 138)
1841 **63G-4-401**, (Renumbered from 63-46b-14, as last amended by Laws of Utah 1988,
1842 Chapter 72)
1843 **63G-4-402**, (Renumbered from 63-46b-15, as last amended by Laws of Utah 2001,
1844 Chapters 120, and 138)
1845 **63G-4-403**, (Renumbered from 63-46b-16, as last amended by Laws of Utah 1988,
1846 Chapter 72)
1847 **63G-4-404**, (Renumbered from 63-46b-17, as enacted by Laws of Utah 1987, Chapter
1848 161)
1849 **63G-4-405**, (Renumbered from 63-46b-18, as enacted by Laws of Utah 1987, Chapter

1850 161)

1851 **63G-4-501**, (Renumbered from 63-46b-19, as enacted by Laws of Utah 1987, Chapter

1852 161)

1853 **63G-4-502**, (Renumbered from 63-46b-20, as enacted by Laws of Utah 1987, Chapter

1854 161)

1855 **63G-4-503**, (Renumbered from 63-46b-21, as last amended by Laws of Utah 1988,

1856 Chapter 72)

1857 **63G-4-601**, (Renumbered from 63-46b-23, as enacted by Laws of Utah 2001, Chapter

1858 138)

1859 **63G-5-101**, (Renumbered from 63-46c-101, as enacted by Laws of Utah 2001, Chapter

1860 173)

1861 **63G-5-102**, (Renumbered from 63-46c-102, as enacted by Laws of Utah 2001, Chapter

1862 173)

1863 **63G-5-201**, (Renumbered from 63-46c-103, as enacted by Laws of Utah 2001, Chapter

1864 173)

1865 **63G-5-301**, (Renumbered from 63-46c-104, as enacted by Laws of Utah 2001, Chapter

1866 173)

1867 **63G-6-102**, (Renumbered from 63-56-101, as renumbered and amended by Laws of

1868 Utah 2005, Chapter 25)

1869 **63G-6-103**, (Renumbered from 63-56-105, as last amended by Laws of Utah 2005,

1870 Chapter 71 and renumbered and amended by Laws of Utah 2005, Chapter 25)

1871 **63G-6-104**, (Renumbered from 63-56-102, as last amended by Laws of Utah 2007,

1872 Chapter 329)

1873 **63G-6-105**, (Renumbered from 63-56-103, as renumbered and amended by Laws of

1874 Utah 2005, Chapter 25)

1875 **63G-6-106**, (Renumbered from 63-56-104, as renumbered and amended by Laws of

1876 Utah 2005, Chapter 25)

1877 **63G-6-201**, (Renumbered from 63-56-201, as last amended by Laws of Utah 2007,

- 1878 Chapter 329)
- 1879 **63G-6-202**, (Renumbered from 63-56-202, as renumbered and amended by Laws of
- 1880 Utah 2005, Chapter 25)
- 1881 **63G-6-203**, (Renumbered from 63-56-203, as renumbered and amended by Laws of
- 1882 Utah 2005, Chapter 25)
- 1883 **63G-6-204**, (Renumbered from 63-56-204, as last amended by Laws of Utah 2005,
- 1884 Chapter 169 and renumbered and amended by Laws of Utah 2005, Chapter 25)
- 1885 **63G-6-205**, (Renumbered from 63-56-205, as renumbered and amended by Laws of
- 1886 Utah 2005, Chapter 25)
- 1887 **63G-6-206**, (Renumbered from 63-56-206, as renumbered and amended by Laws of
- 1888 Utah 2005, Chapter 25)
- 1889 **63G-6-207**, (Renumbered from 63-56-207, as renumbered and amended by Laws of
- 1890 Utah 2005, Chapter 25)
- 1891 **63G-6-208**, (Renumbered from 63-56-208, as renumbered and amended by Laws of
- 1892 Utah 2005, Chapter 25)
- 1893 **63G-6-209**, (Renumbered from 63-56-209, as renumbered and amended by Laws of
- 1894 Utah 2005, Chapter 25)
- 1895 **63G-6-301**, (Renumbered from 63-56-301, as renumbered and amended by Laws of
- 1896 Utah 2005, Chapter 25)
- 1897 **63G-6-302**, (Renumbered from 63-56-302, as renumbered and amended by Laws of
- 1898 Utah 2005, Chapter 25)
- 1899 **63G-6-303**, (Renumbered from 63-56-303, as renumbered and amended by Laws of
- 1900 Utah 2005, Chapter 25)
- 1901 **63G-6-401**, (Renumbered from 63-56-401, as renumbered and amended by Laws of
- 1902 Utah 2005, Chapter 25)
- 1903 **63G-6-402**, (Renumbered from 63-56-402, as renumbered and amended by Laws of
- 1904 Utah 2005, Chapter 25)
- 1905 **63G-6-403**, (Renumbered from 63-56-403, as renumbered and amended by Laws of

- 1906 Utah 2005, Chapter 25)
- 1907 **63G-6-404**, (Renumbered from 63-56-404, as renumbered and amended by Laws of
- 1908 Utah 2005, Chapter 25)
- 1909 **63G-6-405**, (Renumbered from 63-56-405, as renumbered and amended by Laws of
- 1910 Utah 2005, Chapter 25)
- 1911 **63G-6-406**, (Renumbered from 63-56-406, as renumbered and amended by Laws of
- 1912 Utah 2005, Chapter 25)
- 1913 **63G-6-407**, (Renumbered from 63-56-407, as renumbered and amended by Laws of
- 1914 Utah 2005, Chapter 25)
- 1915 **63G-6-408**, (Renumbered from 63-56-408, as renumbered and amended by Laws of
- 1916 Utah 2005, Chapter 25)
- 1917 **63G-6-409**, (Renumbered from 63-56-409, as last amended by Laws of Utah 2006,
- 1918 Chapter 46)
- 1919 **63G-6-410**, (Renumbered from 63-56-410, as renumbered and amended by Laws of
- 1920 Utah 2005, Chapter 25)
- 1921 **63G-6-411**, (Renumbered from 63-56-411, as renumbered and amended by Laws of
- 1922 Utah 2005, Chapter 25)
- 1923 **63G-6-412**, (Renumbered from 63-56-412, as renumbered and amended by Laws of
- 1924 Utah 2005, Chapter 25)
- 1925 **63G-6-413**, (Renumbered from 63-56-413, as renumbered and amended by Laws of
- 1926 Utah 2005, Chapter 25)
- 1927 **63G-6-414**, (Renumbered from 63-56-414, as renumbered and amended by Laws of
- 1928 Utah 2005, Chapter 25)
- 1929 **63G-6-415**, (Renumbered from 63-56-415, as renumbered and amended by Laws of
- 1930 Utah 2005, Chapter 25)
- 1931 **63G-6-416**, (Renumbered from 63-56-416, as renumbered and amended by Laws of
- 1932 Utah 2005, Chapter 25)
- 1933 **63G-6-417**, (Renumbered from 63-56-417, as renumbered and amended by Laws of

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- 1934 Utah 2005, Chapter 25)
- 1935 **63G-6-418**, (Renumbered from 63-56-418, as renumbered and amended by Laws of
- 1936 Utah 2005, Chapter 25)
- 1937 **63G-6-419**, (Renumbered from 63-56-419, as renumbered and amended by Laws of
- 1938 Utah 2005, Chapter 25)
- 1939 **63G-6-420**, (Renumbered from 63-56-420, as renumbered and amended by Laws of
- 1940 Utah 2005, Chapter 25)
- 1941 **63G-6-421**, (Renumbered from 63-56-421, as renumbered and amended by Laws of
- 1942 Utah 2005, Chapter 25)
- 1943 **63G-6-422**, (Renumbered from 63-56-422, as renumbered and amended by Laws of
- 1944 Utah 2005, Chapter 25)
- 1945 **63G-6-423**, (Renumbered from 63-56-423, as renumbered and amended by Laws of
- 1946 Utah 2005, Chapter 25)
- 1947 **63G-6-424**, (Renumbered from 63-56-424, as renumbered and amended by Laws of
- 1948 Utah 2005, Chapter 25)
- 1949 **63G-6-425**, (Renumbered from 63-56-425, as last amended by Laws of Utah 2006,
- 1950 Chapter 32)
- 1951 **63G-6-426**, (Renumbered from 63-56-426, as enacted by Laws of Utah 2006, Chapter
- 1952 66)
- 1953 **63G-6-501**, (Renumbered from 63-56-501, as renumbered and amended by Laws of
- 1954 Utah 2005, Chapter 25)
- 1955 **63G-6-502**, (Renumbered from 63-56-502, as last amended by Laws of Utah 2006,
- 1956 Chapter 319)
- 1957 **63G-6-503**, (Renumbered from 63-56-502.5, as enacted by Laws of Utah 2006, Chapter
- 1958 36)
- 1959 **63G-6-504**, (Renumbered from 63-56-503, as renumbered and amended by Laws of
- 1960 Utah 2005, Chapter 25)
- 1961 **63G-6-505**, (Renumbered from 63-56-504, as renumbered and amended by Laws of

- 1962 Utah 2005, Chapter 25)
- 1963 **63G-6-506**, (Renumbered from 63-56-505, as renumbered and amended by Laws of
- 1964 Utah 2005, Chapter 25)
- 1965 **63G-6-507**, (Renumbered from 63-56-506, as renumbered and amended by Laws of
- 1966 Utah 2005, Chapter 25)
- 1967 **63G-6-601**, (Renumbered from 63-56-601, as renumbered and amended by Laws of
- 1968 Utah 2005, Chapter 25)
- 1969 **63G-6-602**, (Renumbered from 63-56-602, as renumbered and amended by Laws of
- 1970 Utah 2005, Chapter 25)
- 1971 **63G-6-701**, (Renumbered from 63-56-701, as renumbered and amended by Laws of
- 1972 Utah 2005, Chapter 25)
- 1973 **63G-6-702**, (Renumbered from 63-56-702, as renumbered and amended by Laws of
- 1974 Utah 2005, Chapter 25)
- 1975 **63G-6-703**, (Renumbered from 63-56-703, as renumbered and amended by Laws of
- 1976 Utah 2005, Chapter 25)
- 1977 **63G-6-704**, (Renumbered from 63-56-704, as renumbered and amended by Laws of
- 1978 Utah 2005, Chapter 25)
- 1979 **63G-6-705**, (Renumbered from 63-56-705, as renumbered and amended by Laws of
- 1980 Utah 2005, Chapter 25)
- 1981 **63G-6-801**, (Renumbered from 63-56-801, as renumbered and amended by Laws of
- 1982 Utah 2005, Chapter 25)
- 1983 **63G-6-802**, (Renumbered from 63-56-802, as renumbered and amended by Laws of
- 1984 Utah 2005, Chapter 25)
- 1985 **63G-6-803**, (Renumbered from 63-56-803, as renumbered and amended by Laws of
- 1986 Utah 2005, Chapter 25)
- 1987 **63G-6-804**, (Renumbered from 63-56-804, as renumbered and amended by Laws of
- 1988 Utah 2005, Chapter 25)
- 1989 **63G-6-805**, (Renumbered from 63-56-805, as renumbered and amended by Laws of

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- 1990 Utah 2005, Chapter 25)
- 1991 **63G-6-806**, (Renumbered from 63-56-806, as last amended by Laws of Utah 2007,
1992 Chapter 306)
- 1993 **63G-6-807**, (Renumbered from 63-56-807, as renumbered and amended by Laws of
1994 Utah 2005, Chapter 25)
- 1995 **63G-6-808**, (Renumbered from 63-56-808, as renumbered and amended by Laws of
1996 Utah 2005, Chapter 25)
- 1997 **63G-6-809**, (Renumbered from 63-56-809, as renumbered and amended by Laws of
1998 Utah 2005, Chapter 25)
- 1999 **63G-6-810**, (Renumbered from 63-56-810, as renumbered and amended by Laws of
2000 Utah 2005, Chapter 25)
- 2001 **63G-6-811**, (Renumbered from 63-56-811, as renumbered and amended by Laws of
2002 Utah 2005, Chapter 25)
- 2003 **63G-6-812**, (Renumbered from 63-56-812, as renumbered and amended by Laws of
2004 Utah 2005, Chapter 25)
- 2005 **63G-6-813**, (Renumbered from 63-56-813, as renumbered and amended by Laws of
2006 Utah 2005, Chapter 25)
- 2007 **63G-6-814**, (Renumbered from 63-56-814, as renumbered and amended by Laws of
2008 Utah 2005, Chapter 25)
- 2009 **63G-6-815**, (Renumbered from 63-56-815, as renumbered and amended by Laws of
2010 Utah 2005, Chapter 25)
- 2011 **63G-6-816**, (Renumbered from 63-56-816, as renumbered and amended by Laws of
2012 Utah 2005, Chapter 25)
- 2013 **63G-6-817**, (Renumbered from 63-56-817, as renumbered and amended by Laws of
2014 Utah 2005, Chapter 25)
- 2015 **63G-6-818**, (Renumbered from 63-56-818, as renumbered and amended by Laws of
2016 Utah 2005, Chapter 25)
- 2017 **63G-6-819**, (Renumbered from 63-56-819, as renumbered and amended by Laws of

- 2018 Utah 2005, Chapter 25)
- 2019 **63G-6-820**, (Renumbered from 63-56-820, as renumbered and amended by Laws of
- 2020 Utah 2005, Chapter 25)
- 2021 **63G-6-901**, (Renumbered from 63-56-901, as renumbered and amended by Laws of
- 2022 Utah 2005, Chapter 25)
- 2023 **63G-6-902**, (Renumbered from 63-56-902, as renumbered and amended by Laws of
- 2024 Utah 2005, Chapter 25)
- 2025 **63G-6-903**, (Renumbered from 63-56-903, as renumbered and amended by Laws of
- 2026 Utah 2005, Chapter 25)
- 2027 **63G-6-904**, (Renumbered from 63-56-904, as renumbered and amended by Laws of
- 2028 Utah 2005, Chapter 25)
- 2029 **63G-6-905**, (Renumbered from 63-56-905, as renumbered and amended by Laws of
- 2030 Utah 2005, Chapter 25)
- 2031 **63G-6-906**, (Renumbered from 63-56-906, as renumbered and amended by Laws of
- 2032 Utah 2005, Chapter 25)
- 2033 **63G-6-907**, (Renumbered from 63-56-907, as renumbered and amended by Laws of
- 2034 Utah 2005, Chapter 25)
- 2035 **63G-6-1001**, (Renumbered from 63-56-1001, as renumbered and amended by Laws of
- 2036 Utah 2005, Chapter 25)
- 2037 **63G-6-1002**, (Renumbered from 63-56-1002, as renumbered and amended by Laws of
- 2038 Utah 2005, Chapter 25)
- 2039 **63G-7-101**, (Renumbered from 63-30d-101, as enacted by Laws of Utah 2004, Chapter
- 2040 267)
- 2041 **63G-7-102**, (Renumbered from 63-30d-102, as last amended by Laws of Utah 2007,
- 2042 Chapter 329)
- 2043 **63G-7-201**, (Renumbered from 63-30d-201, as enacted by Laws of Utah 2004, Chapter
- 2044 267)
- 2045 **63G-7-202**, (Renumbered from 63-30d-202, as enacted by Laws of Utah 2004, Chapter

2046 267)
2047 **63G-7-203**, (Renumbered from 63-30d-203, as last amended by Laws of Utah 2007,
2048 Chapter 306)
2049 **63G-7-301**, (Renumbered from 63-30d-301, as last amended by Laws of Utah 2007,
2050 Chapter 357)
2051 **63G-7-302**, (Renumbered from 63-30d-302, as enacted by Laws of Utah 2004, Chapter
2052 267)
2053 **63G-7-401**, (Renumbered from 63-30d-401, as last amended by Laws of Utah 2007,
2054 Chapter 329)
2055 **63G-7-402**, (Renumbered from 63-30d-402, as enacted by Laws of Utah 2004, Chapter
2056 267)
2057 **63G-7-403**, (Renumbered from 63-30d-403, as enacted by Laws of Utah 2004, Chapter
2058 267)
2059 **63G-7-501**, (Renumbered from 63-30d-501, as enacted by Laws of Utah 2004, Chapter
2060 267)
2061 **63G-7-502**, (Renumbered from 63-30d-502, as enacted by Laws of Utah 2004, Chapter
2062 267)
2063 **63G-7-601**, (Renumbered from 63-30d-601, as enacted by Laws of Utah 2004, Chapter
2064 267)
2065 **63G-7-602**, (Renumbered from 63-30d-602, as enacted by Laws of Utah 2004, Chapter
2066 267)
2067 **63G-7-603**, (Renumbered from 63-30d-603, as enacted by Laws of Utah 2004, Chapter
2068 267)
2069 **63G-7-604**, (Renumbered from 63-30d-604, as last amended by Laws of Utah 2007,
2070 Chapter 71)
2071 **63G-7-701**, (Renumbered from 63-30d-701, as enacted by Laws of Utah 2004, Chapter
2072 267)
2073 **63G-7-702**, (Renumbered from 63-30d-702, as enacted by Laws of Utah 2004, Chapter

2074 267)
2075 **63G-7-703**, (Renumbered from 63-30d-703, as enacted by Laws of Utah 2004, Chapter
2076 267)
2077 **63G-7-704**, (Renumbered from 63-30d-704, as enacted by Laws of Utah 2004, Chapter
2078 267)
2079 **63G-7-801**, (Renumbered from 63-30d-801, as enacted by Laws of Utah 2004, Chapter
2080 267)
2081 **63G-7-802**, (Renumbered from 63-30d-802, as enacted by Laws of Utah 2004, Chapter
2082 267)
2083 **63G-7-803**, (Renumbered from 63-30d-803, as enacted by Laws of Utah 2004, Chapter
2084 267)
2085 **63G-7-804**, (Renumbered from 63-30d-804, as enacted by Laws of Utah 2004, Chapter
2086 267)
2087 **63G-7-805**, (Renumbered from 63-30d-805, as enacted by Laws of Utah 2004, Chapter
2088 267)
2089 **63G-7-901**, (Renumbered from 63-30d-901, as enacted by Laws of Utah 2004, Chapter
2090 267)
2091 **63G-7-902**, (Renumbered from 63-30d-902, as enacted by Laws of Utah 2004, Chapter
2092 267)
2093 **63G-7-903**, (Renumbered from 63-30d-903, as enacted by Laws of Utah 2004, Chapter
2094 267)
2095 **63G-7-904**, (Renumbered from 63-30d-904, as enacted by Laws of Utah 2004, Chapter
2096 267)
2097 **63G-8-102**, (Renumbered from 63-30b-1, as enacted by Laws of Utah 1979, Chapter
2098 93)
2099 **63G-8-201**, (Renumbered from 63-30b-2, as enacted by Laws of Utah 1979, Chapter
2100 92)
2101 **63G-8-202**, (Renumbered from 63-30b-3, as last amended by Laws of Utah 2005,

2102 Chapter 102)
2103 **63G-8-301**, (Renumbered from 63-30b-4, as enacted by Laws of Utah 1979, Chapter
2104 93)
2105 **63G-9-201**, (Renumbered from 63-6-1, as last amended by Laws of Utah 2007, Chapter
2106 329)
2107 **63G-9-202**, (Renumbered from 63-6-1.5, as enacted by Laws of Utah 1987, Chapter
2108 161)
2109 **63G-9-203**, (Renumbered from 63-6-2, as last amended by Laws of Utah 1963, Chapter
2110 150)
2111 **63G-9-204**, (Renumbered from 63-6-3, Utah Code Annotated 1953)
2112 **63G-9-205**, (Renumbered from 63-6-4, Utah Code Annotated 1953)
2113 **63G-9-206**, (Renumbered from 63-6-5, Utah Code Annotated 1953)
2114 **63G-9-207**, (Renumbered from 63-6-6, Utah Code Annotated 1953)
2115 **63G-9-301**, (Renumbered from 63-6-10, as last amended by Laws of Utah 1987,
2116 Chapter 61)
2117 **63G-9-302**, (Renumbered from 63-6-11, as last amended by Laws of Utah 2006,
2118 Chapter 357)
2119 **63G-9-303**, (Renumbered from 63-6-12, as last amended by Laws of Utah 1995,
2120 Chapter 20)
2121 **63G-9-304**, (Renumbered from 63-6-13, as last amended by Laws of Utah 2006,
2122 Chapter 357)
2123 **63G-9-305**, (Renumbered from 63-6-14, Utah Code Annotated 1953)
2124 **63G-9-306**, (Renumbered from 63-6-16, as last amended by Laws of Utah 2006,
2125 Chapter 357)
2126 **63G-9-401**, (Renumbered from 63-6-17, Utah Code Annotated 1953)
2127 **63G-10-102**, (Renumbered from 63-38b-101, as last amended by Laws of Utah 2004,
2128 Chapter 60)
2129 **63G-10-103**, (Renumbered from 63-38b-102, as last amended by Laws of Utah 2002,

- 2130 Chapter 235)
- 2131 **63G-10-201**, (Renumbered from 63-38b-201, as renumbered and amended by Laws of
- 2132 Utah 2002, Chapter 235)
- 2133 **63G-10-202**, (Renumbered from 63-38b-202, as renumbered and amended by Laws of
- 2134 Utah 2002, Chapter 235)
- 2135 **63G-10-301**, (Renumbered from 63-38b-301, as enacted by Laws of Utah 2002,
- 2136 Chapter 235)
- 2137 **63G-10-302**, (Renumbered from 63-38b-302, as enacted by Laws of Utah 2002,
- 2138 Chapter 235)
- 2139 **63G-10-303**, (Renumbered from 63-38b-303, as enacted by Laws of Utah 2002,
- 2140 Chapter 235)
- 2141 **63G-10-401**, (Renumbered from 63-38b-401, as renumbered and amended by Laws of
- 2142 Utah 2002, Chapter 235)
- 2143 **63I-1-101**, (Renumbered from 63-55-101, as last amended by Laws of Utah 1997,
- 2144 Chapter 15)
- 2145 **63I-1-102**, (Renumbered from 63-55-102, as last amended by Laws of Utah 1997,
- 2146 Chapter 15)
- 2147 **63I-1-103**, (Renumbered from 63-55-103, as last amended by Laws of Utah 1997,
- 2148 Chapter 15)
- 2149 **63I-1-104**, (Renumbered from 63-55-104, as renumbered and amended by Laws of Utah
- 2150 1990, Chapter 1)
- 2151 **63I-1-105**, (Renumbered from 63-55-105, as last amended by Laws of Utah 1993,
- 2152 Chapter 13)
- 2153 **63I-1-106**, (Renumbered from 63-55-106, as last amended by Laws of Utah 1993,
- 2154 Chapter 13)
- 2155 **63I-1-209**, (Renumbered from 63-55-209, as last amended by Laws of Utah 2006,
- 2156 Chapters 82, 86, and 223)
- 2157 **63I-1-210**, (Renumbered from 63-55-210, as last amended by Laws of Utah 2004,

2158 Chapter 90)
2159 **63I-1-213**, (Renumbered from 63-55-213, as last amended by Laws of Utah 2007,
2160 Chapter 216)
2161 **63I-1-219**, (Renumbered from 63-55-219, as last amended by Laws of Utah 2006,
2162 Chapters 82, and 187)
2163 **63I-1-220**, (Renumbered from 63-55-220, as last amended by Laws of Utah 2004,
2164 Chapter 37)
2165 **63I-1-223**, (Renumbered from 63-55-223, as last amended by Laws of Utah 2004,
2166 Chapter 90)
2167 **63I-1-226**, (Renumbered from 63-55-226, as last amended by Laws of Utah 2007,
2168 Chapter 24)
2169 **63I-1-230**, (Renumbered from 63-55-230, Utah Code Annotated 1953)
2170 **63I-1-231**, (Renumbered from 63-55-231, as last amended by Laws of Utah 2007,
2171 Chapter 216)
2172 **63I-1-232**, (Renumbered from 63-55-232, as last amended by Laws of Utah 1998,
2173 Chapter 175)
2174 **63I-1-234**, (Renumbered from 63-55-234, as last amended by Laws of Utah 2005,
2175 Chapter 289)
2176 **63I-1-235**, (Renumbered from 63-55-235, as last amended by Laws of Utah 2007,
2177 Chapter 216)
2178 **63I-1-236**, (Renumbered from 63-55-236, as last amended by Laws of Utah 2007,
2179 Chapters 39, and 216)
2180 **63I-1-238**, (Renumbered from 63-55-238, as enacted by Laws of Utah 2004, Chapter
2181 250)
2182 **63I-1-241**, (Renumbered from 63-55-241, as last amended by Laws of Utah 2005,
2183 Chapters 2, and 108)
2184 **63I-1-253**, (Renumbered from 63-55-253, as last amended by Laws of Utah 2007,
2185 Chapter 386)

- 2186 **63I-1-254**, (Renumbered from 63-55-254, as last amended by Laws of Utah 2000,
2187 Chapter 1)
- 2188 **63I-1-258**, (Renumbered from 63-55-258, as last amended by Laws of Utah 2007,
2189 Chapter 216)
- 2190 **63I-1-259**, (Renumbered from 63-55-259, as last amended by Laws of Utah 2007,
2191 Chapters 216, and 306)
- 2192 **63I-1-261**, (Renumbered from 63-55-261, as last amended by Laws of Utah 1999,
2193 Chapter 242)
- 2194 **63I-1-262**, (Renumbered from 63-55-262, as last amended by Laws of Utah 2007,
2195 Chapter 135)
- 2196 **63I-1-263**, (Renumbered from 63-55-263, as last amended by Laws of Utah 2007,
2197 Chapters 216, 306, and 317)
- 2198 **63I-1-267**, (Renumbered from 63-55-267, as last amended by Laws of Utah 2007,
2199 Chapters 39, and 216)
- 2200 **63I-1-269**, (Renumbered from 63-55-269, as enacted by Laws of Utah 2004, Chapter
2201 313)
- 2202 **63I-1-272**, (Renumbered from 63-55-272, as last amended by Laws of Utah 2004,
2203 Chapter 90)
- 2204 **63I-1-273**, (Renumbered from 63-55-273, as last amended by Laws of Utah 2003,
2205 Chapter 254)
- 2206 **63I-1-277**, (Renumbered from 63-55-277, as last amended by Laws of Utah 2004,
2207 Chapter 37)
- 2208 **63I-1-278**, (Renumbered from 63-55-278, as last amended by Laws of Utah 2007,
2209 Chapters 216, and 324)
- 2210 **63I-2-210**, (Renumbered from 63-55b-110, as last amended by Laws of Utah 2005,
2211 Chapter 28)
- 2212 **63I-2-220**, (Renumbered from 63-55b-120, as last amended by Laws of Utah 2003,
2213 Chapters 131, and 159)

2214 **63I-2-223**, (Renumbered from 63-55b-123, as last amended by Laws of Utah 2003,
2215 Chapter 131)
2216 **63I-2-226**, (Renumbered from 63-55b-126, as last amended by Laws of Utah 2007,
2217 Chapter 216)
2218 **63I-2-231**, (Renumbered from 63-55b-131, as last amended by Laws of Utah 2006,
2219 Chapter 82)
2220 **63I-2-232**, (Renumbered from 63-55b-132, as last amended by Laws of Utah 2005,
2221 Chapter 152)
2222 **63I-2-234**, (Renumbered from 63-55b-134, as last amended by Laws of Utah 2003,
2223 Chapter 131)
2224 **63I-2-253**, (Renumbered from 63-55b-153, as last amended by Laws of Utah 2007,
2225 Chapter 216)
2226 **63I-2-254**, (Renumbered from 63-55b-154, as last amended by Laws of Utah 2007,
2227 Chapter 306)
2228 **63I-2-258**, (Renumbered from 63-55b-158, as last amended by Laws of Utah 2006,
2229 Chapters 46, and 291)
2230 **63I-2-259**, (Renumbered from 63-55b-159, as last amended by Laws of Utah 2007,
2231 Chapter 306)
2232 **63I-2-263**, (Renumbered from 63-55b-163, as last amended by Laws of Utah 2007,
2233 Chapter 306)
2234 **63I-2-264**, (Renumbered from 63-55b-164, as last amended by Laws of Utah 2007,
2235 Chapter 353)
2236 **63I-2-267**, (Renumbered from 63-55b-167, as last amended by Laws of Utah 2004,
2237 Chapter 90)
2238 **63I-2-272**, (Renumbered from 63-55b-172, as last amended by Laws of Utah 2005,
2239 Second Special Session, Chapter 1)
2240 **63I-2-276**, (Renumbered from 63-55b-176, as last amended by Laws of Utah 2004,
2241 Chapter 90)

- 2242 **63I-2-277**, (Renumbered from 63-55b-177, as last amended by Laws of Utah 2006,
2243 Chapter 341)
- 2244 **63I-2-278**, (Renumbered from 63-55b-178, as last amended by Laws of Utah 2007,
2245 Chapters 216, 306, and 354)
- 2246 **63I-3-101**, (Renumbered from 63-54-101, as enacted by Laws of Utah 2006, Chapter
2247 248)
- 2248 **63I-3-102**, (Renumbered from 63-54-102, as enacted by Laws of Utah 2006, Chapter
2249 248)
- 2250 **63I-3-201**, (Renumbered from 63-54-103, as last amended by Laws of Utah 2007,
2251 Chapter 273)
- 2252 **63I-3-202**, (Renumbered from 63-54-104, as renumbered and amended by Laws of Utah
2253 2006, Chapter 248)
- 2254 **63I-3-203**, (Renumbered from 63-54-105, as renumbered and amended by Laws of Utah
2255 2006, Chapter 248)
- 2256 **63I-3-204**, (Renumbered from 63-54-106, as renumbered and amended by Laws of Utah
2257 2006, Chapter 248)
- 2258 **63I-3-205**, (Renumbered from 63-54-107, as renumbered and amended by Laws of Utah
2259 2006, Chapter 248)
- 2260 **63I-3-206**, (Renumbered from 63-54-108, as renumbered and amended by Laws of Utah
2261 2006, Chapter 248)
- 2262 **63I-3-207**, (Renumbered from 63-54-109, as renumbered and amended by Laws of Utah
2263 2006, Chapter 248)
- 2264 **63I-4-102**, (Renumbered from 63-55a-1, as last amended by Laws of Utah 2003,
2265 Chapter 193)
- 2266 **63I-4-201**, (Renumbered from 63-55a-2, as last amended by Laws of Utah 2003,
2267 Chapter 193)
- 2268 **63I-4-202**, (Renumbered from 63-55a-3, as last amended by Laws of Utah 2003,
2269 Chapter 193)

- 2270 **63I-5-101**, (Renumbered from 63-91-101, as enacted by Laws of Utah 1995, Chapter
2271 280)
- 2272 **63I-5-102**, (Renumbered from 63-91-102, as last amended by Laws of Utah 2007,
2273 Chapter 329)
- 2274 **63I-5-201**, (Renumbered from 63-91-201, as last amended by Laws of Utah 2007,
2275 Chapter 356)
- 2276 **63I-5-301**, (Renumbered from 63-91-301, as last amended by Laws of Utah 1996,
2277 Chapter 293)
- 2278 **63I-5-302**, (Renumbered from 63-91-302, as last amended by Laws of Utah 1996,
2279 Chapter 293)
- 2280 **63I-5-401**, (Renumbered from 63-91-401, as last amended by Laws of Utah 1996,
2281 Chapter 293)
- 2282 **63J-1-101**, (Renumbered from 63-38-1, as enacted by Laws of Utah 1969, Chapter 207)
- 2283 **63J-1-103**, (Renumbered from 63-38-9.5, as last amended by Laws of Utah 2005,
2284 Chapter 71)
- 2285 **63J-1-201**, (Renumbered from 63-38-2, as last amended by Laws of Utah 2007,
2286 Chapter 179)
- 2287 **63J-1-202**, (Renumbered from 63-38-2.5, as last amended by Laws of Utah 2003,
2288 Chapters 88, and 319)
- 2289 **63J-1-203**, (Renumbered from 63-38-2.6, as last amended by Laws of Utah 2007,
2290 Chapter 122)
- 2291 **63J-1-204**, (Renumbered from 63-38-2.7, as enacted by Laws of Utah 2007, Chapter
2292 328)
- 2293 **63J-1-301**, (Renumbered from 63-38-3, as last amended by Laws of Utah 2006,
2294 Chapter 278)
- 2295 **63J-1-302**, (Renumbered from 63-38-3.1, as enacted by Laws of Utah 2001, Chapter
2296 267)
- 2297 **63J-1-303**, (Renumbered from 63-38-3.2, as last amended by Laws of Utah 2003,

2298 Chapter 16)
2299 **63J-1-304**, (Renumbered from 63-38-3.3, as last amended by Laws of Utah 2007,
2300 Chapter 329)
2301 **63J-1-305**, (Renumbered from 63-38-3.4, as enacted by Laws of Utah 2001, Chapter
2302 191)
2303 **63J-1-306**, (Renumbered from 63-38-3.5, as last amended by Laws of Utah 2003,
2304 Chapter 5)
2305 **63J-1-307**, (Renumbered from 63-38-3.6, as enacted by Laws of Utah 2002, Fifth
2306 Special Session, Chapter 20)
2307 **63J-1-308**, (Renumbered from 63-38-4, as enacted by Laws of Utah 1969, Chapter 207)
2308 **63J-1-309**, (Renumbered from 63-38-5, as last amended by Laws of Utah 1987,
2309 Chapter 92)
2310 **63J-1-310**, (Renumbered from 63-38-6, as last amended by Laws of Utah 2001,
2311 Chapter 175)
2312 **63J-1-311**, (Renumbered from 63-38-7, as last amended by Laws of Utah 1997,
2313 Chapter 169)
2314 **63J-1-401**, (Renumbered from 63-38-8, as last amended by Laws of Utah 2004,
2315 Chapter 179)
2316 **63J-1-402**, (Renumbered from 63-38-8.1, as last amended by Laws of Utah 2006,
2317 Chapter 278)
2318 **63J-1-403**, (Renumbered from 63-38-8.2, as enacted by Laws of Utah 2004, Chapter
2319 226)
2320 **63J-1-404**, (Renumbered from 63-38-9, as last amended by Laws of Utah 2007,
2321 Chapter 122)
2322 **63J-1-405**, (Renumbered from 63-38-10, as last amended by Laws of Utah 1987,
2323 Chapter 61)
2324 **63J-1-406**, (Renumbered from 63-38-11, as last amended by Laws of Utah 1994,
2325 Chapter 216)

2326 **63J-1-407**, (Renumbered from 63-38-11.5, as enacted by Laws of Utah 2004, Chapter
2327 352)

2328 **63J-1-408**, (Renumbered from 63-38-12, as enacted by Laws of Utah 1969, Chapter
2329 207)

2330 **63J-1-409**, (Renumbered from 63-38-13, as enacted by Laws of Utah 1969, Chapter
2331 207)

2332 **63J-1-501**, (Renumbered from 63-38-14, as last amended by Laws of Utah 2003,
2333 Chapter 16)

2334 **63J-1-502**, (Renumbered from 63-38-15, as last amended by Laws of Utah 2003,
2335 Chapter 16)

2336 **63J-1-503**, (Renumbered from 63-38-16, as enacted by Laws of Utah 1983, Chapter 10)

2337 **63J-2-101**, (Renumbered from 63-38a-101, as enacted by Laws of Utah 1992, Chapter
2338 259)

2339 **63J-2-102**, (Renumbered from 63-38a-102, as last amended by Laws of Utah 2005,
2340 Chapter 71)

2341 **63J-2-201**, (Renumbered from 63-38a-103, as enacted by Laws of Utah 1992, Chapter
2342 259)

2343 **63J-2-202**, (Renumbered from 63-38a-104, as last amended by Laws of Utah 1994,
2344 Chapter 211)

2345 **63J-3-101**, (Renumbered from 63-38c-101, as renumbered and amended by Laws of
2346 Utah 1996, Chapter 275)

2347 **63J-3-102**, (Renumbered from 63-38c-102, as last amended by Laws of Utah 2004,
2348 Chapter 318)

2349 **63J-3-103**, (Renumbered from 63-38c-103, as last amended by Laws of Utah 2007,
2350 Chapters 122, 206, and 328)

2351 **63J-3-201**, (Renumbered from 63-38c-201, as last amended by Laws of Utah 2004,
2352 Chapter 318)

2353 **63J-3-202**, (Renumbered from 63-38c-202, as last amended by Laws of Utah 2004,

- 2354 Chapter 318)
- 2355 **63J-3-203**, (Renumbered from 63-38c-203, as renumbered and amended by Laws of
- 2356 Utah 1996, Chapter 275)
- 2357 **63J-3-204**, (Renumbered from 63-38c-204, as renumbered and amended by Laws of
- 2358 Utah 1996, Chapter 275)
- 2359 **63J-3-205**, (Renumbered from 63-38c-205, as renumbered and amended by Laws of
- 2360 Utah 1996, Chapter 275)
- 2361 **63J-3-301**, (Renumbered from 63-38c-301, as renumbered and amended by Laws of
- 2362 Utah 1996, Chapter 275)
- 2363 **63J-3-401**, (Renumbered from 63-38c-401, as renumbered and amended by Laws of
- 2364 Utah 1996, Chapter 275)
- 2365 **63J-3-402**, (Renumbered from 63-38c-402, as last amended by Laws of Utah 2007,
- 2366 Chapters 201, and 206)
- 2367 **63J-4-101**, (Renumbered from 63-38d-101, as enacted by Laws of Utah 2003, Chapter
- 2368 16)
- 2369 **63J-4-102**, (Renumbered from 63-38d-102, as last amended by Laws of Utah 2007,
- 2370 Chapter 329)
- 2371 **63J-4-201**, (Renumbered from 63-38d-201, as enacted by Laws of Utah 2003, Chapter
- 2372 16)
- 2373 **63J-4-202**, (Renumbered from 63-38d-202, as enacted by Laws of Utah 2003, Chapter
- 2374 16)
- 2375 **63J-4-301**, (Renumbered from 63-38d-301, as last amended by Laws of Utah 2004,
- 2376 Chapter 352)
- 2377 **63J-4-401**, (Renumbered from 63-38d-401, as last amended by Laws of Utah 2005,
- 2378 Chapter 179)
- 2379 **63J-4-501**, (Renumbered from 63-38d-501, as enacted by Laws of Utah 2003, Chapter
- 2380 16)
- 2381 **63J-4-502**, (Renumbered from 63-38d-502, as last amended by Laws of Utah 2007,

2382 Chapter 66)
2383 **63J-4-503**, (Renumbered from 63-38d-503, as enacted by Laws of Utah 2003, Chapter
2384 16)
2385 **63J-4-504**, (Renumbered from 63-38d-504, as enacted by Laws of Utah 2003, Chapter
2386 16)
2387 **63J-4-505**, (Renumbered from 63-38d-505, as enacted by Laws of Utah 2003, Chapter
2388 16)
2389 **63J-4-601**, (Renumbered from 63-38d-601, as last amended by Laws of Utah 2007,
2390 Chapter 329)
2391 **63J-4-602**, (Renumbered from 63-38d-602, as enacted by Laws of Utah 2005, Chapter
2392 298)
2393 **63J-4-603**, (Renumbered from 63-38d-603, as last amended by Laws of Utah 2006,
2394 Chapter 292)
2395 **63J-4-604**, (Renumbered from 63-38d-604, as enacted by Laws of Utah 2005, Chapter
2396 298)
2397 **63J-4-605**, (Renumbered from 63-38d-605, as enacted by Laws of Utah 2005, Chapter
2398 298)
2399 **63J-5-102**, (Renumbered from 63-38e-101, as enacted by Laws of Utah 2004, Chapter
2400 352)
2401 **63J-5-103**, (Renumbered from 63-38e-102, as enacted by Laws of Utah 2004, Chapter
2402 352)
2403 **63J-5-201**, (Renumbered from 63-38e-201, as enacted by Laws of Utah 2004, Chapter
2404 352)
2405 **63J-5-202**, (Renumbered from 63-38e-202, as enacted by Laws of Utah 2004, Chapter
2406 352)
2407 **63J-5-203**, (Renumbered from 63-38e-203, as enacted by Laws of Utah 2004, Chapter
2408 352)
2409 **63J-5-204**, (Renumbered from 63-38e-204, as enacted by Laws of Utah 2004, Chapter

- 2410 352)
- 2411 **63J-6-201**, (Renumbered from 63-61-1, as enacted by Laws of Utah 1984, Chapter 5)
- 2412 **63J-6-202**, (Renumbered from 63-61-2, as last amended by Laws of Utah 1987,
- 2413 Chapter 202)
- 2414 **63J-6-203**, (Renumbered from 63-61-3, as last amended by Laws of Utah 1987,
- 2415 Chapter 202)
- 2416 **63J-6-204**, (Renumbered from 63-61-4, as enacted by Laws of Utah 1984, Chapter 5)
- 2417 **63K-1-101**, (Renumbered from 63-5b-101, as enacted by Laws of Utah 1992, Chapter
- 2418 294)
- 2419 **63K-1-102**, (Renumbered from 63-5b-102, as last amended by Laws of Utah 2007,
- 2420 Chapter 66)
- 2421 **63K-1-201**, (Renumbered from 63-5b-201, as enacted by Laws of Utah 1992, Chapter
- 2422 294)
- 2423 **63K-1-202**, (Renumbered from 63-5b-202, as enacted by Laws of Utah 1992, Chapter
- 2424 294)
- 2425 **63K-1-301**, (Renumbered from 63-5b-301, as last amended by Laws of Utah 2007,
- 2426 Chapter 66)
- 2427 **63K-1-302**, (Renumbered from 63-5b-302, as enacted by Laws of Utah 1992, Chapter
- 2428 294)
- 2429 **63K-1-401**, (Renumbered from 63-5b-401, as last amended by Laws of Utah 2006,
- 2430 Chapter 286)
- 2431 **63K-1-501**, (Renumbered from 63-5b-501, as enacted by Laws of Utah 1992, Chapter
- 2432 294)
- 2433 **63K-1-502**, (Renumbered from 63-5b-502, as enacted by Laws of Utah 1992, Chapter
- 2434 294)
- 2435 **63K-1-503**, (Renumbered from 63-5b-503, as enacted by Laws of Utah 1992, Chapter
- 2436 294)
- 2437 **63K-1-504**, (Renumbered from 63-5b-504, as enacted by Laws of Utah 1992, Chapter

2438 294)
2439 **63K-1-601**, (Renumbered from 63-5b-601, as enacted by Laws of Utah 1992, Chapter
2440 294)
2441 **63K-1-602**, (Renumbered from 63-5b-602, as enacted by Laws of Utah 1992, Chapter
2442 294)
2443 **63K-2-102**, (Renumbered from 63-53a-2, as enacted by Laws of Utah 1980, Chapter
2444 23)
2445 **63K-2-103**, (Renumbered from 63-53a-1, as enacted by Laws of Utah 1980, Chapter
2446 23)
2447 **63K-2-201**, (Renumbered from 63-53a-3, as enacted by Laws of Utah 1980, Chapter
2448 23)
2449 **63K-2-202**, (Renumbered from 63-53a-4, as enacted by Laws of Utah 1980, Chapter
2450 23)
2451 **63K-2-203**, (Renumbered from 63-53a-5, as enacted by Laws of Utah 1980, Chapter
2452 23)
2453 **63K-2-204**, (Renumbered from 63-53a-6, as last amended by Laws of Utah 2005,
2454 Chapter 214)
2455 **63K-2-205**, (Renumbered from 63-53a-7, as enacted by Laws of Utah 1980, Chapter
2456 23)
2457 **63K-2-206**, (Renumbered from 63-53a-10, as enacted by Laws of Utah 1980, Chapter
2458 23)
2459 **63K-2-301**, (Renumbered from 63-53a-8, as enacted by Laws of Utah 1980, Chapter
2460 23)
2461 **63K-2-302**, (Renumbered from 63-53a-9, as enacted by Laws of Utah 1980, Chapter
2462 23)
2463 **63K-2-303**, (Renumbered from 63-53a-11, as enacted by Laws of Utah 1980, Chapter
2464 23)
2465 **63K-3-102**, (Renumbered from 63-5-2, as enacted by Laws of Utah 1981, Chapter 254)

- 2466 **63K-3-201**, (Renumbered from 63-5-4, as last amended by Laws of Utah 2007, Chapter
2467 66)
- 2468 **63K-3-301**, (Renumbered from 63-5-5, as last amended by Laws of Utah 1996, Chapter
2469 243)
- 2470 **63K-4-102**, (Renumbered from 63-5a-1, as last amended by Laws of Utah 1994,
2471 Chapter 12)
- 2472 **63K-4-103**, (Renumbered from 63-5a-2, as last amended by Laws of Utah 2006,
2473 Chapter 286)
- 2474 **63K-4-201**, (Renumbered from 63-5a-3, as last amended by Laws of Utah 1994,
2475 Chapter 12)
- 2476 **63K-4-202**, (Renumbered from 63-5a-4, as last amended by Laws of Utah 2006,
2477 Chapter 286)
- 2478 **63K-4-203**, (Renumbered from 63-5a-5, as enacted by Laws of Utah 1981, Chapter
2479 253)
- 2480 **63K-4-301**, (Renumbered from 63-5a-6, as last amended by Laws of Utah 2006,
2481 Chapter 286)
- 2482 **63K-4-401**, (Renumbered from 63-5a-7, as last amended by Laws of Utah 2007,
2483 Chapter 177)
- 2484 **63K-4-402**, (Renumbered from 63-5a-8, as last amended by Laws of Utah 2007,
2485 Chapters 66, and 328)
- 2486 **63K-4-403**, (Renumbered from 63-5a-9, as enacted by Laws of Utah 1981, Chapter
2487 253)
- 2488 **63K-4-404**, (Renumbered from 63-5a-11, as enacted by Laws of Utah 1981, Chapter
2489 253)
- 2490 **63L-1-201**, (Renumbered from 63-8-1, as last amended by Laws of Utah 1981, Chapter
2491 262)
- 2492 **63L-1-202**, (Renumbered from 63-8-2, Utah Code Annotated 1953)
- 2493 **63L-1-203**, (Renumbered from 63-8-3, Utah Code Annotated 1953)

2494 **63L-1-204**, (Renumbered from 63-8-4, as last amended by Laws of Utah 1980, Chapter
2495 71)
2496 **63L-1-205**, (Renumbered from 63-8-5, as last amended by Laws of Utah 1983, Chapter
2497 292)
2498 **63L-1-206**, (Renumbered from 63-8-6, as enacted by Laws of Utah 1985, Chapter 233)
2499 **63L-1-207**, (Renumbered from 63-8-7, as enacted by Laws of Utah 1997, Chapter 239)
2500 **63L-2-201**, (Renumbered from 63-34b-101, as enacted by Laws of Utah 2001, Chapter
2501 287)
2502 **63L-3-101**, (Renumbered from 63-90-1, as renumbered and amended by Laws of Utah
2503 1994, Chapter 91)
2504 **63L-3-102**, (Renumbered from 63-90-2, as last amended by Laws of Utah 2007,
2505 Chapter 306)
2506 **63L-3-201**, (Renumbered from 63-90-3, as last amended by Laws of Utah 1997,
2507 Chapter 293)
2508 **63L-3-202**, (Renumbered from 63-90-4, as renumbered and amended by Laws of Utah
2509 1994, Chapter 91)
2510 **63L-4-102**, (Renumbered from 63-90a-1, as last amended by Laws of Utah 2007,
2511 Chapter 329)
2512 **63L-4-103**, (Renumbered from 63-90a-2, as enacted by Laws of Utah 1994, Chapter
2513 91)
2514 **63L-4-201**, (Renumbered from 63-90a-3, as enacted by Laws of Utah 1994, Chapter
2515 91)
2516 **63L-4-301**, (Renumbered from 63-90a-4, as last amended by Laws of Utah 1998,
2517 Chapters 295, and 321)
2518 **63L-5-101**, (Renumbered from 63-90b-101, as enacted by Laws of Utah 2005, Chapter
2519 99)
2520 **63L-5-102**, (Renumbered from 63-90b-102, as last amended by Laws of Utah 2007,
2521 Chapter 329)

2522 **63L-5-201**, (Renumbered from 63-90b-201, as enacted by Laws of Utah 2005, Chapter
2523 99)
2524 **63L-5-301**, (Renumbered from 63-90b-301, as enacted by Laws of Utah 2005, Chapter
2525 99)
2526 **63L-5-302**, (Renumbered from 63-90b-302, as enacted by Laws of Utah 2005, Chapter
2527 99)
2528 **63L-5-401**, (Renumbered from 63-90b-401, as enacted by Laws of Utah 2005, Chapter
2529 99)
2530 **63L-5-402**, (Renumbered from 63-90b-402, as enacted by Laws of Utah 2005, Chapter
2531 99)
2532 **63L-5-403**, (Renumbered from 63-90b-403, as enacted by Laws of Utah 2005, Chapter
2533 99)
2534 **63M-1-101**, (Renumbered from 63-38f-101, as renumbered and amended by Laws of
2535 Utah 2005, Chapter 148)
2536 **63M-1-102**, (Renumbered from 63-38f-102, as renumbered and amended by Laws of
2537 Utah 2005, Chapter 148)
2538 **63M-1-201**, (Renumbered from 63-38f-201, as enacted by Laws of Utah 2005, Chapter
2539 148)
2540 **63M-1-202**, (Renumbered from 63-38f-202, as renumbered and amended by Laws of
2541 Utah 2005, Chapter 148)
2542 **63M-1-203**, (Renumbered from 63-38f-203, as renumbered and amended by Laws of
2543 Utah 2005, Chapter 148)
2544 **63M-1-204**, (Renumbered from 63-38f-204, as renumbered and amended by Laws of
2545 Utah 2005, Chapter 148)
2546 **63M-1-205**, (Renumbered from 63-38f-205, as renumbered and amended by Laws of
2547 Utah 2005, Chapter 148)
2548 **63M-1-301**, (Renumbered from 63-38f-301, as renumbered and amended by Laws of
2549 Utah 2005, Chapter 148)

- 2550 **63M-1-302**, (Renumbered from 63-38f-302, as renumbered and amended by Laws of
2551 Utah 2005, Chapter 148)
- 2552 **63M-1-303**, (Renumbered from 63-38f-303, as last amended by Laws of Utah 2006,
2553 Chapter 52)
- 2554 **63M-1-304**, (Renumbered from 63-38f-304, as renumbered and amended by Laws of
2555 Utah 2005, Chapter 148)
- 2556 **63M-1-401**, (Renumbered from 63-38f-401, as renumbered and amended by Laws of
2557 Utah 2005, Chapter 148)
- 2558 **63M-1-402**, (Renumbered from 63-38f-402, as last amended by Laws of Utah 2006,
2559 Chapter 223)
- 2560 **63M-1-403**, (Renumbered from 63-38f-403, as renumbered and amended by Laws of
2561 Utah 2005, Chapter 148)
- 2562 **63M-1-404**, (Renumbered from 63-38f-404, as renumbered and amended by Laws of
2563 Utah 2005, Chapter 148)
- 2564 **63M-1-405**, (Renumbered from 63-38f-405, as renumbered and amended by Laws of
2565 Utah 2005, Chapter 148)
- 2566 **63M-1-406**, (Renumbered from 63-38f-406, as renumbered and amended by Laws of
2567 Utah 2005, Chapter 148)
- 2568 **63M-1-407**, (Renumbered from 63-38f-407, as renumbered and amended by Laws of
2569 Utah 2005, Chapter 148)
- 2570 **63M-1-408**, (Renumbered from 63-38f-408, as renumbered and amended by Laws of
2571 Utah 2005, Chapter 148)
- 2572 **63M-1-409**, (Renumbered from 63-38f-409, as renumbered and amended by Laws of
2573 Utah 2005, Chapter 148)
- 2574 **63M-1-410**, (Renumbered from 63-38f-410, as renumbered and amended by Laws of
2575 Utah 2005, Chapter 148)
- 2576 **63M-1-411**, (Renumbered from 63-38f-411, as renumbered and amended by Laws of
2577 Utah 2005, Chapter 148)

- 2578 **63M-1-412**, (Renumbered from 63-38f-412, as last amended by Laws of Utah 2006,
2579 Chapter 223)
- 2580 **63M-1-413**, (Renumbered from 63-38f-413, as last amended by Laws of Utah 2006,
2581 Chapter 223)
- 2582 **63M-1-414**, (Renumbered from 63-38f-414, as renumbered and amended by Laws of
2583 Utah 2005, Chapter 148)
- 2584 **63M-1-415**, (Renumbered from 63-38f-415, as renumbered and amended by Laws of
2585 Utah 2005, Chapter 148)
- 2586 **63M-1-416**, (Renumbered from 63-38f-416, as last amended by Laws of Utah 2006,
2587 Chapter 52)
- 2588 **63M-1-501**, (Renumbered from 63-38f-501, as last amended by Laws of Utah 2007,
2589 Chapter 306)
- 2590 **63M-1-502**, (Renumbered from 63-38f-501.5, as enacted by Laws of Utah 2006,
2591 Chapter 52)
- 2592 **63M-1-503**, (Renumbered from 63-38f-502, as last amended by Laws of Utah 2006,
2593 Chapter 223)
- 2594 **63M-1-504**, (Renumbered from 63-38f-503, as last amended by Laws of Utah 2006,
2595 Chapter 223)
- 2596 **63M-1-601**, (Renumbered from 63-38f-601, as renumbered and amended by Laws of
2597 Utah 2005, Chapter 148)
- 2598 **63M-1-602**, (Renumbered from 63-38f-602, as renumbered and amended by Laws of
2599 Utah 2005, Chapter 148)
- 2600 **63M-1-603**, (Renumbered from 63-38f-603, as renumbered and amended by Laws of
2601 Utah 2005, Chapter 148)
- 2602 **63M-1-604**, (Renumbered from 63-38f-604, as renumbered and amended by Laws of
2603 Utah 2005, Chapter 148)
- 2604 **63M-1-605**, (Renumbered from 63-38f-605, as renumbered and amended by Laws of
2605 Utah 2005, Chapter 148)

2606 **63M-1-606**, (Renumbered from 63-38f-606, as renumbered and amended by Laws of
2607 Utah 2005, Chapter 148)

2608 **63M-1-607**, (Renumbered from 63-38f-607, as renumbered and amended by Laws of
2609 Utah 2005, Chapter 148)

2610 **63M-1-608**, (Renumbered from 63-38f-608, as last amended by Laws of Utah 2007,
2611 Chapter 286)

2612 **63M-1-701**, (Renumbered from 63-38f-702, as last amended by Laws of Utah 2007,
2613 Chapter 11)

2614 **63M-1-702**, (Renumbered from 63-38f-701, as renumbered and amended by Laws of
2615 Utah 2005, Chapter 148)

2616 **63M-1-703**, (Renumbered from 63-38f-703, as last amended by Laws of Utah 2007,
2617 Chapter 11)

2618 **63M-1-704**, (Renumbered from 63-38f-704, as last amended by Laws of Utah 2007,
2619 Chapter 11)

2620 **63M-1-705**, (Renumbered from 63-38f-705, as enacted by Laws of Utah 2007, Chapter
2621 11)

2622 **63M-1-801**, (Renumbered from 63-38f-801, as renumbered and amended by Laws of
2623 Utah 2005, Chapter 148)

2624 **63M-1-802**, (Renumbered from 63-38f-802, as renumbered and amended by Laws of
2625 Utah 2005, Chapter 148)

2626 **63M-1-901**, (Renumbered from 63-38f-901, as renumbered and amended by Laws of
2627 Utah 2005, Chapter 148)

2628 **63M-1-902**, (Renumbered from 63-38f-902, as renumbered and amended by Laws of
2629 Utah 2005, Chapter 148)

2630 **63M-1-903**, (Renumbered from 63-38f-903, as renumbered and amended by Laws of
2631 Utah 2005, Chapter 148)

2632 **63M-1-904**, (Renumbered from 63-38f-903.5, as enacted by Laws of Utah 2007,
2633 Chapter 50)

- 2634 **63M-1-905**, (Renumbered from 63-38f-904, as last amended by Laws of Utah 2007,
2635 Chapter 328)
- 2636 **63M-1-906**, (Renumbered from 63-38f-905, as renumbered and amended by Laws of
2637 Utah 2005, Chapter 148)
- 2638 **63M-1-907**, (Renumbered from 63-38f-906, as renumbered and amended by Laws of
2639 Utah 2005, Chapter 148)
- 2640 **63M-1-908**, (Renumbered from 63-38f-907, as renumbered and amended by Laws of
2641 Utah 2005, Chapter 148)
- 2642 **63M-1-909**, (Renumbered from 63-38f-908, as renumbered and amended by Laws of
2643 Utah 2005, Chapter 148)
- 2644 **63M-1-910**, (Renumbered from 63-38f-909, as renumbered and amended by Laws of
2645 Utah 2005, Chapter 148)
- 2646 **63M-1-1001**, (Renumbered from 63-38f-1001, as renumbered and amended by Laws of
2647 Utah 2005, Chapter 148)
- 2648 **63M-1-1002**, (Renumbered from 63-38f-1002, as renumbered and amended by Laws of
2649 Utah 2005, Chapter 148)
- 2650 **63M-1-1003**, (Renumbered from 63-38f-1003, as renumbered and amended by Laws of
2651 Utah 2005, Chapter 148)
- 2652 **63M-1-1101**, (Renumbered from 63-38f-1101, as renumbered and amended by Laws of
2653 Utah 2005, Chapter 148)
- 2654 **63M-1-1102**, (Renumbered from 63-38f-1102, as last amended by Laws of Utah 2006,
2655 Chapter 223)
- 2656 **63M-1-1103**, (Renumbered from 63-38f-1103, as renumbered and amended by Laws of
2657 Utah 2005, Chapter 148)
- 2658 **63M-1-1104**, (Renumbered from 63-38f-1104, as renumbered and amended by Laws of
2659 Utah 2005, Chapter 148)
- 2660 **63M-1-1105**, (Renumbered from 63-38f-1105, as renumbered and amended by Laws of
2661 Utah 2005, Chapter 148)

2662 **63M-1-1106**, (Renumbered from 63-38f-1106, as renumbered and amended by Laws of
2663 Utah 2005, Chapter 148)

2664 **63M-1-1107**, (Renumbered from 63-38f-1107, as renumbered and amended by Laws of
2665 Utah 2005, Chapter 148)

2666 **63M-1-1108**, (Renumbered from 63-38f-1108, as renumbered and amended by Laws of
2667 Utah 2005, Chapter 148)

2668 **63M-1-1109**, (Renumbered from 63-38f-1109, as renumbered and amended by Laws of
2669 Utah 2005, Chapter 148)

2670 **63M-1-1110**, (Renumbered from 63-38f-1110, as last amended by Laws of Utah 2006,
2671 Chapter 223)

2672 **63M-1-1111**, (Renumbered from 63-38f-1111, as last amended by Laws of Utah 2006,
2673 Chapter 52)

2674 **63M-1-1112**, (Renumbered from 63-38f-1112, as renumbered and amended by Laws of
2675 Utah 2005, Chapter 148)

2676 **63M-1-1201**, (Renumbered from 63-38f-1201, as renumbered and amended by Laws of
2677 Utah 2005, Chapter 148)

2678 **63M-1-1202**, (Renumbered from 63-38f-1202, as last amended by Laws of Utah 2005,
2679 Chapter 14 and renumbered and amended by Laws of Utah 2005, Chapter 148)

2680 **63M-1-1203**, (Renumbered from 63-38f-1203, as last amended by Laws of Utah 2006,
2681 Chapter 223)

2682 **63M-1-1204**, (Renumbered from 63-38f-1204, as renumbered and amended by Laws of
2683 Utah 2005, Chapter 148)

2684 **63M-1-1205**, (Renumbered from 63-38f-1205, as last amended by Laws of Utah 2006,
2685 Chapter 14)

2686 **63M-1-1206**, (Renumbered from 63-38f-1206, as last amended by Laws of Utah 2006,
2687 Chapter 52)

2688 **63M-1-1207**, (Renumbered from 63-38f-1207, as renumbered and amended by Laws of
2689 Utah 2005, Chapter 148)

- 2690 **63M-1-1208**, (Renumbered from 63-38f-1208, as renumbered and amended by Laws of
2691 Utah 2005, Chapter 148)
- 2692 **63M-1-1209**, (Renumbered from 63-38f-1209, as renumbered and amended by Laws of
2693 Utah 2005, Chapter 148)
- 2694 **63M-1-1210**, (Renumbered from 63-38f-1210, as renumbered and amended by Laws of
2695 Utah 2005, Chapter 148)
- 2696 **63M-1-1211**, (Renumbered from 63-38f-1211, as last amended by Laws of Utah 2006,
2697 Chapters 46, and 52)
- 2698 **63M-1-1212**, (Renumbered from 63-38f-1212, as renumbered and amended by Laws of
2699 Utah 2005, Chapter 148)
- 2700 **63M-1-1213**, (Renumbered from 63-38f-1213, as renumbered and amended by Laws of
2701 Utah 2005, Chapter 148)
- 2702 **63M-1-1214**, (Renumbered from 63-38f-1214, as renumbered and amended by Laws of
2703 Utah 2005, Chapter 148)
- 2704 **63M-1-1215**, (Renumbered from 63-38f-1215, as last amended by Laws of Utah 2005,
2705 Chapter 14 and renumbered and amended by Laws of Utah 2005, Chapter 148)
- 2706 **63M-1-1216**, (Renumbered from 63-38f-1216, as renumbered and amended by Laws of
2707 Utah 2005, Chapter 148)
- 2708 **63M-1-1217**, (Renumbered from 63-38f-1217, as renumbered and amended by Laws of
2709 Utah 2005, Chapter 148)
- 2710 **63M-1-1218**, (Renumbered from 63-38f-1218, as last amended by Laws of Utah 2005,
2711 Chapter 14 and renumbered and amended by Laws of Utah 2005, Chapter 148)
- 2712 **63M-1-1219**, (Renumbered from 63-38f-1219, as last amended by Laws of Utah 2005,
2713 Chapter 14 and renumbered and amended by Laws of Utah 2005, Chapter 148)
- 2714 **63M-1-1220**, (Renumbered from 63-38f-1220, as last amended by Laws of Utah 2005,
2715 Chapter 14 and renumbered and amended by Laws of Utah 2005, Chapter 148)
- 2716 **63M-1-1221**, (Renumbered from 63-38f-1221, as renumbered and amended by Laws of
2717 Utah 2005, Chapter 148)

2718 **63M-1-1222**, (Renumbered from 63-38f-1222, as renumbered and amended by Laws of
2719 Utah 2005, Chapter 148)

2720 **63M-1-1223**, (Renumbered from 63-38f-1223, as renumbered and amended by Laws of
2721 Utah 2005, Chapter 148)

2722 **63M-1-1224**, (Renumbered from 63-38f-1224, as last amended by Laws of Utah 2006,
2723 Chapter 14)

2724 **63M-1-1301**, (Renumbered from 63-38f-1301, as renumbered and amended by Laws of
2725 Utah 2005, Chapter 148)

2726 **63M-1-1302**, (Renumbered from 63-38f-1302, as renumbered and amended by Laws of
2727 Utah 2005, Chapter 148)

2728 **63M-1-1303**, (Renumbered from 63-38f-1303, as last amended by Laws of Utah 2005,
2729 Chapter 3 and renumbered and amended by Laws of Utah 2005, Chapter 148)

2730 **63M-1-1304**, (Renumbered from 63-38f-1304, as last amended by Laws of Utah 2006,
2731 Chapter 52)

2732 **63M-1-1305**, (Renumbered from 63-38f-1305, as last amended by Laws of Utah 2006,
2733 Chapter 52)

2734 **63M-1-1306**, (Renumbered from 63-38f-1306, as renumbered and amended by Laws of
2735 Utah 2005, Chapter 148)

2736 **63M-1-1307**, (Renumbered from 63-38f-1307, as last amended by Laws of Utah 2006,
2737 Chapter 52)

2738 **63M-1-1308**, (Renumbered from 63-38f-1308, as renumbered and amended by Laws of
2739 Utah 2005, Chapter 148)

2740 **63M-1-1309**, (Renumbered from 63-38f-1309, as last amended by Laws of Utah 2005,
2741 Chapter 272 and renumbered and amended by Laws of Utah 2005, Chapter 148)

2742 **63M-1-1401**, (Renumbered from 63-38f-1406, as last amended by Laws of Utah 2005,
2743 First Special Session, Chapter 12)

2744 **63M-1-1402**, (Renumbered from 63-38f-1407, as last amended by Laws of Utah 2005,
2745 First Special Session, Chapter 12)

- 2746 **63M-1-1403**, (Renumbered from 63-38f-1408, as last amended by Laws of Utah 2005,
2747 First Special Session, Chapter 12)
- 2748 **63M-1-1404**, (Renumbered from 63-38f-1409, as last amended by Laws of Utah 2005,
2749 First Special Session, Chapter 12)
- 2750 **63M-1-1405**, (Renumbered from 63-38f-1410, as renumbered and amended by Laws of
2751 Utah 2005, Chapter 148)
- 2752 **63M-1-1406**, (Renumbered from 63-38f-1411, as last amended by Laws of Utah 2007,
2753 Chapter 128)
- 2754 **63M-1-1501**, (Renumbered from 63-38f-1501, as renumbered and amended by Laws of
2755 Utah 2005, Chapter 148)
- 2756 **63M-1-1502**, (Renumbered from 63-38f-1502, as renumbered and amended by Laws of
2757 Utah 2005, Chapter 148)
- 2758 **63M-1-1503**, (Renumbered from 63-38f-1503, as renumbered and amended by Laws of
2759 Utah 2005, Chapter 148)
- 2760 **63M-1-1504**, (Renumbered from 63-38f-1504, as renumbered and amended by Laws of
2761 Utah 2005, Chapter 148)
- 2762 **63M-1-1505**, (Renumbered from 63-38f-1505, as renumbered and amended by Laws of
2763 Utah 2005, Chapter 148)
- 2764 **63M-1-1601**, (Renumbered from 63-38f-1601, as renumbered and amended by Laws of
2765 Utah 2005, Chapter 148)
- 2766 **63M-1-1602**, (Renumbered from 63-38f-1602, as renumbered and amended by Laws of
2767 Utah 2005, Chapter 148)
- 2768 **63M-1-1603**, (Renumbered from 63-38f-1603, as renumbered and amended by Laws of
2769 Utah 2005, Chapter 148)
- 2770 **63M-1-1604**, (Renumbered from 63-38f-1604, as last amended by Laws of Utah 2006,
2771 Chapter 52)
- 2772 **63M-1-1605**, (Renumbered from 63-38f-1605, as renumbered and amended by Laws of
2773 Utah 2005, Chapter 148)

2774 **63M-1-1606**, (Renumbered from 63-38f-1606, as renumbered and amended by Laws of
2775 Utah 2005, Chapter 148)
2776 **63M-1-1701**, (Renumbered from 63-38f-1701, as enacted by Laws of Utah 2005,
2777 Chapter 272)
2778 **63M-1-1702**, (Renumbered from 63-38f-1702, as enacted by Laws of Utah 2005,
2779 Chapter 272)
2780 **63M-1-1703**, (Renumbered from 63-38f-1703, as enacted by Laws of Utah 2005,
2781 Chapter 272)
2782 **63M-1-1704**, (Renumbered from 63-38f-1704, as enacted by Laws of Utah 2005,
2783 Chapter 272)
2784 **63M-1-1705**, (Renumbered from 63-38f-1705, as enacted by Laws of Utah 2005,
2785 Chapter 272)
2786 **63M-1-1706**, (Renumbered from 63-38f-1706, as enacted by Laws of Utah 2005,
2787 Chapter 272)
2788 **63M-1-1801**, (Renumbered from 63-38f-1801, as enacted by Laws of Utah 2005,
2789 Chapter 210)
2790 **63M-1-1802**, (Renumbered from 63-38f-1802, as enacted by Laws of Utah 2005,
2791 Chapter 210)
2792 **63M-1-1803**, (Renumbered from 63-38f-1803, as enacted by Laws of Utah 2005,
2793 Chapter 210)
2794 **63M-1-1804**, (Renumbered from 63-38f-1804, as enacted by Laws of Utah 2005,
2795 Chapter 210)
2796 **63M-1-1805**, (Renumbered from 63-38f-1805, as enacted by Laws of Utah 2005,
2797 Chapter 210)
2798 **63M-1-1901**, (Renumbered from 63-38f-1901, as enacted by Laws of Utah 2005,
2799 Chapter 191)
2800 **63M-1-2001**, (Renumbered from 63-38f-2001, as enacted by Laws of Utah 2005,
2801 Chapter 151)

2802 **63M-1-2002**, (Renumbered from 63-38f-2002, as last amended by Laws of Utah 2007,
2803 Chapter 329)
2804 **63M-1-2003**, (Renumbered from 63-38f-2003, as enacted by Laws of Utah 2005,
2805 Chapter 151)
2806 **63M-1-2004**, (Renumbered from 63-38f-2004, as enacted by Laws of Utah 2005,
2807 Chapter 151)
2808 **63M-1-2005**, (Renumbered from 63-38f-2005, as enacted by Laws of Utah 2005,
2809 Chapter 151)
2810 **63M-1-2006**, (Renumbered from 63-38f-2006, as enacted by Laws of Utah 2005,
2811 Chapter 151)
2812 **63M-1-2101**, (Renumbered from 63-38f-2101, as enacted by Laws of Utah 2006,
2813 Chapter 146)
2814 **63M-1-2201**, (Renumbered from 63-38f-2201, as enacted by Laws of Utah 2007,
2815 Chapter 3)
2816 **63M-1-2202**, (Renumbered from 63-38f-2202, as enacted by Laws of Utah 2007,
2817 Chapter 3)
2818 **63M-1-2203**, (Renumbered from 63-38f-2203, as enacted by Laws of Utah 2007,
2819 Chapter 3)
2820 **63M-1-2301**, (Renumbered from 63-38f-2301, as enacted by Laws of Utah 2007,
2821 Chapter 327)
2822 **63M-1-2302**, (Renumbered from 63-38f-2302, as enacted by Laws of Utah 2007,
2823 Chapter 327)
2824 **63M-1-2303**, (Renumbered from 63-38f-2303, as enacted by Laws of Utah 2007,
2825 Chapter 327)
2826 **63M-1-2304**, (Renumbered from 63-38f-2304, as enacted by Laws of Utah 2007,
2827 Chapter 327)
2828 **63M-1-2305**, (Renumbered from 63-38f-2305, as enacted by Laws of Utah 2007,
2829 Chapter 327)

2830 **63M-1-2306**, (Renumbered from 63-38f-2306, as enacted by Laws of Utah 2007,
2831 Chapter 327)
2832 **63M-2-101**, (Renumbered from 63-38g-101, as enacted by Laws of Utah 2006, Chapter
2833 123)
2834 **63M-2-102**, (Renumbered from 63-38g-102, as enacted by Laws of Utah 2006, Chapter
2835 123)
2836 **63M-2-201**, (Renumbered from 63-38g-201, as enacted by Laws of Utah 2006, Chapter
2837 123)
2838 **63M-2-202**, (Renumbered from 63-38g-202, as enacted by Laws of Utah 2006, Chapter
2839 123)
2840 **63M-2-203**, (Renumbered from 63-38g-203, as enacted by Laws of Utah 2006, Chapter
2841 123)
2842 **63M-2-204**, (Renumbered from 63-38g-204, as enacted by Laws of Utah 2006, Chapter
2843 123)
2844 **63M-2-301**, (Renumbered from 63-38g-301, as enacted by Laws of Utah 2006, Chapter
2845 123)
2846 **63M-2-302**, (Renumbered from 63-38g-302, as enacted by Laws of Utah 2006, Chapter
2847 123)
2848 **63M-2-303**, (Renumbered from 63-38g-303, as enacted by Laws of Utah 2006, Chapter
2849 123)
2850 **63M-3-102**, (Renumbered from 63-45a-1, as last amended by Laws of Utah 1987,
2851 Chapter 92)
2852 **63M-3-103**, (Renumbered from 63-45a-2, as last amended by Laws of Utah 1994,
2853 Chapter 12)
2854 **63M-3-201**, (Renumbered from 63-45a-3, as enacted by Laws of Utah 1980, Chapter
2855 26)
2856 **63M-3-202**, (Renumbered from 63-45a-4, as enacted by Laws of Utah 1980, Chapter
2857 26)

2858 **63M-4-101**, (Renumbered from 63-53b-101, as enacted by Laws of Utah 2006, Chapter
2859 180)
2860 **63M-4-102**, (Renumbered from 63-53b-102, as enacted by Laws of Utah 2006, Chapter
2861 180)
2862 **63M-4-201**, (Renumbered from 63-53b-201, as last amended by Laws of Utah 2007,
2863 Chapter 66)
2864 **63M-4-202**, (Renumbered from 63-53b-202, as enacted by Laws of Utah 2006, Chapter
2865 180)
2866 **63M-4-203**, (Renumbered from 63-53b-203, as enacted by Laws of Utah 2006, Chapter
2867 180)
2868 **63M-4-301**, (Renumbered from 63-53b-301, as last amended by Laws of Utah 2007,
2869 Chapter 346)
2870 **63M-4-302**, (Renumbered from 63-53b-302, as enacted by Laws of Utah 2006, Chapter
2871 180)
2872 **63M-5-102**, (Renumbered from 63-51-1, as last amended by Laws of Utah 1981,
2873 Chapter 242)
2874 **63M-5-103**, (Renumbered from 63-51-2, as last amended by Laws of Utah 2007,
2875 Chapter 329)
2876 **63M-5-201**, (Renumbered from 63-51-3, as last amended by Laws of Utah 1988,
2877 Chapter 3)
2878 **63M-5-202**, (Renumbered from 63-51-4, as last amended by Laws of Utah 2006,
2879 Chapter 253)
2880 **63M-5-301**, (Renumbered from 63-51-5, as last amended by Laws of Utah 1991,
2881 Chapter 137)
2882 **63M-5-302**, (Renumbered from 63-51-6, as last amended by Laws of Utah 1994,
2883 Chapter 120)
2884 **63M-5-303**, (Renumbered from 63-51-7, as last amended by Laws of Utah 1987,
2885 Chapter 5)

2886 **63M-5-304**, (Renumbered from 63-51-8, as last amended by Laws of Utah 1994,
2887 Chapter 120)
2888 **63M-5-305**, (Renumbered from 63-51-9, as enacted by Laws of Utah 1975, Chapter
2889 133)
2890 **63M-5-306**, (Renumbered from 63-51-10, as last amended by Laws of Utah 2005,
2891 Chapter 148)
2892 **63M-6-201**, (Renumbered from 63-49a-1, as last amended by Laws of Utah 2005,
2893 Chapter 148)
2894 **63M-6-202**, (Renumbered from 63-49a-2, as last amended by Laws of Utah 2005,
2895 Chapter 148)
2896 **63M-6-203**, (Renumbered from 63-49a-3, as last amended by Laws of Utah 2005,
2897 Chapter 148)
2898 **63M-7-201**, (Renumbered from 63-25a-101, as last amended by Laws of Utah 1999,
2899 Chapter 270)
2900 **63M-7-202**, (Renumbered from 63-25a-102, as last amended by Laws of Utah 2007,
2901 Chapter 330)
2902 **63M-7-203**, (Renumbered from 63-25a-103, as last amended by Laws of Utah 2002,
2903 Chapter 176)
2904 **63M-7-204**, (Renumbered from 63-25a-104, as last amended by Laws of Utah 2007,
2905 Chapter 330)
2906 **63M-7-205**, (Renumbered from 63-25a-104.5, as last amended by Laws of Utah 1999,
2907 Chapter 270)
2908 **63M-7-206**, (Renumbered from 63-25a-105, as renumbered and amended by Laws of
2909 Utah 1996, Chapter 242)
2910 **63M-7-207**, (Renumbered from 63-25a-106, as renumbered and amended by Laws of
2911 Utah 1996, Chapter 242 and repealed and reenacted by Laws of Utah 1996, Chapter
2912 243)
2913 **63M-7-301**, (Renumbered from 63-25a-201, as last amended by Laws of Utah 2003,

- 2914 Chapter 171)
- 2915 **63M-7-302**, (Renumbered from 63-25a-202, as last amended by Laws of Utah 2002,
2916 Chapter 115)
- 2917 **63M-7-303**, (Renumbered from 63-25a-203, as last amended by Laws of Utah 2007,
2918 Chapter 218)
- 2919 **63M-7-304**, (Renumbered from 63-25a-205, as last amended by Laws of Utah 2002,
2920 Chapter 115)
- 2921 **63M-7-305**, (Renumbered from 63-25a-205.5, as last amended by Laws of Utah 2007,
2922 Chapter 218)
- 2923 **63M-7-306**, (Renumbered from 63-25a-207, as last amended by Laws of Utah 2002,
2924 Chapter 115)
- 2925 **63M-7-401**, (Renumbered from 63-25a-301, as last amended by Laws of Utah 2003,
2926 Chapter 171)
- 2927 **63M-7-402**, (Renumbered from 63-25a-302, as last amended by Laws of Utah 1997,
2928 Chapter 276)
- 2929 **63M-7-403**, (Renumbered from 63-25a-303, as renumbered and amended by Laws of
2930 Utah 1996, Chapter 242)
- 2931 **63M-7-404**, (Renumbered from 63-25a-304, as last amended by Laws of Utah 1997,
2932 Chapter 342)
- 2933 **63M-7-405**, (Renumbered from 63-25a-305, as last amended by Laws of Utah 1996,
2934 Chapter 243 and renumbered and amended by Laws of Utah 1996, Chapter 242)
- 2935 **63M-7-406**, (Renumbered from 63-25a-306, as renumbered and amended by Laws of
2936 Utah 1996, Chapter 242)
- 2937 **63M-7-501**, (Renumbered from 63-25a-401, as renumbered and amended by Laws of
2938 Utah 1996, Chapter 242)
- 2939 **63M-7-502**, (Renumbered from 63-25a-402, as last amended by Laws of Utah 2002,
2940 Chapter 256)
- 2941 **63M-7-503**, (Renumbered from 63-25a-403, as last amended by Laws of Utah 2002,

- 2942 Chapter 35)
- 2943 **63M-7-504**, (Renumbered from 63-25a-404, as last amended by Laws of Utah 2002,
2944 Chapter 176)
- 2945 **63M-7-505**, (Renumbered from 63-25a-405, as last amended by Laws of Utah 2002,
2946 Chapter 256)
- 2947 **63M-7-506**, (Renumbered from 63-25a-406, as last amended by Laws of Utah 2007,
2948 Chapter 300)
- 2949 **63M-7-507**, (Renumbered from 63-25a-407, as last amended by Laws of Utah 2002,
2950 Chapter 256)
- 2951 **63M-7-508**, (Renumbered from 63-25a-408, as renumbered and amended by Laws of
2952 Utah 1996, Chapter 242)
- 2953 **63M-7-509**, (Renumbered from 63-25a-409, as last amended by Laws of Utah 2000,
2954 Chapter 235)
- 2955 **63M-7-510**, (Renumbered from 63-25a-410, as last amended by Laws of Utah 2000,
2956 Chapters 28, and 235)
- 2957 **63M-7-511**, (Renumbered from 63-25a-411, as last amended by Laws of Utah 2002,
2958 Chapters 35, and 256)
- 2959 **63M-7-512**, (Renumbered from 63-25a-412, as last amended by Laws of Utah 2000,
2960 Chapter 235)
- 2961 **63M-7-513**, (Renumbered from 63-25a-413, as last amended by Laws of Utah 2001,
2962 Chapter 116)
- 2963 **63M-7-514**, (Renumbered from 63-25a-414, as last amended by Laws of Utah 2002,
2964 Chapter 256)
- 2965 **63M-7-515**, (Renumbered from 63-25a-415, as last amended by Laws of Utah 2000,
2966 Chapter 235)
- 2967 **63M-7-516**, (Renumbered from 63-25a-416, as renumbered and amended by Laws of
2968 Utah 1996, Chapter 242)
- 2969 **63M-7-517**, (Renumbered from 63-25a-417, as renumbered and amended by Laws of

- 2970 Utah 1996, Chapter 242)
- 2971 **63M-7-518**, (Renumbered from 63-25a-418, as renumbered and amended by Laws of
- 2972 Utah 1996, Chapter 242)
- 2973 **63M-7-519**, (Renumbered from 63-25a-419, as last amended by Laws of Utah 2002,
- 2974 Chapter 256)
- 2975 **63M-7-520**, (Renumbered from 63-25a-420, as renumbered and amended by Laws of
- 2976 Utah 1996, Chapter 242)
- 2977 **63M-7-521**, (Renumbered from 63-25a-421, as renumbered and amended by Laws of
- 2978 Utah 1996, Chapter 242)
- 2979 **63M-7-522**, (Renumbered from 63-25a-422, as renumbered and amended by Laws of
- 2980 Utah 1996, Chapter 242)
- 2981 **63M-7-523**, (Renumbered from 63-25a-423, as renumbered and amended by Laws of
- 2982 Utah 1996, Chapter 242)
- 2983 **63M-7-524**, (Renumbered from 63-25a-424, as renumbered and amended by Laws of
- 2984 Utah 1996, Chapter 242)
- 2985 **63M-7-525**, (Renumbered from 63-25a-428, as last amended by Laws of Utah 2002,
- 2986 Chapter 256)
- 2987 **63M-7-601**, (Renumbered from 63-25a-601, as enacted by Laws of Utah 2007, Chapter
- 2988 300)
- 2989 **63M-7-602**, (Renumbered from 63-25a-602, as enacted by Laws of Utah 2007, Chapter
- 2990 300)
- 2991 **63M-7-603**, (Renumbered from 63-25a-603, as enacted by Laws of Utah 2007, Chapter
- 2992 300)
- 2993 **63M-7-604**, (Renumbered from 63-25a-604, as enacted by Laws of Utah 2007, Chapter
- 2994 300)
- 2995 **63M-7-605**, (Renumbered from 63-25a-605, as enacted by Laws of Utah 2007, Chapter
- 2996 300)
- 2997 **63M-8-201**, (Renumbered from 63-47-1, as last amended by Laws of Utah 2004,

2998 Chapter 238)
2999 **63M-8-202**, (Renumbered from 63-47-2, as last amended by Laws of Utah 2004,
3000 Chapter 238)
3001 **63M-8-203**, (Renumbered from 63-47-3, as last amended by Laws of Utah 2004,
3002 Chapter 238)
3003 **63M-8-204**, (Renumbered from 63-47-4, as enacted by Laws of Utah 1973, Chapter
3004 173)
3005 **63M-8-301**, (Renumbered from 63-47-5, as last amended by Laws of Utah 2004,
3006 Chapter 238)
3007 **63M-8-302**, (Renumbered from 63-47-7, as last amended by Laws of Utah 2004,
3008 Chapters 238, and 352)
3009 **63M-8-303**, (Renumbered from 63-47-8, as enacted by Laws of Utah 1973, Chapter
3010 173)
3011 **63M-9-101**, (Renumbered from 63-75-1, as last amended by Laws of Utah 1996,
3012 Chapter 136)
3013 **63M-9-102**, (Renumbered from 63-75-2, as last amended by Laws of Utah 1999,
3014 Chapter 104)
3015 **63M-9-103**, (Renumbered from 63-75-3, as last amended by Laws of Utah 2003,
3016 Chapter 171)
3017 **63M-9-104**, (Renumbered from 63-75-8, as enacted by Laws of Utah 1996, Chapter
3018 136)
3019 **63M-9-201**, (Renumbered from 63-75-4, as last amended by Laws of Utah 1999,
3020 Chapter 104)
3021 **63M-9-202**, (Renumbered from 63-75-5, as last amended by Laws of Utah 2003,
3022 Chapter 171)
3023 **63M-9-203**, (Renumbered from 63-75-5.5, as enacted by Laws of Utah 1993, Chapter
3024 12)
3025 **63M-9-301**, (Renumbered from 63-75-5.7, as last amended by Laws of Utah 1996,

- 3026 Chapter 136)
- 3027 **63M-9-401**, (Renumbered from 63-75-6, as last amended by Laws of Utah 2005,
- 3028 Chapter 81)
- 3029 **63M-9-402**, (Renumbered from 63-75-6.5, as enacted by Laws of Utah 1996, Chapter
- 3030 136)
- 3031 **63M-9-501**, (Renumbered from 63-75-7, as last amended by Laws of Utah 2002,
- 3032 Chapter 210)
- 3033 **63M-10-101**, (Renumbered from 63-92-1, as enacted by Laws of Utah 1996, Chapter
- 3034 165)
- 3035 **63M-10-201**, (Renumbered from 63-92-2, as last amended by Laws of Utah 1999,
- 3036 Chapter 304)
- 3037 **63M-10-202**, (Renumbered from 63-92-3, as last amended by Laws of Utah 2003,
- 3038 Chapter 171)
- 3039 **63M-11-101**, (Renumbered from 63-99-101, as enacted by Laws of Utah 2005, Chapter
- 3040 279)
- 3041 **63M-11-102**, (Renumbered from 63-99-103, as enacted by Laws of Utah 2005, Chapter
- 3042 279)
- 3043 **63M-11-103**, (Renumbered from 63-99-102, as last amended by Laws of Utah 2007,
- 3044 Chapter 317)
- 3045 **63M-11-201**, (Renumbered from 63-99-104, as last amended by Laws of Utah 2007,
- 3046 Chapter 317)
- 3047 **63M-11-202**, (Renumbered from 63-99-105, as last amended by Laws of Utah 2007,
- 3048 Chapter 317)
- 3049 **63M-11-203**, (Renumbered from 63-99-106, as enacted by Laws of Utah 2005, Chapter
- 3050 279)
- 3051 **63M-11-204**, (Renumbered from 63-99-107, as enacted by Laws of Utah 2005, Chapter
- 3052 279)
- 3053 **63M-11-205**, (Renumbered from 63-99-108, as enacted by Laws of Utah 2005, Chapter

3054 279)
3055 **63M-11-206**, (Renumbered from 63-99-109, as enacted by Laws of Utah 2005, Chapter
3056 279)
3057 **63M-11-207**, (Renumbered from 63-99-110, as repealed and reenacted by Laws of Utah
3058 2007, Chapter 317)
3059 REPEALS:
3060 **63-46a-17**, as enacted by Laws of Utah 2001, Chapter 138
3061 **63-97-101**, as last amended by Laws of Utah 2000, Chapters 293, and 351

3063 *Be it enacted by the Legislature of the state of Utah:*

3064 Section 1. Section **3-1-6** is amended to read:

3065 **3-1-6. Filing articles of incorporation -- Certificate of incorporation -- Fees --**
3066 **Constructive notice.**

3067 (1) The articles of incorporation shall be filed with the Division of Corporations and
3068 Commercial Code, which shall thereupon issue a certificate of incorporation. This certificate or
3069 a certified copy of the same shall be prima facie evidence of the due incorporation of the
3070 association. Upon the issuance of such certificate of incorporation, the corporate existence
3071 begins.

3072 (2) The Division of Corporations and Commercial Code shall establish a fee pursuant to
3073 Section [~~63-38-3.2~~] 63J-1-303 for filing articles of incorporation with the division, for securing
3074 a certified copy of the articles, for the issuance of a certificate of incorporation, and for filing
3075 amendments to the articles, whether incorporated with or without stock.

3076 (3) No person dealing with the association may be charged with constructive notice of
3077 the contents of the articles or amendments thereto by reason of such filing or recording.

3078 Section 2. Section **3-1-36** is amended to read:

3079 **3-1-36. Articles of merger or consolidation -- Execution, contents, and filing of**
3080 **articles -- Issuance of certificate of merger or consolidation -- Fees.**

3081 (1) Upon approval, articles of merger or consolidation shall be signed in duplicate by

3082 each party to the merger or consolidation by its president or a vice president and by its secretary
3083 or an assistant secretary and verified by one of the officers of each association and corporation
3084 signing the articles.

3085 (2) The articles shall set forth:

3086 (a) the plan of merger or consolidation;

3087 (b) a statement:

3088 (i) of the date of the meeting at which the plan of merger or consolidation was
3089 considered and voted upon;

3090 (ii) that a quorum was present at the meeting; and

3091 (iii) that notice of the meeting was given to all members and shareholders entitled to
3092 notice;

3093 (c) the number of members entitled to vote and the number of shares outstanding
3094 entitled to vote; and

3095 (d) the number of members who voted for and against the plan, respectively, and the
3096 number of shares voted for and against the plan, respectively.

3097 (3) (a) Duplicate originals of the articles of merger or consolidation shall be delivered to
3098 the Division of Corporations and Commercial Code and the fee established under Section
3099 [~~63-38-3.2~~] 63J-1-303 shall be paid.

3100 (b) If the Division of Corporations and Commercial Code finds that the articles conform
3101 to law, it shall, after the fees have been paid:

3102 (i) endorse on each of the duplicate originals the word "filed" and the month, day, and
3103 year of the filing;

3104 (ii) file one of the duplicate originals in its office; and

3105 (iii) issue a certificate of merger or consolidation, attach the other duplicate original,
3106 and return the certificate to the surviving or new corporation, or its representative.

3107 Section 3. Section **4-1-3.5** is amended to read:

3108 **4-1-3.5. Procedures -- Adjudicative proceedings.**

3109 The Department of Agriculture and Food and its divisions shall comply with the

3110 procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
3111 Procedures Act, in their adjudicative proceedings.

3112 Section 4. Section **4-2-2** is amended to read:

3113 **4-2-2. Functions, powers, and duties of department -- Fees for services --**

3114 **Marketing orders -- Procedure.**

3115 (1) The department shall:

3116 (a) inquire into and promote the interests and products of agriculture and its allied
3117 industries;

3118 (b) promote methods for increasing the production and facilitating the distribution of
3119 the agricultural products of the state;

3120 (c) (i) inquire into the cause of contagious, infectious, and communicable diseases
3121 among livestock and the means for their prevention and cure; and

3122 (ii) initiate, implement, and administer plans and programs to prevent the spread of
3123 diseases among livestock;

3124 (d) encourage experiments designed to determine the best means and methods for the
3125 control of diseases among domestic and wild animals;

3126 (e) issue marketing orders for any designated agricultural product to:

3127 (i) promote orderly market conditions for any product;

3128 (ii) give the producer a fair return on the producer's investment at the marketplace; and

3129 (iii) only promote and not restrict or restrain the marketing of Utah agricultural
3130 commodities;

3131 (f) administer and enforce all laws assigned to the department by the Legislature;

3132 (g) establish standards and grades for agricultural products and fix and collect
3133 reasonable fees for services performed by the department in conjunction with the grading of
3134 agricultural products;

3135 (h) establish operational standards for any establishment that manufactures, processes,
3136 produces, distributes, stores, sells, or offers for sale any agricultural product;

3137 (i) adopt, according to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

3138 Administrative Rulemaking Act, rules necessary for the effective administration of the
3139 agricultural laws of the state;

3140 (j) when necessary, make investigations, subpoena witnesses and records, conduct
3141 hearings, issue orders, and make recommendations concerning all matters related to agriculture;

3142 (k) (i) inspect any nursery, orchard, farm, garden, park, cemetery, greenhouse, or any
3143 private or public place that may become infested or infected with harmful insects, plant diseases,
3144 noxious or poisonous weeds, or other agricultural pests;

3145 (ii) establish and enforce quarantines;

3146 (iii) issue and enforce orders and rules for the control and eradication of pests, wherever
3147 they may exist within the state; and

3148 (iv) perform other duties relating to plants and plant products considered advisable and
3149 not contrary to law;

3150 (l) inspect apiaries for diseases inimical to bees and beekeeping;

3151 (m) take charge of any agricultural exhibit within the state, if considered necessary by
3152 the department, and award premiums at that exhibit;

3153 (n) assist the Conservation Commission in the administration of Title 4, Chapter 18,
3154 Conservation Commission Act, and administer and disburse any funds available to assist
3155 conservation districts in the state in the conservation of the state's soil and water resources; and

3156 (o) perform any additional functions, powers, and duties provided by law.

3157 (2) The department, by following the procedures and requirements of Section
3158 ~~[63-38-3.2]~~ 63J-1-303, may adopt a schedule of fees assessed for services provided by the
3159 department.

3160 (3) (a) No marketing order issued under Subsection (1)(e) shall take effect until:

3161 (i) the department gives notice of the proposed order to the producers and handlers of
3162 the affected product;

3163 (ii) the commissioner conducts a hearing on the proposed order; and

3164 (iii) at least 50% of the registered producers and handlers of the affected products vote
3165 in favor of the proposed order.

3166 (b) (i) The department may establish boards of control to administer marketing orders
3167 and the proceeds derived from any order.

3168 (ii) The board of control shall:

3169 (A) ensure that all proceeds are placed in an account in the board of control's name in a
3170 depository institution; and

3171 (B) ensure that the account is annually audited by an accountant approved by the
3172 commissioner.

3173 (4) Funds collected by grain grading, as provided by Subsection (1)(g), shall be
3174 deposited in the General Fund as nonlapsing dedicated credits for the grain grading program.

3175 Section 5. Section **4-2-8.5** is amended to read:

3176 **4-2-8.5. Salinity Offset Fund.**

3177 (1) As used in this section, "Colorado River Salinity Offset Program" means a program,
3178 administered by the Division of Water Quality, allowing oil, gas, or mining companies and other
3179 entities to provide funds to finance salinity reduction projects in the Colorado River Basin by
3180 purchasing salinity credits as offsets against discharges made by the company under permits
3181 issued by the Division of Water Quality.

3182 (2) (a) There is created a restricted special revenue fund known as the "Salinity Offset
3183 Fund."

3184 (b) The fund shall consist of:

3185 (i) monies received from the Division of Water Quality that have been collected as part
3186 of the Colorado River Salinity Offset Program;

3187 (ii) grants from local governments, the state, or the federal government;

3188 (iii) grants from private entities; and

3189 (iv) interest on fund monies.

3190 (3) Any unallocated balance in the fund at the end of a fiscal year is nonlapsing.

3191 (4) (a) The department shall:

3192 (i) subject to the rules established under Subsection (4)(a)(ii), distribute fund monies to
3193 farmers, ranchers, mutual irrigation companies, and other entities in the state to assist in

3194 financing irrigation, rangeland, and watershed improvement projects that will, in accordance
3195 with the Colorado River Salinity Offset Program, reduce salinity in the Colorado River; and

3196 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

3197 Administrative Rulemaking Act, make rules establishing:

3198 (A) a project funding application process;

3199 (B) project funding requirements;

3200 (C) project approval criteria; and

3201 (D) standards for evaluating the effectiveness of funded projects in reducing salinity in
3202 the Colorado River.

3203 (b) The department may require entities seeking fund monies to provide matching
3204 funds.

3205 (c) The department shall submit to the Water Quality Board's executive secretary
3206 proposed funding projects for the executive secretary's review and approval.

3207 (5) The department may use fund monies for the administration of the fund, but this
3208 amount may not exceed 10% of the annual receipts to the fund.

3209 Section 6. Section **4-3-2** is amended to read:

3210 **4-3-2. Authority to make and enforce rules.**

3211 The department is authorized and directed, subject to [~~Title 63, Chapter 46a~~] Title 63G,
3212 Chapter 3, Utah Administrative Rulemaking Act, to make and enforce such rules as may in its
3213 judgment and discretion be necessary to carry out the purposes of this chapter.

3214 Section 7. Section **4-3-14** is amended to read:

3215 **4-3-14. Sale of raw milk -- Suspension of producer's permit -- Severability not**
3216 **permitted.**

3217 (1) As used in this section:

3218 (a) "Batch" means all the milk emptied from one bulk tank and bottled in a single day.

3219 (b) "Self-owned retail store" means a retail store:

3220 (i) of which the producer owns at least 51% of the value of the real property and
3221 tangible personal property used in the operations of the retail store; or

- 3222 (ii) for which the producer has the power to vote at least 51% of any class of voting
3223 shares or ownership interest in the business entity that operates the retail store.
- 3224 (2) Raw milk may be sold if:
- 3225 (a) the producer obtains a permit from the department to produce milk under
3226 Subsection 4-3-8(5);
- 3227 (b) the sale and delivery of the milk is made upon the premises where the milk is
3228 produced, except as provided by Subsection (3);
- 3229 (c) it is sold to consumers for household use and not for resale;
- 3230 (d) it is bottled or packaged under sanitary conditions and in sanitary containers on the
3231 premises where the milk is produced;
- 3232 (e) it is labeled "raw milk" and meets the labeling requirements under 21 C.F.R. Parts
3233 101 and 131 and rules established by the department;
- 3234 (f) it is:
- 3235 (i) cooled to 50 degrees Fahrenheit or a lower temperature within one hour after being
3236 drawn from the animal;
- 3237 (ii) further cooled to 41 degrees Fahrenheit within two hours of being drawn from the
3238 animal; and
- 3239 (iii) maintained at 41 degrees Fahrenheit or a lower temperature until it is delivered to
3240 the consumer;
- 3241 (g) the bacterial count of the milk does not exceed 20,000 colony forming units per
3242 milliliter;
- 3243 (h) the bacterial plate count and the coliform count of the milk meet the bacterial and
3244 coliform enforcement standards for grade A pasteurized milk;
- 3245 (i) the production of the milk conforms to departmental rules for the production of
3246 grade A milk;
- 3247 (j) all dairy animals on the premises are:
- 3248 (i) permanently and individually identifiable; and
- 3249 (ii) free of tuberculosis, brucellosis, and other diseases carried through milk; and

3250 (k) any person on the premises performing any work in connection with the production,
3251 bottling, handling, or sale of the milk is free from communicable disease.

3252 (3) A producer may sell raw whole milk at a self-owned retail store, which is properly
3253 staffed, if, in addition to the requirements of Subsection (2), the producer:

3254 (a) transports the milk from the premises where the milk is produced to the self-owned
3255 retail store in a refrigerated truck where the milk is maintained at 41 degrees Fahrenheit or a
3256 lower temperature;

3257 (b) retains ownership of the milk until it is sold to the final consumer, including
3258 transporting the milk from the premises where the milk is produced to the self-owned retail
3259 store without any:

3260 (i) intervening storage;

3261 (ii) change of ownership; or

3262 (iii) loss of physical control;

3263 (c) stores the milk at 41 degrees Fahrenheit or a lower temperature in a display case
3264 equipped with a properly calibrated thermometer at the self-owned retail store;

3265 (d) places a sign above the display case at the self-owned retail store that reads, "Raw
3266 Unpasteurized Milk";

3267 (e) labels the milk with:

3268 (i) a date, no more than nine days after the milk is produced, by which the milk should
3269 be sold;

3270 (ii) the statement "Raw milk, no matter how carefully produced, may be unsafe.";

3271 (iii) handling instructions to preserve quality and avoid contamination or spoilage; and

3272 (iv) any other information required by rule;

3273 (f) refrains from offering the milk for sale until:

3274 (i) each batch of milk is tested for standard plate count and coliform count from an
3275 official sample taken at the self-owned retail store and tested by a third party certified by the
3276 department; and

3277 (ii) the test results meet the minimum standards established for those tests;

- 3278 (g) (i) maintains a database of the milk sales; and
3279 (ii) makes the database available to the Department of Health during the self-owned
3280 retail store's business hours for purposes of epidemiological investigation;
- 3281 (h) refrains from offering any pasteurized milk at the self-owned retail store;
- 3282 (i) ensures that the plant and retail store complies with Title 4, Chapter 5, Utah
3283 Wholesome Food Act, and the rules governing food establishments enacted under Section
3284 4-5-9;
- 3285 (j) participates in a hazard analysis critical control point system as established by the
3286 United States Food and Drug Administration;
- 3287 (k) conducts monthly tests on a sample taken from a batch of milk for:
- 3288 (i) *Listeria monocytogenes*;
- 3289 (ii) *Salmonella typhimurium*;
- 3290 (iii) *Salmonella dublin*;
- 3291 (iv) *Campylobacter jejuni*; and
- 3292 (v) *E.Coli 0157:H7*; and
- 3293 (l) complies with all applicable rules adopted as authorized by this chapter.
- 3294 (4) The person conducting the tests required by Subsection (3) shall send a copy of the
3295 test results to the department as soon as the test results are available.
- 3296 (5) (a) The department shall adopt rules, as authorized by Section 4-3-2, governing the
3297 sale of raw whole milk at a self-owned retail store.
- 3298 (b) The rules adopted by the department shall include rules regarding:
- 3299 (i) permits;
- 3300 (ii) building and premises requirements;
- 3301 (iii) sanitation and operating requirements, including bulk milk tanks requirements;
- 3302 (iv) additional tests, including a test for pathogens;
- 3303 (v) frequency of inspections, including random cooler checks;
- 3304 (vi) recordkeeping; and
- 3305 (vii) packaging and labeling.

3306 (c) (i) The department shall establish a fee for the tests and inspections required by this
3307 section and by rule by following the procedures and requirements of Section [~~63-38-3.2~~]
3308 63J-1-303.

3309 (ii) Notwithstanding Section [~~63-38-3.2~~] 63J-1-303, the department shall retain the fees
3310 as dedicated credits and may only use the fees to administer and enforce this section.

3311 (6) (a) The department shall suspend a permit issued under Section 4-3-8 if a producer
3312 violates any provision of this section or any rules adopted as authorized by this section.

3313 (b) The department may reissue a permit that has been suspended under Subsection
3314 (6)(a) if the producer has complied with all of the requirements of this section and rules adopted
3315 as authorized by this section.

3316 (7) For 2008 and 2009, the Department of Health and the Department of Agriculture
3317 and Food shall report on or before November 30th to the Natural Resources, Agriculture, and
3318 Environment Interim Committee and the Health and Human Services Interim Committee on any
3319 health problems resulting from the sale of raw whole milk at self-owned retail stores.

3320 (8) (a) If any subsection of this section or the application of any subsection to any
3321 person or circumstance is held invalid by a final decision of a court of competent jurisdiction,
3322 the remainder of the section may not be given effect without the invalid subsection or
3323 application.

3324 (b) The provisions of this section may not be severed.

3325 Section 8. Section **4-4-2** is amended to read:

3326 **4-4-2. Authority to make and enforce rules.**

3327 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3328 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3329 necessary to administer and enforce this chapter.

3330 Section 9. Section **4-5-9** is amended to read:

3331 **4-5-9. Registration of food establishments -- Fee -- Suspension and reinstatement**
3332 **of registration -- Inspection for compliance.**

3333 (1) (a) Pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative

3334 Rulemaking Act, the department shall establish rules providing for the registration of food
3335 establishments to protect public health and ensure a safe food supply.

3336 (b) The owner or operator of a food establishment shall register with the department
3337 before operating a food establishment.

3338 (c) Prior to granting a registration to the owner or operator of a food establishment, the
3339 department shall inspect and assess the food establishment to determine whether it complies
3340 with the rules established under Subsection (1)(a).

3341 (d) An applicant shall register with the department, in writing, using forms required by
3342 the department.

3343 (e) The department shall issue a registration to an applicant, if the department
3344 determines that the applicant meets the qualifications of registration established under
3345 Subsection (1)(a).

3346 (f) If the applicant does not meet the qualifications of registration, the department shall
3347 notify the applicant, in writing, that the applicant's registration is denied.

3348 (g) (i) If an applicant submits an incomplete application, a written notice of conditional
3349 denial of registration shall be provided to an applicant.

3350 (ii) The applicant must correct the deficiencies within the time period specified in the
3351 notice to receive a registration.

3352 (h) (i) The department may, as provided under Subsection 4-2-2(2), charge the food
3353 establishment a registration fee.

3354 (ii) The department shall retain the fees as dedicated credits and shall use the fees to
3355 administer the registration of food establishments.

3356 (2) (a) A registration, issued under this section, shall be valid from the date the
3357 department issues the registration, to December 31 of the year the registration is issued.

3358 (b) A registration may be renewed for the following year by applying for renewal by
3359 December 31 of the year the registration expires.

3360 (3) A registration, issued under this section, shall specify:

3361 (a) the name and address of the food establishment;

3362 (b) the name of the owner or operator of the food establishment; and

3363 (c) the registration issuance and expiration date.

3364 (4) (a) The department may immediately suspend a registration, issued under this
3365 section, if any of the conditions of registration have been violated.

3366 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the
3367 reinstatement of a registration.

3368 (ii) If the department determines that all registration requirements have been met, the
3369 department shall reinstate the registration.

3370 (5) (a) A food establishment, registered under this section, shall allow the department to
3371 have access to the food establishment to determine if the food establishment is complying with
3372 the registration requirements.

3373 (b) If a food establishment denies access for an inspection required under Subsection
3374 (5)(a), the department may suspend the food establishment's registration until the department is
3375 allowed access to the food establishment's premises.

3376 Section 10. Section **4-5-9.5** is amended to read:

3377 **4-5-9.5. Cottage food production operations.**

3378 (1) For purposes of this chapter:

3379 (a) "Cottage food production operation" means a person, who in the person's home,
3380 produces a food product that is not a potentially hazardous food or a food that requires
3381 time/temperature controls for safety.

3382 (b) "Home" means a primary residence:

3383 (i) occupied by the individual who is operating a cottage food production operation;

3384 and

3385 (ii) which contains:

3386 (A) a kitchen designed for common residential usage; and

3387 (B) appliances designed for common residential usage.

3388 (c) "Potentially hazardous food" or "food that requires time/temperature controls for
3389 safety":

- 3390 (i) means a food that requires time and or temperature control for safety to limit
3391 pathogenic microorganism growth or toxin formation and is in a form capable of supporting:
3392 (A) the rapid and progressive growth of infections or toxigenic microorganisms;
3393 (B) the growth and toxin production of *Clostridium botulinum*; or
3394 (C) in shell eggs, the growth of *Salmonella enteritidis*;
3395 (ii) includes:
3396 (A) an animal food;
3397 (B) a food of animal origin that is raw or heat treated;
3398 (C) a food of plant origin that is heat treated or consists of raw seed sprouts;
3399 (D) cut melons;
3400 (E) cut tomatoes; and
3401 (F) garlic and oil mixtures that are not acidified or otherwise modified at a food
3402 establishment in a way that results in mixtures that do not support growth as specified under
3403 Subsection (1)(c)(i); and
3404 (iii) does not include:
3405 (A) an air-cooled hard-boiled egg with shell intact;
3406 (B) a food with an actual weight or water activity value of 0.85 or less;
3407 (C) a food with pH level of 4.6 or below when measured at 24 degrees Centigrade;
3408 (D) a food, in an unopened hermetically sealed container, that is processed to achieve
3409 and maintain sterility under conditions of nonrefrigerated storage and distribution;
3410 (E) a food for which laboratory evidence demonstrates that the rapid and progressive
3411 growth of items listed in Subsection (1)(c)(i) cannot occur, such as a food that:
3412 (I) has an actual weight and a pH level that are above the levels specified under
3413 Subsections (1)(c)(iii)(B) and (C); or
3414 (II) contains a preservative or other barrier to the growth of microorganisms, or a
3415 combination of barriers that inhibit the growth of microorganisms; or
3416 (F) a food that does not support the growth of microorganisms as specified under
3417 Subsection (1)(c)(i) even though the food may contain an infectious or toxigenic microorganism

3418 or chemical or physical contaminant at a level sufficient to cause illness.

3419 (2) (a) The department shall adopt rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G,
3420 Chapter 3, Utah Administrative Rulemaking Act, as necessary to protect public health and
3421 ensure a safe food supply.

3422 (b) Rules adopted pursuant to this Subsection (2) shall provide for:

3423 (i) the registration of cottage food production operations as food establishments under
3424 this chapter;

3425 (ii) the labeling of products from a cottage food production operation as "Home
3426 Produced"; and

3427 (iii) other exceptions to the chapter that the department determines are appropriate and
3428 that are consistent with this section.

3429 (3) Rules adopted pursuant to Subsection (2):

3430 (a) may not require:

3431 (i) the use of commercial surfaces such as stainless steel counters or cabinets;

3432 (ii) the use of a commercial grade:

3433 (A) sink;

3434 (B) dishwasher; or

3435 (C) oven;

3436 (iii) a separate kitchen for the cottage food production operation; or

3437 (iv) the submission of plans and specifications before construction of, or remodel of, a
3438 cottage food production operation; and

3439 (b) may require:

3440 (i) an inspection of a cottage food production operation:

3441 (A) prior to issuing a registration for the cottage food production operation; and

3442 (B) at other times if the department has reason to believe the cottage food production
3443 operation is operating:

3444 (I) in violation of this chapter or an administrative rule adopted pursuant to this section;

3445 or

3446 (II) in an unsanitary manner; and
3447 (ii) the use of finished and cleanable surfaces.
3448 (4) (a) The operator of a cottage food production operation shall:
3449 (i) register with the department as a cottage food production operation before operating
3450 as a cottage food production operation; and
3451 (ii) hold a valid food handler's permit.
3452 (b) Notwithstanding the provisions of Subsections 4-5-9(1)(a) and (c), the department
3453 shall issue a registration to an applicant for a cottage food production operation if the applicant
3454 for the registration:
3455 (i) passes the inspection required by Subsection (3)(b);
3456 (ii) pays the fees required by the department; and
3457 (iii) meets the requirements of this section.
3458 (5) Notwithstanding the provisions of Section 26A-1-114, a local health department:
3459 (a) does not have jurisdiction to regulate the production of food at a cottage food
3460 production operation operating in compliance with this section, as long as the products are not
3461 offered to the public for consumption on the premises; and
3462 (b) does have jurisdiction to investigate a cottage food production operation in any
3463 investigation into the cause of a food born illness outbreak.
3464 (6) A food service establishment as defined in Section 26-15a-102 may not use a
3465 product produced in a cottage food production operation as an ingredient in any food that is
3466 prepared by the food establishment and offered by the food establishment to the public for
3467 consumption.
3468 Section 11. Section **4-9-2** is amended to read:
3469 **4-9-2. Authority to promulgate rules.**
3470 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3471 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3472 necessary to administer and enforce this chapter.
3473 Section 12. Section **4-9-15** is amended to read:

3474 **4-9-15. Registration of commercial establishments using weights and measures --**
3475 **Approved weights and measures inspectors -- Application -- Fee -- Expiration -- Renewal.**

3476 (1) (a) Pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
3477 Rulemaking Act, the department shall establish rules providing for the registration of weights
3478 and measures users and issuance of certification of weights and measures devices to ensure the
3479 use of correct weights and measures in commerce or trade.

3480 (b) The division may:

3481 (i) determine whether weights and measures are correct through:

3482 (A) inspection and testing by department employees; or

3483 (B) acceptance of an inspection and testing report prepared by a registered weights and
3484 measures service person;

3485 (ii) establish standards and qualifications for registered weights and measures service
3486 persons; and

3487 (iii) determine the form and content of an inspection and testing report.

3488 (c) A weights and measures user shall register with the department.

3489 (d) Prior to granting a registration to a weights and measures user, the department shall
3490 determine whether the weights and measures user complies with the rules established under
3491 Subsection (1)(a).

3492 (e) An applicant shall register with the department, in writing, using forms required by
3493 the department.

3494 (f) The department shall issue a registration to an applicant, if the department
3495 determines that the applicant meets the qualifications of registration established under
3496 Subsection (1)(a).

3497 (g) If the applicant does not meet the qualifications of registration, the department shall
3498 notify the applicant, in writing, that the applicant's registration is denied.

3499 (h) (i) If an applicant submits an incomplete application, a written notice of conditional
3500 denial of registration shall be provided to an applicant.

3501 (ii) The applicant must correct the deficiencies within the time period specified in the

3502 notice to receive a registration.

3503 (i) (i) The department may, as provided under Subsection 4-2-2(2), charge the weights
3504 and measures user a registration fee.

3505 (ii) The department shall retain the fees as dedicated credits and shall use the fees to
3506 administer the registration of weights and measures users.

3507 (2) (a) A registration, issued under this section, shall be valid from the date the
3508 department issues the registration, to December 31 of the year the registration is issued.

3509 (b) A registration may be renewed for the following year by applying for renewal by
3510 December 31 of the year the registration expires.

3511 (3) A registration, issued under this section, shall specify:

3512 (a) the name and address of the weights and measures user;

3513 (b) the registration issuance and expiration date; and

3514 (c) the number and type of weights and measures devices to be certified.

3515 (4) (a) The department may immediately suspend a registration, issued under this
3516 section, if any of the requirements of Section 4-9-12 are violated.

3517 (b) (i) The holder of a registration suspended under Subsection (4)(a) may apply for the
3518 reinstatement of a registration.

3519 (ii) If the department determines that all requirements under Section 4-9-12 are being
3520 met, the department shall reinstate the registration.

3521 (5) (a) A weights and measures user, registered under this section, shall allow the
3522 department access to the weights and measures user's place of business to determine if the
3523 weights and measures user is complying with the registration requirements.

3524 (b) If a weights and measures user denies access for an inspection required under
3525 Subsection (5)(a), the department may suspend the weights and measures user's registration
3526 until the department is allowed access to the weights and measures user's place of business.

3527 Section 13. Section **4-10-3** is amended to read:

3528 **4-10-3. Authority to make and enforce rules.**

3529 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

3530 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3531 necessary to administer and enforce this chapter.

3532 Section 14. Section **4-11-3** is amended to read:

3533 **4-11-3. Department authorized to make and enforce rules.**

3534 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3535 Utah Administrative Rulemaking Act, to make and enforce such rules as it considers necessary
3536 for the administration and enforcement of this chapter. Such rules shall include provisions for
3537 the identification of each apiary within the state.

3538 Section 15. Section **4-12-3** is amended to read:

3539 **4-12-3. Department authorized to make and enforce rules -- Cooperation with**
3540 **state and federal agencies authorized.**

3541 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3542 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3543 necessary to administer and enforce this chapter and may cooperate with, or enter into
3544 agreements with, other agencies of this state, other states, and agencies of the United States in
3545 the administration and enforcement of this chapter.

3546 Section 16. Section **4-14-3** is amended to read:

3547 **4-14-3. Registration required for distribution -- Application -- Fees -- Renewal --**
3548 **Local needs registration -- Distributor or applicator license -- Fees -- Renewal.**

3549 (1) (a) No person may distribute a pesticide in this state that is not registered with the
3550 department.

3551 (b) Application for registration shall be made to the department upon forms prescribed
3552 and furnished by it accompanied with an annual registration fee determined by the department
3553 pursuant to Subsection 4-2-2(2) for each pesticide registered.

3554 (c) Upon receipt by the department of a proper application and payment of the
3555 appropriate fee, the commissioner shall issue a registration to the applicant allowing distribution
3556 of the registered pesticide in this state through June 30 of each year, subject to suspension or
3557 revocation for cause.

3558 (d) (i) Each registration is renewable for a period of one year upon the payment of an
3559 annual registration renewal fee in an amount equal to the current applicable original registration
3560 fee.

3561 (ii) Each renewal fee shall be paid on or before June 30 of each year.

3562 (2) The application shall include the following information:

3563 (a) the name and address of the applicant and the name and address of the person

3564 whose name will appear on the label, if other than the applicant's name;

3565 (b) the name of the pesticide;

3566 (c) a complete copy of the label which will appear on the pesticide; and

3567 (d) any information prescribed by rule of the department considered necessary for the
3568 safe and effective use of the pesticide.

3569 (3) (a) Forms for the renewal of registration shall be mailed to registrants at least 30
3570 days before their registration expires.

3571 (b) A registration in effect on June 30 for which a renewal application has been filed and
3572 the registration fee tendered shall continue in effect until the applicant is notified either that the
3573 registration is renewed or that it is suspended or revoked pursuant to Section 4-14-8.

3574 (4) The department may, before approval of any registration, require the applicant to
3575 submit the complete formula of any pesticide including active and inert ingredients and may
3576 also, for any pesticide not registered according to 7 U.S.C. Sec. 136a or for any pesticide on
3577 which restrictions are being considered, require a complete description of all tests and test
3578 results that support the claims made by the applicant or the manufacturer of the pesticide.

3579 (5) A registrant who desires to register a pesticide to meet special local needs according
3580 to 7 U.S.C. Sec. 136a(c) shall, in addition to complying with Subsections (1) and (2), satisfy the
3581 department that:

3582 (a) a special local need exists;

3583 (b) the pesticide warrants the claims made for it;

3584 (c) the pesticide, if used in accordance with commonly accepted practices, will not
3585 cause unreasonable adverse effects on the environment; and

- 3586 (d) the proposed classification for use conforms with 7 U.S.C. Sec. 136a(d).
- 3587 (6) No registration is required for a pesticide distributed in this state pursuant to an
- 3588 experimental use permit issued by the EPA or under Section 4-14-5.
- 3589 (7) No pesticide dealer may distribute a restricted use pesticide in this state without a
- 3590 license.
- 3591 (8) A person must receive a license before applying:
- 3592 (a) a restricted use pesticide; or
- 3593 (b) a general use pesticide for hire or in exchange for compensation.
- 3594 (9) (a) A license to engage in an activity listed in Subsection (7) or (8) may be obtained
- 3595 by:
- 3596 (i) submitting an application on a form provided by the department;
- 3597 (ii) paying the license fee determined by the department according to Subsection
- 3598 4-2-2(2); and
- 3599 (iii) complying with the rules adopted as authorized by this chapter.
- 3600 (b) A person may apply for a license that expires on December 31:
- 3601 (i) of the calendar year in which the license is issued; or
- 3602 (ii) of the second calendar year after the calendar year in which the license is issued.
- 3603 (c) (i) Notwithstanding Section [~~63-38-3.2~~] 63J-1-303, the department shall retain the
- 3604 fees as dedicated credits and may only use the fees to administer and enforce this chapter.
- 3605 (ii) The Legislature may annually designate the revenue generated from the fee as
- 3606 nonlapsing in an appropriations act.
- 3607 Section 17. Section **4-14-6** is amended to read:
- 3608 **4-14-6. Department authorized to make and enforce rules.**
- 3609 The department may, by following the procedures and requirements of [~~Title 63,~~
- 3610 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules to:
- 3611 (1) declare as a pest any form of plant or animal life that is injurious to health or the
- 3612 environment, except:
- 3613 (a) a human being; or

- 3614 (b) a bacteria, virus, or other microorganism on or in a living person or animal;
- 3615 (2) establish, in accordance with the regulations promulgated by the EPA under 7
- 3616 U.S.C. Sec. 136w(c)(2), whether pesticides registered for special local needs under the
- 3617 authority of 7 U.S.C. Sec. 136v(c) are highly toxic to man;
- 3618 (3) establish, consistent with EPA regulations, that certain pesticides or quantities of
- 3619 substances contained in these pesticides are injurious to the environment;
- 3620 (4) adopt a list of "restricted use pesticides" for the state or designated areas within the
- 3621 state if it determines upon substantial evidence presented at a public hearing and upon
- 3622 recommendation of the pesticide committee that restricted use is necessary to prevent damage
- 3623 to property or to the environment;
- 3624 (5) establish qualifications for a pesticide applicator business; and
- 3625 (6) adopt any rule, not inconsistent with federal regulations promulgated under FIFRA,
- 3626 considered necessary to administer and enforce this chapter, including rules relating to the sale,
- 3627 distribution, use, and disposition of pesticides if necessary to prevent damage and to protect the
- 3628 public health.

3629 Section 18. Section **4-14-13** is amended to read:

3630 **4-14-13. Registration required for a pesticide business.**

- 3631 (1) A pesticide applicator business shall register with the department by:
- 3632 (a) submitting an application on a form provided by the department;
- 3633 (b) paying the registration fee; and
- 3634 (c) certifying that the business is in compliance with this chapter and departmental rules
- 3635 authorized by this chapter.
- 3636 (2) (a) By following the procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303,
- 3637 the department shall establish a registration fee based on the number of pesticide applicators
- 3638 employed by the pesticide applicator business.
- 3639 (b) (i) Notwithstanding Section [~~63-38-3.2~~] 63J-1-303, the department shall retain the
- 3640 fees as dedicated credits and may only use the fees to administer and enforce this chapter.
- 3641 (ii) The Legislature may annually designate the revenue generated from the fee as

3642 nonlapsing in an appropriations act.

3643 (3) (a) The department shall issue a pesticide applicator business a registration
3644 certificate if the pesticide applicator business:

3645 (i) has complied with the requirements of this section; and

3646 (ii) meets the qualifications established by rule.

3647 (b) The department shall notify the pesticide applicator business in writing that the
3648 registration is denied if the pesticide applicator business does not meet the registration
3649 qualifications.

3650 (4) A registration certificate expires on December 31 of the second calendar year after
3651 the calendar year in which the registration certificate is issued.

3652 (5) (a) The department may suspend a registration certificate if the pesticide applicator
3653 business violates this chapter or any rules authorized by it.

3654 (b) A pesticide applicator business whose registration certificate has been suspended
3655 may apply to the department for reinstatement of the registration certificate by demonstrating
3656 compliance with this chapter and rules authorized by it.

3657 (6) A pesticide applicator business shall:

3658 (a) only employ a pesticide applicator who has received a license from the department,
3659 as required by Section 4-14-3; and

3660 (b) ensure that all employees comply with this chapter and the rules authorized by it.
3661 Section 19. Section **4-15-3** is amended to read:

3662 **4-15-3. Department authorized to make and enforce rules.**

3663 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3664 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3665 necessary to administer and enforce this chapter.

3666 Section 20. Section **4-16-3** is amended to read:

3667 **4-16-3. Department authorized to make and enforce rules -- Cooperation with**
3668 **state and federal agencies authorized.**

3669 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

3670 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3671 deemed necessary to administer and enforce this chapter; and, in conjunction with its
3672 administration and enforcement, it is authorized to cooperate with other state agencies, other
3673 states, and with the United States Department of Agriculture or other departments or agencies
3674 of the federal government.

3675 Section 21. Section **4-18-5** is amended to read:

3676 **4-18-5. Conservation commission -- Functions and duties.**

3677 (1) The commission shall:

3678 (a) facilitate the development and implementation of the strategies and programs
3679 necessary to protect, conserve, utilize, and develop the soil and water resources of the state;

3680 (b) disseminate information regarding districts' activities and programs;

3681 (c) supervise the formation, reorganization, or dissolution of districts according to the
3682 requirements of Title 17A, Chapter 3, Part 8, Conservation Districts;

3683 (d) prescribe uniform accounting and recordkeeping procedures for districts and require
3684 each district to submit annually an audit of its funds to the commission;

3685 (e) approve and make loans for agricultural purposes, from the Agriculture Resource
3686 Development Fund for:

3687 (i) nonfederal rangeland improvement and management projects;

3688 (ii) watershed protection and flood prevention projects;

3689 (iii) agricultural cropland soil and water conservation projects; and

3690 (iv) programs designed to promote energy efficient farming practices;

3691 (f) administer federal or state funds in accordance with applicable federal or state
3692 guidelines and make loans or grants from those funds to land occupiers for the conservation of
3693 soil or water resources;

3694 (g) seek to coordinate soil and water protection, conservation, and development
3695 activities and programs of state agencies, local governmental units, other states, special interest
3696 groups, and federal agencies; and

3697 (h) plan watershed and flood control projects in cooperation with appropriate local,

3698 state, and federal authorities and coordinate flood control projects in the state.

3699 (2) The commission may:

3700 (a) employ, with the approval of the department, an administrator and necessary
3701 technical experts and employees;

3702 (b) execute contracts or other instruments necessary to exercise its powers;

3703 (c) sue and be sued; and

3704 (d) adopt rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
3705 Administrative Rulemaking Act, necessary to carry out the powers and duties specified in
3706 Subsections (1)(d), (e), (f), and (2)(b).

3707 Section 22. Section **4-18-6.5** is amended to read:

3708 **4-18-6.5. Grants to improve manure management or control runoff at animal**
3709 **feeding operations.**

3710 (1) (a) The commission may make grants to owners or operators of animal feeding
3711 operations to pay for costs of plans or projects to improve manure management or control
3712 surface water runoff, including costs of preparing or implementing comprehensive nutrient
3713 management plans.

3714 (b) The commission shall make the grants described in Subsection (1)(a) from funds
3715 appropriated by the Legislature for that purpose.

3716 (2) (a) In awarding grants, the commission shall consider the following criteria:

3717 (i) the ability of the grantee to pay for costs of plans or projects to improve manure
3718 management or control surface water runoff;

3719 (ii) the availability of:

3720 (A) matching funds provided by the grantee or another source; or

3721 (B) material, labor, or other items of value provided in lieu of money by the grantee or
3722 another source; and

3723 (iii) the benefits that accrue to the general public by the awarding of a grant.

3724 (b) The commission may establish by rule additional criteria for the awarding of grants.

3725 (3) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title

3726 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

3727 Section 23. Section **4-20-1.5** is amended to read:

3728 **4-20-1.5. State Grazing Advisory Board -- Duties.**

3729 (1) (a) There is created within the department the State Grazing Advisory Board.

3730 (b) The commissioner shall appoint the following members:

3731 (i) one member from each regional board;

3732 (ii) one member from the Conservation Commission created in Section 4-18-4;

3733 (iii) one representative of the Department of Natural Resources;

3734 (iv) two livestock producers at-large; and

3735 (v) one representative of the oil, gas, or mining industry.

3736 (2) The term of office for a state board member is four years.

3737 (3) Members of the state board shall elect a chair, who shall serve for two years.

3738 (4) (a) (i) A member who is not a government employee may not receive compensation
3739 or benefits for the member's service, but may receive per diem and expenses incurred in the
3740 performance of the member's official duties at the rates established by the Division of Finance
3741 under Sections 63A-3-106 and 63A-3-107.

3742 (ii) A member may decline to receive per diem and expenses for the member's service.

3743 (b) (i) A state government officer and employee member who does not receive salary,
3744 per diem, or expenses from the agency the member represents for the member's service may
3745 receive per diem and expenses incurred in the performance of the member's official duties at the
3746 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3747 (ii) A state government officer and employee member may decline to receive per diem
3748 and expenses for the member's service.

3749 (c) (i) A local government member who does not receive salary, per diem, or expenses
3750 from the entity that the member represents for the member's service may receive per diem and
3751 expenses incurred in the performance of the member's official duties at the rates established by
3752 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

3753 (ii) A local government member may decline to receive per diem and expenses for the

3754 member's service.

3755 (5) The state board shall:

3756 (a) receive:

3757 (i) advice and recommendations from a regional board concerning:

3758 (A) management plans for public lands, state lands, and school and institutional trust

3759 lands as defined in Section 53C-1-103, within the regional board's region; and

3760 (B) any issue that impacts grazing on private lands, public lands, state lands, or school

3761 and institutional trust lands as defined in Section 53C-1-103, in its region; and

3762 (ii) requests for fund monies from the entities described in Subsections (5)(c)(i) through

3763 (iv);

3764 (b) recommend state policy positions and cooperative agency participation in federal

3765 and state land management plans to the department and to the Public Lands Policy Coordinating

3766 Office created under Section ~~[63-38d-602]~~ 63J-4-602; and

3767 (c) advise the department on the requests and recommendations of:

3768 (i) regional boards;

3769 (ii) county weed control boards created under Section 4-17-4;

3770 (iii) cooperative weed management associations; and

3771 (iv) conservation districts created under the authority of Title 17A, Chapter 3, Part 8,

3772 Conservation Districts.

3773 Section 24. Section **4-22-4.5** is amended to read:

3774 **4-22-4.5. Exemption from certain operational requirements.**

3775 The commission is exempt from:

3776 (1) Title 51, Chapter 5, Funds Consolidation Act;

3777 (2) Title 51, Chapter 7, State Money Management Act;

3778 (3) ~~[Title 63, Chapter 38]~~ Title 63J, Chapter 1, Budgetary Procedures Act;

3779 (4) Title 63A, Utah Administrative Services Code; and

3780 (5) Title 67, Chapter 19, Utah State Personnel Management Act.

3781 Section 25. Section **4-23-5** is amended to read:

3782 **4-23-5. Board responsibilities -- Damage prevention policy -- Rules -- Methods to**
3783 **control predators and depredating birds and animals.**

3784 (1) The board is responsible for the formulation of the agricultural and wildlife damage
3785 prevention policy of the state and in conjunction with its responsibility may, consistent with
3786 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, adopt rules
3787 to implement its policy which shall be administered by the department.

3788 (2) In its policy deliberations the board shall:

3789 (a) specify programs designed to prevent damage to livestock, poultry, and agricultural
3790 crops; and

3791 (b) specify methods for the prevention of damage and for the selective control of
3792 predators and depredating birds and animals including, but not limited to, hunting, trapping,
3793 chemical toxicants, and the use of aircraft.

3794 (3) The board may also:

3795 (a) specify bounties on designated predatory animals and recommend procedures for the
3796 payment of bounty claims, recommend bounty districts, recommend persons not authorized to
3797 receive bounty, and recommend to the department other actions it [~~deems~~] considers advisable
3798 for the enforcement of its policies; and

3799 (b) cooperate with federal, state, and local governments, educational institutions, and
3800 private persons or organizations, through agreement or otherwise, to effectuate its policies.

3801 Section 26. Section **4-24-3** is amended to read:

3802 **4-24-3. Department authorized to make and enforce rules.**

3803 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3804 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3805 necessary to administer and enforce this chapter.

3806 Section 27. Section **4-25-3** is amended to read:

3807 **4-25-3. Department authorized to make and enforce rules.**

3808 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3809 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are

3810 necessary to administer and enforce this chapter.

3811 Section 28. Section **4-29-1** is amended to read:

3812 **4-29-1. Department authorized to make and enforce rules.**

3813 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3814 Utah Administrative Rulemaking Act, to make and enforce such rules as it considers necessary
3815 for the administration and enforcement of this chapter.

3816 Section 29. Section **4-30-3** is amended to read:

3817 **4-30-3. Department authorized to make and enforce rules.**

3818 The department is authorized, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
3819 Utah Administrative Rulemaking Act, to make and enforce such rules as in its judgment are
3820 necessary to administer and enforce this chapter.

3821 Section 30. Section **4-31-16.5** is amended to read:

3822 **4-31-16.5. Brucellosis -- Vaccination required for certain cattle -- Testing**
3823 **required to import certain cattle.**

3824 (1) As used in this section, "test-eligible" has the meaning defined in 9 C.F.R. Sec. 78.1.

3825 (2) (a) Instate origin replacement cattle that are kept for breeding stock must be official
3826 calfhood vaccinated for brucellosis.

3827 (b) Female cattle from within the state that are not kept for breeding stock will not be
3828 required to be vaccinated.

3829 (c) For purposes of this Subsection (2), the department may make rules in accordance
3830 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
3831 governing non-legible brucellosis tattoos and may accept brucellosis vaccination record forms as
3832 evidence that brucellosis vaccinations were performed.

3833 (3) All female beef-breed cattle imported into the state are required to be official
3834 calfhood vaccinated for brucellosis except female cattle:

3835 (a) less than four months of age;

3836 (b) going directly to slaughter;

3837 (c) going to a qualified feedlot; or

3838 (d) going to an approved auction to be vaccinated on arrival or designated for slaughter
3839 only.

3840 (4) (a) Test-eligible cattle imported from states designated as brucellosis-free under 9
3841 C.F.R. Sec. 78.43, that are acquired directly from the farm of origin are not required to be
3842 tested for brucellosis before movement into the state.

3843 (b) Test-eligible cattle imported from states designated as brucellosis-free under 9
3844 C.F.R. Sec. 78.43, that are acquired through trading channels must test negative for brucellosis
3845 within 30 days before movement into the state.

3846 (5) Test-eligible cattle imported from states that have not been designated as
3847 brucellosis-free under 9 C.F.R. Sec. 78.43, must test negative for brucellosis within 30 days
3848 before movement into the state.

3849 (6) The department may investigate situations where fees for brucellosis vaccinations
3850 are considered to be excessive.

3851 (7) The department may make rules in accordance with [~~Title 63, Chapter 46a~~] Title
3852 63G, Chapter 3, Utah Administrative Rulemaking Act, for beef-breed cattle that are acquired
3853 for specialized breeding purposes, and may exempt those cattle from brucellosis vaccination
3854 requirements.

3855 (8) The department shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
3856 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

3857 Section 31. Section **4-31-21** is amended to read:

3858 **4-31-21. Trichomoniasis -- Department to make rules.**

3859 The department shall make rules for the prevention and control of trichomoniasis in
3860 cattle and bison in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
3861 Administrative Rulemaking Act.

3862 Section 32. Section **4-32-7** is amended to read:

3863 **4-32-7. Mandatory functions, powers, and duties of department prescribed.**

3864 The department shall make rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter
3865 3, Utah Administrative Rulemaking Act, regarding the following functions, powers, and duties,

3866 in addition to those specified in Title 4, Chapter 1, Utah Agricultural Code, for the
3867 administration and enforcement of this chapter:

3868 (1) The department shall require antemortem and postmortem inspections, quarantine,
3869 segregation, and reinspections by inspectors appointed for those purposes with respect to the
3870 slaughter of livestock and poultry and the preparation of livestock and poultry products at
3871 official establishments, except as provided in Subsection 4-32-8(13).

3872 (2) The department shall require that:

3873 (a) livestock and poultry be identified for inspection purposes;

3874 (b) livestock or poultry products, or their containers be marked or labeled as:

3875 (i) "Utah Inspected and Passed" if, upon inspection, the products are found to be
3876 unadulterated; and

3877 (ii) "Utah Inspected and Condemned" if, upon inspection, the products are found to be
3878 adulterated; and

3879 (c) condemned products, which otherwise would be used for human consumption, be
3880 destroyed under the supervision of an inspector.

3881 (3) The department shall prohibit or limit livestock products, poultry products, or other
3882 materials not prepared under inspection procedures provided in this chapter, from being brought
3883 into official establishments.

3884 (4) The department shall require that labels and containers for livestock and poultry
3885 products:

3886 (a) bear all information required under Section 4-32-3 if the product leaves the official
3887 establishment; and

3888 (b) be approved prior to sale or transportation.

3889 (5) For official establishments required to be inspected under Subsection (1), the
3890 department shall:

3891 (a) prescribe sanitary standards;

3892 (b) require experts in sanitation or other competent investigators to investigate sanitary
3893 conditions; and

3894 (c) refuse to provide inspection service if the sanitary conditions allow adulteration of
3895 any livestock or poultry product.

3896 (6) (a) The department shall require that any person engaged in a business referred to in
3897 Subsection (6)(b) shall:

3898 (i) keep accurate records disclosing all pertinent business transactions;

3899 (ii) allow inspection of the business premises at reasonable times and examination of
3900 inventory, records, and facilities; and

3901 (iii) allow inventory samples to be taken after payment of their fair market value.

3902 (b) Subsection (6)(a) shall refer to any person who:

3903 (i) slaughters livestock or poultry;

3904 (ii) prepares, freezes, packages, labels, buys, sells, transports, or stores any livestock or
3905 poultry products for human or animal consumption;

3906 (iii) renders livestock or poultry; or

3907 (iv) buys, sells, or transports any dead, dying, disabled, or diseased livestock or poultry,
3908 or parts of their carcasses that died by a method other than slaughter.

3909 (7) (a) The department shall:

3910 (i) adopt by reference rules and regulations under federal acts with changes that the
3911 commissioner considers appropriate to make the rules and regulations applicable to operations
3912 and transactions subject to this chapter; and

3913 (ii) promulgate any other rules considered necessary for the efficient execution of the
3914 provisions of this chapter, including rules of practice providing an opportunity for hearing in
3915 connection with the issuance of orders under Subsection (5) or under Subsection 4-32-8(1), (2),
3916 or (3) and prescribing procedures for proceedings in these cases.

3917 (b) These procedures shall not preclude requiring that a label or container be withheld
3918 from use, or inspection be refused under Subsections (1) and (5), or Subsection 4-32-8(3),
3919 pending issuance of a final order in the proceeding.

3920 (8) (a) To prevent the inhumane slaughtering of livestock and poultry, inspectors shall
3921 be appointed to examine and inspect methods of handling and slaughtering livestock and

3922 poultry.

3923 (b) Inspection of new slaughtering establishments may be refused or temporarily
3924 suspended if livestock or poultry have been slaughtered or handled by any method not in
3925 accordance with the Humane Methods of Slaughter Act of 1978, Public Law 95-445.

3926 (9) (a) The department shall require all livestock and poultry showing symptoms of
3927 disease during antemortem inspection, performed by an inspector appointed for that purpose, to
3928 be set apart and slaughtered separately from other livestock and poultry.

3929 (b) When slaughtered, the carcasses of livestock and poultry shall be subject to careful
3930 examination and inspection in accordance with rules prescribed by the commissioner.

3931 Section 33. Section ~~4-33-4~~ is amended to read:

3932 **4-33-4. Administrative and enforcement powers of department.**

3933 The department shall administer and enforce this chapter and may:

3934 (1) make and enforce such rules, subject to [~~Title 63, Chapter 46a~~] Title 63G, Chapter
3935 3, Utah Administrative Rulemaking Act, as it considers necessary for the effective
3936 administration and enforcement of this chapter;

3937 (2) acquire and test motor fuel samples to determine compliance with this chapter;

3938 (3) maintain and staff a laboratory to test motor fuel samples;

3939 (4) enter public or private premises during normal working hours to enforce this
3940 chapter;

3941 (5) stop and detain any commercial vehicle transporting motor fuel to inspect its
3942 contents and applicable documents or to acquire motor fuel samples; and

3943 (6) require that records applicable to this chapter be available for examination and
3944 review upon request by the department.

3945 Section 34. Section ~~4-37-109~~ is amended to read:

3946 **4-37-109. Department to make rules.**

3947 (1) The department shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
3948 63G, Chapter 3, Utah Administrative Rulemaking Act:

3949 (a) specifying procedures for the application and renewal of certificates of registration

3950 for operating an aquaculture or fee fishing facility; and

3951 (b) governing the disposal or removal of aquatic animals from an aquaculture or fee
3952 fishing facility for which the certificate of registration has lapsed or been revoked.

3953 (2) (a) The department may make other rules consistent with its responsibilities set forth
3954 in Section 4-37-104.

3955 (b) Except as provided by this chapter, the rules authorized by Subsection (2)(a) must
3956 be consistent with the suggested procedures for the detection and identification of pathogens
3957 published by the American Fisheries Society's Fish Health Section.

3958 Section 35. Section **4-37-201** is amended to read:

3959 **4-37-201. Certificate of registration required to operate an aquaculture facility.**

3960 (1) A person may not operate an aquaculture facility without first obtaining a certificate
3961 of registration from the department.

3962 (2) (a) Each application for a certificate of registration to operate an aquaculture facility
3963 shall be accompanied by a fee.

3964 (b) The fee shall be established by the department in accordance with Section
3965 [~~63-38-3.2~~] 63J-1-303.

3966 (3) The department shall coordinate with the Division of Wildlife Resources:

3967 (a) on the suitability of the proposed site relative to potential impacts on adjacent
3968 aquatic wildlife populations; and

3969 (b) in determining which species the holder of the certificate of registration may
3970 propagate, possess, transport, or sell.

3971 (4) The department shall list on the certificate of registration the species which the
3972 holder may propagate, possess, transport, or sell.

3973 Section 36. Section **4-37-301** is amended to read:

3974 **4-37-301. Certificate of registration required to operate a fee fishing facility.**

3975 (1) A person may not operate a fee fishing facility without first obtaining a certificate of
3976 registration from the department.

3977 (2) (a) Each application for a certificate of registration to operate a fee fishing facility

3978 shall be accompanied by a fee.

3979 (b) The fee shall be established by the department in accordance with Section
3980 [~~63-38-3.2~~] 63J-1-303.

3981 (3) The department shall coordinate with the Division of Wildlife Resources:

3982 (a) on the suitability of the proposed site relative to potential impacts on adjacent
3983 aquatic wildlife populations; and

3984 (b) in determining which species the holder of the certificate of registration may possess
3985 or transport to or stock into the facility.

3986 (4) The department shall list on the certificate of registration the species which the
3987 holder may possess or transport to or stock into the facility.

3988 (5) A person holding a certificate of registration for an aquaculture facility may also
3989 operate a fee fishing facility without obtaining an additional certificate of registration, if the fee
3990 fishing facility:

3991 (a) is in a body of water meeting the criteria of Section 4-37-111 which is connected
3992 with the aquaculture facility;

3993 (b) contains only those aquatic animals specified on the certificate of registration for the
3994 aquaculture facility; and

3995 (c) is designated on the certificate of registration for the aquaculture facility.

3996 Section 37. Section ~~4-37-602~~ is amended to read:

3997 **4-37-602. Adjudicative proceedings -- Presiding officer.**

3998 (1) Adjudicative proceedings under this chapter shall be conducted in accordance with
3999 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

4000 (2) The revocation of an aquaculture facility's certificate of registration, the denial of an
4001 aquaculture facility's future certificate of registration, and a denial or cancellation of an
4002 aquaculture facility's health approval number is a state agency action governed by [~~Title 63,~~
4003 ~~Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

4004 (3) (a) An owner or operator of an aquaculture facility may ask for an agency review,
4005 as provided by Section [~~63-46b-12~~] 63G-4-301, of an agency action specified in Subsection (2).

4006 (b) The presiding officer, as defined in Section [~~63-46b-2~~] 63G-4-103, conducting the
4007 agency review shall consist of three members as follows:

4008 (i) the person representing sport fishermen, appointed under Subsection
4009 4-37-503(4)(a)(i)(C);

4010 (ii) one person representing the aquaculture industry, appointed by the governor from
4011 names submitted by a nonprofit corporation, as defined in Section 16-6a-102, that promotes the
4012 efficient production, distribution, and marketing of aquaculture products and the welfare of all
4013 persons engaged in aquaculture; and

4014 (iii) one person, appointed by the governor, who is knowledgeable about aquatic
4015 diseases and is employed by an institution of higher education.

4016 (c) If the governor rejects all the names submitted under Subsection (3)(b)(ii), the
4017 recommending nonprofit corporation shall submit additional names.

4018 (d) The final decision of the presiding officer shall be adopted upon approval of at least
4019 two of the members.

4020 (e) The term and compensation for the member listed in Subsection (3)(b)(i) shall be the
4021 same as provided in Section 4-37-503.

4022 (f) The term for the members appointed under Subsections (3)(b)(ii) and (iii) shall be
4023 four years.

4024 (g) (i) (A) A higher education member who does not receive salary, per diem, or
4025 expenses from the entity that the member represents for the member's service may receive per
4026 diem and expenses incurred in the performance of the member's official duties at the rates
4027 established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

4028 (B) A higher education member may decline to receive per diem and expenses for the
4029 member's service.

4030 (ii) (A) A member who is not a government employee may not receive compensation or
4031 benefits for the member's service, but may receive per diem and expenses incurred in
4032 performance of the member's official duties at rates established by the Division of Finance under
4033 Sections 63A-3-106 and 63A-3-107.

4034 (B) A member may decline to receive per diem and expenses for the member's service.
4035 Section 38. Section ~~4-38-4~~ is amended to read:
4036 **4-38-4. Powers and duties of commission.**
4037 (1) The commission shall:
4038 (a) license, regulate, and supervise all persons involved in the racing of horses as
4039 provided in this chapter;
4040 (b) license, regulate, and supervise all recognized race meets held in this state under the
4041 terms of this chapter;
4042 (c) cause the various places where recognized race meets are held to be visited and
4043 inspected at least once a year;
4044 (d) assist in procuring public liability insurance coverage from a private insurance
4045 company for those licensees unable to otherwise obtain the insurance required under this
4046 chapter;
4047 (e) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
4048 Administrative Rulemaking Act, to govern race meets, including rules:
4049 (i) to resolve scheduling conflicts and settle disputes among licensees;
4050 (ii) to supervise, discipline, suspend, fine, and bar from events all persons required to be
4051 licensed by this chapter; and
4052 (iii) to hold, conduct, and operate all recognized race meets conducted pursuant to this
4053 chapter;
4054 (f) determine which persons participating, directly or indirectly, in recognized race
4055 meets require licenses;
4056 (g) announce the time, place, and duration of recognized race meets for which licenses
4057 shall be required; and
4058 (h) establish reasonable fees for all licenses provided for under this chapter.
4059 (2) The commission may:
4060 (a) grant, suspend, or revoke licenses issued under this chapter;
4061 (b) impose fines as provided in this chapter;

4062 (c) access criminal history record information for all licensees and commission
4063 employees; and

4064 (d) exclude from any racetrack facility in this state any person who the commission
4065 considers detrimental to the best interests of racing or any person who violates any provisions of
4066 this chapter or any rule or order of the commission.

4067 Section 39. Section **4-38-6** is amended to read:

4068 **4-38-6. Public records.**

4069 All records of the commission shall be subject to [~~Title 63, Chapter 2~~] Title 63G,
4070 Chapter 2, Government Records Access and Management Act.

4071 Section 40. Section **4-38-14** is amended to read:

4072 **4-38-14. Hearings.**

4073 (1) Except as otherwise provided in this section, all proceedings before the commission
4074 or its hearing officer with respect to the denial, suspension, or revocation of licenses or the
4075 imposition of fines shall be conducted pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
4076 Administrative Procedures Act.

4077 (2) These proceedings shall be held in the county where the commission has its office or
4078 in any other place the commission designates. The commission shall notify the applicant or
4079 licensee by mailing, by first class mail, a copy of the written notice required to the last address
4080 furnished by the application or licensee to the commission at least seven days in advance of the
4081 hearing.

4082 (3) The commission may delegate its authority to conduct hearings with respect to the
4083 denial or suspension of licenses or the imposition of a fine to a hearing officer.

4084 (4) Proceedings before the board of stewards need not be governed by the procedural
4085 or other requirements of the Administrative Procedures Act, but rather shall be conducted in
4086 accordance with rules adopted by the commission.

4087 (5) The commission and the board of stewards may administer oaths and affirmations,
4088 sign and issue subpoenas, order the production of documents and other evidence, and regulate
4089 the course of the hearing pursuant to rules adopted by it.

4090 (6) Any person aggrieved by a final order or ruling issued by a board of stewards may
4091 appeal the order or ruling to the commission pursuant to procedural rules adopted by the
4092 commission. The aggrieved party may petition the commission for a stay of execution pending
4093 appeal to the commission.

4094 Section 41. Section **4-39-106** is amended to read:

4095 **4-39-106. Department to make rules.**

4096 (1) The department shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
4097 63G, Chapter 3, Utah Administrative Rulemaking Act, after considering the recommendations
4098 of the advisory council:

4099 (a) specifying procedures for the application and renewal of licenses for operating a
4100 domesticated elk facility;

4101 (b) governing the disposal or removal of domesticated elk from a domesticated elk
4102 facility for which the license has lapsed or been revoked;

4103 (c) setting standards and requirements for operating a domesticated elk facility;

4104 (d) setting health requirements and standards for health inspections; and

4105 (e) governing the possession, transportation, and accompanying documentation of
4106 domesticated elk carcasses.

4107 (2) The department may make other rules consistent with its responsibilities set forth in
4108 Section 4-39-103.

4109 Section 42. Section **4-39-203** is amended to read:

4110 **4-39-203. License required to operate a domesticated elk facility.**

4111 (1) A person may not operate a domesticated elk facility without first obtaining a
4112 license from the department.

4113 (2) (a) Each application for a license to operate a domesticated elk facility shall be
4114 accompanied by a fee.

4115 (b) The fee shall be established by the department in accordance with Section
4116 [~~63-38-3.2~~] 63J-1-303.

4117 (3) Each applicant for a domesticated elk facility license shall submit an application

4118 providing all information in the form and manner as required by the department.

4119 (4) (a) No license shall be issued until the department has inspected and approved the
4120 facility.

4121 (b) The department shall:

4122 (i) notify the Division of Wildlife Resources at least 48 hours prior to a scheduled
4123 inspection so that a Division of Wildlife Resources representative may be present at the
4124 inspection; and

4125 (ii) provide the Division of Wildlife Resources with copies of all licensing and
4126 inspection reports.

4127 (5) Each separate location of the domesticated elk operation shall be licensed
4128 separately.

4129 (6) (a) If a domesticated elk facility is operated under more than one business name
4130 from a single location, the name of each operation shall be listed with the department in the
4131 form and manner required by the department.

4132 (b) The department shall require that a separate fee be paid for each business name
4133 listed.

4134 (c) If a domesticated elk facility operates under more than one business name from a
4135 single location, the facility shall maintain separate records.

4136 (7) Each person or business entity with an equity interest in the domesticated elk shall
4137 be listed on the application for license.

4138 (8) Each domesticated elk facility license shall expire on July 1 in the year following the
4139 year of issuance.

4140 (9) Each licensee shall report to the department, in the form and manner required by the
4141 department, any change in the information provided in the licensee's application or in the reports
4142 previously submitted, within 15 days of each change.

4143 (10) Licenses issued pursuant to this section are not transferable.

4144 Section 43. Section **4-39-502** is amended to read:

4145 **4-39-502. Adjudicative proceedings.**

4146 Adjudicative proceedings under this chapter shall be conducted in accordance with [Title
4147 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

4148 Section 44. Section **7-1-105** is amended to read:

4149 **7-1-105. Procedures -- Adjudicative proceedings.**

4150 The commissioner and the department shall, except to the extent exempted, comply with
4151 the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
4152 Administrative Procedures Act, in their adjudicative proceedings.

4153 Section 45. Section **7-1-301** is amended to read:

4154 **7-1-301. Powers and duties of commissioner -- Rulemaking.**

4155 Without limiting the other powers, duties, and responsibilities specified in this title, the
4156 commissioner has all the functions, powers, duties, and responsibilities with respect to
4157 institutions, persons, or businesses subject to the jurisdiction of the department contained in this
4158 title, including all of the functions, powers, duties, and responsibilities described in Subsections
4159 (1) through (15).

4160 (1) The commissioner may govern the administration and operation of the department.

4161 (2) The commissioner may supervise the conduct, operation, management, examination,
4162 and statements and reports of examinations of financial institutions and other persons subject to
4163 the jurisdiction of the department.

4164 (3) (a) The commissioner may authorize a state chartered depository institution to
4165 engage in any activity it could engage in, and to grant to that institution all additional rights,
4166 powers, privileges, benefits, or immunities it would possess, if it were chartered under the laws
4167 of the United States.

4168 (b) The commissioner may authorize a depository institution chartered by this state to
4169 engage in any activity that a Utah branch of an out-of-state depository institution of the same
4170 class can engage in, and to grant to the Utah institution all additional rights, powers, privileges,
4171 benefits, or immunities it needs to engage in the activity.

4172 (c) In granting authority under this Subsection (3), the commissioner shall consider:

4173 (i) the need for competitive equality between institutions chartered by this state and

4174 institutions operating in this state that are chartered by another state or by the federal
4175 government; and

4176 (ii) the adverse effect on shareholders, members, depositors, and other customers of
4177 financial institutions chartered by this state if equal power and protection of those institutions,
4178 compared with federally chartered or out-of-state institutions of the same class, are not
4179 promptly available.

4180 (4) The commissioner may safeguard the interest of shareholders, members, depositors,
4181 and other customers of institutions and other persons subject to the jurisdiction of the
4182 department.

4183 (5) (a) The commissioner may establish criteria consistent with this title to be applied in
4184 granting applications for approval of:

4185 (i) a new institution;

4186 (ii) a new branch;

4187 (iii) the relocation of an office or branch;

4188 (iv) a merger;

4189 (v) a consolidation;

4190 (vi) a change in control of an institution or other person subject to the jurisdiction of the
4191 department; and

4192 (vii) other applications specified in this title.

4193 (b) The criteria established under Subsection (5)(a) may not be applied to make it more
4194 difficult for a state chartered institution to obtain approval of an application than for a federally
4195 chartered institution in the same class to obtain approval from the appropriate federal regulatory
4196 agency or administrator.

4197 (6) (a) The commissioner may protect the privacy of the records of any institution
4198 subject to the jurisdiction of the department pertaining to a particular depositor or other
4199 customer of the institution. Rules adopted under this Subsection (6) shall be consistent with
4200 federal laws and regulations applicable to the institution.

4201 (b) Any institution that consents to produce records or that is required to produce

4202 records in compliance with a subpoena or other order of a court of competent jurisdiction or in
4203 compliance with an order obtained pursuant to Sections 78-27-45 through 78-27-50.5 shall be
4204 reimbursed for the cost of retrieval and reproduction of the records by the party seeking the
4205 information. The commissioner may by rule establish the rates and conditions under which
4206 reimbursement is made.

4207 (7) (a) The commissioner may classify all records kept by institutions subject to the
4208 jurisdiction of the department and to prescribe the period for which each class of records is
4209 retained.

4210 (b) Rules adopted under this Subsection (7) for any class of financial institution shall be
4211 consistent with federal laws and regulations applicable to the class.

4212 (c) Rules made under this Subsection (7) shall provide that:

4213 (i) An institution may dispose of any record after retaining it for the period prescribed
4214 by the commissioner for retention of records of its class. If an institution disposes of a record
4215 after the prescribed period, the institution has no duty to produce it in any action or proceeding
4216 and is not liable to any person by reason of that disposition.

4217 (ii) Any institution may keep records in its custody in the form of microfilm or
4218 equivalent reproduction. Any such reproduction shall have the same force and effect as the
4219 original and shall be admissible into evidence as if it were the original.

4220 (d) In adopting rules under this Subsection (7), the commissioner shall take into
4221 consideration:

4222 (i) actions at law and administrative proceedings in which the production of the records
4223 might be necessary or desirable;

4224 (ii) state and federal statutes of limitation applicable to the actions or proceedings;

4225 (iii) the availability from other sources of information contained in these records; and

4226 (iv) other matters the commissioner considers pertinent in formulating rules that require
4227 institutions to retain their records for as short a period as commensurate with the interest in
4228 having the records available of:

4229 (A) customers, members, depositors, and shareholders of the institutions; and

4230 (B) the people of this state.

4231 (8) (a) The commissioner may establish reasonable classes of depository and other
4232 financial institutions including separate classes for:

4233 (i) savings and loan associations and related institutions;
4234 (ii) banks and related institutions;
4235 (iii) credit unions; and
4236 (iv) industrial banks.

4237 (b) If the restrictions or requirements the commissioner imposes are not more stringent
4238 than those applicable under federal law or regulation to federally chartered institutions of the
4239 same class, the commissioner may establish the following for each class in a manner consistent
4240 with this title:

4241 (i) eligible classes and types of investments for the deposits and other funds of those
4242 financial institutions;

4243 (ii) minimum standards, in amounts sufficient to protect depositors and other creditors,
4244 for the amount and types of capital required to engage in the business conducted by each class
4245 or to obtain a license or to establish a branch or additional office of an institution of each class;

4246 (iii) eligible obligations, reserves, and other accounts to be included in the computation
4247 of capital;

4248 (iv) minimum liquidity requirements for financial institutions within each class in
4249 amounts sufficient to meet the demands of depositors and other creditors for liquid funds;

4250 (v) limitations on the amount and type of borrowings by each class of financial
4251 institution in relation to the amount of its capital and the character and condition of its assets
4252 and its deposits and other liabilities;

4253 (vi) limitations on the amount and nature of loans and extensions of credit to any person
4254 or related persons by each class of financial institution in relation to the amount of its capital;
4255 and

4256 (vii) limitations on the amount and nature of loans and extensions of credit by a
4257 financial institution or other person within each class to an executive officer, director, or

4258 principal shareholder of:

4259 (A) the institution or other person;

4260 (B) any company of which the institution or other person is a subsidiary;

4261 (C) any subsidiary of the institution or other person;

4262 (D) any affiliate of the institution; and

4263 (E) a company controlled by an executive officer, director, or principal shareholder of
4264 the institution.

4265 (9) The commissioner may define unfair trade practices of financial institutions and
4266 other persons subject to the jurisdiction of the department and to prohibit or restrict these
4267 practices.

4268 (10) The commissioner may establish reasonable standards to promote the fair and
4269 truthful advertising of:

4270 (a) services offered by a financial institution;

4271 (b) the charges for the services advertised under Subsection (10)(a);

4272 (c) the interest or other compensation to be paid on deposits or any debt instrument
4273 offered for sale by the institution;

4274 (d) the nature and extent of any:

4275 (i) insurance on deposits;

4276 (ii) savings accounts;

4277 (iii) share accounts;

4278 (iv) certificates of deposit;

4279 (v) time deposit accounts;

4280 (vi) NOW accounts;

4281 (vii) share draft accounts;

4282 (viii) transaction accounts; or

4283 (ix) any evidence of indebtedness issued, offered for sale, offered to sell or sold by any
4284 financial institution or other person subject to the jurisdiction of the department; and

4285 (e) the safety or financial soundness of any financial institution or other person subject

4286 to the jurisdiction of the department.

4287 (11) The commissioner may define what constitutes an impairment of capital for each
4288 class of financial institution or other person subject to the jurisdiction of the department.

4289 (12) The commissioner may designate days on which depository institutions are closed
4290 in accordance with Section 7-1-808.

4291 (13) The commissioner may regulate the issuance, advertising, offer for sale, and sale of
4292 a security to the extent authorized by Section 7-1-503.

4293 (14) The commissioner may require the officers of any institution or other person
4294 subject to the commissioner's jurisdiction to open and keep a standard set of books, computer
4295 records, or both for the purpose of keeping accurate and convenient records of the transactions
4296 and accounts of the institution in a manner to enable the commissioner, supervisors, and
4297 department examiners to readily ascertain the institution's true condition. These requirements
4298 shall be consistent with generally accepted accounting principles for financial institutions.

4299 (15) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
4300 Administrative Rulemaking Act, the commissioner may adopt and issue rules consistent with the
4301 purposes and provisions of this title, and may revise, amend, or repeal the rules adopted.

4302 Section 46. Section **7-1-323** is amended to read:

4303 **7-1-323. Regulation of interstate operations -- Coordination of efforts.**

4304 (1) The commissioner may:

4305 (a) examine, supervise, and regulate a branch operated in this state by a depository
4306 institution chartered by another state and take any action or issue any order with regard to that
4307 branch;

4308 (b) examine, supervise, and regulate a branch operated in another state by a depository
4309 institution chartered by this state and take any action or issue any order with regard to that
4310 branch; and

4311 (c) coordinate these activities with any other state or federal agency that shares
4312 jurisdiction over the institution.

4313 (2) The commissioner may coordinate the examination, supervision, and regulation of

4314 any depository institution chartered by this state with the examination, supervision, and
4315 regulation of an affiliated depository institution operating in another state.

4316 (3) The commissioner may take any reasonable and lawful action in furtherance of
4317 coordinating the regulation of interstate operations, including:

4318 (a) negotiating and entering into cooperative agreements with an agency of another
4319 state or of the federal government;

4320 (b) sharing information and reports in accordance with Section 7-1-802 with an agency
4321 that shares jurisdiction over the institution;

4322 (c) accepting as sufficient, if appropriate, examination reports and other information
4323 compiled or generated by or for an agency that shares jurisdiction over the institution;

4324 (d) contracting with an agency that shares jurisdiction over the institution to engage the
4325 services of its examiners at a reasonable rate of compensation;

4326 (e) offering the services of the department's examiners at a reasonable rate of
4327 compensation to an agency that shares jurisdiction over the institution;

4328 (f) collecting fees on behalf of, or receiving payment of fees through, an agency that
4329 shares jurisdiction over the institution; and

4330 (g) cooperating in any other way with other supervisory agencies and professional
4331 associations to promote the efficient, safe, and sound operation and regulation of interstate
4332 depository institution activities, including the formulation of interstate examination policies and
4333 procedures and the drafting of model laws, rules, and agreements.

4334 (4) A contract between the department and an agency that shares jurisdiction over a
4335 depository institution to provide examiners to aid in interstate examination and regulation is
4336 considered a sole source contract under Section [~~63-56-410~~] 63G-6-410.

4337 Section 47. Section **7-1-324** is amended to read:

4338 **7-1-324. Debt cancellation agreements and debt suspension agreements.**

4339 (1) As used in this section:

4340 (a) "Class of depository institution" means a class consisting of:

4341 (i) banks;

- 4342 (ii) credit unions;
- 4343 (iii) industrial banks;
- 4344 (iv) savings and loan associations; or
- 4345 (v) wholly owned subsidiaries of a depository institution listed in this Subsection (1)(a).

4346 (b) "Debt cancellation agreement" is as defined in Section 31A-21-109.

4347 (c) "Debt suspension agreement" is as defined in Section 31A-21-109.

4348 (2) Subject to the other provisions of this section, the commissioner may by rule, made
4349 in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
4350 Rulemaking Act:

4351 (a) authorize any member of a class of depository institution that is subject to the
4352 jurisdiction of the department to issue:

4353 (i) a debt cancellation agreement; or

4354 (ii) a debt suspension agreement; and

4355 (b) regulate the issuance of a debt cancellation agreement or a debt suspension
4356 agreement issued in this state by a member of a class of depository institution.

4357 (3) (a) Any rule adopted by the commissioner under this section as applied to a class of
4358 depository institution shall be substantially similar to any federal regulation applying to the same
4359 class of depository institution.

4360 (b) Any rule adopted by the commissioner applicable to a class of depository institution
4361 described in this Subsection (3)(b) shall be substantially similar to any federal regulation
4362 applicable to a bank if no federal regulation authorizes or regulates the issuance of a debt
4363 cancellation agreement or debt suspension agreement for that class of depository institution.

4364 (4) (a) An out-of-state depository institution may issue a debt cancellation agreement or
4365 debt suspension agreement in this state if:

4366 (i) the home state of the out-of-state depository institution authorizes and regulates the
4367 issuance of a debt cancellation agreement or debt suspension agreement by the out-of-state
4368 depository institution; and

4369 (ii) subject to Subsection (4)(b), the out-of-state depository institution complies with

4370 regulations from the out-of-state depository institution's home state that regulate the issuance of
4371 a debt cancellation agreement or a debt suspension agreement.

4372 (b) Notwithstanding Subsection (4)(a), an out-of-state depository institution described
4373 in Subsection (4)(a) shall comply with rules adopted by the commissioner under this section that
4374 regulate the issuance of a debt cancellation agreement or a debt suspension agreement in this
4375 state by the class of depository institution to which the out-of-state depository institution
4376 belongs if the regulations of the out-of-state depository institution's home state do not provide
4377 at least the same level of protection with respect to a debt cancellation agreement or debt
4378 suspension agreement as the rules adopted by the commissioner under this section with respect
4379 to the same class of depository institution:

- 4380 (i) for the safety and soundness of the depository institution; and
- 4381 (ii) for consumer protections for the borrowers of the depository institution.

4382 Section 48. Section **7-1-325** is amended to read:

4383 **7-1-325. Compliance with applicable federal law.**

4384 (1) As used in this section, "federal law" means:

- 4385 (a) a statute passed by the Congress of the United States; or
- 4386 (b) a final regulation:

- 4387 (i) adopted by an administrative agency of the United States government; and
- 4388 (ii) published in the code of federal regulations or the federal register.

4389 (2) (a) An institution subject to the jurisdiction of the department violates this title if the
4390 institution violates a federal law:

- 4391 (i) that is applicable to the institution; and
- 4392 (ii) pursuant to the terms of the federal law in effect on the day the institution violates
4393 the federal law.

4394 (b) The department shall by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title
4395 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this title, designate
4396 which one or more federal laws are applicable to an institution subject to the jurisdiction of the
4397 department.

4398 (3) Except for criminal penalties, the department may enforce a violation described in
4399 Subsection (2) by taking any action:

4400 (a) permitted by:

4401 (i) this part;

4402 (ii) Chapter 2, Possession of Depository Institution by Commissioner;

4403 (iii) Chapter 19, Acquisition of Failing Depository Institutions or Holding Companies;

4404 (iv) in the case of a check casher, Chapter 23, Check Cashing Registration Act; or

4405 (v) in the case of a title lender, Chapter 24, Title Lending Registration Act; and

4406 (b) including bringing an action permitted under this title in state court.

4407 Section 49. Section **7-1-704** is amended to read:

4408 **7-1-704. Authorization required to engage in business -- Exemptions --**

4409 **Procedure.**

4410 (1) (a) An institution subject to the jurisdiction of the department may maintain an
4411 office in this state or engage in the activities of a financial institution in this state only if it is
4412 authorized to do so by the department.

4413 (b) This Subsection (1) does not apply to:

4414 (i) any person who is lawfully engaging in the activities of a financial institution in this
4415 state on July 1, 1981, unless the institution was not subject to the jurisdiction of the department
4416 before that date;

4417 (ii) an application to establish a branch or additional office; or

4418 (iii) the establishment of a service corporation or service organization.

4419 (2) An applicant for authorization to become an institution subject to the jurisdiction of
4420 the department shall pay to the department the appropriate filing fee, as provided in Section
4421 7-1-401, and shall file with the commissioner:

4422 (a) its undertaking to pay all expenses incurred in conducting any administrative
4423 proceedings forming part of the department's consideration of the application;

4424 (b) its proposed articles of incorporation and by-laws;

4425 (c) an application in a form prescribed by the commissioner that includes all information

4426 the commissioner requires about the source of the proposed original capital and about the
4427 identity, personal history, business background and experience, financial condition, and
4428 participation in any litigation or administrative proceeding of the organizers, the proposed
4429 members of the board of directors, and the principal officers; and

4430 (d) any other information the commissioner requires.

4431 (3) In addition to the requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
4432 Administrative Procedures Act, the commissioner shall, at the expense of the applicant:

4433 (a) give notice of the application by publication in three successive issues of a
4434 newspaper of general circulation in the county where the principal place of business is to be
4435 established;

4436 (b) give notice of the application to other institutions subject to the jurisdiction of the
4437 department in a manner and to an extent the commissioner considers appropriate;

4438 (c) cause the appropriate supervisor to make a careful investigation and examination of
4439 the following:

4440 (i) the character, reputation, and financial standing and ability of the organizers;

4441 (ii) the character, financial responsibility, experience, and business qualifications of
4442 those proposed as officers;

4443 (iii) the character and standing in the community of those proposed as directors,
4444 principal stockholders, or owners;

4445 (iv) the need in the service area where the institution would be located, giving particular
4446 consideration to the adequacy of existing financial facilities and the effect the proposed
4447 institution would have on existing institutions in the area;

4448 (v) the ability of the proposed service area to support the proposed institution, including
4449 the extent and nature of existing competition, the economic history and future prospects of the
4450 community, and the opportunity for profitable employment of financial institution funds; and

4451 (vi) other facts and circumstances bearing on the proposed institution that the
4452 supervisor considers relevant.

4453 (4) (a) The supervisor shall submit findings and recommendations in writing to the

4454 commissioner.

4455 (b) The application, any additional information furnished by the applicant, and the
4456 findings and recommendations of the supervisor may be inspected by any person at the
4457 department's office, except those portions of the application or report the commissioner declares
4458 to be confidential, pursuant to the applicant's request, in order to prevent a clearly unwarranted
4459 invasion of privacy.

4460 (5) (a) If a hearing is held, the applicant shall publish notice of the hearing at the
4461 applicant's expense in a newspaper of general circulation within the county where the proposed
4462 institution is to be located at least once a week for three successive weeks before the date of
4463 hearing.

4464 (b) The notice shall include the date, time, and place of the hearing and any other
4465 information required by the commissioner.

4466 (c) The commissioner shall act on the record before him within 30 days after receipt of
4467 the transcript of the hearing.

4468 (6) If no hearing is held, the commissioner may, within 90 days of acceptance of the
4469 application as complete, approve or disapprove the application based on the papers filed with
4470 him, together with the supervisor's findings and recommendations.

4471 (7) (a) The commissioner may not approve the application unless ~~he~~ the commissioner
4472 finds that the applicant has established by the preponderance of the evidence that:

4473 (i) in light of the need for financial services in the area, the adequacy of existing
4474 facilities, and the effect the proposed institution would have on existing institutions in the area,
4475 the public need and convenience will be promoted by the establishment of the proposed
4476 institution;

4477 (ii) in light of the ability of the proposed service area to support the proposed
4478 institution, including the extent and nature of existing competition, the economic history and
4479 future prospects of the community, and the opportunity for profitable employment of financial
4480 institution funds, conditions in the service area in which the proposed institution would transact
4481 business afford reasonable promise of a successful operation;

4482 (iii) the institution is being formed only for legitimate purposes allowed by the laws of
4483 this state;

4484 (iv) the proposed capital equals or exceeds the required minimum and is adequate in
4485 light of current and prospective conditions;

4486 (v) if the applicant is seeking authority to accept deposits, the deposits will be insured
4487 or guaranteed by an agency of the federal government;

4488 (vi) the proposed officers and directors have sufficient experience, ability, and standing
4489 to afford reasonable promise of a successful operation;

4490 (vii) the name of the proposed financial institution does not resemble the name of any
4491 other institution transacting business in this state so closely as to cause confusion;

4492 (viii) the applicants have complied with all of the provisions of law; and

4493 (ix) no properly managed and soundly operated existing institutions offering
4494 substantially similar services in the service area to which the application relates will be unduly
4495 injured by approval of the application.

4496 (b) The commissioner may condition approval of the application on the institution's
4497 acceptance of requirements or conditions with respect to insurance that the commissioner
4498 considers necessary to protect depositors.

4499 (8) (a) The commissioner shall provide written findings and conclusions on the
4500 application.

4501 (b) Upon approving an application, the commissioner shall:

4502 (i) endorse the approval on the articles of incorporation;

4503 (ii) file one copy with the Division of Corporations and Commercial Code;

4504 (iii) retain one file copy; and

4505 (iv) return one copy to the applicant within ten days after the date of [~~his~~] the
4506 commissioner's decision approving the application.

4507 (c) Upon disapproving an application, the commissioner shall mail notice of the
4508 disapproval to the applicant within ten days.

4509 (d) The commissioner may approve an application subject to conditions [~~he~~] the

4510 commissioner considers appropriate to protect the public interest and carry out the purposes of
4511 this title.

4512 (e) The commissioner shall give written notice of the decision to all persons who have
4513 filed a protest to the application.

4514 (9) Upon approval of an application for authorization to conduct a business subject to
4515 the jurisdiction of the department, the commissioner shall issue a license, permit, or other
4516 appropriate certificate of authority if:

4517 (a) except in the case of credit unions, all of the capital of the institution being formed
4518 has been paid in; and

4519 (b) all the conditions and other requirements for approval of the application have been
4520 met.

4521 (10) (a) Any approval by the commissioner of an application under this section is
4522 considered revoked unless the business is open and operating within one year from the date of
4523 the approval.

4524 (b) The commissioner, on written application made before the expiration of that period,
4525 and for good cause shown, may extend the date for activation for additional periods not to
4526 exceed six months each.

4527 (11) No person may obtain, for the purpose of resale, a certificate of approval to
4528 operate any institution under the jurisdiction of the department.

4529 (12) The commissioner may approve an application without any notice to other
4530 financial institutions to respond to an emergency arising from the insolvency of an existing
4531 institution or to prevent the failure of an existing institution if the commissioner makes the
4532 findings required by Subsection (7).

4533 Section 50. Section **7-1-810** is amended to read:

4534 **7-1-810. Limited liability companies.**

4535 (1) Notwithstanding any other provision of this title and subject to Subsection (8), if the
4536 conditions of this section are met, the following may be organized as or convert to a limited
4537 liability company under Title 48, Chapter 2c, Utah Revised Limited Liability Company Act:

- 4538 (a) an industrial bank chartered under Chapter 8, Industrial Banks;
- 4539 (b) an industrial loan company as defined in Section 7-8-21; or
- 4540 (c) any of the following if the institution is an S Corporation, as defined in Section
- 4541 1361, Internal Revenue Code, immediately before becoming a limited liability company:
- 4542 (i) a bank chartered under Chapter 3, Banks;
- 4543 (ii) a savings and loan association chartered under Chapter 7, Savings and Loan
- 4544 Associations Act; or
- 4545 (iii) a depository institution holding company.
- 4546 (2) (a) Before an institution described in Subsection (1) may organize as or convert to a
- 4547 limited liability company, the institution shall obtain approval of the commissioner.
- 4548 (b) (i) To obtain the approval under this section from the commissioner, the institution
- 4549 shall file a request for approval with the commissioner at least 30 days before the day on which
- 4550 the institution becomes a limited liability company.
- 4551 (ii) If the commissioner does not disapprove the request for approval within 30 days
- 4552 from the day on which the commissioner receives the request, the request is considered
- 4553 approved.
- 4554 (iii) When taking action on a request for approval filed under this section, the
- 4555 commissioner may:
- 4556 (A) approve the request;
- 4557 (B) approve the request subject to terms and conditions the commissioner considers
- 4558 necessary; or
- 4559 (C) disapprove the request.
- 4560 (3) To approve a request for approval, the commissioner shall find:
- 4561 (a) for an institution described in Subsection (1) that is required to be insured by a
- 4562 federal deposit insurance agency, that the institution:
- 4563 (i) will operate in a safe and sound manner;
- 4564 (ii) has the following characteristics:
- 4565 (A) the institution is not subject to automatic termination, dissolution, or suspension

4566 upon the happening of some event other than the passage of time;

4567 (B) the exclusive authority to manage the institution is vested in a board of managers or
4568 directors that:

4569 (I) is elected or appointed by the owners;

4570 (II) is not required to have owners of the institution included on the board;

4571 (III) possesses adequate independence and authority to supervise the operation of the
4572 institution; and

4573 (IV) operates with substantially the same rights, powers, privileges, duties, and
4574 responsibilities as the board of directors of a corporation;

4575 (C) neither state law, nor the institution's operating agreement, bylaws, or other
4576 organizational documents provide that an owner of the institution is liable for the debts,
4577 liabilities, and obligations of the institution in excess of the amount of the owner's investment;
4578 and

4579 (D) (I) neither state law, nor the institution's operating agreement, bylaws, or other
4580 organizational documents require the consent of any other owner of the institution in order for
4581 any owner to transfer an ownership interest in the institution, including voting rights; and

4582 (II) the institution is able to obtain new investment funding if needed to maintain
4583 adequate capital; and

4584 (iii) is able to comply with all legal and regulatory requirements for an insured
4585 depository institution under applicable federal and state law; and

4586 (b) for an institution described in Subsection (1) that is not required to be insured by a
4587 federal deposit insurance agency, that the institution will operate in a safe and sound manner.

4588 (4) An institution described in Subsection (3)(a) that is organized as a limited liability
4589 company shall maintain the characteristics listed in Subsection (3)(a)(ii) during such time as it is
4590 authorized to conduct business under this title as a limited liability company.

4591 (5) (a) All rights, privileges, powers, duties, and obligations of an institution described
4592 in Subsection (1) that is organized as a limited liability company and its members and managers
4593 shall be governed by Title 48, Chapter 2c, Utah Revised Limited Liability Company Act, except:

- 4594 (i) the following sections do not apply to an institution that is described in Subsection
4595 (3)(a):
- 4596 (A) Subsection 48-2c-402(2)(a)(ii);
 - 4597 (B) Section 48-2c-604;
 - 4598 (C) Section 48-2c-703;
 - 4599 (D) Section 48-2c-708;
 - 4600 (E) Subsection 48-2c-801(2);
 - 4601 (F) Section 48-2c-1102;
 - 4602 (G) Section 48-2c-1104; and
 - 4603 (H) Subsections 48-2c-1201(2) through (5); and
- 4604 (ii) as otherwise provided in this title.
- 4605 (b) Notwithstanding Subsection (5)(a), for an institution that is described in Subsection
4606 (3)(a):
- 4607 (i) for purposes of transferring a member's interests in the institution, a member's
4608 interest in the institution shall be treated like a share of stock in a corporation; and
 - 4609 (ii) if a member's interest in the institution is transferred voluntarily or involuntarily to
4610 another person, the person who receives the member's interest shall obtain the member's entire
4611 rights associated with the member's interest in the institution including:
 - 4612 (A) all economic rights; and
 - 4613 (B) all voting rights.
 - 4614 (c) An institution described in Subsection (3)(a) may not by agreement or otherwise
4615 change the application of Subsection (5)(a) to the institution.
 - 4616 (6) Unless the context requires otherwise, for the purpose of applying this title to an
4617 institution described in Subsection (1) that is organized as a limited liability company:
 - 4618 (a) a citation to Title 16, Chapter 10a, Utah Revised Business Corporation Act,
4619 includes the equivalent citation to Title 48, Chapter 2c, Utah Revised Limited Liability
4620 Company Act;
 - 4621 (b) "articles of incorporation" includes a limited liability company's articles of

4622 organization as that term is used in Section 48-2c-403;

4623 (c) "board of directors" includes one or more persons who have, with respect to an
4624 institution described in Subsection (1), authority substantially similar to that of a board of
4625 directors of a corporation;

4626 (d) "bylaws" includes a limited liability company's operating agreement as that term is
4627 defined in Section 48-2c-102;

4628 (e) "corporation" includes a limited liability company organized under Title 48, Chapter
4629 2c, Utah Revised Limited Liability Company Act;

4630 (f) "director" includes any of the following of a limited liability company:

4631 (i) a manager;

4632 (ii) a director; or

4633 (iii) other person who has with respect to the institution described in Subsection (1),
4634 authority substantially similar to that of a director of a corporation;

4635 (g) "dividend" includes distributions made by a limited liability company under Title 48,
4636 Chapter 2c, Part 10, Distributions;

4637 (h) "incorporator" includes the organizers of a limited liability company as provided in
4638 Title 48, Chapter 2c, Part 4, Formation;

4639 (i) "officer" includes any of the following of an institution described in Subsection (1):

4640 (i) an officer; or

4641 (ii) other person who has with respect to the institution described in Subsection (1)
4642 authority substantially similar to that of an officer of a corporation;

4643 (j) "security," "shares," or "stock" of a corporation includes:

4644 (i) a membership interest in a limited liability company as provided in Title 48, Chapter
4645 2c, Part 7, Members; and

4646 (ii) any certificate or other evidence of an ownership interest in a limited liability
4647 company; and

4648 (k) "stockholder" or "shareholder" includes an owner of an interest in an institution
4649 described in Subsection (1) including a member as provided in Title 48, Chapter 2c, Part 7,

4650 Members.

4651 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
4652 Administrative Rulemaking Act, the commissioner shall make rules governing the form of a
4653 request for approval filed under this section.

4654 (8) A depository institution organized under the laws of this state may not be organized
4655 as or converted to a series of members, managers, or interests in a limited liability company as
4656 provided in Section 48-2c-606.

4657 Section 51. Section **7-2-9** is amended to read:

4658 **7-2-9. Conservatorship, receivership, or liquidation of institution -- Appointment**
4659 **of receiver -- Review of actions.**

4660 (1) Upon taking possession of the institution, the commissioner may appoint a receiver
4661 to perform the duties of the commissioner. Subject to any limitations, conditions, or
4662 requirements specified by the commissioner and approved by the court, a receiver shall have all
4663 the powers and duties of the commissioner under this chapter and the laws of this state to act as
4664 a conservator, receiver, or liquidator of the institution. Actions of the commissioner in
4665 appointing a receiver shall be subject to review only as provided in Section 7-2-2.

4666 (2) (a) If the deposits of the institution are to any extent insured by a federal deposit
4667 insurance agency, the commissioner may appoint that agency as receiver. After receiving notice
4668 in writing of the acceptance of the appointment, the commissioner shall file a certificate of
4669 appointment in [~~his~~] the commissioner's office and with the clerk of the district court. After the
4670 filing of the certificate, the possession of all assets, business, and property of the institution is
4671 considered transferred from the institution and the commissioner to the agency, and title to all
4672 assets, business, and property of the institution is vested in the agency without the execution of
4673 any instruments of conveyance, assignment, transfer, or endorsement.

4674 (b) If a federal deposit insurance agency accepts an appointment as receiver, it has all
4675 the powers and privileges provided by the laws of this state and the United States with respect
4676 to the conservatorship, receivership, or liquidation of an institution and the rights of its
4677 depositors, and other creditors, including authority to make an agreement for the purchase of

4678 assets and assumption of deposit and other liabilities by another depository institution or take
4679 other action authorized by Title 12 of the United States Code to maintain the stability of the
4680 banking system. Such action by a federal deposit insurance agency may be taken upon approval
4681 by the court, with or without prior notice. Such actions or agreements may be disapproved,
4682 amended, or rescinded only upon a finding by the court that the decisions or actions of the
4683 receiver are arbitrary, capricious, fraudulent, or contrary to law. In the event of any conflict
4684 between state and federal law, including provisions for adjudicating claims against the institution
4685 or receiver, the receiver shall comply with the federal law and any resulting violation of state
4686 law shall not by itself constitute grounds for the court to disapprove the actions of the receiver
4687 or impose any penalty for such violation.

4688 (c) The commissioner or any receiver appointed by him shall possess all the rights and
4689 claims of the institution against any person whose breach of fiduciary duty or violations of the
4690 laws of this state or the United States applicable to depository institutions may have caused or
4691 contributed to a condition which resulted in any loss incurred by the institution or to its assets in
4692 the possession of the commissioner or receiver. As used in this Subsection (2)(c), fiduciary
4693 duty includes those duties and standards applicable under statutes and laws of this state and the
4694 United States to a director, officer, or other party employed by or rendering professional
4695 services to a depository institution whose deposits are insured by a federal deposit insurance
4696 agency. Upon taking possession of an institution, no person other than the commissioner or
4697 receiver shall have standing to assert any such right or claim of the institution, including its
4698 depositors, creditors, or shareholders unless the right or claim has been abandoned by the
4699 commissioner or receiver with approval of the court. Any judgment based on the rights and
4700 claims of the commissioner or receiver shall have priority in payment from the assets of the
4701 judgment debtors.

4702 (d) For the purposes of this section, the term "federal deposit insurance agency" shall
4703 include the Federal Deposit Insurance Corporation, the National Credit Union Administration
4704 and any departments thereof or successors thereto, and any other federal agency authorized by
4705 federal law to act as a conservator, receiver, and liquidator of a federally insured depository

4706 institution, including the Resolution Trust Corporation and any department thereof or successor
4707 thereto.

4708 (3) The receiver may employ assistants, agents, accountants, and legal counsel. If the
4709 receiver is not a federal deposit insurance agency, the compensation to be paid such assistants,
4710 agents, accountants, and legal counsel shall be approved by the commissioner. All expenses
4711 incident to the receivership shall be paid out of the assets of the institution. If a receiver is not a
4712 federal deposit insurance agency, the receiver and any assistants and agents shall provide bond
4713 or other security specified by the commissioner and approved by the court for the faithful
4714 discharge of all duties and responsibilities in connection with the receivership including the
4715 accounting for money received and paid. The cost of the bond shall be paid from the assets of
4716 the institution. Suit may be maintained on the bond by the commissioner or by any person
4717 injured by a breach of the condition of the bond.

4718 (4) (a) Upon the appointment of a receiver for an institution in possession pursuant to
4719 this chapter, the commissioner and the department are exempt from liability or damages for any
4720 act or omission of any receiver appointed pursuant to this section.

4721 (b) This section does not limit the right of the commissioner to prescribe and enforce
4722 rules regulating a receiver in carrying out its duties with respect to an institution subject to the
4723 jurisdiction of the department.

4724 (c) Any act or omission of the commissioner or of any federal deposit insurance agency
4725 as a receiver appointed by him while acting pursuant to this chapter shall be deemed to be the
4726 exercise of a discretionary function within the meaning of Section [~~63-30d-30f~~] 63G-7-301 of
4727 the laws of this state or Section 28 U.S.C. 2680(a) of the laws of the United States.

4728 (5) Actions, decisions, or agreements of a receiver under this chapter, other than
4729 allowance or disallowance of claims under Section 7-2-6, shall be subject to judicial review only
4730 as follows:

4731 (a) A petition for review shall be filed with the court having jurisdiction under Section
4732 7-2-2 not more than 90 days after the date the act, decision, or agreement became effective or
4733 its terms are filed with the court.

4734 (b) The petition shall state in simple, concise, and direct terms the facts and principles
4735 of law upon which the petitioner claims the act, decision, or agreement of the receiver was or
4736 would be arbitrary, capricious, fraudulent, or contrary to law and how the petitioner is or may
4737 be damaged thereby. The court shall dismiss any petition which fails to allege that the petitioner
4738 would be directly injured or damaged by the act, decision, or agreement which is the subject of
4739 the petition. Rule 11 of the Utah Rules of Civil Procedure shall apply to all parties with respect
4740 to the allegations set forth in a petition or response.

4741 (c) The receiver shall have 30 days after service of the petition within which to respond.

4742 (d) All further proceedings are to be conducted in accordance with the Utah Rules of
4743 Civil Procedure.

4744 (6) All notices required under this section shall be made in accordance with the Utah
4745 Rules of Civil Procedure and served upon the attorney general of the state of Utah, the
4746 commissioner of financial institutions, the receiver of the institution appointed under this
4747 chapter, and upon the designated representative of any party in interest who requests in writing
4748 such notice.

4749 Section 52. Section **7-2-21** is amended to read:

4750 **7-2-21. Applicability of Utah Procurement Code.**

4751 No action of the commissioner taken under this chapter or Chapter 19 is subject to the
4752 provisions of [~~Title 63, Chapter 56, the~~] Title 63G, Chapter 6, Utah Procurement Code.

4753 Section 53. Section **7-9-59** is amended to read:

4754 **7-9-59. Credit union service organizations -- Limitations on providing services**
4755 **through other entities.**

4756 (1) This section applies to a credit union service organization in which a credit union
4757 organized under this chapter has an ownership interest.

4758 (2) (a) A credit union service organization may provide a service only if the service is:

4759 (i) (A) listed in Subsection (2)(b); or

4760 (B) approved by the commissioner in accordance with Subsection (4)(b); and

4761 (ii) (A) except for the extension of credit by the credit union service organization,

4762 limited primarily to:

4763 (I) credit unions that hold an ownership interest in the credit union service organization;

4764 (II) members of credit unions that hold an ownership interest in the credit union service
4765 organization;

4766 (III) members of credit unions that contract with the credit union service organization;

4767 or

4768 (IV) credit unions that contract with the credit union service organization but do not
4769 hold an ownership interest in the credit union service organization; or

4770 (B) for purposes of the extension of credit by the credit union service organization,
4771 limited to members of a credit union that holds an ownership interest in the credit union service
4772 organization.

4773 (b) Subsection (2)(a) applies to:

4774 (i) the following checking and currency services:

4775 (A) check cashing;

4776 (B) coin and currency services; and

4777 (C) services related to:

4778 (I) a money order;

4779 (II) a savings bond;

4780 (III) a travelers check; or

4781 (IV) the purchase and sale of United States Mint commemorative coins;

4782 (ii) the following clerical, professional, and management services:

4783 (A) accounting services;

4784 (B) courier services;

4785 (C) credit analysis;

4786 (D) facsimile transmission and copying services;

4787 (E) services related to conducting an internal audit for a credit union;

4788 (F) locator services;

4789 (G) services related to management and personnel training and support;

- 4790 (H) marketing services;
- 4791 (I) research services; or
- 4792 (J) services related to a supervisory committee audit;
- 4793 (iii) consumer mortgage loan origination;
- 4794 (iv) the following electronic transaction services:
 - 4795 (A) automated teller machine services;
 - 4796 (B) credit card services;
 - 4797 (C) debit card services;
 - 4798 (D) data processing services;
 - 4799 (E) electronic fund transfer services;
 - 4800 (F) services related to electronic income tax filings;
 - 4801 (G) payment item processing;
 - 4802 (H) wire transfer services; or
 - 4803 (I) cyber financial services;
- 4804 (v) the following financial counseling services:
 - 4805 (A) developing and administering personnel benefit plans including:
 - 4806 (I) individual retirement accounts;
 - 4807 (II) Keogh plans; or
 - 4808 (III) deferred compensation plans;
 - 4809 (B) estate planning;
 - 4810 (C) financial planning and counseling;
 - 4811 (D) income tax preparation;
 - 4812 (E) investment counseling; or
 - 4813 (F) retirement counseling;
- 4814 (vi) fixed asset services related to the:
 - 4815 (A) management, development, sale, or lease of fixed assets; or
 - 4816 (B) sale, lease, or servicing of computer hardware or software;
- 4817 (vii) the following insurance brokerage or agency services:

- 4818 (A) operating as an agency for sale of insurance;
- 4819 (B) providing vehicle warranty programs; or
- 4820 (C) providing group purchasing programs;
- 4821 (viii) the following leasing services:
 - 4822 (A) leasing of personal property; or
 - 4823 (B) real estate leasing of excess credit union service organization property;
- 4824 (ix) the following loan support services:
 - 4825 (A) debt collection services;
 - 4826 (B) loan processing, servicing, and sales; or
 - 4827 (C) sale of repossessed collateral;
- 4828 (x) the extension of credit including member-business loans;
- 4829 (xi) the following record retention, security, and disaster recovery services:
 - 4830 (A) alarm-monitoring and other security services;
 - 4831 (B) disaster recovery services;
 - 4832 (C) services related to:
 - 4833 (I) microfilm;
 - 4834 (II) microfiche;
 - 4835 (III) optical and electronic imaging; or
 - 4836 (IV) CD-ROM data storage retrieval;
 - 4837 (D) providing forms and supplies; or
 - 4838 (E) services related to record retention and storage;
- 4839 (xii) securities brokerage services;
- 4840 (xiii) operation of shared credit union branch services, including service centers;
- 4841 (xiv) student loan origination;
- 4842 (xv) travel agency services;
- 4843 (xvi) the following trust and trust-related services:
 - 4844 (A) acting as an administrator for a prepaid legal service plan;
 - 4845 (B) acting in a fiduciary capacity including as:

4846 (I) trustee;
4847 (II) guardian;
4848 (III) conservator; or
4849 (IV) estate administrator; or
4850 (C) trust services; or
4851 (xvii) making credit union service organization investments in noncredit union service
4852 organization service providers.

4853 (3) (a) One or more credit unions organized under this chapter may form a credit union
4854 service organization on or after the day on which each credit union forming the credit union
4855 service organization obtains in accordance with this section the approval by the commissioner
4856 for the formation of the credit union service organization.

4857 (b) To obtain approval from the commissioner for the formation of a credit union
4858 service organization, each credit union that is forming a credit union service organization shall
4859 file an application with the commissioner that specifies:

4860 (i) whether the credit union meets the capital and surplus standards established by rule
4861 by the commissioner;

4862 (ii) the services to be provided by the credit union service organization; and

4863 (iii) any information required by rule by the commissioner.

4864 (c) The commissioner may by rule establish the requirements for forming of a credit
4865 union service organization to ensure that:

4866 (i) the credit union service organization as formed:

4867 (A) has the financial capacity to provide the services described in the application
4868 requesting the formation of the credit union service organization in a safe and sound manner;
4869 and

4870 (B) has the managerial expertise to provide the services described in the application
4871 requesting the formation of the credit union service organization in a safe and sound manner;
4872 and

4873 (ii) any potential harm that granting the approval may have on other institutions subject

4874 to the jurisdiction of the department does not clearly outweigh the probable beneficial effect of
4875 the credit union service organization providing the services.

4876 (4) (a) A credit union service organization may provide a service that is described in
4877 Subsection (2)(b) but not listed in the application requesting the formation of the credit union
4878 service organization by filing written notice with the commissioner at least 30 days before the
4879 day on which the credit union service organization first provides the service.

4880 (b) A credit union service organization may provide a service not described in
4881 Subsection (2)(b) if:

4882 (i) the credit union service organization files a written request for approval to provide
4883 the service with the commissioner; and

4884 (ii) the commissioner approves the credit union service organization providing that
4885 service.

4886 (c) The commissioner may at any time limit the services engaged in by a credit union
4887 service organization on the basis of:

4888 (i) a supervisory reason;

4889 (ii) a legal reason; or

4890 (iii) a safety and soundness reason.

4891 (5) The commissioner may conduct examinations of a credit union service organization
4892 in accordance with Section 7-1-314.

4893 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
4894 Administrative Rulemaking Act, the commissioner may make rules for purposes of this section:

4895 (a) defining what constitutes an ownership interest held by a credit union;

4896 (b) specifying the information required to be included in an application seeking to form
4897 a credit union service organization;

4898 (c) specifying in accordance with Subsection (3), the requirements for forming a credit
4899 union service organization;

4900 (d) specifying the procedure for obtaining approval to provide a service under
4901 Subsection (4)(a); and

4902 (e) specifying the conditions under which a credit union service organization may
4903 provide a service described in Subsection (2).

4904 (7) (a) Except as provided in Subsection (7)(b), a credit union may not provide any
4905 service to a member of the credit union through:

4906 (i) a person who is controlled by or is under common control with the credit union
4907 whether or not the control is exercised:

4908 (A) directly; or

4909 (B) indirectly through one or more intermediary controls; or

4910 (ii) an entity in which the credit union holds an ownership interest.

4911 (b) Notwithstanding Subsection (7)(a), a credit union may provide services to a member
4912 of a credit union:

4913 (i) through a credit union service organization to the extent permitted by this section; or

4914 (ii) through a loan production office to the extent those services are authorized by
4915 Section 7-1-715.

4916 (c) Notwithstanding Section 7-1-103, for purposes of this section, "control" means the
4917 power, directly, or indirectly, to:

4918 (i) direct or exercise a controlling influence over:

4919 (A) the management or policies of an entity; or

4920 (B) the election of a majority of the directors or trustees of an entity;

4921 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or

4922 (iii) vote more than 5% of any class of voting securities of an entity by a person other
4923 than an individual.

4924 (d) Nothing within this section may be interpreted as prohibiting a credit union from
4925 entering into a contract or agreement to provide services to members of the credit union if the
4926 person with whom the credit union enters into the contract agreement is not a person described
4927 in Subsection (7)(a).

4928 (8) (a) A credit union holding an ownership interest in a credit union service
4929 organization operating on May 5, 2003 is not required to file an application requesting to form

4930 that credit union service organization.

4931 (b) A credit union service organization operating on May 5, 2003:

4932 (i) shall provide the commissioner written notice of the services the credit union service
4933 organization provides by no later than July 1, 2003; and

4934 (ii) may provide a service not described in Subsection (2)(b) on or after July 1, 2003
4935 only if the credit union service organization has obtained approval from the commissioner in
4936 accordance with Subsection (4).

4937 Section 54. Section **7-23-103** is amended to read:

4938 **7-23-103. Registration -- Rulemaking.**

4939 (1) (a) It is unlawful for a person to engage in the business of a check casher in Utah or
4940 with a Utah resident unless the person:

4941 (i) registers with the department in accordance with this chapter; and

4942 (ii) maintains a valid registration.

4943 (b) It is unlawful for a person to operate a mobile facility in this state to engage in the
4944 business of a check casher.

4945 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
4946 unless on or before that date the person renews the registration.

4947 (b) To register under this section, a person shall:

4948 (i) pay an original registration fee established under Subsection 7-1-401(8); and

4949 (ii) submit a registration statement containing the information described in Subsection
4950 (2)(d).

4951 (c) To renew a registration under this section, a person shall:

4952 (i) pay the annual fee established under Subsection 7-1-401(5); and

4953 (ii) submit a renewal statement containing the information described in Subsection
4954 (2)(d).

4955 (d) A registration or renewal statement shall state:

4956 (i) the name of the person;

4957 (ii) the name in which the business will be transacted if different from that required in

4958 Subsection (2)(d)(i);

4959 (iii) the address of the person's principal business office, which may be outside this
4960 state;

4961 (iv) the addresses of all offices in this state at which the person conducts the business of
4962 a check casher;

4963 (v) if the person conducts the business of a check casher in this state but does not
4964 maintain an office in this state, a brief description of the manner in which the business is
4965 conducted;

4966 (vi) the name and address in this state of a designated agent upon whom service of
4967 process may be made;

4968 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
4969 crime involving moral turpitude with respect to that person or any officer, director, manager,
4970 operator, or principal of that person; and

4971 (viii) any other information required by the rules of the department.

4972 (e) (i) The commissioner may impose an administrative fine determined under
4973 Subsection (2)(e)(ii) on a person if:

4974 (A) the person is required to be registered under this chapter;

4975 (B) the person fails to register or renew a registration in accordance with this chapter;

4976 (C) the department notifies the person that the person is in violation of this chapter for
4977 failure to be registered; and

4978 (D) the person fails to register within 30 days after the day on which the person receives
4979 the notice described in Subsection (2)(e)(i)(C).

4980 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this section
4981 is:

4982 (A) \$500 if the person:

4983 (I) has no office in this state at which the person conducts the business of a check
4984 cashier; or

4985 (II) has one office in this state at which the person conducts the business of a check

4986 cashier; or

4987 (B) if the person has two or more offices in this state at which the person conducts the
4988 business of a check casher, \$500 for each office at which the person conducts the business of a
4989 check casher.

4990 (iii) The commissioner may reduce or waive a fine imposed under this Subsection (2)(e)
4991 if the person shows good cause.

4992 (3) If the information in a registration or renewal statement required under Subsection
4993 (2) becomes inaccurate after filing, a person is not required to notify the department until:

4994 (a) that person is required to renew the registration; or

4995 (b) the department specifically requests earlier notification.

4996 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
4997 Administrative Rulemaking Act, the department may make rules consistent with this section
4998 providing for the form, content, and filing of a registration and renewal statement.

4999 Section 55. Section **7-23-106** is amended to read:

5000 **7-23-106. Enforcement by department -- Rulemaking.**

5001 (1) Subject to the requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
5002 Administrative Procedures Act, the department may:

5003 (a) receive and act on complaints;

5004 (b) take action designed to obtain voluntary compliance with this chapter;

5005 (c) commence administrative or judicial proceedings on its own initiative to enforce
5006 compliance with this chapter; or

5007 (d) take action against any check casher that fails to:

5008 (i) respond to the department, in writing within 30 business days of the day on which
5009 the check casher receives notice from the department of a complaint filed with the department;
5010 or

5011 (ii) submit information as requested by the department.

5012 (2) The department may:

5013 (a) counsel persons and groups on their rights and duties under this chapter;

5014 (b) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5015 Administrative Rulemaking Act, to:

5016 (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
5017 abusive;

5018 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
5019 and communications between check cashers and customers; or

5020 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
5021 state or federal laws or federal regulations; and

5022 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
5023 perform the department's duties under this chapter.

5024 Section 56. Section **7-23-108** is amended to read:

5025 **7-23-108. Penalties.**

5026 (1) A person who violates this chapter or who files materially false information with a
5027 registration or renewal under Section 7-23-103 is:

5028 (a) guilty of a class B misdemeanor, except for a violation of:

5029 (i) Subsection 7-23-105(1)(f)(i), (ii), or (iii); or

5030 (ii) rules made under Subsection 7-23-106(2)(b); and

5031 (b) subject to revocation of a person's registration under this chapter.

5032 (2) Subject to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
5033 Act, if the department determines that a person is engaging in the business of cashing checks in
5034 violation of this chapter, the department may:

5035 (a) revoke that person's registration under this chapter;

5036 (b) issue a cease and desist order from committing any further violations;

5037 (c) prohibit the person from continuing to engage in the business of a check casher;

5038 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

5039 (i) a fine imposed under Subsection 7-23-103(2)(e) shall comply with Subsection
5040 7-23-103(2)(e); and

5041 (ii) the aggregate total of fines imposed under this chapter against a person in a calendar

5042 year may not exceed \$30,000 for that calendar year; or

5043 (e) take any combination of actions listed under this Subsection (2).

5044 Section 57. Section **7-24-201** is amended to read:

5045 **7-24-201. Registration -- Rulemaking.**

5046 (1) (a) It is unlawful for a person to extend a title loan in Utah or with a Utah resident
5047 unless the person:

5048 (i) registers with the department in accordance with this chapter; and

5049 (ii) maintains a valid registration.

5050 (b) It is unlawful for a person to operate a mobile facility in this state to extend a title
5051 loan.

5052 (2) (a) A registration and a renewal of a registration expires on April 30 of each year
5053 unless on or before that date the person renews the registration.

5054 (b) To register under this section, a person shall:

5055 (i) pay an original registration fee established under Subsection 7-1-401(8); and

5056 (ii) submit a registration statement containing the information described in Subsection
5057 (2)(d).

5058 (c) To renew a registration under this section, a person shall:

5059 (i) pay the annual fee established under Subsection 7-1-401(5); and

5060 (ii) submit a renewal statement containing the information described in Subsection
5061 (2)(d).

5062 (d) A registration or renewal statement shall state:

5063 (i) the name of the person;

5064 (ii) the name in which the business will be transacted if different from that required in
5065 Subsection (2)(d)(i);

5066 (iii) the address of the person's principal business office, which may be outside this
5067 state;

5068 (iv) the addresses of all offices in this state at which the person extends title loans;

5069 (v) if the person extends title loans in this state but does not maintain an office in this

5070 state, a brief description of the manner in which the business is conducted;

5071 (vi) the name and address in this state of a designated agent upon whom service of
5072 process may be made;

5073 (vii) disclosure of any injunction, judgment, administrative order, or conviction of any
5074 crime involving moral turpitude with respect to that person or any officer, director, manager,
5075 operator, or principal of that person; and

5076 (viii) any other information required by the rules of the department.

5077 (e) (i) The commissioner may impose an administrative fine determined under
5078 Subsection (2)(e)(ii) on a person if:

5079 (A) the person is required to be registered under this chapter;

5080 (B) the person fails to register or renew a registration in accordance with this chapter;

5081 (C) the department notifies the person that the person is in violation of this chapter for
5082 failure to be registered; and

5083 (D) the person fails to register within 30 days after the day on which the person receives
5084 the notice described in Subsection (2)(e)(i)(C).

5085 (ii) Subject to Subsection (2)(e)(iii), the administrative fine imposed under this
5086 Subsection (2)(e) is:

5087 (A) \$500 if the person:

5088 (I) has no office in this state at which the person extends a title loan; or

5089 (II) has one office in this state at which the person extends a title loan; or

5090 (B) if the person has two or more offices in this state at which the person extends a title
5091 loan, \$500 for each office at which the person extends a title loan.

5092 (iii) The commissioner may reduce or waive a fine imposed under this Subsection (2)(e)
5093 if the person shows good cause.

5094 (3) If the information in a registration or renewal statement required under Subsection
5095 (2) becomes inaccurate after filing, a person is not required to notify the department until:

5096 (a) that person is required to renew the registration; or

5097 (b) the department specifically requests earlier notification.

5098 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5099 Administrative Rulemaking Act, the department may make rules consistent with this section
5100 providing for the form, content, and filing of a registration and renewal statement.

5101 Section 58. Section **7-24-203** is amended to read:

5102 **7-24-203. Disclosure form for title loans.**

5103 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5104 Administrative Rulemaking Act, the department shall adopt a disclosure form for title loans that
5105 complies with this section.

5106 (2) The department shall specify by rule:

5107 (a) the information to be provided in the disclosure form including:

5108 (i) the costs of obtaining a title loan;

5109 (ii) the consequences of defaulting on a title loan;

5110 (iii) generally available alternatives to a title loan; and

5111 (iv) methods of obtaining credit counseling or other financial advice;

5112 (b) the type size of the disclosure form; and

5113 (c) the manner in which a title lender shall conspicuously provide the disclosure form to
5114 a person seeking a title loan.

5115 Section 59. Section **7-24-301** is amended to read:

5116 **7-24-301. Enforcement by department -- Rulemaking.**

5117 (1) Subject to the requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
5118 Administrative Procedures Act, the department may:

5119 (a) receive and act on complaints;

5120 (b) take action designed to obtain voluntary compliance with this chapter; or

5121 (c) commence administrative or judicial proceedings on its own initiative to enforce
5122 compliance with this chapter.

5123 (2) The department may:

5124 (a) counsel persons and groups on their rights and duties under this chapter;

5125 (b) make rules to:

5126 (i) restrict or prohibit lending or servicing practices that are misleading, unfair, or
5127 abusive;

5128 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
5129 and communications between title lenders and customers; or

5130 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
5131 state or federal laws or federal regulations; and

5132 (c) employ hearing examiners, clerks, and other employees and agents as necessary to
5133 perform the department's duties under this chapter.

5134 Section 60. Section **7-24-303** is amended to read:

5135 **7-24-303. Penalties.**

5136 (1) A person who violates this chapter or who files materially false information with a
5137 registration or renewal under Section 7-24-201 is:

5138 (a) guilty of a class B misdemeanor except for a violation of:

5139 (i) Subsection 7-24-202(1)(e)(i), (ii), or (iii); or

5140 (ii) rules made under Subsection 7-24-301(2)(b); and

5141 (b) subject to revocation of a person's registration under this chapter.

5142 (2) Subject to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
5143 Act, if the department determines that a person is extending title loans in violation of this
5144 chapter, the department may:

5145 (a) revoke that person's registration under this chapter;

5146 (b) issue a cease and desist order from committing any further violations;

5147 (c) prohibit the person from continuing to extend title loans;

5148 (d) impose an administrative fine not to exceed \$1,000 per violation, except that:

5149 (i) a fine imposed under Subsection 7-24-201(2)(e) shall comply with Subsection
5150 7-24-201(2)(e); and

5151 (ii) the aggregate total of fines imposed under this chapter against a person in a calendar
5152 year may not exceed \$30,000 for that calendar year; or

5153 (e) take any combination of actions listed under this Subsection (2).

5154 (3) A person is not subject to the penalties under this section for a violation of this
5155 chapter that was not willful or intentional, including a violation resulting from a clerical error.

5156 Section 61. Section **9-1-203** is amended to read:

5157 **9-1-203. Compliance with Administrative Procedures Act.**

5158 The department and all of its divisions, boards, offices, bureaus, commissions, and other
5159 entities shall comply with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
5160 Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

5161 Section 62. Section **9-1-809** is amended to read:

5162 **9-1-809. Commission duties.**

5163 (1) The commission shall, in the performance of its tasks and functions:

5164 (a) ensure that its funding decisions meet all federal and state statutory requirements;

5165 (b) recommend innovative, creative, statewide service programs to increase volunteer
5166 participation in all age groups and community-based problem-solving among diverse
5167 participants;

5168 (c) develop and implement a centralized, organized system of obtaining information and
5169 technical support concerning volunteerism and community service recruitment, projects, training
5170 methods, materials, and activities throughout the state and share such information and support
5171 upon request;

5172 (d) promote strong interagency collaboration as an avenue for maximizing resources
5173 and providing that model on the state level;

5174 (e) provide public recognition and support of individual volunteer efforts and successful
5175 or promising private sector initiatives and public/private partnerships that address community
5176 needs;

5177 (f) stimulate increased community awareness of the impact of volunteer services in the
5178 state;

5179 (g) utilize local, state, and, subject to [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5,
5180 Federal Funds Procedures, federal resources to reinforce, expand, and initiate quality service
5181 programs;

- 5182 (h) assist in the planning and implementation of volunteer programs;
- 5183 (i) serve as the state's liaison and voice to appropriate national and state organizations
5184 that support its mission;
- 5185 (j) develop a three-year comprehensive state and community service plan and establish
5186 state priorities;
- 5187 (k) preselect programs and prepare applications to the corporation pursuant to the act;
- 5188 (l) prepare service learning applications;
- 5189 (m) administer the grants program and oversee and monitor the performance and
5190 progress of funded programs;
- 5191 (n) implement comprehensive, nonduplicative evaluation and monitoring systems;
- 5192 (o) provide technical assistance to local nonprofit organizations and other entities;
- 5193 (p) assist in the development of programs established in the act;
- 5194 (q) develop mechanisms for recruitment and placement of people interested in
5195 participating in national service programs;
- 5196 (r) assist in the provision of health care and child care benefits to participants under the
5197 act;
- 5198 (s) make priority program recommendations to the corporation;
- 5199 (t) coordinate its activities with the activities of other state agencies that administer
5200 federal block grants; and
- 5201 (u) coordinate its activities with the activities of other volunteer service programs.
- 5202 (2) The commission may not directly operate or run any national service program
5203 receiving financial assistance, in any form, from the corporation.
- 5204 (3) The commission may, subject to [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5,
5205 Federal Funds Procedures, receive and accept federal funds, and may receive and accept private
5206 gifts, donations, or funds from any source. All moneys shall be deposited with the state and
5207 shall be continuously available to the commission to carry out the purposes of this part.
- 5208 (4) (a) The commission shall establish a community volunteer training program to assist
5209 the state's school districts in implementing the literacy programs required under Section

5210 53A-1-801.

5211 (b) The program shall focus on:

5212 (i) recruitment of volunteers to assist public schools in reading improvement programs;

5213 (ii) providing for the training of volunteers recruited under Subsection (4)(b)(i), which
 5214 may include training in teaching phonetic decoding skills and phonemic awareness, to assist
 5215 public schools and community based, not-for-profit literacy programs in accomplishing the
 5216 literacy goals established in Section 53A-1-801;

5217 (iii) providing grants to entities whose primary purpose is to support literacy by
 5218 working with either school districts or individual schools to accomplish their literacy goals; and

5219 (iv) providing materials and supplies which may be used by the commission or the
 5220 public schools or both to help public education accomplish its literacy goals under Section
 5221 53A-1-801.

5222 (c) The commission shall coordinate its activities under this Subsection (4) with other
 5223 state and community entities engaged in child literacy programs.

5224 (d) (i) The commission shall make an annual report to the State Board of Education on:

5225 (A) how public monies were spent on the programs authorized under this Subsection
 5226 (4); and

5227 (B) the number of volunteers recruited for and participating in the program.

5228 (ii) The commission shall make its report by July 1, with the first report required by July
 5229 1, 2000.

5230 Section 63. Section **9-3-308** is amended to read:

5231 **9-3-308. Relation to certain acts.**

5232 (1) The authority is exempt from:

5233 (a) Title 51, Chapter 5, Funds Consolidation Act;

5234 (b) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;

5235 (c) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;

5236 (d) Title 63A, Chapter 1, Utah Administrative Services Code; and

5237 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

5238 (2) The authority shall be subject to audit by the state auditor pursuant to Title 67,
5239 Chapter 3, and by the legislative auditor general pursuant to Section 36-12-15.

5240 Section 64. Section **9-3-410** is amended to read:

5241 **9-3-410. Relation to certain acts.**

5242 (1) The authority is exempt from:

5243 (a) Title 51, Chapter 5, Funds Consolidation Act;

5244 (b) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;

5245 (c) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;

5246 (d) Title 63A, Chapter 1, Utah Administrative Services Code; and

5247 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

5248 (2) The authority shall be subject to audit by:

5249 (a) the state auditor pursuant to Title 67, Chapter 3, Auditor; and

5250 (b) the legislative auditor general pursuant to Section 36-12-15.

5251 (3) The authority shall annually report to the Retirement and Independent Entities

5252 Committee created under Section 63E-1-201 concerning the authority's implementation of this
5253 part.

5254 Section 65. Section **9-4-202** is amended to read:

5255 **9-4-202. Powers and duties of division.**

5256 (1) The division shall:

5257 (a) assist local governments and citizens in the planning, development, and maintenance
5258 of necessary public infrastructure and services;

5259 (b) cooperate with, and provide technical assistance to, counties, cities, towns, regional
5260 planning commissions, area-wide clearinghouses, zoning commissions, parks or recreation
5261 boards, community development groups, community action agencies, and other agencies
5262 created for the purpose of aiding and encouraging an orderly, productive, and coordinated
5263 development of the state and its political subdivisions;

5264 (c) assist the governor in coordinating the activities of state agencies which have an
5265 impact on the solution of community development problems and the implementation of

5266 community plans;

5267 (d) serve as a clearinghouse for information, data, and other materials which may be
5268 helpful to local governments in discharging their responsibilities and provide information on
5269 available federal and state financial and technical assistance;

5270 (e) carry out continuing studies and analyses of the problems faced by communities
5271 within the state and develop such recommendations for administrative or legislative action as
5272 appear necessary;

5273 (f) assist in funding affordable housing and addressing problems of homelessness;

5274 (g) support economic development activities through grants, loans, and direct programs
5275 financial assistance;

5276 (h) certify project funding at the local level in conformance with federal, state, and other
5277 requirements;

5278 (i) utilize the capabilities and facilities of public and private universities and colleges
5279 within the state in carrying out its functions;

5280 (j) assist and support local governments, community action agencies, and citizens in the
5281 planning, development, and maintenance of home weatherization, energy efficiency, and
5282 antipoverty activities; and

5283 (k) assist and support volunteer efforts in the state.

5284 (2) The division may:

5285 (a) by following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,
5286 Chapter 5, Federal Funds Procedures, seek federal grants, loans, or participation in federal
5287 programs;

5288 (b) if any federal program requires the expenditure of state funds as a condition to
5289 participation by the state in any fund, property, or service, with the governor's approval, expend
5290 whatever funds are necessary out of the money provided by the Legislature for the use of the
5291 department;

5292 (c) in accordance with Part 13, Domestic Violence Shelters, assist in developing,
5293 constructing, and improving shelters for victims of domestic violence, as described in Section

5294 77-36-1, through loans and grants to nonprofit and governmental entities; and
5295 (d) assist, when requested by a county or municipality, in the development of accessible
5296 housing.

5297 (3) (a) The division is recognized as an issuing authority as defined in Subsection
5298 9-4-502(7), entitled to issue bonds from the Small Issue Bond Account created in Subsection
5299 9-4-506(1)(c) as a part of the state's private activity bond volume cap authorized by the Internal
5300 Revenue Code of 1986 and computed under Section 146 of the code.

5301 (b) To promote and encourage the issuance of bonds from the Small Issue Bond
5302 Account for manufacturing projects, the division may:

5303 (i) develop campaigns and materials that inform qualified small manufacturing
5304 businesses about the existence of the program and the application process;

5305 (ii) assist small businesses in applying for and qualifying for these bonds; or

5306 (iii) develop strategies to lower the cost to small businesses of applying for and
5307 qualifying for these bonds, including making arrangements with financial advisors, underwriters,
5308 bond counsel, and other professionals involved in the issuance process to provide their services
5309 at a reduced rate when the division can provide them with a high volume of applicants or issues.

5310 Section 66. Section **9-4-306** is amended to read:

5311 **9-4-306. Powers.**

5312 The impact board may:

5313 (1) appoint, where it considers this appropriate, a hearing examiner or administrative
5314 law judge with authority to conduct any hearings, make determinations, and enter appropriate
5315 findings of facts, conclusions of law, and orders under authority of the impact board under
5316 Sections 11-13-306 and 11-13-307;

5317 (2) appoint additional professional and administrative staff necessary to effectuate
5318 Sections 11-13-306 and 11-13-307;

5319 (3) make independent studies regarding matters submitted to it under Sections
5320 11-13-306 and 11-13-307 that the impact board, in its discretion, considers necessary, which
5321 studies shall be made a part of the record and may be considered in the impact board's

5322 determination; and

5323 (4) make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
5324 Rulemaking Act it considers necessary to perform its responsibilities under Sections 11-13-306
5325 and 11-13-307.

5326 Section 67. Section **9-4-307** is amended to read:

5327 **9-4-307. Impact fund administered by impact board -- Eligibility for assistance --**
5328 **Review by board -- Administration costs -- Annual report.**

5329 (1) (a) The impact board shall:

5330 (i) administer the impact fund in a manner that will keep a portion of the impact fund
5331 revolving;

5332 (ii) determine provisions for repayment of loans; and

5333 (iii) establish criteria for determining eligibility for assistance under this part.

5334 (b) (i) Criteria for awarding loans or grants made from funds described in Subsection
5335 9-4-303(5) shall be consistent with Subsection 9-4-303(5).

5336 (ii) Criteria for awarding grants made from funds described in Subsection 9-4-303
5337 (2)(c) shall be consistent with Subsection 9-4-303(6).

5338 (c) In order to receive assistance under this part, subdivisions and interlocal agencies
5339 shall submit formal applications containing the information that the impact board requires.

5340 (2) In determining eligibility for loans and grants under this part, the impact board shall
5341 consider the following:

5342 (a) the subdivision's or interlocal agency's current mineral lease production;

5343 (b) the feasibility of the actual development of a resource that may impact the
5344 subdivision or interlocal agency directly or indirectly;

5345 (c) current taxes being paid by the subdivision's or interlocal agency's residents;

5346 (d) the borrowing capacity of the subdivision or interlocal agency, its ability and
5347 willingness to sell bonds or other securities in the open market, and its current and authorized
5348 indebtedness;

5349 (e) all possible additional sources of state and local revenue, including utility user

5350 charges;

5351 (f) the availability of federal assistance funds;

5352 (g) probable growth of population due to actual or prospective natural resource
5353 development in an area;

5354 (h) existing public facilities and services;

5355 (i) the extent of the expected direct or indirect impact upon public facilities and services
5356 of the actual or prospective natural resource development in an area; and

5357 (j) the extent of industry participation in an impact alleviation plan, either as specified in
5358 [~~Title 63, Chapter 51~~] Title 63M, Chapter 5, Resource Development, or otherwise.

5359 (3) The impact board may not fund any education project that could otherwise have
5360 reasonably been funded by a school district through a program of annual budgeting, capital
5361 budgeting, bonded indebtedness, or special assessments.

5362 (4) The impact board may restructure all or part of the agency's or subdivision's liability
5363 to repay loans for extenuating circumstances.

5364 (5) The impact board shall:

5365 (a) review the proposed uses of the impact fund for loans or grants before approving
5366 them and may condition its approval on whatever assurances that the impact board considers to
5367 be necessary to ensure that the proceeds of the loan or grant will be used in accordance with the
5368 Leasing Act and this part; and

5369 (b) ensure that each loan specifies the terms for repayment and is evidenced by general
5370 obligation, special assessment, or revenue bonds, notes, or other obligations of the appropriate
5371 subdivision or interlocal agency issued to the impact board under whatever authority for the
5372 issuance of those bonds, notes, or obligations exists at the time of the loan.

5373 (6) The impact board shall allocate from the impact fund to the department those funds
5374 that are appropriated by the Legislature for the administration of the impact fund, but this
5375 amount may not exceed 2% of the annual receipts to the impact fund.

5376 (7) The department shall make an annual report to the Legislature concerning the
5377 number and type of loans and grants made as well as a list of subdivisions and interlocal

5378 agencies that received this assistance.

5379 Section 68. Section **9-4-509** is amended to read:

5380 **9-4-509. Procedures -- Adjudicative proceedings.**

5381 The board of review shall comply with the procedures and requirements of [~~Title 63,~~
5382 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
5383 proceedings.

5384 Section 69. Section **9-4-704** is amended to read:

5385 **9-4-704. Distribution of fund moneys.**

5386 (1) The executive director shall:

5387 (a) make grants and loans from the fund for any of the activities authorized by Section
5388 9-4-705, as directed by the board;

5389 (b) establish the criteria with the approval of the board by which loans and grants will
5390 be made; and

5391 (c) determine with the approval of the board the order in which projects will be funded.

5392 (2) The executive director shall distribute, as directed by the board, any federal moneys
5393 contained in the fund according to the procedures, conditions, and restrictions placed upon the
5394 use of those moneys by the federal government.

5395 (3) (a) The executive director shall distribute, as directed by the board, any funds
5396 received pursuant to Section 17C-1-412 to pay the costs of providing income targeted housing
5397 within the community that created the community development and renewal agency under Title
5398 17C, Limited Purpose Local Government Entities - Community Development and Renewal
5399 Agencies.

5400 (b) As used in Subsection (3)(a):

5401 (i) "Community" has the meaning as defined in Section 17C-1-102.

5402 (ii) "Income targeted housing" has the meaning as defined in Section 17C-1-102.

5403 (4) Except federal money and money received under Section 17C-1-412, the executive
5404 director shall distribute, as directed by the board, all other moneys from the fund according to
5405 the following requirements:

5406 (a) Not less than 30% of all fund moneys shall be distributed to rural areas of the state.

5407 (b) At least 50% of the moneys in the fund shall be distributed as loans to be repaid to
5408 the fund by the entity receiving them.

5409 (i) (A) Of the fund moneys distributed as loans, at least 50% shall be distributed to
5410 benefit persons whose annual income is at or below 50% of the median family income for the
5411 state.

5412 (B) The remaining loan moneys shall be distributed to benefit persons whose annual
5413 income is at or below 80% of the median family income for the state.

5414 (ii) The executive director or ~~his~~ the executive director's designee shall lend moneys in
5415 accordance with this Subsection (4) at a rate based upon the borrower's ability to pay.

5416 (c) Any fund moneys not distributed as loans shall be distributed as grants.

5417 (i) At least 90% of the fund moneys distributed as grants shall be distributed to benefit
5418 persons whose annual income is at or below 50% of the median family income for the state.

5419 (ii) The remaining fund moneys distributed as grants may be used by the executive
5420 director to obtain federal matching funds or for other uses consistent with the intent of this part,
5421 including the payment of reasonable loan servicing costs, but no more than 3% of the revenues
5422 of the fund may be used to offset other department or board administrative expenses.

5423 (5) The executive director may with the approval of the board:

5424 (a) enact rules to establish procedures for the grant and loan process by following the
5425 procedures and requirements of ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
5426 Administrative Rulemaking Act; and

5427 (b) service or contract, pursuant to ~~[Title 63, Chapter 56]~~ Title 63G, Chapter 6, Utah
5428 Procurement Code, for the servicing of loans made by the fund.

5429 Section 70. Section **9-4-906** is amended to read:

5430 **9-4-906. Relation to certain acts.**

5431 (1) The corporation is exempt from:

5432 (a) Title 51, Chapter 5, Funds Consolidation Act;

5433 (b) Title 51, Chapter 7, State Money Management Act;

- 5434 (c) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;
- 5435 (d) [~~Title 63, Chapter 38a~~] Title 63J, Chapter 2, Revenue Procedures and Control Act;
- 5436 (e) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;
- 5437 (f) Title 63A, Utah Administrative Services Code; and
- 5438 (g) Title 67, Chapter 19, Utah State Personnel Management Act.

5439 (2) The corporation shall comply with:

- 5440 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 5441 (b) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
- 5442 Management Act.

5443 Section 71. Section **9-4-917** is amended to read:

5444 **9-4-917. Notes, bonds, other obligations -- Not debt liability -- Expenses payable**
 5445 **from funds provided -- Corporation without authority to incur liability on behalf of state**
 5446 **-- Relationship to Governmental Immunity Act of Utah.**

5447 (1) (a) Notes, bonds, and other obligations issued under this part do not constitute a
 5448 debt or liability of this state or of any county, city, town, village, school district, or any other
 5449 political subdivision of the state, nor shall the notes, bonds, or other obligations constitute the
 5450 loaning of credit of the state or of any county, city, town, township, district, or any other
 5451 political subdivision of the state, nor may the notes, bonds, or other obligations be payable from
 5452 funds other than those of the corporation.

5453 (b) All notes, bonds, or other obligations shall contain on their face a statement to the
 5454 effect that:

5455 (i) the corporation is obligated to pay the note, bond, or obligation solely from the
 5456 revenues or other funds of the corporation;

5457 (ii) neither this state nor any political subdivision of it is obligated to pay the note, bond,
 5458 or obligation; and

5459 (iii) neither the faith and credit nor the taxing power of this state or any political
 5460 subdivision of it is pledged to the payment of principal, or redemption price of, or the interest
 5461 on the notes, bonds, or other obligations.

5462 (2) All expenses incurred in carrying out this act shall be payable solely from funds
5463 provided under this part, and nothing in this part shall be construed to authorize the corporation
5464 to incur indebtedness or liability on behalf of or payable by this state or any political subdivision
5465 of it.

5466 (3) (a) [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of
5467 Utah, shall apply to the corporation.

5468 (b) Notwithstanding Subsection (3)(a), no claim may be brought against the state, any
5469 public official or employee of the state, another public entity, or any public official or employee
5470 of another public entity, based on or arising from:

5471 (i) any failure or alleged failure to fulfill a contractual obligation of the corporation;

5472 (ii) any act or failure to act of the corporation or any of its trustees, officers, employees,
5473 agents, or representatives; or

5474 (iii) any failure of the corporation to comply with the requirements of any law or
5475 regulation.

5476 (c) The provisions of Subsection (3)(b) do not apply to a claim of a current or former
5477 officer or employee of the corporation for the retirement or insurance benefits.

5478 Section 72. Section **9-4-1103** is amended to read:

5479 **9-4-1103. Utah State Fair Corporation -- Legal status -- Powers.**

5480 (1) There is created an independent public nonprofit corporation known as the "Utah
5481 State Fair Corporation."

5482 (2) The board shall file articles of incorporation for the corporation with the Division of
5483 Corporations and Commercial Code.

5484 (3) The corporation shall, subject to this part, have all powers and authority permitted
5485 nonprofit corporations by law.

5486 (4) The corporation shall, subject to approval of the board:

5487 (a) have general management, supervision, and control over all activities relating to the
5488 state fair and have charge of all state expositions except as otherwise provided by statute;

5489 (b) for public entertainment, displays, and exhibits or similar events:

- 5490 (i) provide, sponsor, or arrange the events;
- 5491 (ii) publicize and promote the events; and
- 5492 (iii) secure funds to cover the cost of the exhibits from:
 - 5493 (A) private contributions;
 - 5494 (B) public appropriations;
 - 5495 (C) admission charges; and
 - 5496 (D) other lawful means;
- 5497 (c) establish the time, place, and purpose of state expositions; and
- 5498 (d) acquire and designate exposition sites.
- 5499 (5) (a) The corporation shall:
 - 5500 (i) use generally accepted accounting principals in accounting for its assets, liabilities,
5501 and operations;
 - 5502 (ii) seek corporate sponsorships for the state fair park and for individual buildings or
5503 facilities within the fair park;
 - 5504 (iii) work with county and municipal governments, the Salt Lake Convention and
5505 Visitor's Bureau, the Utah Travel Council, and other entities to develop and promote
5506 expositions and the use of the state fair park;
 - 5507 (iv) develop and maintain a marketing program to promote expositions and the use of
5508 the state fair park;
 - 5509 (v) in cooperation with the Division of Facilities Construction and Management,
5510 maintain the physical appearance and structural integrity of the state fair park and the buildings
5511 located at the state fair park;
 - 5512 (vi) hold an annual exhibition that:
 - 5513 (A) is called the state fair or a similar name;
 - 5514 (B) includes expositions of livestock, poultry, agricultural, domestic science,
5515 horticultural, floricultural, mineral, and industrial products, manufactured articles, and domestic
5516 animals that, in the corporation's opinion will best stimulate agricultural, industrial, artistic, and
5517 educational pursuits and the sharing of talents among the people of Utah;

5518 (C) includes the award of premiums for the best specimens of the exhibited articles and
5519 animals;

5520 (D) permits competition by livestock exhibited by citizens of other states and territories
5521 of the United States; and

5522 (E) is arranged according to plans approved by the board;

5523 (vii) fix the conditions of entry to the exposition described in Subsection (5)(a)(vi); and

5524 (viii) publish a list of premiums that will be awarded at the exhibition described in
5525 Subsection (5)(a)(vi) for the best specimens of exhibited articles and animals.

5526 (b) In addition to the state fair to be held in accordance with Subsection (5)(a)(vi), the
5527 corporation may hold other exhibitions of livestock, poultry, agricultural, domestic science,
5528 horticultural, floricultural, mineral, and industrial products, manufactured articles, and domestic
5529 animals that, in its opinion, will best stimulate agricultural, industrial, artistic, and educational
5530 pursuits and the sharing of talents among the people of Utah.

5531 (6) The corporation may:

5532 (a) employ advisers, consultants, and agents, including financial experts and
5533 independent legal counsel, and fix their compensation;

5534 (b) procure insurance against any loss in connection with its property and other assets,
5535 including mortgage loans;

5536 (c) receive and accept aid or contributions of money, property, labor, or other things of
5537 value from any source, including any grants or appropriations from any department, agency, or
5538 instrumentality of the United States or Utah;

5539 (d) hold, use, loan, grant, and apply that aid and those contributions to carry out the
5540 purposes of the corporation, subject to the conditions, if any, upon which the aid and
5541 contributions were made;

5542 (e) enter into management agreements with any person or entity for the performance of
5543 its functions or powers;

5544 (f) establish whatever accounts and procedures as necessary to budget, receive, and
5545 disburse, account for, and audit all funds received, appropriated, or generated;

5546 (g) enter into agreements for the leasing of any of the facilities at the state fair park, if
 5547 approved by the board; and

5548 (h) sponsor events as approved by the board.

5549 (7) (a) Except as provided in Subsection (7)(c), as an independent agency of Utah, the
 5550 corporation is exempt from:

5551 (i) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;

5552 (ii) Title 51, Chapter 7, State Money Management Act;

5553 (iii) Title 63A, Utah Administrative Services Code;

5554 (iv) Title 51, Chapter 5, Funds Consolidation Act;

5555 (v) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code; and

5556 (vi) Title 67, Chapter 19, Utah State Personnel Management Act.

5557 (b) The board shall adopt policies parallel to and consistent with:

5558 (i) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;

5559 (ii) Title 51, Chapter 7, State Money Management Act;

5560 (iii) Title 63A, Utah Administrative Services Code;

5561 (iv) Title 51, Chapter 5, Funds Consolidation Act; and

5562 (v) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code.

5563 (c) The corporation shall comply with the legislative approval requirements for new
 5564 facilities established in Subsection 63A-5-104(3).

5565 Section 73. Section **9-4-1301** is amended to read:

5566 **9-4-1301. Assistance to domestic violence shelters -- Rulemaking authority.**

5567 (1) The Division of Child and Family Services within the Department of Human
 5568 Services has statutory responsibility to provide violence services, including temporary shelter, to
 5569 victims of domestic violence pursuant to the provisions of Sections 62A-4a-101 and
 5570 62A-4a-105. The division may assist the Division of Child and Family Services by providing for
 5571 the development, construction, and improvement of shelters for victims of domestic violence, as
 5572 described in Section 77-36-1, through loans and grants to nonprofit and governmental entities.

5573 (2) No later than July 1, 2001, the division shall, in accordance with [~~Title 63, Chapter~~

5574 46a] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules establishing:

5575 (a) procedures for applying for loans and grants;

5576 (b) criteria for awarding loans and grants; and

5577 (c) requirements for the repayment of loans.

5578 (3) The division may appoint an advisory panel to:

5579 (a) assist the division in developing rules under Subsection (2); and

5580 (b) recommend how available funds should be disbursed.

5581 (4) The division shall make loans and grants with monies specifically appropriated for
5582 that purpose.

5583 (5) The division shall coordinate with the Division of Child and Family Services in
5584 complying with the provisions of this section.

5585 Section 74. Section **9-4-1404** is amended to read:

5586 **9-4-1404. Duties of office.**

5587 The office shall:

5588 (1) coordinate state activities designed to reduce poverty;

5589 (2) encourage entities in the private sector to participate in efforts to ameliorate poverty
5590 in the community;

5591 (3) cooperate with agencies of local, state, and federal government in reducing poverty
5592 and implementing community, social, and economic programs;

5593 (4) receive and expend funds for the purposes outlined in this part;

5594 (5) enter into contracts with and award grants to public and private nonprofit agencies
5595 and organizations;

5596 (6) develop a state plan based on needs identified by community action agencies and
5597 community action statewide organizations;

5598 (7) designate community action agencies to receive funds through the Community
5599 Services Block Grant program;

5600 (8) fund community action agencies and community action statewide organizations;

5601 (9) make rules in conjunction with the division pursuant to [~~Title 63, Chapter 46a~~] Title

5602 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the purposes of this part;

5603 (10) provide assistance to local governments or private organizations for the purpose of
5604 establishing and operating a community action agency;

5605 (11) provide technical assistance to community action agencies to improve program
5606 planning, program development, administration, and the mobilization of public and private
5607 resources;

5608 (12) convene public meetings which provide citizens the opportunity to comment on
5609 public policies and programs to reduce poverty;

5610 (13) advise the governor and Legislature of the nature and extent of poverty in the state
5611 and make recommendations concerning changes in state and federal policies and programs;

5612 (14) encourage Utah's nonprofit humanitarian assistance agencies serving low-income
5613 persons by facilitating, coordinating, training, partnerships, and providing technical assistance in
5614 addressing Utah's low-income persons by enhancing management, improving service and
5615 program delivery, and preserving flexibility and local initiative;

5616 (15) develop and implement management goals which fulfill the Community Services
5617 Block Grant mission, state requirements, and the mandates of federal legislation;

5618 (16) prepare a Community Services Block Grant plan which contains provisions
5619 describing how the state will carry out the assurances of the Community Services Block Grant
5620 Act;

5621 (17) act as the state agency responsible for the evaluation and improvement of
5622 emergency food assistance services in the state;

5623 (18) monitor the impact of social policies on the emergency food network;

5624 (19) provide training and technical assistance to all grantees to assist them in program
5625 development and implementation, compliance with state and federal regulations, and reporting
5626 and management information systems;

5627 (20) certify, monitor, and decertify qualified emergency food agencies for purposes of
5628 the sales tax refund under Section 59-12-902; and

5629 (21) administer other programs to alleviate poverty assigned to the office.

5630 Section 75. Section **9-4-1406** is amended to read:

5631 **9-4-1406. Evaluations -- Reports.**

5632 (1) The office shall periodically evaluate grantees of Community Services Block Grant
5633 funds as established by rule by the division in accordance with [~~Title 63, Chapter 46a~~] Title
5634 63G, Chapter 3, Utah Administrative Rulemaking Act.

5635 (2) Grantees of Community Services Block Grant funds shall submit to the office a
5636 year-end report, covering a reporting period consistent with the federal fiscal year, which
5637 provides an account of all programs operated with or supported by Community Services Block
5638 Grant funds, including:

5639 (a) types of programs operated by that grantee;

5640 (b) the program outcomes;

5641 (c) the number of persons served;

5642 (d) the number of times service was given; and

5643 (e) an accounting of all Community Services Block Grant funds expended by the
5644 grantee.

5645 (3) The office shall report annually to the appropriate legislative appropriations
5646 subcommittee on the distribution and expenditure of Community Services Block Grant funds.

5647 Section 76. Section **9-6-205** is amended to read:

5648 **9-6-205. Board powers and duties.**

5649 (1) The board may:

5650 (a) make, amend, or repeal rules for the conduct of its business in governing the
5651 institute and the division in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5652 Administrative Rulemaking Act;

5653 (b) receive gifts, bequests, and property; and

5654 (c) issue certificates and offer and confer prizes, certificates, and awards for works of
5655 art and achievement in the arts.

5656 (2) The board shall make policy for the institute and for the division.

5657 Section 77. Section **9-6-504** is amended to read:

5658 **9-6-504. Duties of board.**

5659 The board shall:

5660 (1) allocate moneys from the state fund to the endowment fund created by a qualifying
5661 organization under Section 9-6-503;

5662 (2) determine the eligibility of each qualifying organization to receive moneys from the
5663 state fund into the endowment fund of the qualifying organization and be the final arbiter of
5664 eligibility;

5665 (3) determine the matching amount each qualifying organization must raise in order to
5666 qualify to receive moneys from the state fund;

5667 (4) establish a date by which each qualifying organization must provide its matching
5668 funds;

5669 (5) verify that matching funds have been provided by each qualifying organization by
5670 the date determined in Subsection (4); and

5671 (6) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5672 Administrative Rulemaking Act, establish criteria by rule not otherwise prescribed in this
5673 chapter for determining the eligibility of qualifying organizations to receive moneys from the
5674 state fund.

5675 Section 78. Section **9-6-605** is amended to read:

5676 **9-6-605. Board -- Duties.**

5677 (1) The board is the policymaking body for the office.

5678 (2) The board shall, in consultation with the director of the office:

5679 (a) set policies and, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

5680 Utah Administrative Rulemaking Act, make rules governing:

5681 (i) the office grants program; and

5682 (ii) the awarding of grants to assist Utah's eligible museums; and

5683 (b) set eligibility guidelines for grants administered through the office.

5684 Section 79. Section **9-7-213** is amended to read:

5685 **9-7-213. Rulemaking.**

5686 The division may make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
5687 Chapter 3, Utah Administrative Rulemaking Act, necessary to implement and administer the
5688 provisions of this chapter including:

5689 (1) standards which must be met by libraries to obtain and retain a designation as a
5690 depository library;

5691 (2) the method by which grants are made to individual libraries, but not including
5692 appropriations made directly to any other agency or institution;

5693 (3) standards for the certification of public librarians; and

5694 (4) standards for the public library online access policy required in Section 9-7-215.

5695 Section 80. Section **9-7-302** is amended to read:

5696 **9-7-302. Public access -- Rules.**

5697 (1) The public shall have access to the State Law Library.

5698 (2) The board of control may make rules in accordance with [~~Title 63, Chapter 46a~~]
5699 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, and not inconsistent with the
5700 provisions of this part.

5701 Section 81. Section **9-8-203** is amended to read:

5702 **9-8-203. Division duties.**

5703 (1) The division shall:

5704 (a) stimulate research, study, and activity in the field of Utah history and related history;

5705 (b) maintain a specialized history library;

5706 (c) mark and preserve historic sites, areas, and remains;

5707 (d) collect, preserve, and administer historical records relating to the history of Utah;

5708 (e) administer, collect, preserve, document, interpret, develop, and exhibit historical
5709 artifacts, documentary materials, and other objects relating to the history of Utah for

5710 educational and cultural purposes;

5711 (f) edit and publish historical records;

5712 (g) cooperate with local, state, and federal agencies and schools and museums to

5713 provide coordinated and organized activities for the collection, documentation, preservation,

5714 interpretation, and exhibition of historical artifacts related to the state;

5715 (h) provide grants and technical assistance as necessary and appropriate; and

5716 (i) comply with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,

5717 Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

5718 (2) The division may acquire or produce reproductions of historical artifacts and

5719 documentary materials for educational and cultural use.

5720 (3) To promote an appreciation of Utah history and to increase heritage tourism in the

5721 state, the division shall:

5722 (a) (i) create and maintain an inventory of all historic markers and monuments that are

5723 accessible to the public throughout the state;

5724 (ii) enter into cooperative agreements with other groups and organizations to collect

5725 and maintain the information needed for the inventory;

5726 (iii) encourage the use of volunteers to help collect the information and to maintain the

5727 inventory;

5728 (iv) publicize the information in the inventory in a variety of forms and media, especially

5729 to encourage Utah citizens and tourists to visit the markers and monuments;

5730 (v) work with public and private landowners, heritage organizations, and volunteer

5731 groups to help maintain, repair, and landscape around the markers and monuments; and

5732 (vi) make the inventory available upon request to all other public and private history

5733 and heritage organizations, tourism organizations and businesses, and others;

5734 (b) (i) create and maintain an inventory of all active and inactive cemeteries throughout

5735 the state;

5736 (ii) enter into cooperative agreements with local governments and other groups and

5737 organizations to collect and maintain the information needed for the inventory;

5738 (iii) encourage the use of volunteers to help collect the information and to maintain the

5739 inventory;

5740 (iv) encourage cemetery owners to create and maintain geographic information systems

5741 to record burial sites and encourage volunteers to do so for inactive and small historic

5742 cemeteries;

5743 (v) publicize the information in the inventory in a variety of forms and media, especially
5744 to encourage Utah citizens to participate in the care and upkeep of historic cemeteries;

5745 (vi) work with public and private cemeteries, heritage organizations, genealogical
5746 groups, and volunteer groups to help maintain, repair, and landscape cemeteries, grave sites,
5747 and tombstones; and

5748 (vii) make the inventory available upon request to all other public and private history
5749 and heritage organizations, tourism organizations and businesses, and others; and

5750 (c) (i) create and maintain a computerized record of cemeteries and burial locations in a
5751 state-coordinated and publicly accessible information system;

5752 (ii) gather information for the information system created and maintained under
5753 Subsection (3)(c)(i) by providing matching grants, upon approval by the board, to:

5754 (A) municipal cemeteries;

5755 (B) cemetery maintenance districts;

5756 (C) endowment care cemeteries;

5757 (D) private nonprofit cemeteries;

5758 (E) genealogical associations; and

5759 (F) other nonprofit groups with an interest in cemeteries; and

5760 (iii) adopt rules, pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
5761 Administrative Rulemaking Act, for granting matching funds under Subsection (3)(c)(ii) to
5762 assure that:

5763 (A) professional standards are met; and

5764 (B) projects are cost effective.

5765 (4) This chapter may not be construed to authorize the division to acquire by purchase
5766 any historical artifacts, documentary materials, or specimens that are restricted from sale by
5767 federal law or the laws of any state, territory, or foreign nation.

5768 Section 82. Section **9-8-305** is amended to read:

5769 **9-8-305. Permit required to survey or excavate on state lands -- Public Lands**

5770 **Policy Coordinating Office to issue permits and make rules -- Ownership of collections**
5771 **and resources -- Revocation or suspension of permits -- Criminal penalties.**

5772 (1) (a) Except as provided by Subsections (1)(d) and (3)(c), each principal investigator
5773 who wishes to survey or excavate on any lands owned or controlled by the state, its political
5774 subdivisions, or by the School and Institutional Trust Lands Administration shall obtain a survey
5775 or excavation permit from the Public Lands Policy Coordinating Office.

5776 (b) A principal investigator who holds a valid permit under this section may allow other
5777 individuals to assist the principal investigator in a survey or excavation if the principal
5778 investigator ensures that all the individuals comply with the law, the rules, the permit, and the
5779 appropriate professional standards.

5780 (c) A person, other than a principal investigator, may not survey or excavate on any
5781 lands owned or controlled by the state, its political subdivisions, or by the School and
5782 Institutional Trust Lands Administration unless the person works under the direction of a
5783 principal investigator who holds a valid permit.

5784 (d) A permit obtained before July 1, 2006 shall continue until the permit terminates on
5785 its own terms.

5786 (2) (a) To obtain a survey permit, a principal investigator shall:

5787 (i) submit a permit application on a form furnished by the Public Lands Policy
5788 Coordinating Office;

5789 (ii) except as provided in Subsection (2)(b), possess a graduate degree in anthropology,
5790 archaeology, or history;

5791 (iii) have one year of full-time professional experience or equivalent specialized training
5792 in archaeological research, administration, or management; and

5793 (iv) have one year of supervised field and analytical experience in Utah prehistoric or
5794 historic archaeology.

5795 (b) In lieu of the graduate degree required by Subsection (2)(a)(ii), a principal
5796 investigator may submit evidence of training and experience equivalent to a graduate degree.

5797 (c) Unless the permit is revoked or suspended, a survey permit is valid for the time

5798 period specified in the permit by the Public Lands Policy Coordinating Office, which may not
5799 exceed three years.

5800 (3) (a) Except as provided by Subsection (3)(c), to obtain an excavation permit, a
5801 principal investigator shall, in addition to complying with Subsection (2)(a), submit:

5802 (i) a research design to the Public Lands Policy Coordinating Office and the Antiquities
5803 Section that:

5804 (A) states the questions to be addressed;

5805 (B) states the reasons for conducting the work;

5806 (C) defines the methods to be used;

5807 (D) describes the analysis to be performed;

5808 (E) outlines the expected results and the plan for reporting;

5809 (F) evaluates expected contributions of the proposed work to archaeological or
5810 anthropological science; and

5811 (G) estimates the cost and the time of the work that the principal investigator believes is
5812 necessary to provide the maximum amount of historic, scientific, archaeological,
5813 anthropological, and educational information; and

5814 (ii) proof of permission from the landowner to enter the property for the purposes of
5815 the permit.

5816 (b) An excavation permit is valid for the amount of time specified in the permit, unless
5817 the permit is revoked according to Subsection (9).

5818 (c) The Public Lands Policy Coordinating Office may delegate to an agency the
5819 authority to issue excavation permits if the agency:

5820 (i) requests the delegation; and

5821 (ii) employs or has a long-term contract with a principal investigator with a valid survey
5822 permit.

5823 (d) The Public Lands Policy Coordinating Office shall conduct an independent review
5824 of the delegation authorized by Subsection (3)(c) every three years and may revoke the
5825 delegation at any time without cause.

- 5826 (4) The Public Lands Policy Coordinating Office shall:
- 5827 (a) grant a survey permit to a principal investigator who meets the requirements of this
- 5828 section;
- 5829 (b) grant an excavation permit to a principal investigator after approving, in
- 5830 consultation with the Antiquities Section, the research design for the project; and
- 5831 (c) assemble a committee of qualified individuals to advise the Public Lands Policy
- 5832 Coordinating Office in its duties under this section.
- 5833 (5) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
- 5834 Chapter 3, Utah Administrative Rulemaking Act, the Public Lands Policy Coordinating Office
- 5835 shall, after consulting with the Antiquities Section, make rules to:
- 5836 (a) establish survey methodology;
- 5837 (b) standardize report and data preparation and submission;
- 5838 (c) require other permit application information that the Public Lands Policy
- 5839 Coordinating Office finds necessary, including proof of consultation with the appropriate Native
- 5840 American tribe;
- 5841 (d) establish what training and experience is equivalent to a graduate degree;
- 5842 (e) establish requirements for a person authorized by Subsection (1)(b) to assist the
- 5843 principal investigator;
- 5844 (f) establish requirements for a principal investigator's employer, if applicable; and
- 5845 (g) establish criteria, that if met, would allow the Public Lands Policy Coordinating
- 5846 Office to reinstate a suspended permit.
- 5847 (6) Each principal investigator shall submit a summary report of the work for each
- 5848 project to the Antiquities Section in a form prescribed by a rule established under Subsection
- 5849 (5)(b), which shall include copies of all:
- 5850 (a) site forms;
- 5851 (b) data;
- 5852 (c) maps;
- 5853 (d) drawings;

5854 (e) photographs; and

5855 (f) descriptions of specimens.

5856 (7) (a) Except as provided in Subsection (7)(c), a person may not remove from Utah
5857 any specimen, site, or portion of any site from lands owned or controlled by the state or its
5858 political subdivisions, other than school and institutional trust lands, without permission from
5859 the Antiquities Section, and prior consultation with the landowner and any other agencies
5860 managing other interests in the land.

5861 (b) Except as provided in Subsection (7)(c), a person may not remove from Utah any
5862 specimen, site, or portion of any site from school and institutional trust lands without
5863 permission from the School and Institutional Trust Lands Administration, granted after
5864 consultation with the Antiquities Section.

5865 (c) If a specimen, site, or portion of a site is placed in a repository or curation facility, a
5866 person may remove it by following the procedures established by the repository or curation
5867 facility.

5868 (8) (a) Collections recovered from school and institutional trust lands are owned by the
5869 respective trust.

5870 (b) Collections recovered from lands owned or controlled by the state or its
5871 subdivisions, other than school and institutional trust lands, are owned by the state.

5872 (c) Within a reasonable time after the completion of fieldwork, each permit holder shall
5873 deposit all collections at the museum, a curation facility, or a repository.

5874 (d) The repository or curation facility for collections from lands owned or controlled by
5875 the state or its subdivisions shall be designated according to the rules made under the authority
5876 of Section 53B-17-603.

5877 (9) (a) Upon complaint by an agency, the Public Lands Policy Coordinating Office shall
5878 investigate a principal investigator and the work conducted under a permit.

5879 (b) By following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
5880 Chapter 4, Administrative Procedures Act, the Public Lands Policy Coordinating Office may
5881 revoke or suspend a permit if the principal investigator fails to conduct a survey or excavation

5882 according to law, the rules enacted by the Public Lands Policy Coordinating Office, or permit
5883 provisions.

5884 (10) (a) Any person violating this section is guilty of a class B misdemeanor.

5885 (b) A person convicted of violating this section, or found to have violated the rules
5886 authorized by this section, shall, in addition to any other penalties imposed, forfeit all
5887 archaeological resources discovered by or through the person's efforts to the state or the
5888 respective trust.

5889 (11) The division may enter into memoranda of agreement to issue project numbers or
5890 to retain other data for federal lands or Native American lands within the state.

5891 Section 83. Section **9-8-309** is amended to read:

5892 **9-8-309. Ancient human remains on nonfederal lands that are not state lands.**

5893 (1) (a) After April 30, 2007, if a person knows or has reason to know that the person
5894 discovered ancient human remains on nonfederal land that is not state land:

5895 (i) the person shall:

5896 (A) cease activity in the area of the discovery until activity may be resumed in
5897 accordance with Subsection (1)(d);

5898 (B) notify a local law enforcement agency in accordance with Section 76-9-704; and

5899 (C) notify the person who owns or controls the nonfederal land, if that person is
5900 different than the person who discovers the ancient human remains; and

5901 (ii) the person who owns or controls the nonfederal land shall:

5902 (A) require that activity in the area of the discovery cease until activity may be resumed
5903 in accordance with Subsection (1)(d); and

5904 (B) make a reasonable effort to protect the discovered ancient human remains before
5905 activity may be resumed in accordance with Subsection (1)(d).

5906 (b) (i) If the local law enforcement agency believes after being notified under this
5907 Subsection (1) that a person may have discovered ancient human remains, the local law
5908 enforcement agency shall contact the Antiquities Section.

5909 (ii) The Antiquities Section shall:

5910 (A) within two business days of the day on which the Antiquities Section is notified by
5911 local law enforcement, notify the landowner that the Antiquities Section may excavate and
5912 retrieve the human remains with the landowner's permission; and

5913 (B) if the landowner gives the landowner's permission, excavate the human remains by
5914 no later than:

5915 (I) five business days from the day on which the Antiquities Section obtains the
5916 permission of the landowner under this Subsection (1); or

5917 (II) if extraordinary circumstances exist as provided in Subsection (1)(c), within the
5918 time period designated by the director not to exceed 30 days from the day on which the
5919 Antiquities Section obtains the permission of the landowner under this Subsection (1).

5920 (c) (i) The director may grant the Antiquities Section an extension of time for
5921 excavation and retrieval of ancient human remains not to exceed 30 days from the day on which
5922 the Antiquities Section obtains the permission of the landowner under this Subsection (1), if the
5923 director determines that extraordinary circumstances exist on the basis of objective criteria such
5924 as:

5925 (A) the unusual scope of the ancient human remains;

5926 (B) the complexity or difficulty of excavation or retrieval of the ancient human remains;

5927 or

5928 (C) the landowner's concerns related to the excavation or retrieval of the ancient human
5929 remains.

5930 (ii) If the landowner objects to the time period designated by the director, the
5931 landowner may appeal the decision to the executive director of the department in writing.

5932 (iii) If the executive director receives an appeal from the landowner under this
5933 Subsection (1)(c), the executive director shall:

5934 (A) decide on the appeal within two business days; and

5935 (B) (I) uphold the decision of the director; or

5936 (II) designate a shorter time period than the director designated for the excavation and
5937 retrieval of the ancient human remains.

5938 (iv) An appeal under this Subsection (1)(c) may not be the cause for the delay of the
5939 excavation and retrieval of the ancient human remains.

5940 (v) A decision and appeal under this Subsection (1)(c) is exempt from [~~Title 63;~~
5941 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

5942 (d) A person that owns or controls nonfederal land that is not state land may engage in
5943 or permit others to engage in activities in the area of the discovery without violating this part or
5944 Section 76-9-704 if once notified of the discovery of ancient human remains on the nonfederal
5945 land, the person:

5946 (i) consents to the Antiquities Section excavating and retrieving the ancient human
5947 remains; and

5948 (ii) engages in or permits others to engage in activities in the area of the discovery only
5949 after:

5950 (A) the day on which the Antiquities Section removes the ancient human remains from
5951 the nonfederal land; or

5952 (B) the time period described in Subsection (1)(b)(ii)(B).

5953 (2) A person that owns or controls nonfederal land that is not state land may not be
5954 required to pay any costs incurred by the state associated with the ancient human remains,
5955 including costs associated with the costs of the:

5956 (a) discovery of ancient human remains;

5957 (b) excavation or retrieval of ancient human remains; or

5958 (c) determination of ownership or disposition of ancient human remains.

5959 (3) For nonfederal land that is not state land, nothing in this section limits or prohibits
5960 the Antiquities Section and a person who owns or controls the nonfederal land from entering
5961 into an agreement addressing the ancient human remains that allows for different terms than
5962 those provided in this section.

5963 (4) The ownership and control of ancient human remains that are the ancient human
5964 remains of a Native American shall be determined in accordance with Chapter 9, Part 4, Native
5965 American Grave Protection and Repatriation Act:

- 5966 (a) if the ancient human remains are in possession of the state;
- 5967 (b) if the ancient human remains are not known to have been discovered on lands
- 5968 owned, controlled, or held in trust by the federal government; and
- 5969 (c) regardless of when the ancient human remains are discovered.
- 5970 (5) This section:
- 5971 (a) does not apply to ancient human remains that are subject to the provisions and
- 5972 procedures of:
- 5973 (i) federal law; or
- 5974 (ii) Part 4, Historic Sites; and
- 5975 (b) does not modify any property rights of a person that owns or controls nonfederal
- 5976 land except as to the ownership of the ancient human remains.
- 5977 (6) The division, Antiquities Section, or Division of Indian Affairs may not make rules
- 5978 that impose any requirement on a person who discovers ancient human remains or who owns or
- 5979 controls nonfederal land that is not state land on which ancient human remains are discovered
- 5980 that is not expressly provided for in this section.

5981 Section 84. Section **9-8-405** is amended to read:

5982 **9-8-405. Federal funds -- Agreements on standards and procedures.**

5983 By following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,
5984 Chapter 5, Federal Funds Procedures, the division may accept and administer federal funds
5985 provided under the provisions of the National Historic Preservation Act of 1966, the Land and
5986 Water Conservation Act as amended, and subsequent legislation directed toward the
5987 encouragement of historic preservation, and to enter into those agreements on professional
5988 standards and procedures required by participation in the National Historic Preservation Act of
5989 1966 and the National Register Office.

5990 Section 85. Section **9-8-704** is amended to read:

5991 **9-8-704. Division duties.**

5992 The division shall, according to policy established by the board:

- 5993 (1) allocate monies from the state fund to the endowment fund created by a qualifying

5994 organization under Section 9-8-703;
5995 (2) determine the eligibility of each qualifying organization to receive monies from the
5996 state fund into the endowment fund of the qualifying organization;
5997 (3) determine the matching amount each qualifying organization must raise in order to
5998 qualify to receive monies from the state fund;
5999 (4) establish a date by which each qualifying organization must provide its matching
6000 funds;
6001 (5) verify that matching funds have been provided by each qualifying organization by
6002 the date determined in Subsection (4); and
6003 (6) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
6004 Administrative Rulemaking Act, establish criteria by rule not otherwise prescribed in this
6005 chapter for determining the eligibility of qualifying organizations to receive monies from the
6006 state fund.

6007 Section 86. Section **9-9-104** is amended to read:

6008 **9-9-104. Duties and powers.**

6009 (1) The division shall:
6010 (a) have all of the functions, powers, duties, rights, and responsibilities granted to it by
6011 this chapter;
6012 (b) staff those committees or boards as specified in this chapter; and
6013 (c) in accordance with policies set by state government, coordinate relations between:
6014 (i) the state;
6015 (ii) tribal governments;
6016 (iii) other Indian groups; and
6017 (iv) federal agencies.
6018 (2) The division may:
6019 (a) contract with public and private entities to provide services or facilities;
6020 (b) acquire and hold funds or other property for the administration of the programs
6021 outlined in this chapter;

6022 (c) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
6023 Administrative Rulemaking Act, that are necessary to carry out the duties of the division;

6024 (d) accept gifts, grants, devises, and property, in cash or in kind, for the benefit of
6025 Indians; and

6026 (e) apply or dispose of those gifts, grants, devises, and property received under
6027 Subsection (2)(d) for the use and benefit of Indians within the state.

6028 Section 87. Section **9-10-105** is amended to read:

6029 **9-10-105. Powers.**

6030 (1) The board may:

6031 (a) appoint a hearing examiner or administrative law judge with authority to conduct
6032 any hearings, make determinations, and enter appropriate findings of facts, conclusions of law,
6033 and orders under authority of the Interlocal Cooperation Act; and

6034 (b) make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
6035 Rulemaking Act, if necessary to perform its responsibilities.

6036 (2) The board shall:

6037 (a) be subject to the procedures and requirements under Title 52, Chapter 4, Open and
6038 Public Meetings Act; and

6039 (b) be subject to the procedures and requirements under Title 51, Chapter 7, State
6040 Money Management Act.

6041 Section 88. Section **9-11-102** is amended to read:

6042 **9-11-102. Definitions.**

6043 As used in this chapter:

6044 (1) "Board" means the Navajo Revitalization Fund Board.

6045 (2) "Capital projects" means expenditures for land, improvements on the land, and
6046 equipment intended to have long-term beneficial use.

6047 (3) "Division" means the Division of Housing and Community Development.

6048 (4) "Eligible entities" means:

6049 (a) the Navajo Nation;

- 6050 (b) a department or division of the Navajo Nation;
- 6051 (c) a Utah Navajo Chapter, as defined in Section [~~63-88-101~~] 51-9-501;
- 6052 (d) the Navajo Utah Commission;
- 6053 (e) an agency of the state or a political subdivision of the state;
- 6054 (f) the Navajo Trust Fund established under [~~Title 63, Chapter 88~~] Title 51, Chapter 9,
- 6055 Part 5, Navajo Trust Fund; or
- 6056 (g) a nonprofit corporation.
- 6057 (5) "Navajo Utah Commission" means the commission created by Resolution
- 6058 IGRJN-134-92 of the Intergovernmental Relations Committee of the Navajo Nation Council.
- 6059 (6) "Revitalization fund" or "fund" means the Navajo Revitalization Fund.
- 6060 Section 89. Section **9-11-105** is amended to read:
- 6061 **9-11-105. Navajo Revitalization Fund Board created -- Members -- Terms --**
- 6062 **Chair -- Expenses.**
- 6063 (1) There is created within the division the Navajo Revitalization Board composed of
- 6064 five members as follows:
- 6065 (a) the governor or the governor's designee;
- 6066 (b) the two members of the San Juan County commission whose districts include
- 6067 portions of the Navajo Reservation;
- 6068 (c) the chair of the Navajo Utah Commission or a member of the commission
- 6069 designated by the chair; and
- 6070 (d) the chair of the Utah Dineh Committee, as created in Section [~~63-88-107~~] 51-9-507,
- 6071 or a member of the committee designated by the chair.
- 6072 (2) The terms of office for the members of the board shall run concurrently with the
- 6073 terms of office for the governor, county commissioners, member of the Navajo Utah
- 6074 Commission, and member of the Utah Dineh Committee.
- 6075 (3) The governor, or the governor's designee, shall be the chair of the board and the
- 6076 chair is responsible to call necessary meetings.
- 6077 (4) (a) (i) Members who are not government employees of the state or local government

6078 shall receive no compensation or benefits for their services, but may receive per diem and
6079 expenses incurred in the performance of the member's official duties at the rates established by
6080 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

6081 (ii) Members may decline to receive per diem and expenses for their service.

6082 (b) (i) State government officer and employee members who do not receive salary, per
6083 diem, or expenses from their agency for their service may receive per diem and expenses
6084 incurred in the performance of their official duties from the board at the rates established by the
6085 Division of Finance under Sections 63A-3-106 and 63A-3-107.

6086 (ii) State government officer and employee members may decline to receive per diem
6087 and expenses for their service.

6088 (c) (i) Local government members who do not receive salary, per diem, or expenses
6089 from the entity that they represent for their service may receive per diem and expenses incurred
6090 in the performance of their official duties at the rates established by the Division of Finance
6091 under Sections 63A-3-106 and 63A-3-107.

6092 (ii) Local government members may decline to receive per diem and expenses for their
6093 service.

6094 (d) The per diem and expenses permitted under this Subsection (4) may be included as
6095 costs of administration of the fund.

6096 (5) Four board members are a quorum.

6097 (6) Any board decisions related to monies in or disbursed from the fund requires the
6098 affirmative vote of each member of the board present at a meeting when a quorum is present.

6099 Section 90. Section **9-11-106** is amended to read:

6100 **9-11-106. Powers -- Duties.**

6101 (1) The board shall:

6102 (a) direct the division regarding grants and loans from the revitalization fund to eligible
6103 entities to serve persons that are or may be socially or economically impacted, directly or
6104 indirectly, by mineral resource development;

6105 (b) establish procedures for application for an award of grants and loans including

6106 eligibility criteria;

6107 (c) coordinate projects and programs with other projects and programs funded by
6108 federal, state, and local government entities;

6109 (d) determine the order in which projects will be funded; and

6110 (e) be subject to the procedures and requirements under Title 52, Chapter 4, Open and
6111 Public Meetings Act.

6112 (2) The board may:

6113 (a) qualify for, accept, and administer grants, gifts, loans, or other funds from the
6114 federal government and from other sources, public or private; and

6115 (b) make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
6116 Rulemaking Act, if necessary to perform its responsibilities.

6117 Section 91. Section **9-11-107** is amended to read:

6118 **9-11-107. Revitalization fund administered by board -- Eligibility for assistance --**
6119 **Review by board -- Restrictions on loans and grants -- Division to distribute monies.**

6120 (1) (a) If an eligible entity wishes to receive a loan or grant from the board, the eligible
6121 entity shall apply to the board. The application shall contain the information required by the
6122 board.

6123 (b) The board shall review each application for a loan or grant before approving the
6124 loan or grant.

6125 (c) The board may approve loan or grant applications subject to the applicant's
6126 compliance with certain conditions established by the board.

6127 (2) In determining whether an eligible entity may receive a loan or grant, the board shall
6128 give priority to:

6129 (a) capital projects and infrastructure, including electrical power, water, and other one
6130 time need projects;

6131 (b) housing projects that consist of:

6132 (i) the purchase of new housing;

6133 (ii) the construction of new housing; or

- 6134 (iii) a significant remodeling of existing housing; or
- 6135 (c) matching educational endowments that:
 - 6136 (i) promote economic development within the Utah portion of the Navajo Reservation;
 - 6137 (ii) promote the preservation of Navajo culture, history, and language; or
 - 6138 (iii) support postsecondary educational opportunities for Navajo students enrolled in
 - 6139 courses or programs taught within the Utah portion of the Navajo Reservation.
- 6140 (3) A loan or grant issued under this chapter may not fund:
 - 6141 (a) start-up or operational costs of private business ventures;
 - 6142 (b) general operating budgets of the eligible entities; or
 - 6143 (c) a project or program that will operate or be located outside of the Navajo
 - 6144 Reservation in San Juan County, Utah, except for educational endowments approved by the
 - 6145 board under Subsection (2)(c).
- 6146 (4) (a) The board may not approve a loan unless the loan:
 - 6147 (i) specifies the terms for repayment; and
 - 6148 (ii) is secured by proceeds from a general obligation, special assessment, or revenue
 - 6149 bond, note, or other obligation.
- 6150 (b) Any loan repayment or interest on a loan issued under this chapter shall be
- 6151 deposited into the fund.
- 6152 (5) The board may not approve a loan or grant unless the loan or grant provides for
- 6153 matching monies or in-kind services from:
 - 6154 (a) the Navajo Nation;
 - 6155 (b) the Navajo Trust Fund;
 - 6156 (c) San Juan County;
 - 6157 (d) the state;
 - 6158 (e) the federal government;
 - 6159 (f) a Utah Navajo Chapter, as defined in Section [~~63-88-101~~] 51-9-501; or
 - 6160 (g) other private or public organization.
- 6161 (6) The division shall distribute loan and grant monies:

- 6162 (a) if the loan or grant is approved by the board;
- 6163 (b) in accordance with the instructions of the board, except that the board may not
- 6164 instruct that monies be distributed in a manner:
 - 6165 (i) inconsistent with this chapter; or
 - 6166 (ii) in violation of rules and procedures of the department; and
 - 6167 (c) in the case of a loan, in accordance with Section 63A-3-205.

6168 Section 92. Section **9-12-103** is amended to read:

6169 **9-12-103. Eligibility criteria.**

6170 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
6171 Rulemaking Act, the department may make rules establishing eligibility criteria for recipients of
6172 assistance under this chapter. A recipient of assistance under this chapter must demonstrate:

- 6173 (1) that the recipient's family, household, or individual income is 150% of the federal
- 6174 poverty level or less;
- 6175 (2) that the recipient is responsible for paying the recipient's home energy costs; and
- 6176 (3) compliance with any rules established by the department under this section.

6177 Section 93. Section **9-12-105** is amended to read:

6178 **9-12-105. Payment method.**

6179 Direct payments for home energy costs shall be made jointly to the responsible
6180 householder and to the vendor of energy services to whom the family or individual served owes
6181 a payment except in certain cases, as established by rule by the department in accordance with
6182 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, where
6183 payments may be made directly to the responsible householder.

6184 Section 94. Section **10-1-306** is amended to read:

6185 **10-1-306. Rules for delivered value and point of sale.**

- 6186 (1) The delivered value of taxable energy under this part shall be established pursuant to
- 6187 rules made by the commission in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
- 6188 Utah Administrative Rulemaking Act.
- 6189 (2) The rules made by the commission under Subsection (1):

6190 (a) shall provide that an arm's length sales price for taxable energy sold or used by a
6191 taxpayer in the municipality is the delivered value, unless the sales price does not include some
6192 portion of the taxable energy or component of delivered value;

6193 (b) shall establish one or more default methods for determining the delivered value for
6194 each customer class one time per calendar year on or before January 31 for taxable energy when
6195 the commission determines that the sales price does not accurately reflect delivered value; and

6196 (c) shall provide that for purposes of determining the point of sale or use of taxable
6197 energy the location of the meter is normally the point of sale or use unless the taxpayer
6198 demonstrates that the use is not in a municipality imposing the municipal energy sales and use
6199 tax.

6200 (3) In establishing a default method under Subsection (2)(b), the commission:

6201 (a) shall take into account quantity discounts and other reductions or increases in value
6202 that are generally available in the marketplace for various grades or types of property and
6203 classes of services; and

6204 (b) may consider:

6205 (i) generally applicable tariffs for various classes of utility services approved by the
6206 Public Service Commission or other governmental entity;

6207 (ii) posted prices;

6208 (iii) spot-market prices;

6209 (iv) trade publications;

6210 (v) market data; and

6211 (vi) other information and data prescribed by the commission.

6212 Section 95. Section **10-1-308** is amended to read:

6213 **10-1-308. Report of tax collections -- Allocation when location of taxpayer cannot**
6214 **be accurately determined.**

6215 (1) All municipal energy sales and use taxes collected under this part shall be reported
6216 to the commission on forms that accurately identify the municipality where the taxpayer is
6217 located.

6218 (2) The commission shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title
6219 63G, Chapter 3, Utah Administrative Rulemaking Act, to proportionally distribute all taxes
6220 collected if the municipality where the taxpayer is located cannot be accurately determined.

6221 Section 96. Section **10-1-405** is amended to read:

6222 **10-1-405. Collection of taxes by commission -- Uniform interlocal agreement --**
6223 **Rulemaking authority -- Charge for services.**

6224 (1) Subject to the other provisions of this section, the commission shall collect, enforce,
6225 and administer any municipal telecommunications license tax imposed under this part pursuant
6226 to:

6227 (a) the same procedures used in the administration, collection, and enforcement of the
6228 state sales and use tax under:

6229 (i) Title 59, Chapter 1, General Taxation Policies; and

6230 (ii) Title 59, Chapter 12, Part 1, Tax Collection:

6231 (A) except for:

6232 (I) Subsection 59-12-103(2)(h);

6233 (II) Section 59-12-104;

6234 (III) Section 59-12-104.1;

6235 (IV) Section 59-12-104.2; and

6236 (V) Section 59-12-107.1; and

6237 (B) except that for purposes of Section 59-12-110, the term "taxpayer" may include a
6238 customer from whom a municipal telecommunications license tax is recovered in accordance
6239 with Subsection 10-1-403(2); and

6240 (b) a uniform interlocal agreement:

6241 (i) between:

6242 (A) the municipality that imposes the municipal telecommunications license tax; and

6243 (B) the commission;

6244 (ii) that is executed under Title 11, Chapter 13, Interlocal Cooperation Act;

6245 (iii) that complies with Subsection (2)(a); and

6246 (iv) that is developed by rule in accordance with Subsection (2)(b).
6247 (2) (a) The uniform interlocal agreement described in Subsection (1) shall provide that
6248 the commission shall:
6249 (i) transmit monies collected under this part:
6250 (A) monthly; and
6251 (B) by electronic funds transfer by the commission to the municipality;
6252 (ii) conduct audits of the municipal telecommunications license tax;
6253 (iii) charge the municipality for the commission's services under this section in an
6254 amount:
6255 (A) sufficient to reimburse the commission for the cost to the commission in rendering
6256 the services; and
6257 (B) that may not exceed an amount equal to 1.5% of the municipal telecommunications
6258 license tax imposed by the ordinance of the municipality; and
6259 (iv) collect, enforce, and administer the municipal telecommunications license tax
6260 authorized under this part pursuant to the same procedures used in the administration,
6261 collection, and enforcement of the state sales and use tax as provided in Subsection (1)(a).
6262 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
6263 Administrative Rulemaking Act, the commission shall develop a uniform interlocal agreement
6264 that meets the requirements of this section.
6265 (3) The administrative fee charged under Subsection (2)(a) shall be:
6266 (a) deposited in the Sales and Use Tax Administrative Fees Account; and
6267 (b) used for administration of municipal telecommunications license taxes under this
6268 part.
6269 (4) If, on July 1, 2007, a municipality has in effect an ordinance that levies a municipal
6270 telecommunications license tax under this part at a rate that exceeds 3.5%:
6271 (a) except as provided in Subsection (4)(b), beginning on July 1, 2007, the commission
6272 shall collect the municipal telecommunications license tax:
6273 (i) within the municipality;

- 6274 (ii) at a rate of 3.5%; and
- 6275 (iii) from a telecommunications provider required to pay the municipal
- 6276 telecommunications license tax on or after July 1, 2007; and
- 6277 (b) the commission shall collect a municipal telecommunications license tax within the
- 6278 municipality at the rate imposed by the municipality if:
- 6279 (i) after July 1, 2007, the municipality has in effect an ordinance that levies a municipal
- 6280 telecommunications license tax under this part at a rate of up to 3.5%;
- 6281 (ii) the municipality meets the requirements of Subsection 10-1-403(3)(b) in changing
- 6282 the rate of the municipal telecommunications license tax; and
- 6283 (iii) a telecommunications provider is required to pay the municipal telecommunications
- 6284 license tax on or after the day on which the ordinance described in Subsection (4)(b)(ii) takes
- 6285 effect.

6286 Section 97. Section **10-3-208** is amended to read:

6287 **10-3-208. Campaign finance statement in municipal election.**

- 6288 (1) As used in this section:
- 6289 (a) "Reporting date" means:
- 6290 (i) ten days before a municipal general election, for a campaign finance statement
- 6291 required to be filed no later than seven days before a municipal general election; and
- 6292 (ii) the day of filing, for a campaign finance statement required to be filed no later than
- 6293 30 days after a municipal primary or general election.
- 6294 (b) "Reporting limit" means:
- 6295 (i) \$50; or
- 6296 (ii) an amount lower than \$50 that is specified in an ordinance of the municipality.
- 6297 (2) (a) (i) Each candidate for municipal office who is not eliminated at a municipal
- 6298 primary election shall file with the municipal clerk or recorder a campaign finance statement:
- 6299 (A) no later than seven days before the date of the municipal general election; and
- 6300 (B) no later than 30 days after the date of the municipal general election.
- 6301 (ii) Each candidate for municipal office who is eliminated at a municipal primary

6302 election shall file with the municipal clerk or recorder a campaign finance statement no later
6303 than 30 days after the date of the municipal primary election.

6304 (b) Each campaign finance statement under Subsection (2)(a) shall:

6305 (i) except as provided in Subsection (2)(b)(ii):

6306 (A) report all of the candidate's itemized and total:

6307 (I) campaign contributions, including in-kind and other nonmonetary contributions,
6308 received before the close of the reporting date; and

6309 (II) campaign expenditures made through the close of the reporting date; and

6310 (B) identify:

6311 (I) for each contribution that exceeds the reporting limit, the amount of the contribution
6312 and the name of the donor;

6313 (II) the aggregate total of all contributions that individually do not exceed the reporting
6314 limit; and

6315 (III) for each campaign expenditure, the amount of the expenditure and the name of the
6316 recipient of the expenditure; or

6317 (ii) report the total amount of all campaign contributions and expenditures if the
6318 candidate receives \$500 or less in campaign contributions and spends \$500 or less on the
6319 candidate's campaign.

6320 (3) (a) A municipality may, by ordinance:

6321 (i) provide a reporting limit lower than \$50;

6322 (ii) require greater disclosure of campaign contributions and expenditures than is
6323 required in this section; and

6324 (iii) impose additional penalties on candidates who fail to comply with the applicable
6325 requirements beyond those imposed by this section.

6326 (b) A candidate for municipal office is subject to the provisions of this section and not
6327 the provisions of an ordinance adopted by the municipality under Subsection (3)(a) if:

6328 (i) the municipal ordinance establishes requirements or penalties that differ from those
6329 established in this section; and

6330 (ii) the municipal clerk or recorder fails to notify the candidate of the provisions of the
6331 ordinance as required in Subsection (4).

6332 (4) Each municipal clerk or recorder shall, at the time the candidate for municipal office
6333 files a declaration of candidacy, and again 14 days before each municipal general election, notify
6334 the candidate in writing of:

6335 (a) the provisions of statute or municipal ordinance governing the disclosure of
6336 campaign contributions and expenditures;

6337 (b) the dates when the candidate's campaign finance statement is required to be filed;
6338 and

6339 (c) the penalties that apply for failure to file a timely campaign finance statement,
6340 including the statutory provision that requires removal of the candidate's name from the ballot
6341 for failure to file the required campaign finance statement when required.

6342 (5) Notwithstanding any provision of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
6343 Government Records Access and Management Act, the municipal clerk or recorder shall make
6344 each campaign finance statement filed by a candidate available for public inspection and copying
6345 no later than one business day after the statement is filed.

6346 (6) (a) If a candidate fails to file a campaign finance statement before the municipal
6347 general election by the deadline specified in Subsection (2)(a)(i)(A), the municipal clerk or
6348 recorder shall inform the appropriate election official who:

6349 (i) shall:

6350 (A) if practicable, remove the candidate's name from the ballot by blacking out the
6351 candidate's name before the ballots are delivered to voters; or

6352 (B) if removing the candidate's name from the ballot is not practicable, inform the
6353 voters by any practicable method that the candidate has been disqualified and that votes cast for
6354 the candidate will not be counted; and

6355 (ii) may not count any votes for that candidate.

6356 (b) Notwithstanding Subsection (6)(a), a candidate who files a campaign finance
6357 statement seven days before a municipal general election is not disqualified if:

6358 (i) the statement details accurately and completely the information required under
6359 Subsection (2)(b), except for inadvertent omissions or insignificant errors or inaccuracies; and

6360 (ii) the omissions, errors, or inaccuracies are corrected in an amended report or in the
6361 next scheduled report.

6362 (7) A campaign finance statement required under this section is considered filed if it is
6363 received in the municipal clerk or recorder's office by 5 p.m. on the date that it is due.

6364 (8) (a) A private party in interest may bring a civil action in district court to enforce the
6365 provisions of this section or an ordinance adopted under this section.

6366 (b) In a civil action under Subsection (8)(a), the court may award costs and attorney's
6367 fees to the prevailing party.

6368 Section 98. Section **10-3-1303** is amended to read:

6369 **10-3-1303. Definitions.**

6370 As used in this part:

6371 (1) "Appointed officer" means any person appointed to any statutory office or position
6372 or any other person appointed to any position of employment with a city or with a community
6373 development and renewal agency under Title 17C, Limited Purpose Local Government Entities
6374 - Community Development and Renewal Agencies. Appointed officers include, but are not
6375 limited to, persons serving on special, regular, or full-time committees, agencies, or boards
6376 whether or not such persons are compensated for their services. The use of the word "officer"
6377 in this part is not intended to make appointed persons or employees "officers" of the
6378 municipality.

6379 (2) "Assist" means to act, or offer or agree to act, in such a way as to help, represent,
6380 aid, advise, furnish information to, or otherwise provide assistance to a person or business
6381 entity, believing that such action is of help, aid, advice, or assistance to such person or business
6382 entity and with the intent to assist such person or business entity.

6383 (3) "Business entity" means a sole proprietorship, partnership, association, joint
6384 venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on
6385 a business.

6386 (4) "Compensation" means anything of economic value, however designated, which is
6387 paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone
6388 other than the governmental employer for or in consideration of personal services, materials,
6389 property, or any other thing whatsoever.

6390 (5) "Elected officer" means any person elected or appointed to the office of mayor,
6391 commissioner, or council member.

6392 (6) "Improper disclosure" means disclosure of private, controlled, or protected
6393 information to any person who does not have both the right and the need to receive the
6394 information.

6395 (7) "Municipal employee" means a person who is not an elected or appointed officer
6396 who is employed on a full or part-time basis by a municipality or by a community development
6397 and renewal agency under Title 17C, Limited Purpose Local Government Entities - Community
6398 Development and Renewal Agencies.

6399 (8) "Private, controlled, or protected information" means information classified as
6400 private, controlled, or protected under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
6401 Records Access and Management Act or other applicable provision of law.

6402 (9) "Substantial interest" means the ownership, either legally or equitably, by an
6403 individual, [~~his~~] the individual's spouse, or [~~his~~] the individual's minor children, of at least 10%
6404 of the outstanding shares of a corporation or 10% interest in any other business entity.

6405 Section 99. Section **10-3-1304** is amended to read:

6406 **10-3-1304. Use of office for personal benefit prohibited.**

6407 (1) As used in this section, "economic benefit tantamount to a gift" includes:

6408 (a) a loan at an interest rate that is substantially lower than the commercial rate then
6409 currently prevalent for similar loans; and

6410 (b) compensation received for private services rendered at a rate substantially exceeding
6411 the fair market value of the services.

6412 (2) It is an offense for an elected or appointed officer or municipal employee, under
6413 circumstances not amounting to a violation of Section [~~63-56-1001~~] 63G-6-1001 or 76-8-105,

6414 to:

6415 (a) disclose or improperly use private, controlled, or protected information acquired by
6416 reason of ~~[his]~~ the officer's or employee's official position or in the course of official duties in
6417 order to further substantially the officer's or employee's personal economic interest or to secure
6418 special privileges or exemptions for ~~[himself]~~ the officer or employee or for others;

6419 (b) use or attempt to use ~~[his]~~ the officer's or employee's official position to:

6420 (i) further substantially the officer's or employee's personal economic interest; or

6421 (ii) secure special privileges for ~~[himself]~~ the officer or employee or for others; or

6422 (c) knowingly receive, accept, take, seek, or solicit, directly or indirectly, for ~~[himself]~~
6423 the officer or employee or for another, a gift of substantial value or a substantial economic
6424 benefit tantamount to a gift that:

6425 (i) would tend improperly to influence a reasonable person in the person's position to
6426 depart from the faithful and impartial discharge of the person's public duties; or

6427 (ii) the person knows or that a reasonable person in that position should know under the
6428 circumstances is primarily for the purpose of rewarding the person for official action taken.

6429 (3) Subsection (2)(c) does not apply to:

6430 (a) an occasional nonpecuniary gift having a value of less than \$50;

6431 (b) an award publicly presented in recognition of public services;

6432 (c) any bona fide loan made in the ordinary course of business; or

6433 (d) a political campaign contribution.

6434 Section 100. Section **10-3-1305** is amended to read:

6435 **10-3-1305. Compensation for assistance in transaction involving municipality --**

6436 **Public disclosure and filing required.**

6437 (1) As used in this section, "municipal body" means any public board, commission,
6438 committee, or other public group organized to make public policy decisions or to advise persons
6439 who make public policy decisions.

6440 (2) It is an offense for an elected officer, or appointed officer, who is a member of a
6441 public body, under circumstances not amounting to a violation of Section ~~[63-56-1001]~~

6442 63G-6-1001 or 76-8-105, to receive or agree to receive compensation for assisting any person
6443 or business entity in any transaction involving the municipality in which ~~he~~ the member is an
6444 officer unless ~~he~~ the member:

6445 (a) files with the mayor a sworn statement giving the information required by this
6446 section; and

6447 (b) discloses the information required by Subsection (5) in an open meeting to the
6448 members of the body of which ~~he~~ the officer is a member immediately before the discussion.

6449 (3) It is an offense for an appointed officer who is not a member of a public body or a
6450 municipal employee to receive or agree to receive compensation for assisting any person or
6451 business entity in any transaction involving the municipality by which ~~he~~ the person is
6452 employed unless the officer or employee:

6453 (a) files with the mayor a sworn statement giving the information required by this
6454 section; and

6455 (b) discloses the information required by Subsection (5) to:

6456 (i) ~~his~~ the officer or employee's immediate supervisor; and

6457 (ii) any other municipal officer or employee who may rely upon the employee's
6458 representations in evaluating or approving the transaction.

6459 (4) (a) The officer or employee shall file the statement required to be filed by this
6460 section ten days before the date of any agreement between the elected or appointed officer or
6461 municipal employee and the person or business entity being assisted or ten days before the
6462 receipt of compensation by the officer or employee, whichever is earlier.

6463 (b) The statement is public information and shall be available for examination by the
6464 public.

6465 (5) The statement and disclosure shall contain:

6466 (a) the name and address of the officer or municipal employee;

6467 (b) the name and address of the person or business entity being or to be assisted or in
6468 which the appointed or elected official or municipal employee has a substantial interest; and

6469 (c) a brief description of the transaction as to which service is rendered or is to be

6470 rendered and of the nature of the service performed or to be performed.

6471 Section 101. Section **10-7-86** is amended to read:

6472 **10-7-86. Municipality may adopt Utah Procurement Code -- Hiring of**
6473 **professional architect, engineer, or surveyor.**

6474 (1) The governing body of any municipality may adopt any or all of the provisions of
6475 [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, or the rules promulgated
6476 pursuant to that code.

6477 (2) Notwithstanding Subsection (1), the governing body of each municipality that
6478 engages the services of a professional architect, engineer, or surveyor and considers more than
6479 one such professional for the engagement:

6480 (a) shall consider, as a minimum, in the selection process:

6481 (i) the qualifications, experience, and background of each firm submitting a proposal;

6482 (ii) the specific individuals assigned to the project and the time commitments of each to
6483 the project; and

6484 (iii) the project schedule and the approach to the project that the firm will take; and

6485 (b) may engage the services of a professional architect, engineer, or surveyor based on
6486 the criteria under Subsection (2)(a) rather than solely on lowest cost.

6487 Section 102. Section **10-7-87** is amended to read:

6488 **10-7-87. Procurement -- Use of recycled goods.**

6489 The procurement officer or other person responsible for purchasing supplies for each
6490 municipality shall:

6491 (1) maintain for reference a copy of the current listing of recycled items available on
6492 state contracts as issued by the chief procurement officer under Section [~~63-56-204~~]
6493 63G-6-204; and

6494 (2) give recycled items consideration when inviting bids and purchasing supplies, in
6495 compliance with Section 11-37-101.

6496 Section 103. Section **10-8-2** is amended to read:

6497 **10-8-2. Appropriations -- Acquisition and disposal of property -- Municipal**

6498 **authority -- Corporate purpose -- Procedure -- Notice of intent to acquire real property.**

6499 (1) (a) A municipal legislative body may:

6500 (i) appropriate money for corporate purposes only;

6501 (ii) provide for payment of debts and expenses of the corporation;

6502 (iii) subject to Subsections (4) and (5), purchase, receive, hold, sell, lease, convey, and
6503 dispose of real and personal property for the benefit of the municipality, whether the property is
6504 within or without the municipality's corporate boundaries, if the action is in the public interest
6505 and complies with other law;

6506 (iv) improve, protect, and do any other thing in relation to this property that an
6507 individual could do; and

6508 (v) subject to Subsection (2) and after first holding a public hearing, authorize municipal
6509 services or other nonmonetary assistance to be provided to or waive fees required to be paid by
6510 a nonprofit entity, whether or not the municipality receives consideration in return.

6511 (b) A municipality may:

6512 (i) furnish all necessary local public services within the municipality;

6513 (ii) purchase, hire, construct, own, maintain and operate, or lease public utilities located
6514 and operating within and operated by the municipality; and

6515 (iii) subject to Subsection (1)(c), acquire by eminent domain, or otherwise, property
6516 located inside or outside the corporate limits of the municipality and necessary for any of the
6517 purposes stated in Subsections (1)(b)(i) and (ii), subject to restrictions imposed by Title 78,
6518 Chapter 34, Eminent Domain, and general law for the protection of other communities.

6519 (c) Each municipality that intends to acquire property by eminent domain under
6520 Subsection (1)(b) shall, upon the first contact with the owner of the property sought to be
6521 acquired, deliver to the owner a copy of a booklet or other materials provided by the Office of
6522 the Property Rights Ombudsman, created under Section 13-43-201, dealing with the property
6523 owner's rights in an eminent domain proceeding.

6524 (d) Subsection (1)(b) may not be construed to diminish any other authority a
6525 municipality may claim to have under the law to acquire by eminent domain property located

6526 inside or outside the municipality.

6527 (2) (a) Services or assistance provided pursuant to Subsection (1)(a)(v) is not subject to
6528 the provisions of Subsection (3).

6529 (b) The total amount of services or other nonmonetary assistance provided or fees
6530 waived under Subsection (1)(a)(v) in any given fiscal year may not exceed 1% of the
6531 municipality's budget for that fiscal year.

6532 (3) It is considered a corporate purpose to appropriate money for any purpose that, in
6533 the judgment of the municipal legislative body, provides for the safety, health, prosperity, moral
6534 well-being, peace, order, comfort, or convenience of the inhabitants of the municipality subject
6535 to the following:

6536 (a) The net value received for any money appropriated shall be measured on a
6537 project-by-project basis over the life of the project.

6538 (b) The criteria for a determination under this Subsection (3) shall be established by the
6539 municipality's legislative body. A determination of value received, made by the municipality's
6540 legislative body, shall be presumed valid unless it can be shown that the determination was
6541 arbitrary, capricious, or illegal.

6542 (c) The municipality may consider intangible benefits received by the municipality in
6543 determining net value received.

6544 (d) Prior to the municipal legislative body making any decision to appropriate any funds
6545 for a corporate purpose under this section, a public hearing shall be held. Notice of the hearing
6546 shall be published in a newspaper of general circulation at least 14 days prior to the date of the
6547 hearing, or, if there is no newspaper of general circulation, by posting notice in at least three
6548 conspicuous places within the municipality for the same time period.

6549 (e) A study shall be performed before notice of the public hearing is given and shall be
6550 made available at the municipality for review by interested parties at least 14 days immediately
6551 prior to the public hearing, setting forth an analysis and demonstrating the purpose for the
6552 appropriation. In making the study, the following factors shall be considered:

6553 (i) what identified benefit the municipality will receive in return for any money or

6554 resources appropriated;

6555 (ii) the municipality's purpose for the appropriation, including an analysis of the way the
6556 appropriation will be used to enhance the safety, health, prosperity, moral well-being, peace,
6557 order, comfort, or convenience of the inhabitants of the municipality; and

6558 (iii) whether the appropriation is necessary and appropriate to accomplish the
6559 reasonable goals and objectives of the municipality in the area of economic development, job
6560 creation, affordable housing, blight elimination, job preservation, the preservation of historic
6561 structures and property, and any other public purpose.

6562 (f) (i) An appeal may be taken from a final decision of the municipal legislative body, to
6563 make an appropriation.

6564 (ii) The appeal shall be filed within 30 days after the date of that decision, to the district
6565 court.

6566 (iii) Any appeal shall be based on the record of the proceedings before the legislative
6567 body.

6568 (iv) A decision of the municipal legislative body shall be presumed to be valid unless the
6569 appealing party shows that the decision was arbitrary, capricious, or illegal.

6570 (g) The provisions of this Subsection (3) apply only to those appropriations made after
6571 May 6, 2002.

6572 (h) This section applies only to appropriations not otherwise approved pursuant to Title
6573 10, Chapter 5, Uniform Fiscal Procedures Act for Utah Towns, or Title 10, Chapter 6, Uniform
6574 Fiscal Procedures Act for Utah Cities.

6575 (4) (a) Before a municipality may dispose of a significant parcel of real property, the
6576 municipality shall:

6577 (i) provide reasonable notice of the proposed disposition at least 14 days before the
6578 opportunity for public comment under Subsection (4)(a)(ii); and

6579 (ii) allow an opportunity for public comment on the proposed disposition.

6580 (b) Each municipality shall, by ordinance, define what constitutes:

6581 (i) a significant parcel of real property for purposes of Subsection (4)(a); and

6582 (ii) reasonable notice for purposes of Subsection (4)(a)(i).
6583 (5) (a) Except as provided in Subsection (5)(d), each municipality intending to acquire
6584 real property for the purpose of expanding the municipality's infrastructure or other facilities
6585 used for providing services that the municipality offers or intends to offer shall provide written
6586 notice, as provided in this Subsection (5), of its intent to acquire the property if:
6587 (i) the property is located:
6588 (A) outside the boundaries of the municipality; and
6589 (B) in a county of the first or second class; and
6590 (ii) the intended use of the property is contrary to:
6591 (A) the anticipated use of the property under the general plan of the county in whose
6592 unincorporated area or the municipality in whose boundaries the property is located; or
6593 (B) the property's current zoning designation.
6594 (b) Each notice under Subsection (5)(a) shall:
6595 (i) indicate that the municipality intends to acquire real property;
6596 (ii) identify the real property; and
6597 (iii) be sent to:
6598 (A) each county in whose unincorporated area and each municipality in whose
6599 boundaries the property is located; and
6600 (B) each affected entity.
6601 (c) A notice under this Subsection (5) is a protected record as provided in Subsection
6602 ~~[63-2-304]~~ 63G-2-305(7).
6603 (d) (i) The notice requirement of Subsection (5)(a) does not apply if the municipality
6604 previously provided notice under Section 10-9a-203 identifying the general location within the
6605 municipality or unincorporated part of the county where the property to be acquired is located.
6606 (ii) If a municipality is not required to comply with the notice requirement of Subsection
6607 (5)(a) because of application of Subsection (5)(d)(i), the municipality shall provide the notice
6608 specified in Subsection (5)(a) as soon as practicable after its acquisition of the real property.
6609 Section 104. Section **10-8-58.5** is amended to read:

6610 **10-8-58.5. Contracting for management, maintenance, operation, or construction**
6611 **of jails.**

6612 (1) (a) The governing body of a city or town may contract with private contractors for
6613 management, maintenance, operation, and construction of city jails.

6614 (b) The governing body may include a provision in the contract that requires that any
6615 jail facility meet any federal, state, or local standards for the construction of jails.

6616 (2) If the governing body contracts only for the management, maintenance, or operation
6617 of a jail, the governing body shall include provisions in the contract that:

6618 (a) require the private contractor to post a performance bond in the amount set by the
6619 governing body;

6620 (b) establish training standards that must be met by jail personnel;

6621 (c) require the private contractor to provide and fund training for jail personnel so that
6622 the personnel meet the standards established in the contract and any other federal, state, or local
6623 standards for the operation of jails and the treatment of jail prisoners;

6624 (d) require the private contractor to indemnify the city or town for errors, omissions,
6625 defalcations, and other activities committed by the private contractor that result in liability to the
6626 city or town;

6627 (e) require the private contractor to show evidence of liability insurance protecting the
6628 city or town and its officers, employees, and agents from liability arising from the construction,
6629 operation, or maintenance of the jail, in an amount not less than those specified in [~~Title 63;~~
6630 ~~Chapter 30d]~~ Title 63G, Chapter 7, Governmental Immunity Act of Utah;

6631 (f) require the private contractor to:

6632 (i) receive all prisoners committed to the jail by competent authority; and

6633 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed
6634 by the governing body; and

6635 (g) prohibit the use of inmates by the private contractor for private business purposes of
6636 any kind.

6637 (3) A contractual provision requiring the private contractor to maintain liability

6638 insurance in an amount not less than the liability limits established by [~~Title 63, Chapter 30d~~
6639 Title 63G, Chapter 7, Governmental Immunity Act of Utah, may not be construed as waiving
6640 the limitation on damages recoverable from a governmental entity or its employees established
6641 by that chapter.

6642 Section 105. Section **10-9a-203** is amended to read:

6643 **10-9a-203. Notice of intent to prepare a general plan or comprehensive general**
6644 **plan amendments in certain municipalities.**

6645 (1) Before preparing a proposed general plan or a comprehensive general plan
6646 amendment, each municipality within a county of the first or second class shall provide ten
6647 calendar days notice of its intent to prepare a proposed general plan or a comprehensive general
6648 plan amendment to:

6649 (a) each affected entity;

6650 (b) the Automated Geographic Reference Center created in Section 63F-1-506;

6651 (c) the association of governments, established pursuant to an interlocal agreement
6652 under Title 11, Chapter 13, Interlocal Cooperation Act, of which the municipality is a member;
6653 and

6654 (d) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202.

6655 (2) Each notice under Subsection (1) shall:

6656 (a) indicate that the municipality intends to prepare a general plan or a comprehensive
6657 general plan amendment, as the case may be;

6658 (b) describe or provide a map of the geographic area that will be affected by the general
6659 plan or amendment;

6660 (c) be sent by mail, e-mail, or other effective means;

6661 (d) invite the affected entities to provide information for the municipality to consider in
6662 the process of preparing, adopting, and implementing a general plan or amendment concerning:

6663 (i) impacts that the use of land proposed in the proposed general plan or amendment
6664 may have; and

6665 (ii) uses of land within the municipality that the affected entity is considering that may

6666 conflict with the proposed general plan or amendment; and

6667 (e) include the address of an Internet website, if the municipality has one, and the name
6668 and telephone number of a person where more information can be obtained concerning the
6669 municipality's proposed general plan or amendment.

6670 Section 106. Section **10-9a-402** is amended to read:

6671 **10-9a-402. Information and technical assistance from the state.**

6672 Each state official, department, and agency shall:

6673 (1) promptly deliver any data and information requested by a municipality unless the
6674 disclosure is prohibited by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
6675 Access and Management Act; and

6676 (2) furnish any other technical assistance and advice that they have available to the
6677 municipality without additional cost to the municipality.

6678 Section 107. Section **10-18-302** is amended to read:

6679 **10-18-302. Bonding authority.**

6680 (1) In accordance with Title 11, Chapter 14, Local Government Bonding Act, the
6681 legislative body of a municipality may by resolution determine to issue one or more revenue
6682 bonds or general obligation bonds to finance the capital costs for facilities necessary to provide
6683 to subscribers:

- 6684 (a) a cable television service; or
- 6685 (b) a public telecommunications service.

6686 (2) The resolution described in Subsection (1) shall:

- 6687 (a) describe the purpose for which the indebtedness is to be created; and
- 6688 (b) specify the dollar amount of the one or more bonds proposed to be issued.

6689 (3) (a) A revenue bond issued under this section shall be secured and paid for:

- 6690 (i) from the revenues generated by the municipality from providing:
 - 6691 (A) cable television services with respect to revenue bonds issued to finance facilities
6692 for the municipality's cable television services; and

6693 (B) public telecommunications services with respect to revenue bonds issued to finance

6694 facilities for the municipality's public telecommunications services; and
6695 (ii) notwithstanding Subsection (3)(b) and Subsection 10-18-303(3)(a), from revenues
6696 generated under Title 59, Chapter 12, Sales and Use Tax Act, if:
6697 (A) notwithstanding Subsection 11-14-201(3) and except as provided in Subsections
6698 (4) and (5), the revenue bond is approved by the registered voters in an election held:
6699 (I) except as provided in Subsection (3)(a)(ii)(A)(II), pursuant to the provisions of Title
6700 11, Chapter 14, Local Government Bonding Act, that govern bond elections; and
6701 (II) notwithstanding Subsection 11-14-203(2), at a regular general election;
6702 (B) the revenues described in this Subsection (3)(a)(ii) are pledged as security for the
6703 revenue bond; and
6704 (C) the municipality or municipalities annually appropriate the revenues described in this
6705 Subsection (3)(a)(ii) to secure and pay the revenue bond issued under this section.
6706 (b) Except as provided in Subsection (3)(a)(ii), a municipality may not pay the
6707 origination, financing, or other carrying costs associated with the one or more revenue bonds
6708 issued under this section from the general funds or other enterprise funds of the municipality.
6709 (4) (a) As used in this Subsection (4), "municipal entity" means an entity created
6710 pursuant to an agreement:
6711 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
6712 (ii) to which a municipality is a party.
6713 (b) The requirements of Subsection (3)(a)(ii)(A) do not apply to a municipality or
6714 municipal entity that issues revenue bonds, or to a municipality that is a member of a municipal
6715 entity that issues revenue bonds, if:
6716 (i) on or before March 2, 2004, the municipality that is issuing revenue bonds or that is
6717 a member of a municipal entity that is issuing revenue bonds has published the first notice
6718 described in Subsection (4)(b)(iii);
6719 (ii) on or before April 15, 2004, the municipality that is issuing revenue bonds or that is
6720 a member of a municipal entity that is issuing revenue bonds makes the decision to pledge the
6721 revenues described in Subsection (3)(a)(ii) as security for the revenue bonds described in this

6722 Subsection (4)(b)(ii);

6723 (iii) the municipality that is issuing the revenue bonds or the municipality that is a

6724 member of the municipal entity that is issuing the revenue bonds has:

6725 (A) held a public hearing for which public notice was given by publication of the notice

6726 in a newspaper published in the municipality or in a newspaper of general circulation within the

6727 municipality for two consecutive weeks, with the first publication being not less than 14 days

6728 before the public hearing; and

6729 (B) the notice identifies:

6730 (I) that the notice is given pursuant to Title 11, Chapter 14, Local Government Bonding

6731 Act;

6732 (II) the purpose for the bonds to be issued;

6733 (III) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be

6734 pledged in any fiscal year;

6735 (IV) the maximum number of years that the pledge will be in effect; and

6736 (V) the time, place, and location for the public hearing;

6737 (iv) the municipal entity that issues revenue bonds:

6738 (A) adopts a final financing plan; and

6739 (B) in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government

6740 Records Access and Management Act, makes available to the public at the time the municipal

6741 entity adopts the final financing plan:

6742 (I) the final financing plan; and

6743 (II) all contracts entered into by the municipal entity, except as protected by [~~Title 63,~~

6744 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act;

6745 (v) any municipality that is a member of a municipal entity described in Subsection

6746 (4)(b)(iv):

6747 (A) not less than 30 calendar days after the municipal entity complies with Subsection

6748 (4)(b)(iv)(B), holds a final public hearing;

6749 (B) provides notice, at the time the municipality schedules the final public hearing, to

6750 any person who has provided to the municipality a written request for notice; and

6751 (C) makes all reasonable efforts to provide fair opportunity for oral testimony by all
6752 interested parties; and

6753 (vi) except with respect to a municipality that issued bonds prior to March 1, 2004, not
6754 more than 50% of the average annual debt service of all revenue bonds described in this section
6755 to provide service throughout the municipality or municipal entity may be paid from the
6756 revenues described in Subsection (3)(a)(ii).

6757 (5) On or after July 1, 2007, the requirements of Subsection (3)(a)(ii)(A) do not apply
6758 to a municipality that issues revenue bonds if:

6759 (a) the municipality that is issuing the revenue bonds has:

6760 (i) held a public hearing for which public notice was given by publication of the notice
6761 in a newspaper published in the municipality or in a newspaper of general circulation within the
6762 municipality for two consecutive weeks, with the first publication being not less than 14 days
6763 before the public hearing; and

6764 (ii) the notice identifies:

6765 (A) that the notice is given pursuant to Title 11, Chapter 14, Local Government
6766 Bonding Act;

6767 (B) the purpose for the bonds to be issued;

6768 (C) the maximum amount of the revenues described in Subsection (3)(a)(ii) that will be
6769 pledged in any fiscal year;

6770 (D) the maximum number of years that the pledge will be in effect; and

6771 (E) the time, place, and location for the public hearing; and

6772 (b) except with respect to a municipality that issued bonds prior to March 1, 2004, not
6773 more than 50% of the average annual debt service of all revenue bonds described in this section
6774 to provide service throughout the municipality or municipal entity may be paid from the
6775 revenues described in Subsection (3)(a)(ii).

6776 (6) A municipality that issues bonds pursuant to this section may not make or grant any
6777 undue or unreasonable preference or advantage to itself or to any private provider of:

6778 (a) cable television services; or

6779 (b) public telecommunications services.

6780 Section 108. Section **11-13-222** is amended to read:

6781 **11-13-222. Officers and employees performing services under agreements.**

6782 (1) Each officer and employee performing services for two or more public agencies
6783 under an agreement under this chapter shall be considered to be:

6784 (a) an officer or employee of the public agency employing the officer or employee's
6785 services even though the officer or employee performs those functions outside of the territorial
6786 limits of any one of the contracting public agencies; and

6787 (b) an officer or employee of the public agencies under the provisions of [~~Title 63,~~
6788 ~~Chapter 30d]~~ Title 63G, Chapter 7, Governmental Immunity Act of Utah.

6789 (2) Unless otherwise provided in an agreement that creates an interlocal entity, each
6790 employee of a public agency that is a party to the agreement shall:

6791 (a) remain an employee of that public agency, even though assigned to perform services
6792 for another public agency under the agreement; and

6793 (b) continue to be governed by the rules, rights, entitlements, and status that apply to an
6794 employee of that public agency.

6795 (3) All of the privileges, immunities from liability, exemptions from laws, ordinances,
6796 and rules, pensions and relief, disability, workers compensation, and other benefits that apply to
6797 an officer, agent, or employee of a public agency while performing functions within the
6798 territorial limits of the public agency apply to the same degree and extent when the officer,
6799 agent, or employee performs functions or duties under the agreement outside the territorial
6800 limits of that public agency.

6801 Section 109. Section **11-13-302** is amended to read:

6802 **11-13-302. Payment of fee in lieu of ad valorem property tax by certain energy**
6803 **suppliers -- Method of calculating -- Collection -- Extent of tax lien.**

6804 (1) (a) Each project entity created under this chapter that owns a project and that sells
6805 any capacity, service, or other benefit from it to an energy supplier or suppliers whose tangible

6806 property is not exempted by Utah Constitution Article XIII, Section 3, from the payment of ad
6807 valorem property tax, shall pay an annual fee in lieu of ad valorem property tax as provided in
6808 this section to each taxing jurisdiction within which the project or any part of it is located.

6809 (b) For purposes of this section, "annual fee" means the annual fee described in
6810 Subsection (1)(a) that is in lieu of ad valorem property tax.

6811 (c) The requirement to pay an annual fee shall commence:

6812 (i) with respect to each taxing jurisdiction that is a candidate receiving the benefit of
6813 impact alleviation payments under contracts or determination orders provided for in Sections
6814 11-13-305 and 11-13-306, with the fiscal year of the candidate following the fiscal year of the
6815 candidate in which the date of commercial operation of the last generating unit, other than any
6816 generating unit providing additional project capacity, of the project occurs, or, in the case of
6817 any facilities providing additional project capacity, with the fiscal year of the candidate
6818 following the fiscal year of the candidate in which the date of commercial operation of the
6819 generating unit providing the additional project capacity occurs; and

6820 (ii) with respect to any taxing jurisdiction other than a taxing jurisdiction described in
6821 Subsection (1)(c)(i), with the fiscal year of the taxing jurisdiction in which construction of the
6822 project commences, or, in the case of facilities providing additional project capacity, with the
6823 fiscal year of the taxing jurisdiction in which construction of those facilities commences.

6824 (d) The requirement to pay an annual fee shall continue for the period of the useful life
6825 of the project or facilities.

6826 (2) (a) The annual fees due a school district shall be as provided in Subsection (2)(b)
6827 because the ad valorem property tax imposed by a school district and authorized by the
6828 Legislature under Section 53A-17a-135 represents both:

6829 (i) a levy mandated by the state for the state minimum school program under Section
6830 53A-17a-135; and

6831 (ii) local levies for capital outlay, maintenance, transportation, and other purposes under
6832 Sections 11-2-7, 53A-16-107, 53A-16-110, 53A-17a-126, 53A-17a-127, 53A-17a-133,
6833 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103.

6834 (b) The annual fees due a school district shall be as follows:

6835 (i) the project entity shall pay to the school district an annual fee for the state minimum
6836 school program at the rate imposed by the school district and authorized by the Legislature
6837 under Subsection 53A-17a-135(1); and

6838 (ii) for all other local property tax levies authorized to be imposed by a school district,
6839 the project entity shall pay to the school district either:

6840 (A) an annual fee; or

6841 (B) impact alleviation payments under contracts or determination orders provided for in
6842 Sections 11-13-305 and 11-13-306.

6843 (3) (a) An annual fee due a taxing jurisdiction for a particular year shall be calculated by
6844 multiplying the tax rate or rates of the jurisdiction for that year by the product obtained by
6845 multiplying the fee base or value determined in accordance with Subsection (4) for that year of
6846 the portion of the project located within the jurisdiction by the percentage of the project which
6847 is used to produce the capacity, service, or other benefit sold to the energy supplier or suppliers.

6848 (b) As used in this section, "tax rate," when applied in respect to a school district,
6849 includes any assessment to be made by the school district under Subsection (2) or Section
6850 ~~[63-51-6]~~ 63M-5-302.

6851 (c) There is to be credited against the annual fee due a taxing jurisdiction for each year,
6852 an amount equal to the debt service, if any, payable in that year by the project entity on bonds,
6853 the proceeds of which were used to provide public facilities and services for impact alleviation
6854 in the taxing jurisdiction in accordance with Sections 11-13-305 and 11-13-306.

6855 (d) The tax rate for the taxing jurisdiction for that year shall be computed so as to:

6856 (i) take into account the fee base or value of the percentage of the project located
6857 within the taxing jurisdiction determined in accordance with Subsection (4) used to produce the
6858 capacity, service, or other benefit sold to the supplier or suppliers; and

6859 (ii) reflect any credit to be given in that year.

6860 (4) (a) Except as otherwise provided in this section, the annual fees required by this
6861 section shall be paid, collected, and distributed to the taxing jurisdiction as if:

- 6862 (i) the annual fees were ad valorem property taxes; and
6863 (ii) the project were assessed at the same rate and upon the same measure of value as
6864 taxable property in the state.
- 6865 (b) (i) Notwithstanding Subsection (4)(a), for purposes of an annual fee required by this
6866 section, the fee base of a project may be determined in accordance with an agreement among:
6867 (A) the project entity; and
6868 (B) any county that:
6869 (I) is due an annual fee from the project entity; and
6870 (II) agrees to have the fee base of the project determined in accordance with the
6871 agreement described in this Subsection (4).
- 6872 (ii) The agreement described in Subsection (4)(b)(i):
6873 (A) shall specify each year for which the fee base determined by the agreement shall be
6874 used for purposes of an annual fee; and
6875 (B) may not modify any provision of this chapter except the method by which the fee
6876 base of a project is determined for purposes of an annual fee.
- 6877 (iii) For purposes of an annual fee imposed by a taxing jurisdiction within a county
6878 described in Subsection (4)(b)(i)(B), the fee base determined by the agreement described in
6879 Subsection (4)(b)(i) shall be used for purposes of an annual fee imposed by that taxing
6880 jurisdiction.
- 6881 (iv) (A) If there is not agreement as to the fee base of a portion of a project for any
6882 year, for purposes of an annual fee, the State Tax Commission shall determine the value of that
6883 portion of the project for which there is not an agreement:
6884 (I) for that year; and
6885 (II) using the same measure of value as is used for taxable property in the state.
6886 (B) The valuation required by Subsection (4)(b)(iv)(A) shall be made by the State Tax
6887 Commission in accordance with rules made by the State Tax Commission.
- 6888 (c) Payments of the annual fees shall be made from:
6889 (i) the proceeds of bonds issued for the project; and

6890 (ii) revenues derived by the project entity from the project.

6891 (d) (i) The contracts of the project entity with the purchasers of the capacity, service, or
6892 other benefits of the project whose tangible property is not exempted by Utah Constitution
6893 Article XIII, Section 3, from the payment of ad valorem property tax shall require each
6894 purchaser, whether or not located in the state, to pay, to the extent not otherwise provided for,
6895 its share, determined in accordance with the terms of the contract, of these fees.

6896 (ii) It is the responsibility of the project entity to enforce the obligations of the
6897 purchasers.

6898 (5) (a) The responsibility of the project entity to make payment of the annual fees is
6899 limited to the extent that there is legally available to the project entity, from bond proceeds or
6900 revenues, monies to make these payments, and the obligation to make payments of the annual
6901 fees is not otherwise a general obligation or liability of the project entity.

6902 (b) No tax lien may attach upon any property or money of the project entity by virtue of
6903 any failure to pay all or any part of an annual fee.

6904 (c) The project entity or any purchaser may contest the validity of an annual fee to the
6905 same extent as if the payment was a payment of the ad valorem property tax itself.

6906 (d) The payments of an annual fee shall be reduced to the extent that any contest is
6907 successful.

6908 (6) (a) The annual fee described in Subsection (1):

6909 (i) shall be paid by a public agency that:

6910 (A) is not a project entity; and

6911 (B) owns an interest in a facility providing additional project capacity if the interest is
6912 otherwise exempt from taxation pursuant to Utah Constitution, Article XIII, Section 3; and

6913 (ii) for a public agency described in Subsection (6)(a)(i), shall be calculated in
6914 accordance with Subsection (6)(b).

6915 (b) The annual fee required under Subsection (6)(a) shall be an amount equal to the tax
6916 rate or rates of the applicable taxing jurisdiction multiplied by the product of the following:

6917 (i) the fee base or value of the facility providing additional project capacity located

6918 within the jurisdiction;

6919 (ii) the percentage of the ownership interest of the public agency in the facility; and

6920 (iii) the portion, expressed as a percentage, of the public agency's ownership interest
6921 that is attributable to the capacity, service, or other benefit from the facility that is sold by the
6922 public agency to an energy supplier or suppliers whose tangible property is not exempted by
6923 Utah Constitution, Article XIII, Section 3, from the payment of ad valorem property tax.

6924 (c) A public agency paying the annual fee pursuant to Subsection (6)(a) shall have the
6925 obligations, credits, rights, and protections set forth in Subsections (1) through (5) with respect
6926 to its ownership interest as though it were a project entity.

6927 Section 110. Section **11-13-303** is amended to read:

6928 **11-13-303. Source of project entity's payment of sales and use tax -- Gross**
6929 **receipts taxes for facilities providing additional project capacity.**

6930 (1) A project entity is not exempt from sales and use taxes under Title 59, Chapter 12,
6931 Sales and Use Tax Act, to the extent provided in Subsection 59-12-104(2).

6932 (2) A project entity may make payments or prepayments of sales and use taxes, as
6933 provided in [~~Title 63, Chapter 5~~] Title 63M, Chapter 5, Resource Development, from the
6934 proceeds of revenue bonds issued under Section 11-13-218 or other revenues of the project
6935 entity.

6936 (3) (a) This Subsection (3) applies with respect to facilities providing additional project
6937 capacity.

6938 (b) (i) The in lieu excise tax imposed under Title 59, Chapter 8, Gross Receipts Tax on
6939 Certain Corporations Not Required to Pay Corporate Franchise or Income Tax Act, shall be
6940 imposed collectively on all gross receipts derived with respect to the ownership interests of all
6941 project entities and other public agencies in facilities providing additional project capacity as
6942 though all such ownership interests were held by a single project entity.

6943 (ii) The in lieu excise tax shall be calculated as though the gross receipts derived with
6944 respect to all such ownership interests were received by a single taxpayer that has no other
6945 gross receipts.

6946 (iii) The gross receipts attributable to such ownership interests shall consist solely of
6947 gross receipts that are expended by each project entity and other public agency holding an
6948 ownership interest in the facilities for the operation or maintenance of or ordinary repairs or
6949 replacements to the facilities.

6950 (iv) For purposes of calculating the in lieu excise tax, the determination of whether
6951 there is a tax rate and, if so, what the tax rate is shall be governed by Section 59-8-104, except
6952 that the \$10,000,000 figures in Section 59-8-104 indicating the amount of gross receipts that
6953 determine the applicable tax rate shall be replaced with \$5,000,000.

6954 (c) Each project entity and public agency owning an interest in the facilities providing
6955 additional project capacity shall be liable only for the portion of the gross receipts tax referred
6956 to in Subsection (3)(b) that is proportionate to its percentage ownership interest in the facilities
6957 and may not be liable for any other gross receipts taxes with respect to its percentage ownership
6958 interest in the facilities.

6959 (d) No project entity or other public agency that holds an ownership interest in the
6960 facilities may be subject to the taxes imposed under Title 59, Chapter 7, Corporate Franchise
6961 and Income Taxes, with respect to those facilities.

6962 (4) For purposes of calculating the gross receipts tax imposed on a project entity or
6963 other public agency under Title 59, Chapter 8, Gross Receipts Tax on Certain Corporations Not
6964 Required to Pay Corporate Franchise or Income Tax Act, or Subsection (3), gross receipts
6965 include only gross receipts from the first sale of capacity, services, or other benefits and do not
6966 include gross receipts from any subsequent sale, resale, or layoff of the capacity, services, or
6967 other benefits.

6968 Section 111. Section **11-17-20** is amended to read:

6969 **11-17-20. Power of the State Charter School Finance Authority.**

6970 (1) The State Charter School Finance Authority may exercise the powers granted to
6971 municipalities and counties by this chapter, subject to the same limitations as that imposed on a
6972 municipality or county under the chapter, except as provided by Title 53A, Chapter 20b, State
6973 Charter School Finance Authority Act.

6974 (2) As used in this chapter, "governing body" when applied to the State Charter School
6975 Finance Authority means the authority's governing board as described in Section 53A-20b-103.

6976 (3) Notwithstanding Section 11-17-15, a charter school that receives financing under
6977 this chapter is subject to [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code.

6978 Section 112. Section **11-36-201** is amended to read:

6979 **11-36-201. Impact fees -- Analysis -- Capital facilities plan -- Notice of plan --**
6980 **Summary -- Exemptions.**

6981 (1) (a) Each local political subdivision and private entity shall comply with the
6982 requirements of this chapter before establishing or modifying any impact fee.

6983 (b) A local political subdivision may not:

6984 (i) establish any new impact fees that are not authorized by this chapter; or

6985 (ii) impose or charge any other fees as a condition of development approval unless
6986 those fees are a reasonable charge for the service provided.

6987 (c) Notwithstanding any other requirements of this chapter, each local political
6988 subdivision shall ensure that each existing impact fee that is charged for any public facility not
6989 authorized by Subsection 11-36-102(12) is repealed by July 1, 1995.

6990 (d) (i) Existing impact fees for public facilities authorized in Subsection 11-36-102(12)
6991 that are charged by local political subdivisions need not comply with the requirements of this
6992 chapter until July 1, 1997.

6993 (ii) By July 1, 1997, each local political subdivision shall:

6994 (A) review any impact fees in existence as of the effective date of this act, and prepare
6995 and approve the analysis required by this section for each of those impact fees; and

6996 (B) ensure that the impact fees comply with the requirements of this chapter.

6997 (2) (a) Before imposing impact fees, each local political subdivision shall prepare a
6998 capital facilities plan.

6999 (b) (i) As used in this Subsection (2)(b):

7000 (A) (I) "Affected entity" means each county, municipality, local district under Title 17B,
7001 Limited Purpose Local Government Entities - Local Districts, special service district under Title

7002 17A, Chapter 2, Part 13, Utah Special Service District Act, school district, interlocal
7003 cooperation entity established under Chapter 13, Interlocal Cooperation Act, and specified
7004 public utility:

7005 (Aa) whose services or facilities are likely to require expansion or significant
7006 modification because of the facilities proposed in the proposed capital facilities plan; or

7007 (Bb) that has filed with the local political subdivision or private entity a copy of the
7008 general or long-range plan of the county, municipality, local district, special service district,
7009 school district, interlocal cooperation entity, or specified public utility.

7010 (II) "Affected entity" does not include the local political subdivision or private entity
7011 that is required under this Subsection (2) to provide notice.

7012 (B) "Specified public utility" means an electrical corporation, gas corporation, or
7013 telephone corporation, as those terms are defined in Section 54-2-1.

7014 (ii) Before preparing a capital facilities plan for facilities proposed on land located
7015 within a county of the first or second class, each local political subdivision and each private
7016 entity shall provide written notice, as provided in this Subsection (2)(b), of its intent to prepare
7017 a capital facilities plan.

7018 (iii) Each notice under Subsection (2)(b)(ii) shall:

7019 (A) indicate that the local political subdivision or private entity intends to prepare a
7020 capital facilities plan;

7021 (B) describe or provide a map of the geographic area where the proposed capital
7022 facilities will be located;

7023 (C) be sent to:

7024 (I) each county in whose unincorporated area and each municipality in whose
7025 boundaries is located the land on which the proposed facilities will be located;

7026 (II) each affected entity;

7027 (III) the Automated Geographic Reference Center created in Section 63F-1-506;

7028 (IV) the association of governments, established pursuant to an interlocal agreement
7029 under Title 11, Chapter 13, Interlocal Cooperation Act, in which the facilities are proposed to

7030 be located; and

7031 (V) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202;

7032 and

7033 (D) with respect to the notice to affected entities, invite the affected entities to provide
7034 information for the local political subdivision or private entity to consider in the process of
7035 preparing, adopting, and implementing a capital facilities plan concerning:

7036 (I) impacts that the facilities proposed in the capital facilities plan may have on the
7037 affected entity; and

7038 (II) facilities or uses of land that the affected entity is planning or considering that may
7039 conflict with the facilities proposed in the capital facilities plan.

7040 (c) The plan shall identify:

7041 (i) demands placed upon existing public facilities by new development activity; and

7042 (ii) the proposed means by which the local political subdivision will meet those
7043 demands.

7044 (d) Municipalities and counties need not prepare a separate capital facilities plan if the
7045 general plan required by Sections 10-9a-401 and 17-27a-401 contains the elements required by
7046 Subsection (2)(c).

7047 (e) (i) If a local political subdivision prepares an independent capital facilities plan rather
7048 than including a capital facilities element in the general plan, the local political subdivision shall,
7049 before adopting the capital facilities plan:

7050 (A) give public notice of the plan according to this Subsection (2)(e);

7051 (B) at least 14 days before the date of the public hearing:

7052 (I) make a copy of the plan, together with a summary designed to be understood by a
7053 lay person, available to the public; and

7054 (II) place a copy of the plan and summary in each public library within the local political
7055 subdivision; and

7056 (C) hold a public hearing to hear public comment on the plan.

7057 (ii) Municipalities shall comply with the notice and hearing requirements of, and, except

7058 as provided in Subsection 11-36-401(4)(f), receive the protections of Sections 10-9a-205 and
7059 10-9a-801 and Subsection 10-9a-502(2).

7060 (iii) Counties shall comply with the notice and hearing requirements of, and, except as
7061 provided in Subsection 11-36-401(4)(f), receive the protections of Sections 17-27a-205 and
7062 17-27a-801 and Subsection 17-27a-502(2).

7063 (iv) Local districts, special service districts, and private entities shall comply with the
7064 notice and hearing requirements of, and receive the protections of, Section 17B-1-111.

7065 (v) Nothing contained in this Subsection (2)(e) or in the subsections referenced in
7066 Subsections (2)(e)(ii) and (iii) may be construed to require involvement by a planning
7067 commission in the capital facilities planning process.

7068 (f) (i) Local political subdivisions with a population or serving a population of less than
7069 5,000 as of the last federal census need not comply with the capital facilities plan requirements
7070 of this part, but shall ensure that the impact fees imposed by them are based upon a reasonable
7071 plan.

7072 (ii) Subsection (2)(f)(i) does not apply to private entities.

7073 (3) In preparing the plan, each local political subdivision shall generally consider all
7074 revenue sources, including impact fees, to finance the impacts on system improvements.

7075 (4) A local political subdivision may only impose impact fees on development activities
7076 when its plan for financing system improvements establishes that impact fees are necessary to
7077 achieve an equitable allocation to the costs borne in the past and to be borne in the future, in
7078 comparison to the benefits already received and yet to be received.

7079 (5) (a) Each local political subdivision imposing impact fees shall prepare a written
7080 analysis of each impact fee that:

7081 (i) identifies the impact on system improvements required by the development activity;

7082 (ii) demonstrates how those impacts on system improvements are reasonably related to
7083 the development activity;

7084 (iii) estimates the proportionate share of the costs of impacts on system improvements
7085 that are reasonably related to the new development activity; and

7086 (iv) based upon those factors and the requirements of this chapter, identifies how the
7087 impact fee was calculated.

7088 (b) In analyzing whether or not the proportionate share of the costs of public facilities
7089 are reasonably related to the new development activity, the local political subdivision shall
7090 identify, if applicable:

7091 (i) the cost of existing public facilities;

7092 (ii) the manner of financing existing public facilities, such as user charges, special
7093 assessments, bonded indebtedness, general taxes, or federal grants;

7094 (iii) the relative extent to which the newly developed properties and the other properties
7095 in the municipality have already contributed to the cost of existing public facilities, by such
7096 means as user charges, special assessments, or payment from the proceeds of general taxes;

7097 (iv) the relative extent to which the newly developed properties and the other properties
7098 in the municipality will contribute to the cost of existing public facilities in the future;

7099 (v) the extent to which the newly developed properties are entitled to a credit because
7100 the municipality is requiring their developers or owners, by contractual arrangement or
7101 otherwise, to provide common facilities, inside or outside the proposed development, that have
7102 been provided by the municipality and financed through general taxation or other means, apart
7103 from user charges, in other parts of the municipality;

7104 (vi) extraordinary costs, if any, in servicing the newly developed properties; and

7105 (vii) the time-price differential inherent in fair comparisons of amounts paid at different
7106 times.

7107 (c) Each local political subdivision that prepares a written analysis under this Subsection
7108 (5) on or after July 1, 2000 shall also prepare a summary of the written analysis, designed to be
7109 understood by a lay person.

7110 (6) Each local political subdivision that adopts an impact fee enactment under Section
7111 11-36-202 on or after July 1, 2000 shall, at least 14 days before adopting the enactment, submit
7112 to each public library within the local political subdivision:

7113 (a) a copy of the written analysis required by Subsection (5)(a); and

7114 (b) a copy of the summary required by Subsection (5)(c).

7115 (7) Nothing in this chapter may be construed to repeal or otherwise eliminate any
7116 impact fee in effect on the effective date of this chapter that is pledged as a source of revenues
7117 to pay bonded indebtedness that was incurred before the effective date of this chapter.

7118 Section 113. Section **11-36-402** is amended to read:

7119 **11-36-402. Challenging an impact fee by arbitration -- Procedure -- Appeal --**
7120 **Costs.**

7121 (1) Each person or entity intending to challenge an impact fee under Subsection
7122 11-36-401(4)(c)(ii) shall file a written request for arbitration with the local political subdivision
7123 within the time limitation provided in Subsection 11-36-401(4)(b) for the applicable type of
7124 challenge.

7125 (2) If a person or entity files a written request for arbitration under Subsection (1), an
7126 arbitrator or arbitration panel shall be selected as follows:

7127 (a) the local political subdivision and the person or entity filing the request may agree
7128 on a single arbitrator within ten days after the day the request for arbitration is filed; or

7129 (b) if a single arbitrator is not agreed to in accordance with Subsection (2)(a), an
7130 arbitration panel shall be created with the following members:

7131 (i) each party shall select an arbitrator within 20 days after the date the request is filed;
7132 and

7133 (ii) the arbitrators selected under Subsection (2)(b)(i) shall select a third arbitrator.

7134 (3) The arbitration panel shall hold a hearing on the challenge within 30 days after the
7135 date:

7136 (a) the single arbitrator is agreed on under Subsection (2)(a); or

7137 (b) the two arbitrators are selected under Subsection (2)(b)(i).

7138 (4) The arbitrator or arbitration panel shall issue a decision in writing within ten days
7139 from the date the hearing under Subsection (3) is completed.

7140 (5) Except as provided in this section, each arbitration shall be governed by Title 78,
7141 Chapter 31a, Utah Uniform Arbitration Act.

- 7142 (6) The parties may agree to:
- 7143 (a) binding arbitration;
- 7144 (b) formal, nonbinding arbitration; or
- 7145 (c) informal, nonbinding arbitration.
- 7146 (7) If the parties agree in writing to binding arbitration:
- 7147 (a) the arbitration shall be binding;
- 7148 (b) the decision of the arbitration panel shall be final;
- 7149 (c) neither party may appeal the decision of the arbitration panel; and
- 7150 (d) notwithstanding Subsection (10), the person or entity challenging the impact fee
- 7151 may not also challenge the impact fee under Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
- 7152 (8) (a) Except as provided in Subsection (8)(b), if the parties agree to formal,
- 7153 nonbinding arbitration, the arbitration shall be governed by the provisions of [~~Title 63, Chapter~~
- 7154 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
- 7155 (b) For purposes of applying [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
- 7156 Administrative Procedures Act, to a formal, nonbinding arbitration under this section,
- 7157 notwithstanding Section [~~63-46b-20~~] 63G-4-502, "agency" means a local political subdivision.
- 7158 (9) (a) An appeal from a decision in an informal, nonbinding arbitration may be filed
- 7159 with the district court in which the local political subdivision is located.
- 7160 (b) Each appeal under Subsection (9)(a) shall be filed within 30 days after the date the
- 7161 arbitration panel issues a decision under Subsection (4).
- 7162 (c) The district court shall consider de novo each appeal filed under this Subsection (9).
- 7163 (d) Notwithstanding Subsection (10), a person or entity that files an appeal under this
- 7164 Subsection (9) may not also challenge the impact fee under Subsection 11-36-401(1), (4)(c)(i),
- 7165 or (4)(c)(iii).
- 7166 (10) (a) Except as provided in Subsections (7)(d) and (9)(d), this section may not be
- 7167 construed to prohibit a person or entity from challenging an impact fee as provided in
- 7168 Subsection 11-36-401(1), (4)(c)(i), or (4)(c)(iii).
- 7169 (b) The filing of a written request for arbitration within the required time in accordance

7170 with Subsection (1) tolls all time limitations under Section 11-36-401 until the date the
7171 arbitration panel issues a decision.

7172 (11) The person or entity filing a request for arbitration and the local political
7173 subdivision shall equally share all costs of an arbitration proceeding under this section.

7174 Section 114. Section **11-37-101** is amended to read:

7175 **11-37-101. Definition -- Procurement -- Use of recycled goods.**

7176 (1) "Local government entity" means:

7177 (a) municipalities, cities, and counties;

7178 (b) entities created under Title 26A, Chapter 1, Local Health Departments; and

7179 (c) political subdivisions created by cities or counties, including entities created under:

7180 (i) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act; and

7181 (ii) Title 11, Chapter 13, Interlocal Cooperation Act.

7182 (2) The procurement officer or other person responsible for purchasing supplies for
7183 each local government entity shall:

7184 (a) maintain for reference a copy of the current listing of recycled items available on
7185 state contract as issued by the chief procurement officer under Section [~~63-56-204~~] 63G-6-204;
7186 and

7187 (b) give recycled items consideration when inviting bids and purchasing supplies.

7188 Section 115. Section **11-38-102** is amended to read:

7189 **11-38-102. Definitions.**

7190 As used in this chapter:

7191 (1) "Affordable housing" means housing occupied or reserved for occupancy by
7192 households with a gross household income equal to or less than 80% of the median gross
7193 income of the applicable municipal or county statistical area for households of the same size.

7194 (2) "Agricultural land" has the same meaning as "land in agricultural use" under Section
7195 59-2-502.

7196 (3) "Brownfield sites" means abandoned, idled, or underused commercial or industrial
7197 land where expansion or redevelopment is complicated by real or perceived environmental

7198 contamination.

7199 (4) "Commission" means the Quality Growth Commission established in Section
7200 11-38-201.

7201 (5) "Fund" means the LeRay McAllister Critical Land Conservation Fund established in
7202 Section 11-38-301.

7203 (6) "Infill development" means residential, commercial, or industrial development on
7204 unused or underused land, excluding open land and agricultural land, within existing, otherwise
7205 developed urban areas.

7206 (7) "Local entity" means a county, city, or town.

7207 (8) "OPB" means the Governor's Office of Planning and Budget established under
7208 Section [~~63-38d-201~~] 63J-4-201.

7209 (9) (a) "Open land" means land that is:

7210 (i) preserved in or restored to a predominantly natural, open, and undeveloped
7211 condition; and

7212 (ii) used for:

7213 (A) wildlife habitat;

7214 (B) cultural or recreational use;

7215 (C) watershed protection; or

7216 (D) another use consistent with the preservation of the land in or restoration of the land
7217 to a predominantly natural, open, and undeveloped condition.

7218 (b) (i) "Open land" does not include land whose predominant use is as a developed
7219 facility for active recreational activities, including baseball, tennis, soccer, golf, or other sporting
7220 or similar activity.

7221 (ii) The condition of land does not change from a natural, open, and undeveloped
7222 condition because of the development or presence on the land of facilities, including trails,
7223 waterways, and grassy areas, that:

7224 (A) enhance the natural, scenic, or aesthetic qualities of the land; or

7225 (B) facilitate the public's access to or use of the land for the enjoyment of its natural,

7226 scenic, or aesthetic qualities and for compatible recreational activities.

7227 (10) "Surplus land" means real property owned by the Department of Administrative
7228 Services, the Department of Agriculture and Food, the Department of Natural Resources, or the
7229 Department of Transportation that the individual department determines not to be necessary for
7230 carrying out the mission of the department.

7231 Section 116. Section **11-38-303** is amended to read:

7232 **11-38-303. Commission expenses -- Division of Finance responsibilities --**
7233 **Investment of monies into the fund -- Interest to accrue to the fund.**

7234 (1) Commission expenses and the costs of administering loans from the fund, as
7235 provided in Subsection (2), shall be paid from the fund.

7236 (2) (a) The Division of Finance shall be responsible for the care, custody, safekeeping,
7237 collection, and accounting for loans issued by the commission as provided in Section [~~63-65-4~~]
7238 63B-1b-202.

7239 (b) The Division of Finance may charge to the fund the administrative costs incurred in
7240 discharging the responsibilities imposed by Subsection (2)(a).

7241 (3) The state treasurer shall invest all monies deposited into the fund, and all interest
7242 from investing the monies shall accrue to the fund.

7243 Section 117. Section **11-39-101** is amended to read:

7244 **11-39-101. Definitions.**

7245 As used in this chapter:

7246 (1) "Bid limit" means:

7247 (a) for a building improvement:

7248 (i) for the year 2003, \$40,000; and

7249 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
7250 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
7251 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
7252 year; and

7253 (b) for a public works project:

- 7254 (i) for the year 2003, \$125,000; and
- 7255 (ii) for each year after 2003, the amount of the bid limit for the previous year, plus an
- 7256 amount calculated by multiplying the amount of the bid limit for the previous year by the lesser
- 7257 of 3% or the actual percent change in the Consumer Price Index during the previous calendar
- 7258 year.
- 7259 (2) "Building improvement":
- 7260 (a) means the construction or repair of a public building or structure; and
- 7261 (b) does not include construction or repair at an international airport.
- 7262 (3) "Consumer Price Index" means the Consumer Price Index for All Urban Consumers
- 7263 as published by the Bureau of Labor Statistics of the United States Department of Labor.
- 7264 (4) "Design-build project":
- 7265 (a) means a building improvement or public works project costing over \$250,000 with
- 7266 respect to which both the design and construction are provided for in a single contract with a
- 7267 contractor or combination of contractors capable of providing design-build services; and
- 7268 (b) does not include a building improvement or public works project:
- 7269 (i) that is undertaken by a local entity under contract with a construction manager that
- 7270 guarantees the contract price and is at risk for any amount over the contract price; and
- 7271 (ii) each component of which is competitively bid.
- 7272 (5) "Design-build services" means the engineering, architectural, and other services
- 7273 necessary to formulate and implement a design-build project, including its actual construction.
- 7274 (6) "Emergency repairs" means a building improvement or public works project
- 7275 undertaken on an expedited basis to:
- 7276 (a) eliminate an imminent risk of damage to or loss of public or private property;
- 7277 (b) remedy a condition that poses an immediate physical danger; or
- 7278 (c) reduce a substantial, imminent risk of interruption of an essential public service.
- 7279 (7) "Governing body" means:
- 7280 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 7281 (b) for a local district, the board of trustees of the local district; and

- 7282 (c) for a special service district:
- 7283 (i) the legislative body of the county, city, or town that established the special service
- 7284 district, if no administrative control board has been appointed under Section 17A-2-1326; or
- 7285 (ii) the administrative control board of the special service district, if an administrative
- 7286 control board has been appointed under Section 17A-2-1326.
- 7287 (8) "Local district" has the same meaning as defined in Section 17B-1-102.
- 7288 (9) "Local entity" means a county, city, town, local district, or special service district.
- 7289 (10) "Lowest responsive responsible bidder" means a prime contractor who:
- 7290 (a) has submitted a bid in compliance with the invitation to bid and within the
- 7291 requirements of the plans and specifications for the building improvement or public works
- 7292 project;
- 7293 (b) is the lowest bidder that satisfies the local entity's criteria relating to financial
- 7294 strength, past performance, integrity, reliability, and other factors that the local entity uses to
- 7295 assess the ability of a bidder to perform fully and in good faith the contract requirements;
- 7296 (c) has furnished a bid bond or equivalent in money as a condition to the award of a
- 7297 prime contract; and
- 7298 (d) furnishes a payment and performance bond as required by law.
- 7299 (11) "Procurement code" means the provisions of [~~Title 63, Chapter 56~~] Title 63G,
- 7300 Chapter 6, Utah Procurement Code.
- 7301 (12) "Public works project":
- 7302 (a) means the construction of:
- 7303 (i) a park or recreational facility; or
- 7304 (ii) a pipeline, culvert, dam, canal, or other system for water, sewage, storm water, or
- 7305 flood control; and
- 7306 (b) does not include:
- 7307 (i) the replacement or repair of existing infrastructure on private property;
- 7308 (ii) construction commenced before June 1, 2003; and
- 7309 (iii) construction or repair at an international airport.

7310 (13) "Special service district" means a special service district under Title 17A, Chapter
7311 2, Part 13, Utah Special Service District Act.

7312 Section 118. Section **11-39-107** is amended to read:

7313 **11-39-107. Procurement code.**

7314 (1) This chapter may not be construed to:

7315 (a) prohibit a county legislative body from adopting the procedures of the procurement
7316 code; or

7317 (b) limit the application of the procurement code to a local district or special service
7318 district.

7319 (2) (a) In seeking bids and awarding a contract for a building improvement or public
7320 works project, a county legislative body may elect to follow the provisions of the procurement
7321 code, as the county legislative body considers appropriate under the circumstances, for
7322 specification preparation, source selection, or contract formation.

7323 (b) A county legislative body's election to adopt the procedures of the procurement
7324 code may not excuse the county from complying with the requirements to award a contract for
7325 work in excess of the bid limit and to publish notice of the intent to award.

7326 (c) An election under Subsection (2)(a) may be made on a case-by-case basis, unless the
7327 county has previously adopted the procurement code as permitted by Subsection [~~63-56-102~~]
7328 63G-6-104(3)(e).

7329 (d) The county legislative body shall:

7330 (i) make each election under Subsection (2)(a) in an open meeting; and

7331 (ii) specify in its action the portions of the procurement code to be followed.

7332 (3) If the estimated cost of the building improvement or public works project proposed
7333 by a local district or special service district exceeds the bid limit, the governing body of the local
7334 district or special service district may, if it determines to proceed with the building improvement
7335 or public works project, use the competitive procurement procedures of the procurement code
7336 in place of the comparable provisions of this chapter.

7337 Section 119. Section **11-42-205** is amended to read:

7338 **11-42-205. Unimproved property.**

7339 (1) A local entity may not designate an assessment area in which more than 75% of the
7340 property proposed to be assessed consists of unimproved property unless the local entity:

7341 (a) has obtained an appraisal of the unimproved property from an appraiser who is a
7342 member of the Appraisal Institute, verifying that the market value of the property, after
7343 completion of the proposed improvements, is at least three times the amount of the assessment
7344 proposed to be levied against the unimproved property;

7345 (b) has obtained from each owner of unimproved property:

7346 (i) financial information acceptable to the governing body demonstrating the owner's
7347 ability to pay the proposed assessment; or

7348 (ii) a financial institution's commitment securing, to the governing body's satisfaction,
7349 the owner's obligation to pay the proposed assessment; and

7350 (c) has prepared a development plan, approved by a qualified, independent third party,
7351 describing the plan of development and the financial feasibility of the plan, taking into account
7352 growth trends, absorption studies, and other demographic information applicable to the
7353 unimproved property.

7354 (2) Information that an owner provides to a local entity under Subsection (1)(b)(i) is
7355 not a record for purposes of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
7356 Access and Management Act.

7357 Section 120. Section **12-1-10** is amended to read:

7358 **12-1-10. Applications -- Fees.**

7359 (1) Each application for registration under this chapter shall be made on a form
7360 provided by the Division of Corporations and Commercial Code.

7361 (2) Each applicant shall pay to the Division of Corporations and Commercial Code an
7362 application fee determined under Section [~~63-38-3-2~~] 63J-1-303.

7363 Section 121. Section **13-1-2** is amended to read:

7364 **13-1-2. Creation and functions of department -- Divisions created -- Fees.**

7365 (1) (a) There is created the Department of Commerce.

7366 (b) The department shall execute and administer state laws regulating business activities
7367 and occupations affecting the public interest.

7368 (2) Within the department the following divisions are created:

7369 (a) the Division of Occupational and Professional Licensing;

7370 (b) the Division of Real Estate;

7371 (c) the Division of Securities;

7372 (d) the Division of Public Utilities;

7373 (e) the Division of Consumer Protection; and

7374 (f) the Division of Corporations and Commercial Code.

7375 (3) (a) Unless otherwise provided by statute, the department may adopt a schedule of
7376 fees assessed for services provided by the department by following the procedures and
7377 requirements of Section [~~63-38-3.2~~] 63J-1-303.

7378 (b) The department shall submit each fee established in this manner to the Legislature
7379 for its approval as part of the department's annual appropriations request.

7380 (c) (i) All fees collected by each division and by the department shall be deposited in a
7381 restricted account within the General Fund known as the Commerce Service Fund.

7382 (ii) At the end of each fiscal year, the director of the Division of Finance shall transfer
7383 into the General Fund any fee collections that are greater than the legislative appropriations
7384 from the Commerce Service Fund for that year.

7385 (d) The department may not charge or collect any fee nor expend monies from this fund
7386 without approval by the Legislature.

7387 Section 122. Section **13-1-8.5** is amended to read:

7388 **13-1-8.5. Procedures -- Adjudicative proceedings.**

7389 (1) The Department of Commerce and its divisions shall comply with the procedures
7390 and requirements of [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures
7391 Act, in their adjudicative proceedings.

7392 (2) The department may contract with other state agencies or departments to conduct
7393 hearings in its name or in the name of its divisions or agencies.

7394 Section 123. Section **13-1a-5** is amended to read:

7395 **13-1a-5. Authority of director.**

7396 The director has authority:

7397 (1) to make rules in accordance with [~~Title 63, Chapter 46a, the~~] Title 63G, Chapter 3,
7398 Utah Administrative Rulemaking Act, to administer the responsibilities of the division;

7399 (2) to investigate, upon complaint, the corporation and commercial code filings and
7400 compliance governed by the laws administered and enforced by the division; and

7401 (3) under the provisions of [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4, Utah
7402 Administrative Procedures Act, to take administrative action against persons in violation of the
7403 division rules and the laws administered by it, including the issuance of cease and desist orders.

7404 Section 124. Section **13-1a-6** is amended to read:

7405 **13-1a-6. Powers of Division of Corporations and Commercial Code -- Document**
7406 **retention.**

7407 (1) The Division of Corporations and Commercial Code shall have the power and
7408 authority reasonably necessary to enable it to efficiently administer the laws and rules for which
7409 it is responsible and to perform the duties imposed upon it by law.

7410 (2) The division has authority under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
7411 Administrative Rulemaking Act, to make rules and procedures for the processing, retention, and
7412 disposal of filed documents to efficiently utilize electronic and computerized document image
7413 storage and retrieval.

7414 (3) Notwithstanding the provisions of Section [~~63-2-905~~] 63A-12-105, original
7415 documents filed in the division offices shall not be considered property of the state if electronic
7416 image reproductions thereof which comply with the provisions of [~~Title 63, Chapter 2,~~] Title
7417 63G, Chapter 2, Government Records Access and Management Act, are retained by the
7418 division.

7419 Section 125. Section **13-1a-7** is amended to read:

7420 **13-1a-7. Hearing powers.**

7421 (1) The director, in accordance with [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4,

7422 Administrative Procedures Act, may hold or cause to be held administrative hearings regarding
7423 any matter affecting the division or the incorporation or registration activities of any business
7424 governed by the laws administered by the division.

7425 (2) The director or [~~his~~] the director's designee, for the purposes outlined in this chapter
7426 or any chapter administered by the division, may administer oaths, issue subpoenas, compel the
7427 attendance of witnesses, and compel the production of papers, books, accounts, documents, and
7428 evidence.

7429 Section 126. Section **13-1a-9** is amended to read:

7430 **13-1a-9. Fees of Division of Corporations and Commercial Code.**

7431 In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit
7432 Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, the
7433 Division of Corporations and Commercial Code shall receive and determine fees pursuant to
7434 Section [~~63-38-3.2~~] 63J-1-303 for filing articles of incorporation or amendments of insurance
7435 corporations, of canal or irrigation corporations organized for furnishing water to lands owned
7436 by the members thereof exclusively, or of water users' associations organized in conformity with
7437 the requirements of the United States under the Reclamation Act of June 17, 1902, and which
7438 are authorized to furnish water only to their stockholders. No license fee may be imposed on
7439 insurance corporations, canal or irrigation corporations organized for furnishing water to lands
7440 owned by the members thereof exclusively, or water users' associations organized in conformity
7441 with the requirements of the United States under the Reclamation Act of June 17, 1902, and
7442 which are authorized to furnish water only to the stockholders at the time any such corporation
7443 files its articles of incorporation, articles of amendment increasing the number of authorized
7444 shares, or articles of merger or consolidation, any provision of Title 16, Chapter 10a, Utah
7445 Revised Business Corporation Act, to the contrary notwithstanding.

7446 Section 127. Section **13-2-5** is amended to read:

7447 **13-2-5. Powers of director.**

7448 The director has authority to:

7449 (1) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

7450 Administrative Rulemaking Act, issue rules to administer and enforce the chapters listed in
7451 Section 13-2-1;

7452 (2) investigate the activities of any business governed by the laws administered and
7453 enforced by the division;

7454 (3) take administrative and judicial action against persons in violation of the division
7455 rules and the laws administered and enforced by it, including the issuance of cease and desist
7456 orders;

7457 (4) coordinate, cooperate, and assist with business and industry desiring or attempting
7458 to correct unfair business practices between competitors;

7459 (5) provide consumer information and education to the public and assist any
7460 organization providing such services; and

7461 (6) coordinate with, assist, and utilize the assistance of federal, state, and local agencies
7462 in the performance of [~~his~~] the director's duties and the protection of the public.

7463 Section 128. Section **13-2-6** is amended to read:

7464 **13-2-6. Enforcement powers.**

7465 (1) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
7466 Procedures Act, the division shall have authority to convene administrative hearings, issue cease
7467 and desist orders, and impose fines under all the chapters identified in Section 13-2-1.

7468 (2) Any person who intentionally violates a final cease and desist order entered by the
7469 division of which [~~he~~] the person has notice is guilty of a third degree felony.

7470 (3) If the division has reasonable cause to believe that any person is engaged in violating
7471 any chapter listed in Section 13-2-1, the division may promptly issue the alleged violator a
7472 citation signed by the division's director or [~~his~~] the director's designee.

7473 (a) Each citation shall be in writing and shall:

7474 (i) set forth with particularity the nature of the violation, including a reference to the
7475 statutory or administrative rule provision being violated;

7476 (ii) state that any request for review of the citation must be made in writing and be
7477 received by the division no more than ten days following issuance;

7478 (iii) state the consequences of failing to make a timely request for review; and
7479 (iv) state all other information required by Subsection [~~63-46-3~~] 63G-4-201(2).
7480 (b) In computing any time period prescribed by this section, the following days may not
7481 be included:
7482 (i) the day a citation is issued by the division;
7483 (ii) the day the division received a request for review of a citation;
7484 (iii) Saturdays and Sundays; and
7485 (iv) a legal holiday set forth in Subsection [~~63-13-2~~] 63G-1-301(1)(a).
7486 (c) If the recipient of a citation makes a timely request for review, within ten days of
7487 receiving the request, the division shall convene an adjudicative proceeding in accordance with
7488 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
7489 (d) (i) If the presiding officer finds that there is not substantial evidence that the
7490 recipient violated a chapter listed in Section 13-2-1 at the time the citation was issued, the
7491 citation may not become final, and the division shall immediately vacate the citation and
7492 promptly notify the recipient in writing.
7493 (ii) If the presiding officer finds there is substantial evidence that the recipient violated a
7494 chapter listed in Section 13-2-1 at the time the citation was issued, the citation shall become
7495 final and the division may enter a cease and desist order against the recipient.
7496 (e) A citation issued under this chapter may be personally served upon any person upon
7497 whom a summons may be served in accordance with the Utah Rules of Civil Procedure. A
7498 citation also may be served by first-class mail, postage prepaid.
7499 (f) If the recipient fails to make a timely request for review, the citation shall become
7500 the final order of the division. The period to contest the citation may be extended by the
7501 director for good cause shown.
7502 (g) If the chapter violated allows for an administrative fine, after a citation becomes
7503 final, the director may impose the administrative fine.
7504 (4) (a) A person violating a chapter identified in Section 13-2-1 is subject to the
7505 division's jurisdiction if:

7506 (i) the violation or attempted violation is committed either wholly or partly within the
7507 state;

7508 (ii) conduct committed outside the state constitutes an attempt to commit a violation
7509 within the state; or

7510 (iii) transactional resources located within the state are used by the offender to directly
7511 or indirectly facilitate a violation or attempted violation.

7512 (b) As used in this section, "transactional resources" means:

7513 (i) any mail drop or mail box, whether or not located on the premises of a United States
7514 Post Office;

7515 (ii) any telephone or facsimile transmission device;

7516 (iii) any internet connection by a resident or inhabitant of this state with either a resident
7517 or nonresident maintained internet site;

7518 (iv) any business office or private residence used for a business-related purpose;

7519 (v) any account with or services of a financial institution;

7520 (vi) the services of a common or private carrier; or

7521 (vii) the use of any city, county, or state asset or facility, including any road or highway.

7522 (5) The director or [~~his~~] the director's designee, for the purposes outlined in any chapter
7523 administered by the division, may administer oaths, issue subpoenas, compel the attendance of
7524 witnesses, and compel the production of papers, books, accounts, documents, and evidence.

7525 Section 129. Section **13-2-8** is amended to read:

7526 **13-2-8. Consumer Protection Education and Training Fund.**

7527 (1) There is created a restricted special revenue fund known as the "Consumer
7528 Protection Education and Training Fund."

7529 (2) (a) Unless otherwise provided by a chapter listed in Section 13-2-1, all money not
7530 distributed as consumer restitution that is received by the division from administrative fines and
7531 settlements, from criminal restitution, or from civil damages, forfeitures, penalties, and
7532 settlements when the division receives the monies on its own behalf and not in a representative
7533 capacity, shall be deposited into the fund.

- 7534 (b) Any portion of the fund may be maintained in an interest-bearing account.
- 7535 (c) All interest earned on fund monies shall be deposited into the fund.
- 7536 (3) Notwithstanding [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures
- 7537 Act, the division may use the fund with the approval of the executive director of the Department
- 7538 of Commerce in a manner consistent with the duties of the division under this chapter for:
- 7539 (a) consumer protection education for members of the public;
- 7540 (b) equipment for and training of division personnel;
- 7541 (c) publication of consumer protection brochures, laws, policy statements, or other
- 7542 material relevant to the division's enforcement efforts; and
- 7543 (d) investigation and litigation undertaken by the division.
- 7544 (4) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
- 7545 shall be transferred to the General Fund.
- 7546 Section 130. Section **13-2-9** is amended to read:
- 7547 **13-2-9. Internet -- Consumer education.**
- 7548 (1) The Division of Consumer Protection shall, subject to appropriation, contract with a
- 7549 person to make public service announcements advising consumers about the dangers of using
- 7550 the Internet, especially:
- 7551 (a) material harmful to minors;
- 7552 (b) steps a consumer may take to learn more about the dangers of using the Internet;
- 7553 (c) information about how a service provider can help a consumer learn more about the
- 7554 dangers of using the Internet, including the service provider's duties created by this bill; and
- 7555 (d) how a consumer can monitor the Internet usage of family members.
- 7556 (2) Monies appropriated under Subsection (1) shall be paid by the Division of
- 7557 Consumer Protection to a person only if:
- 7558 (a) the person is a nonprofit organization; and
- 7559 (b) the person agrees to spend private monies amounting to two times the amount of
- 7560 monies provided by the Division of Consumer Protection during each fiscal year in accordance
- 7561 with Subsection (1).

7562 (3) In administering any monies appropriated for use under this section, the Division of
7563 Consumer Protection shall comply with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah
7564 Procurement Code.

7565 Section 131. Section **13-14-104** is amended to read:

7566 **13-14-104. Powers and duties of the advisory board and the executive director.**

7567 (1) (a) Except as provided in Subsection 13-14-106(3), the advisory board shall make
7568 recommendations to the executive director on the administration and enforcement of this
7569 chapter, including adjudicative and rulemaking proceedings.

7570 (b) The executive director shall:

7571 (i) consider the advisory board's recommendations; and

7572 (ii) issue any final decision by the department.

7573 (2) The executive director, in consultation with the advisory board, shall make rules for
7574 the administration of this chapter in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
7575 3, Utah Administrative Rulemaking Act.

7576 (3) (a) An adjudicative proceeding under this chapter shall be conducted in accordance
7577 with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

7578 (b) In an adjudicative proceeding under this chapter, any order issued by the executive
7579 director:

7580 (i) shall comply with Section [~~63-46b-10~~] 63G-4-208, whether the proceeding is a
7581 formal or an informal adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter
7582 4, Administrative Procedures Act; and

7583 (ii) if the order modifies or rejects a finding of fact in a recommendation from the
7584 advisory board, shall be made on the basis of information learned from the executive director's:

7585 (A) personal attendance at the hearing; or

7586 (B) review of the record developed at the hearing.

7587 Section 132. Section **13-14-105** is amended to read:

7588 **13-14-105. Registration -- Fees.**

7589 (1) A franchisee or franchisor doing business in this state shall:

7590 (a) annually register or renew its registration with the department in a manner
7591 established by the department; and

7592 (b) pay an annual registration fee in an amount determined by the department in
7593 accordance with Sections 13-1-2 and [~~63-38-3.2~~] 63J-1-303.

7594 (2) The department shall register or renew the registration of a franchisee or franchisor
7595 if the franchisee or franchisor complies with this chapter and rules made by the department
7596 under this chapter.

7597 (3) A franchisee or franchisor registered under this section shall comply with this
7598 chapter and any rules made by the department under this chapter including any amendments to
7599 this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.

7600 (4) The fee imposed under Subsection (1)(b) shall be collected by the department and
7601 deposited into the Commerce Service Fund.

7602 (5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of
7603 a franchisor does not need to be registered under this section if the franchisor is registered under
7604 this section.

7605 Section 133. Section **13-14-106** is amended to read:

7606 **13-14-106. Administrative proceedings commenced by the agency.**

7607 (1) Except as provided in Subsection (3), after a hearing and after receipt of the
7608 advisory board's recommendation, if the executive director finds that a person has violated this
7609 chapter or any rule made under this chapter, the executive director may:

7610 (a) issue a cease and desist order; and

7611 (b) assess an administrative fine.

7612 (2) (a) In determining the amount and appropriateness of an administrative fine under
7613 Subsection (1), the executive director shall consider:

7614 (i) the gravity of the violation;

7615 (ii) any history of previous violations; and

7616 (iii) any attempt made by the person to retaliate against another person for seeking relief
7617 under this chapter or other federal or state law relating to the motor vehicle industry.

7618 (b) In addition to any other action permitted under Subsection (1), the department may
7619 file an action with a court seeking to enforce the executive director's order and pursue the
7620 executive director's assessment of a fine in an amount not to exceed \$5,000 for each day a
7621 person violates an order of the executive director.

7622 (3) (a) In addition to the grounds for issuing an order on an emergency basis listed in
7623 Subsection [~~63-46b-20~~] 63G-4-502(1), the executive director may issue an order on an
7624 emergency basis if the executive director determines that irreparable damage is likely to occur if
7625 immediate action is not taken.

7626 (b) In issuing an emergency order under Subsection (3)(a) the executive director shall
7627 comply with the requirements of Subsections [~~63-46b-20~~] 63G-4-502(2) and (3).

7628 Section 134. Section **13-14-107** is amended to read:

7629 **13-14-107. Administrative proceedings -- Request for agency action.**

7630 (1) (a) A person may commence an adjudicative proceeding in accordance with this
7631 chapter and [~~with Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act
7632 to:

7633 (i) remedy a violation of this chapter;
7634 (ii) obtain approval of an act regulated by this chapter; or
7635 (iii) obtain any determination that this chapter specifically authorizes that person to
7636 request.

7637 (b) A person shall commence an adjudicative proceeding by filing a request for agency
7638 action in accordance with Section [~~63-46b-3~~] 63G-4-201.

7639 (2) After receipt of the advisory board's recommendation, the executive director shall
7640 apportion in a fair and equitable manner between the parties any costs of the adjudicative
7641 proceeding, including reasonable [~~attorney's~~] attorney fees.

7642 Section 135. Section **13-15-4** is amended to read:

7643 **13-15-4. Information to be filed by seller -- Representations.**

7644 (1) Any seller of an assisted marketing plan shall file the following information with the
7645 division:

7646 (a) the name, address, and principal place of business of the seller, and the name,
7647 address, and principal place of business of the parent or holding company of the seller, if any,
7648 who is responsible for statements made by the seller;

7649 (b) all trademarks, trade names, service marks, or advertising or other commercial
7650 symbols that identify the products, equipment, supplies, or services to be offered, sold, or
7651 distributed by the prospective purchaser;

7652 (c) an individual detailed statement covering the past five years of the business
7653 experience of each of the seller's current directors and executive officers and an individual
7654 statement covering the same period for the seller and the seller's parent company, if any,
7655 including the length of time each:

7656 (i) has conducted a business of the type advertised or solicited for operation by a
7657 prospective purchaser;

7658 (ii) has offered or sold the assisted marketing plan; and

7659 (iii) has offered for sale or sold assisted marketing plans in other lines of business,
7660 together with a description of the other lines of business;

7661 (d) a statement of the total amount that must be paid by the purchaser to obtain or
7662 commence the business opportunity such as initial fees, deposits, down payments, prepaid rent,
7663 and equipment and inventory purchases; provided, that if all or part of these fees or deposits are
7664 returnable, the conditions under which they are returnable shall also be disclosed;

7665 (e) a complete statement of the actual services the seller will perform for the purchaser;

7666 (f) a complete statement of all oral, written, or visual representations that will be made
7667 to prospective purchasers about specific levels of potential sales, income, gross and net profits,
7668 or any other representations that suggest a specific level;

7669 (g) a complete description of the type and length of any training promised to
7670 prospective purchasers;

7671 (h) a complete description of any services promised to be performed by the seller in
7672 connection with the placement of the equipment, products, or supplies at any location from
7673 which they will be sold or used; and a complete description of those services together with any

7674 agreements that will be made by the seller with the owner or manager of the location where the
7675 purchaser's equipment, products, or supplies will be placed;

7676 (i) a statement that discloses any person identified in Subsection (1)(a) who:
7677 (i) has been convicted of a felony or misdemeanor or pleaded nolo contendere to a
7678 felony or misdemeanor charge if the felony or misdemeanor involved fraud, embezzlement,
7679 fraudulent conversion, or misappropriation of property;

7680 (ii) has been held liable or consented to the entry of a stipulated judgment in any civil
7681 action based upon fraud, embezzlement, fraudulent conversion, misappropriation of property, or
7682 the use of untrue or misleading representations in the sale or attempted sale of any real or
7683 personal property, or upon the use of any unfair, unlawful or deceptive business practice; or
7684 (iii) is subject to an injunction or restrictive order relating to business activity as the
7685 result of an action brought by a public agency;

7686 (j) a financial statement of the seller signed by one of the seller's officers, directors,
7687 trustees, or general or limited partners, under a declaration that certifies that to the signatory's
7688 knowledge and belief the information in the financial statement is true and accurate; a financial
7689 statement that is more than 13 months old is unacceptable;

7690 (k) a copy of the entire marketing plan contract;

7691 (l) the number of marketing plans sold to date, and the number of plans under
7692 negotiation;

7693 (m) geographical information including all states in which the seller's assisted marketing
7694 plans have been sold, and the number of plans in each such state;

7695 (n) the total number of marketing plans that were cancelled by the seller in the past 12
7696 months; and

7697 (o) the number of marketing plans that were voluntarily terminated by purchasers within
7698 the past 12 months and the total number of such voluntary terminations to date.

7699 (2) The seller of an assisted marketing plan filing information under Subsection (1) shall
7700 pay a fee as determined by the department in accordance with Section [~~63-38-3.2~~] 63J-1-303.

7701 (3) Before commencing business in this state, the seller of an assisted marketing plan

7702 shall file the information required under Subsection (1) and receive from the division proof of
7703 receipt of the filing.

7704 (4) A seller of an assisted marketing plan claiming an exemption from filing under this
7705 chapter shall file a notice of claim of exemption from filing with the division. A seller claiming
7706 an exemption from filing bears the burden of proving the exemption. The division shall collect a
7707 fee for filing a notice of claim of exemption, as determined by the department in accordance
7708 with Section [~~63-38-3.2~~] 63J-1-303.

7709 (5) A representation described in Subsection (1)(f) shall be relevant to the geographic
7710 market in which the business opportunity is to be located. When the statements or
7711 representations are made, a warning after the representation in not less than 12 point upper and
7712 lower case boldface type shall appear as follows:

7713 CAUTION

7714 No guarantee of earnings or ranges of earnings can be made. The number of purchasers
7715 who have earned through this business an amount in excess of the amount of their initial
7716 payment is at least _____ which represents _____% of the total number of purchasers of this
7717 business opportunity.

7718 Section 136. Section **13-15-4.5** is amended to read:

7719 **13-15-4.5. Notice of exemption filing.**

7720 (1) (a) Any franchise exempt from this chapter pursuant to Subsection
7721 13-15-2(1)(b)(iii) shall, prior to offering for sale or selling a franchise to be located in this state
7722 or to a resident of this state, file with the division a notice that the franchisor is in substantial
7723 compliance with the requirements of the Federal Trade Commission rule found at Title 16,
7724 Chapter I, Subchapter d, Trade Regulation Rules, Part 436, Disclosure Requirements and
7725 Prohibitions Concerning Franchising and Business Opportunity Ventures, together with a filing
7726 fee determined by the department pursuant to Section [~~63-38-3.2~~] 63J-1-303, not to exceed
7727 \$100.

7728 (b) The notice shall state:

7729 (i) the name of the applicant;

7730 (ii) the name of the franchise;

7731 (iii) the name under which the applicant intends to or does transact business, if different
7732 than the name of the franchise;

7733 (iv) the applicant's principal business address; and

7734 (v) the applicant's federal employer identification number.

7735 (2) (a) The initial exemption granted under this section is for a period of one year from
7736 the date of filing the notice.

7737 (b) The exemption may be renewed each year for an additional one-year period upon
7738 filing a notice for renewal and paying a renewal fee determined pursuant to Section [~~63-38-3.2~~
7739 63J-1-303], not to exceed \$100.

7740 (3) The division may make rules to implement this section.

7741 Section 137. Section **13-21-3** is amended to read:

7742 **13-21-3. Credit services organizations -- Prohibitions.**

7743 (1) A credit services organization, its salespersons, agents, and representatives, and
7744 independent contractors who sell or attempt to sell the services of a credit services organization
7745 may not do any of the following:

7746 (a) conduct any business regulated by this chapter without first:

7747 (i) securing a certificate of registration from the division; and

7748 (ii) unless exempted under Section 13-21-4, posting a bond, letter of credit, or
7749 certificate of deposit with the division in the amount of \$100,000;

7750 (b) make a false statement, or fail to state a material fact, in connection with an
7751 application for registration with the division;

7752 (c) charge or receive any money or other valuable consideration prior to full and
7753 complete performance of the services the credit services organization has agreed to perform for
7754 the buyer;

7755 (d) dispute or challenge, or assist a person in disputing or challenging an entry in a
7756 credit report prepared by a consumer reporting agency without a factual basis for believing and
7757 obtaining a written statement for each entry from the person stating that that person believes

7758 that the entry contains a material error or omission, outdated information, inaccurate
7759 information, or unverifiable information;

7760 (e) charge or receive any money or other valuable consideration solely for referral of
7761 the buyer to a retail seller who will or may extend credit to the buyer, if the credit that is or will
7762 be extended to the buyer is upon substantially the same terms as those available to the general
7763 public;

7764 (f) make, or counsel or advise any buyer to make, any statement that is untrue or
7765 misleading and that is known, or that by the exercise of reasonable care should be known, to be
7766 untrue or misleading, to a credit reporting agency or to any person who has extended credit to a
7767 buyer or to whom a buyer is applying for an extension of credit, with respect to a buyer's
7768 creditworthiness, credit standing, or credit capacity;

7769 (g) make or use any untrue or misleading representations in the offer or sale of the
7770 services of a credit services organization or engage, directly or indirectly, in any act, practice, or
7771 course of business that operates or would operate as fraud or deception upon any person in
7772 connection with the offer or sale of the services of a credit services organization; and

7773 (h) transact any business as a credit services organization, as defined in Section
7774 13-21-2, without first having registered with the division by paying an annual fee set pursuant to
7775 Section [~~63-38-3.2~~] 63J-1-303 and filing proof that it has obtained a bond or letter of credit as
7776 required by Subsection (1).

7777 (2) (a) A bond, letter of credit from a Utah depository, or certificate of deposit posted
7778 with the division shall be used to cover the losses of any person arising from a violation of this
7779 chapter by the posting credit services organization. A bond, letter of credit, or certificate of
7780 deposit may also be used to satisfy administrative fines and civil damages arising from any
7781 enforcement action against the posting credit service organization.

7782 (b) A bond, letter of credit, or certificate of deposit shall remain in force:

7783 (i) until replaced by a bond, letter of credit, or certificate of deposit of identical or
7784 superior coverage; or

7785 (ii) for one year after the credit servicing organization notifies the division in writing

7786 that it has ceased all activities regulated by this chapter.

7787 Section 138. Section **13-22-3** is amended to read:

7788 **13-22-3. Investigative and enforcement powers -- Education.**

7789 (1) The division may make any investigation it considers necessary to determine
7790 whether any person is violating, has violated, or is about to violate any provision of this chapter
7791 or any rule made or order issued under this chapter. As part of the investigation, the division
7792 may:

7793 (a) require a person to file a statement in writing;

7794 (b) administer oaths, subpoena witnesses and compel their attendance, take evidence,
7795 and examine under oath any person in connection with an investigation; and

7796 (c) require the production of any books, papers, documents, merchandise, or other
7797 material relevant to the investigation.

7798 (2) Whenever it appears to the director that substantial evidence exists that any person
7799 has engaged in, is engaging in, or is about to engage in any act or practice prohibited in this
7800 chapter or constituting a violation of this chapter or any rule made or order issued under this
7801 chapter, the director may do any of the following in addition to other specific duties under this
7802 chapter:

7803 (a) in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
7804 Procedures Act, the director may issue an order to cease and desist from engaging in the act or
7805 practice or from doing any act in furtherance of the activity; or

7806 (b) the director may bring an action in the appropriate district court of this state to
7807 enjoin the acts or practices constituting the violation or to enforce compliance with this chapter
7808 or any rule made or order issued under this chapter.

7809 (3) Whenever it appears to the director by a preponderance of the evidence that a
7810 person has engaged in or is engaging in any act or practice prohibited in this chapter or
7811 constituting a violation of this chapter or any rule made or order issued under this chapter, the
7812 director may assess an administrative fine of up to \$500 per violation up to \$10,000 for any
7813 series of violations arising out of the same operative facts.

7814 (4) Upon a proper showing, the court hearing an action brought under Subsection
7815 (2)(b) may:

- 7816 (a) issue an injunction;
- 7817 (b) enter a declaratory judgment;
- 7818 (c) appoint a receiver for the defendant or the defendant's assets;
- 7819 (d) order disgorgement of any money received in violation of this chapter;
- 7820 (e) order rescission of agreements violating this chapter;
- 7821 (f) impose a fine of not more than \$2,000 for each violation of this chapter; and
- 7822 (g) impose a civil penalty, or any other relief the court considers just.

7823 (5) (a) In assessing the amount of a fine or penalty under Subsection (3), (4)(f), or
7824 (4)(g), the director or court imposing the fine or penalty shall consider the gravity of the
7825 violation and the intent of the violator.

7826 (b) If it does not appear by a preponderance of the evidence that the violator acted in
7827 bad faith or with intent to harm the public, the director or court shall excuse payment of the fine
7828 or penalty.

7829 (6) The division may provide or contract to provide public education and voluntary
7830 education for applicants and registrants under this chapter. The education may be in the form of
7831 publications, advertisements, seminars, courses, or other appropriate means. The scope of the
7832 education may include:

- 7833 (a) the requirements, prohibitions, and regulated practices under this chapter;
- 7834 (b) suggestions for effective financial and organizational practices for charitable
7835 organizations;
- 7836 (c) charitable giving and solicitation;
- 7837 (d) potential problems with solicitations and fraudulent or deceptive practices; and
- 7838 (e) any other matter relevant to the subject of this chapter.

7839 Section 139. Section **13-22-6** is amended to read:

7840 **13-22-6. Application for registration.**

7841 (1) An applicant for registration or renewal of registration as a charitable organization

7842 shall:

7843 (a) pay an application fee as determined under Section [~~63-38-3.2~~] 63J-1-303; and

7844 (b) submit an application on a form approved by the division which shall include:

7845 (i) the organization's name, address, telephone number, facsimile number, if any, and the
7846 names and addresses of any organizations or persons controlled by, controlling, or affiliated
7847 with the applicant;

7848 (ii) the specific legal nature of the organization, that is, whether it is an individual, joint
7849 venture, partnership, limited liability company, corporation, association, or other entity;

7850 (iii) the names and residence addresses of the officers and directors of the organization;

7851 (iv) the name and address of the registered agent for service of process and a consent to
7852 service of process;

7853 (v) the purpose of the solicitation and use of the contributions to be solicited;

7854 (vi) the method by which the solicitation will be conducted and the projected length of
7855 time it is to be conducted;

7856 (vii) the anticipated expenses of the solicitation, including all commissions, costs of
7857 collection, salaries, and any other items;

7858 (viii) a statement of what percentage of the contributions collected as a result of the
7859 solicitation are projected to remain available for application to the charitable purposes declared
7860 in the application, including a satisfactory statement of the factual basis for the projected
7861 percentage;

7862 (ix) a statement of total contributions collected or received by the organization within
7863 the calendar year immediately preceding the date of the application, including a description of
7864 the expenditures made from or the use made of the contributions;

7865 (x) a copy of any written agreements with any professional fund raiser involved with the
7866 solicitation;

7867 (xi) disclosure of any injunction, judgment, or administrative order or conviction of any
7868 crime involving moral turpitude with respect to any officer, director, manager, operator, or
7869 principal of the organization;

7870 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party
7871 regarding the use of proceeds for the solicitation or fundraising;

7872 (xiii) a statement of whether or not the charity, or its parent foundation, will be using
7873 the services of a professional fund raiser or of a professional fund raising counsel or consultant;

7874 (xiv) if either the charity or its parent foundation will be using the services of a
7875 professional fund raiser or a professional fund raising counsel or consultant:

7876 (A) a copy of all agreements related to the services; and

7877 (B) an acknowledgment that fund raising in the state will not commence until both the
7878 charitable organization, its parent foundation, if any, and the professional fund raiser or
7879 professional fund raising counsel or consultant are registered and in compliance with this
7880 chapter; and

7881 (xv) any additional information the division may require by rule.

7882 (2) If any information contained in the application for registration becomes incorrect or
7883 incomplete, the applicant or registrant shall, within 30 days after the information becomes
7884 incorrect or incomplete, correct the application or file the complete information required by the
7885 division.

7886 (3) In addition to the registration fee, an organization failing to file a registration
7887 application or renewal by the due date or filing an incomplete registration application or renewal
7888 shall pay an additional fee of \$25 for each month or part of a month after the date on which the
7889 registration application or renewal were due to be filed.

7890 Section 140. Section **13-22-8** is amended to read:

7891 **13-22-8. Exemptions.**

7892 (1) Section 13-22-5 does not apply to:

7893 (a) a solicitation that an organization conducts among its own established and bona fide
7894 membership exclusively through the voluntarily donated efforts of other members or officers of
7895 the organization;

7896 (b) a bona fide religious, ecclesiastical, or denominational organization if:

7897 (i) the solicitation is made for a church, missionary, religious, or humanitarian purpose;

7898 and

7899 (ii) the organization is either:

7900 (A) a lawfully organized corporation, institution, society, church, or established physical

7901 place of worship, at which nonprofit religious services and activities are regularly conducted and

7902 carried on;

7903 (B) a bona fide religious group:

7904 (I) that does not maintain specific places of worship;

7905 (II) that is not subject to federal income tax; and

7906 (III) not required to file an IRS Form 990 under any circumstance; or

7907 (C) a separate group or corporation that is an integral part of an institution that is an

7908 income tax exempt organization under 26 U.S.C. Sec. 501(c)(3) and is not primarily supported

7909 by funds solicited outside its own membership or congregation;

7910 (c) a solicitation by a broadcast media owned or operated by an educational institution

7911 or governmental entity, or any entity organized solely for the support of that broadcast media;

7912 (d) except as provided in Subsection 13-22-21(1), a solicitation for the relief of any

7913 person sustaining a life-threatening illness or injury specified by name at the time of solicitation

7914 if the entire amount collected without any deduction is turned over to the named person;

7915 (e) a political party authorized to transact its affairs within this state and any candidate

7916 and campaign worker of the party if the content and manner of any solicitation make clear that

7917 the solicitation is for the benefit of the political party or candidate;

7918 (f) a political action committee or group soliciting funds relating to issues or candidates

7919 on the ballot if the committee or group is required to file financial information with a federal or

7920 state election commission;

7921 (g) any school accredited by the state, any accredited institution of higher learning, or

7922 club or parent, teacher, or student organization within and authorized by the school in support

7923 of the operations or extracurricular activities of the school;

7924 (h) a public or higher education foundation established under Title 53A or 53B;

7925 (i) a television station, radio station, or newspaper of general circulation that donates air

7926 time or print space for no consideration as part of a cooperative solicitation effort on behalf of a
7927 charitable organization, whether or not that organization is required to register under this
7928 chapter;

7929 (j) a volunteer fire department, rescue squad, or local civil defense organization whose
7930 financial oversight is under the control of a local governmental entity;

7931 (k) any governmental unit of any state or the United States; and

7932 (l) any corporation:

7933 (i) established by an act of the United States Congress; and

7934 (ii) that is required by federal law to submit an annual report:

7935 (A) on the activities of the corporation, including an itemized report of all receipts and
7936 expenditures of the corporation; and

7937 (B) to the United States Secretary of Defense to be:

7938 (I) audited; and

7939 (II) submitted to the United States Congress.

7940 (2) Any organization claiming an exemption under this section bears the burden of
7941 proving its eligibility for, or the applicability of, the exemption claimed.

7942 (3) Each organization exempt from registration pursuant to this section that makes a
7943 material change in its legal status, officers, address, or similar changes shall file a report
7944 informing the division of its current legal status, business address, business phone, officers, and
7945 primary contact person within 30 days of the change.

7946 (4) The division may by rule:

7947 (a) require organizations exempt from registration pursuant to this section to file a
7948 notice of claim of exemption;

7949 (b) prescribe the contents of the notice of claim; and

7950 (c) require a filing fee for the notice, as determined under Section [~~63-38-3.2~~]

7951 63J-1-303.

7952 Section 141. Section **13-22-9** is amended to read:

7953 **13-22-9. Professional fund raiser's or fund raising counsel's or consultant's**

7954 **permit.**

7955 (1) It is unlawful for any person or entity to act as a professional fund raiser or
7956 professional fund raising counsel or consultant, whether or not representing an organization
7957 exempt from registration under Section 13-22-8, without first obtaining a permit from the
7958 division by complying with all of the following application requirements:

7959 (a) pay an application fee as determined under Section [~~63-38-3.2~~] 63J-1-303; and

7960 (b) submit a written application, verified under oath, on a form approved by the division
7961 that includes:

7962 (i) the applicant's name, address, telephone number, facsimile number, if any;

7963 (ii) the name and address of any organization or person controlled by, controlling, or
7964 affiliated with the applicant;

7965 (iii) the applicant's business, occupation, or employment for the three-year period
7966 immediately preceding the date of the application;

7967 (iv) whether it is an individual, joint venture, partnership, limited liability company,
7968 corporation, association, or other entity;

7969 (v) the names and residence addresses of any officer or director of the applicant;

7970 (vi) the name and address of the registered agent for service of process and a consent to
7971 service of process;

7972 (vii) if a professional fund raiser:

7973 (A) the purpose of the solicitation and use of the contributions to be solicited;

7974 (B) the method by which the solicitation will be conducted and the projected length of
7975 time it is to be conducted;

7976 (C) the anticipated expenses of the solicitation, including all commissions, costs of
7977 collection, salaries, and any other items;

7978 (D) a statement of what percentage of the contributions collected as a result of the
7979 solicitation are projected to remain available to the charitable organization declared in the
7980 application, including a satisfactory statement of the factual basis for the projected percentage
7981 and projected anticipated revenues provided to the charitable organization, and if a flat fee is

7982 charged, documentation to support the reasonableness of the flat fee; and

7983 (E) a statement of total contributions collected or received by the professional fund
7984 raiser within the calendar year immediately preceding the date of the application, including a
7985 description of the expenditures made from or the use made of the contributions;

7986 (viii) if a professional fund raising counsel or consultant:

7987 (A) the purpose of the plan, management, advise, counsel or preparation of materials
7988 for, or respect to the solicitation and use of the contributions solicited;

7989 (B) the method by which the plan, management, advise, counsel, or preparation of
7990 materials for, or respect to the solicitation will be organized or coordinated and the projected
7991 length of time of the solicitation;

7992 (C) the anticipated expenses of the plan, management, advise, counsel, or preparation
7993 of materials for, or respect to the solicitation, including all commissions, costs of collection,
7994 salaries, and any other items;

7995 (D) a statement of total fees to be earned or received from the charitable organization
7996 declared in the application, and what percentage of the contributions collected as a result of the
7997 plan, management, advise, counsel, or preparation of materials for, or respect to the solicitation
7998 are projected after deducting the total fees to be earned or received remain available to the
7999 charitable organization declared in the application, including a satisfactory statement of the
8000 factual basis for the projected percentage and projected anticipated revenues provided to the
8001 charitable organization, and if a flat fee is charged, documentation to support the reasonableness
8002 of such flat fee; and

8003 (E) a statement of total net fees earned or received within the calendar year immediately
8004 preceding the date of the application, including a description of the expenditures made from or
8005 the use of the net earned or received fees in the planning, management, advising, counseling, or
8006 preparation of materials for, or respect to the solicitation and use of the contributions solicited
8007 for the charitable organization;

8008 (ix) disclosure of any injunction, judgment, or administrative order against the applicant
8009 or the applicant's conviction of any crime involving moral turpitude;

8010 (x) a copy of any written agreements with any charitable organization;

8011 (xi) the disclosure of any injunction, judgment, or administrative order or conviction of

8012 any crime involving moral turpitude with respect to any officer, director, manager, operator, or

8013 principal of the applicant;

8014 (xii) a copy of all agreements to which the applicant is, or proposes to be, a party

8015 regarding the use of proceeds;

8016 (xiii) an acknowledgment that fund raising in the state will not commence until both the

8017 professional fund raiser or professional fund raising counsel or consultant and the charity, its

8018 parent foundation, if any, are registered and in compliance with this chapter; and

8019 (xiv) any additional information the division may require by rule.

8020 (2) If any information contained in the application for a permit becomes incorrect or

8021 incomplete, the applicant or registrant shall, within 30 days after the information becomes

8022 incorrect or incomplete, correct the application or file the complete information required by the

8023 division.

8024 (3) In addition to the permit fee, an applicant failing to file a permit application or

8025 renewal by the due date or filing an incomplete permit application or renewal shall pay an

8026 additional fee of \$25 for each month or part of a month after the date on which the permit

8027 application or renewal were due to be filed.

8028 Section 142. Section **13-22-12** is amended to read:

8029 **13-22-12. Grounds for denial, suspension, or revocation.**

8030 (1) The director may, in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,

8031 Administrative Procedures Act, issue an order to deny, suspend, or revoke an application,

8032 registration, permit, or information card, upon a finding that the order is in the public interest

8033 and that:

8034 (a) the application for registration or renewal is incomplete or misleading in any

8035 material respect;

8036 (b) the applicant or registrant or any officer, director, agent, or employee of the

8037 applicant or registrant has:

- 8038 (i) violated this chapter or committed any of the prohibited acts and practices described
8039 in this chapter;
- 8040 (ii) been enjoined by any court, or is the subject of an administrative order issued in this
8041 or another state, if the injunction or order includes a finding or admission of fraud, breach of
8042 fiduciary duty, material misrepresentation, or if the injunction or order was based on a finding of
8043 lack of integrity, truthfulness, or mental competence of the applicant;
- 8044 (iii) been convicted of a crime involving moral turpitude;
- 8045 (iv) obtained or attempted to obtain a registration or a permit by misrepresentation;
- 8046 (v) materially misrepresented or caused to be misrepresented the purpose and manner in
8047 which contributed funds and property will be used in connection with any solicitation;
- 8048 (vi) caused or allowed any paid solicitor to violate any rule made or order issued under
8049 this chapter by the division;
- 8050 (vii) failed to take corrective action with its solicitors who have violated this chapter or
8051 committed any of the prohibited acts and practices of this chapter;
- 8052 (viii) used, or attempted to use a name that either is deceptively similar to a name used
8053 by an existing registered or exempt charitable organization, or appears reasonably likely to
8054 cause confusion of names;
- 8055 (ix) failed to timely file with the division any report required in this chapter or by rules
8056 made under this chapter; or
- 8057 (x) failed to pay a fine imposed by the division in accordance with Section 13-22-3; or
- 8058 (c) the applicant for registration or renewal has no charitable purpose.
- 8059 (2) The director may, in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
8060 Administrative Procedures Act, issue an order to revoke or suspend a claim of exemption filed
8061 under Subsection 13-22-8(4), upon a finding that the order is in the public interest and that:
- 8062 (a) the notice of claim of exemption is incomplete or false or misleading in any material
8063 respect; or
- 8064 (b) any provision of this chapter, or any rule made or order issued by the division under
8065 this chapter has been violated in connection with a charitable solicitation by any exempt

8066 organization.

8067 Section 143. Section **13-23-5** is amended to read:

8068 **13-23-5. Registration -- Bond, letter of credit, or certificate of deposit required --**

8069 **Penalties.**

8070 (1) (a) (i) It is unlawful for any health spa facility to operate in this state unless the
8071 facility is registered with the division.

8072 (ii) Registration is effective for one year. If the health spa facility renews its
8073 registration, the registration shall be renewed at least 30 days prior to its expiration.

8074 (iii) The division shall provide by rule for the form, content, application process, and
8075 renewal process of the registration.

8076 (b) Each health spa registering in this state shall designate a registered agent for
8077 receiving service of process. The registered agent shall be reasonably available from 8 a.m. until
8078 5 p.m. during normal working days.

8079 (c) The division shall charge and collect a fee for registration under guidelines provided
8080 in Section [~~63-38-3.2~~] 63J-1-303.

8081 (d) If an applicant fails to file a registration application or renewal by the due date, or
8082 files an incomplete registration application or renewal, the applicant shall pay a fee of \$25 for
8083 each month or part of a month after the date on which the registration application or renewal
8084 were due to be filed, in addition to the registration fee described in Subsection (1)(c).

8085 (2) (a) Each health spa shall obtain and maintain:

8086 (i) a performance bond issued by a surety authorized to transact surety business in this
8087 state;

8088 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
8089 business in this state; or

8090 (iii) a certificate of deposit.

8091 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for
8092 the benefit of any consumer who incurs damages as the result of:

8093 (i) the health spa's violation of this chapter; or

8094 (ii) the health spa's going out of business or relocating and failing to offer an alternate
8095 location within five miles.

8096 (c) (i) The division may recover from the bond, letter of credit, or certificate of deposit
8097 the costs of collecting and distributing funds under this section, up to 10% of the face value of
8098 the bond, letter of credit, or certificate of deposit but only if the consumers have fully recovered
8099 their damages first.

8100 (ii) The total liability of the issuer of the bond, letter of credit, or certificate of deposit
8101 may not exceed the amount of the bond, letter of credit, or certificate of deposit.

8102 (iii) The health spa shall maintain a bond, letter of credit, or certificate of deposit in
8103 force for one year after it notifies the division in writing that it has ceased all activities regulated
8104 by this chapter.

8105 (d) A health spa providing services at more than one location shall comply with the
8106 requirements of Subsection (2)(a) for each separate location.

8107 (e) The division may impose a fine against a health spa that fails to comply with the
8108 requirements of Subsection (2)(a) of up to \$100 per day that the health spa remains out of
8109 compliance. All penalties received shall be deposited into the Consumer Protection Education
8110 and Training Fund created in Section 13-2-8.

8111 (3) (a) The minimum principal amount of the bond, letter of credit, or certificate of
8112 credit required under Subsection (2) shall be based on the number of unexpired contracts for
8113 health spa services to which the health spa is a party, in accordance with the following schedule:

| 8114 Principal Amount of 8115 Bond, Letter of Credit, 8116 or Certificate of Deposit | Number of Contracts |
|--|---------------------|
| 8117 \$15,000 | 500 or fewer |
| 8118 35,000 | 501 to 1,500 |
| 8119 50,000 | 1,500 to 3,000 |
| 8120 75,000 | 3,001 or more |

8121 (b) A health spa that is not exempt under Section 13-23-6 shall comply with Subsection

8122 (3)(a) with respect to all of the health spa's unexpired contracts for health spa services,
8123 regardless of whether a portion of those contracts satisfy the criteria in Section 13-23-6.

8124 (4) Each health spa shall obtain the bond, letter of credit, or certificate of deposit and
8125 furnish a certified copy of the bond, letter of credit, or certificate of deposit to the division prior
8126 to selling, offering or attempting to sell, soliciting the sale of, or becoming a party to any
8127 contract to provide health spa services. A health spa is considered to be in compliance with this
8128 section only if the proof provided to the division shows that the bond, letter of credit, or
8129 certificate of credit is current.

8130 (5) Each health spa shall:

8131 (a) maintain accurate records of the bond, letter of credit, or certificate of credit and of
8132 any payments made, due, or to become due to the issuer; and

8133 (b) open the records to inspection by the division at any time during normal business
8134 hours.

8135 (6) If a health spa changes ownership, ceases operation, discontinues facilities, or
8136 relocates and fails to offer an alternate location within five miles within 30 days after its closing,
8137 the health spa is subject to the requirements of this section as if it were a new health spa coming
8138 into being at the time the health spa changed ownership. The former owner may not release,
8139 cancel, or terminate the owner's liability under any bond, letter of credit, or certificate of
8140 deposit previously filed with the division, unless:

8141 (a) the new owner has filed a new bond, letter of credit, or certificate of deposit for the
8142 benefit of consumers covered under the previous owner's bond, letter of credit, or certificate of
8143 deposit; or

8144 (b) the former owner has refunded all unearned payments to consumers.

8145 (7) If a health spa ceases operation or relocates and fails to offer an alternative location
8146 within five miles, the health spa shall provide the division with 45 days prior notice.

8147 Section 144. Section **13-25a-109** is amended to read:

8148 **13-25a-109. No-call database.**

8149 (1) (a) In accordance with Subsection (1)(b), the division shall establish and provide for

8150 the operation of a no-call database to compile a list of telephone numbers of persons who have
8151 provided notice of the person's objection to receiving an unsolicited telephone call.

8152 (b) The no-call database described in Subsection (1)(a) shall consist of the Utah
8153 telephone numbers contained in the national "do-not-call" registry established and maintained by
8154 the Federal Trade Commission pursuant to 16 C.F.R. 310.4(b)(1)(iii)(B).

8155 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
8156 Administrative Rulemaking Act, the division may adopt rules to:

8157 (a) define the improper use of the no-call database;

8158 (b) define administrative fines for the improper use of the no-call database, which may
8159 not be greater than those imposed for a violation of the national "do-not-call" registry described
8160 in Subsection (1)(b); and

8161 (c) define administrative fines against a person that registers another person to the
8162 no-call database without that person's consent.

8163 (3) Information contained in the no-call database maintained under this section shall be
8164 classified as private under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
8165 Access and Management Act, and shall be used only for purposes of:

8166 (a) compliance with this chapter; or

8167 (b) a proceeding or action to enforce this chapter.

8168 Section 145. Section **13-26-3** is amended to read:

8169 **13-26-3. Registration and bond required.**

8170 (1) (a) Unless exempt under Section 13-26-4, each telephone soliciting business shall
8171 register annually with the division before engaging in telephone solicitations if:

8172 (i) the telephone soliciting business engages in telephone solicitations that:

8173 (A) originate in Utah; or

8174 (B) are received in Utah; or

8175 (ii) the telephone soliciting business conducts any business operations in Utah.

8176 (b) The registration form shall designate an agent residing in this state who is

8177 authorized by the telephone soliciting business to receive service of process in any action

8178 brought by this state or a resident of this state.

8179 (c) If a telephone soliciting business fails to designate an agent to receive service or fails
8180 to appoint a successor to the agent:

8181 (i) the business' application for an initial or renewal registration shall be denied; and

8182 (ii) any current registration shall be suspended until an agent is designated.

8183 (2) The division may impose an annual registration fee set pursuant to Section

8184 [~~63-38-3.2~~] 63J-1-303.

8185 (3) (a) Each telephone soliciting business engaging in telephone solicitation or sales in
8186 this state shall obtain and maintain the following security:

8187 (i) a performance bond issued by a surety authorized to transact surety business in this
8188 state;

8189 (ii) an irrevocable letter of credit issued by a financial institution authorized to do
8190 business in this state; or

8191 (iii) a certificate of deposit held in this state in a depository institution regulated by the
8192 Department of Financial Institutions.

8193 (b) The bond, letter of credit, or certificate of deposit shall be payable to the division for
8194 the benefit of any consumer who incurs damages as the result of any telephone solicitation or
8195 sales violation of this chapter.

8196 (c) The division may recover from the bond, letter of credit, or certificate of deposit
8197 investigative costs, attorneys' fees, and other costs of collecting and distributing funds under this
8198 section and the costs of promoting consumer education, but only if the consumer has first
8199 recovered full damages.

8200 (d) A telephone soliciting business shall keep a bond, certificate of deposit, or letter of
8201 credit in force for one year after it notifies the division in writing that it has ceased all activities
8202 regulated by this chapter.

8203 (e) The amount to be posted in the form of a bond, irrevocable letter of credit, or
8204 certificate of deposit shall be:

8205 (i) \$25,000 if:

8206 (A) neither the telephone soliciting business nor any affiliated person has violated this
8207 chapter within three years preceding the date of the application; and

8208 (B) the telephone soliciting business has fewer than ten employees;

8209 (ii) \$50,000 if:

8210 (A) neither the telephone soliciting business nor any affiliated person has violated this
8211 chapter within three years preceding the date of the application; and

8212 (B) the telephone soliciting business has ten or more employees; or

8213 (iii) \$75,000 if the telephone soliciting business or any affiliated person has violated this
8214 chapter within three years preceding the date of the application.

8215 (f) For purposes of Subsection (3)(e) an "affiliated person" means a contractor,
8216 director, employee, officer, owner, or partner of the telephone soliciting business.

8217 (4) The division may establish by rule the registration requirements for telephone
8218 soliciting businesses under the terms of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
8219 Administrative Rulemaking Act. An administrative proceeding conducted by the division under
8220 this chapter shall comply with the requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
8221 Administrative Procedures Act.

8222 (5) The division director may revoke a registration under this section for any violation
8223 of this chapter.

8224 Section 146. Section **13-32a-106.5** is amended to read:

8225 **13-32a-106.5. Confidentiality of pawn and purchase transactions.**

8226 (1) All pawn and purchase transaction records delivered to a local law enforcement
8227 official or transmitted to the central database pursuant to Section 13-32a-106 are protected
8228 records under Section [~~63-2-304~~] 63G-2-305. These records may be used only by law
8229 enforcement officials and the division and only for the law enforcement and administrative
8230 enforcement purposes of:

8231 (a) investigating possible criminal conduct involving the property delivered to the
8232 pawnbroker in a pawn or purchase transaction;

8233 (b) investigating a pawnbroker's possible violation of the record keeping or reporting

8234 requirements of this chapter when the local law enforcement official, based on a review of the
8235 records and information received, has reason to believe that a violation has occurred;

8236 (c) responding to an inquiry from a person claiming ownership of described property by
8237 searching the database to determine if property matching the description has been delivered to a
8238 pawnbroker by another person in a pawn or purchase transaction and if so, obtaining from the
8239 database:

8240 (i) a description of the property;

8241 (ii) the name and address of the pawnbroker who received the property; and

8242 (iii) the name, address, and date of birth of the conveying person; and

8243 (d) take enforcement action under Section 13-2-5 against a pawnbroker.

8244 (2) (a) A person may not knowingly and intentionally use, release, publish, or otherwise
8245 make available to any person or entity any information obtained from the database for any
8246 purpose other than those specified in Subsection (1).

8247 (b) Each separate violation of this Subsection (2) is subject to a civil penalty not to
8248 exceed \$250.

8249 Section 147. Section **13-32a-111** is amended to read:

8250 **13-32a-111. Fees to fund training and central database.**

8251 (1) On and after January 1, 2005, each pawnshop or secondhand merchandise dealer in
8252 operation shall annually pay \$250 to the division, to be deposited in the account.

8253 (2) On and after January 1, 2005, each law enforcement agency that participates in the
8254 use of the database shall annually pay to the division a fee of \$2 per sworn law enforcement
8255 officer who is employed by the agency as of January 1 of that year. The fee shall be deposited
8256 in the account.

8257 (3) The fees under Subsections (1) and (2) shall be paid to the account annually on or
8258 before January 30.

8259 (4) (a) If a law enforcement agency outside Utah requests access to the central
8260 database, the requesting agency shall pay a yearly fee of \$750 for the fiscal year beginning July
8261 1, 2006, which shall be deposited in the account.

8262 (b) The board may establish the fee amount for fiscal years beginning on and after July
8263 1, 2007 under Section [~~63-38-3.2~~] 63J-1-303.

8264 Section 148. Section **13-34-104** is amended to read:

8265 **13-34-104. Prohibited acts -- Exceptions -- Responsibilities of proprietary schools.**

8266 (1) Except as provided in this chapter, a proprietary school may not offer, sell, or award
8267 a degree or any other type of educational credential unless the student has enrolled in and
8268 successfully completed a prescribed program of study as outlined in the proprietary school's
8269 catalogue.

8270 (2) The prohibition described in Subsection (1) does not apply to:

8271 (a) honorary credentials clearly designated as such on the front side of a diploma; or

8272 (b) certificates and awards by a proprietary school that offers other educational
8273 credentials requiring enrollment in and successful completion of a prescribed program of study
8274 in compliance with the requirements of this chapter.

8275 (3) A proprietary school must provide bona fide instruction through student-faculty
8276 interaction.

8277 (4) A proprietary school may not enroll a student in a program unless the proprietary
8278 school has made a good-faith determination that the student has the ability to benefit from the
8279 program.

8280 (5) A proprietary school may not make or cause to be made any oral, written, or visual
8281 statement or representation that an institution described in Subsection 13-34-107(2)(a)(ii)
8282 knows or should know to be:

8283 (a) false;

8284 (b) deceptive;

8285 (c) substantially inaccurate; or

8286 (d) misleading.

8287 (6) The division shall establish standards and criteria by rule made in accordance with
8288 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the
8289 following:

- 8290 (a) the awarding of educational credentials;
- 8291 (b) bona fide instruction through student-faculty interaction; and
- 8292 (c) determination of the ability of a student to benefit from a program.

8293 Section 149. Section **13-34-107** is amended to read:

8294 **13-34-107. Advertising, recruiting, or operating a proprietary school -- Required**
8295 **registration statement or exemption -- Certificate of registration -- Registration does not**
8296 **constitute endorsement.**

8297 (1) (a) Unless an institution complies with Subsection (1)(b), the institution may not do
8298 any of the following in this state:

- 8299 (i) advertise a proprietary school;
- 8300 (ii) recruit students for a proprietary school; or
- 8301 (iii) operate a proprietary school.

8302 (b) An institution may not engage in an activity described in Subsection (1)(a) unless
8303 the institution:

8304 (i) (A) files with the division a registration statement relating to the proprietary school
8305 that is in compliance with:

- 8306 (I) applicable rules made by the division; and
- 8307 (II) the requirements set forth in this chapter; and
- 8308 (B) obtains a certificate of registration; or
- 8309 (ii) establishes an exemption with the division.

8310 (2) (a) The registration statement or exemption described in Subsection (1) shall be:

8311 (i) verified by the oath or affirmation of the owner or a responsible officer of the
8312 proprietary school filing the registration statement or exemption; and

8313 (ii) include a certification as to whether any of the following has violated laws, federal
8314 regulations, or state rules as determined in a criminal, civil, or administrative proceeding:

- 8315 (A) the proprietary school; or
- 8316 (B) any of the following with respect to the proprietary school:
 - 8317 (I) an owner;

- 8318 (II) an officer;
- 8319 (III) a director;
- 8320 (IV) an administrator;
- 8321 (V) a faculty member;
- 8322 (VI) a staff member; or
- 8323 (VII) an agent.
- 8324 (b) The proprietary school shall:
 - 8325 (i) make available, upon request, a copy of the registration statement, showing the date
 - 8326 upon which it was filed; and
 - 8327 (ii) display the certificate of registration obtained from the division in a conspicuous
 - 8328 place on the proprietary school's premises.
- 8329 (3) (a) A registration statement and the accompanying certificate of registration are not
- 8330 transferable.
- 8331 (b) In the event of a change in ownership or in the governing body of the proprietary
- 8332 school, the new owner or governing body, within 30 days after the change, shall file a new
- 8333 registration statement.
- 8334 (4) Except as provided in Subsection (3)(b), a registration statement or a renewal
- 8335 statement and the accompanying certificate of registration are effective for a period of two years
- 8336 after the date of filing and issuance.
- 8337 (5) (a) The division shall establish a graduated fee structure for the filing of registration
- 8338 statements by various classifications of institutions pursuant to Section [~~63-38-3.2~~] 63J-1-303.
- 8339 (b) Fees are not refundable.
- 8340 (c) Fees shall be deposited in the Commerce Service Fund pursuant to Section 13-1-2.
- 8341 (6) (a) Each proprietary school shall:
 - 8342 (i) demonstrate fiscal responsibility at the time the proprietary school files its
 - 8343 registration statement as prescribed by rules of the division; and
 - 8344 (ii) provide evidence to the division that the proprietary school:
 - 8345 (A) is financially sound; and

8346 (B) can reasonably fulfill commitments to and obligations the proprietary school has
8347 incurred with students and creditors.

8348 (b) A proprietary school applying for an initial certificate of registration to operate shall
8349 prepare and submit financial statements and supporting documentation as requested by the
8350 division.

8351 (c) A proprietary school applying for renewal of a certificate of registration to operate
8352 or renewal under new ownership must provide audited financial statements.

8353 (d) The division may require evidence of financial status at other times when it is in the
8354 best interest of students to require such information.

8355 (7) (a) A proprietary school applying for an initial certificate of registration or seeking
8356 renewal shall provide in a form approved by the division:

- 8357 (i) a surety bond;
- 8358 (ii) a certificate of deposit; or
- 8359 (iii) an irrevocable letter of credit.

8360 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
8361 Administrative Rulemaking Act, the division may make rules providing for:

8362 (i) the amount of the bond, certificate, or letter of credit required under Subsection
8363 (7)(a), not to exceed in amount the anticipated tuition and fees to be received by the proprietary
8364 school during a school year;

8365 (ii) the execution of the bond, certificate, or letter of credit;

8366 (iii) cancellation of the bond, certificate, or letter of credit during or at the end of the
8367 registration term; and

8368 (iv) any other matters related to providing the bond, certificate, or letter of credit
8369 required under Subsection (7)(a).

8370 (c) The bond, certificate, or letter of credit shall be used as a protection against loss of
8371 advanced tuition, book fees, supply fees, or equipment fees:

8372 (i) collected by the proprietary school from a student or a student's parent, guardian, or
8373 sponsor prior to the completion of the program or courses for which it was collected; or

8374 (ii) for which the student is liable.

8375 (8) (a) Except as provided in Section 13-34-113, the division may not refuse acceptance
8376 of a registration statement that is:

8377 (i) tendered for filing and, based on a preliminary review, appears to be in compliance
8378 with Subsections (1), (2), and (6); and

8379 (ii) accompanied by:

8380 (A) the required fee; and

8381 (B) one of the following required by Subsection (7):

8382 (I) surety bond;

8383 (II) certificate of deposit; or

8384 (III) irrevocable letter of credit.

8385 (b) A certificate of registration is effective upon the date of issuance.

8386 (c) The responsibility of compliance is upon the proprietary school and not upon the
8387 division.

8388 (d) (i) If it appears to the division that a registration statement on file may not be in
8389 compliance with this chapter, the division may advise the proprietary school as to the apparent
8390 deficiencies.

8391 (ii) After a proprietary school has been notified of a deficiency under Subsection
8392 (8)(d)(i), a new or amended statement may be presented for filing by the proprietary school,
8393 accompanied by:

8394 (A) the required fee; and

8395 (B) one of the following required by Subsection (7):

8396 (I) surety bond;

8397 (II) certificate of deposit; or

8398 (III) irrevocable letter of credit.

8399 (9) The following does not constitute and may not be represented by any person to
8400 constitute, an endorsement or approval of the proprietary school by either the division or the
8401 state:

- 8402 (a) an acceptance of:
- 8403 (i) a registration statement;
- 8404 (ii) a renewal statement; or
- 8405 (iii) an amended registration statement; and
- 8406 (b) issuance of a certificate of registration.

8407 Section 150. Section **13-34-113** is amended to read:

8408 **13-34-113. Denial, suspension, or revocation of a certificate of registration --**
8409 **Limitations.**

8410 (1) In accordance with Chapter 2, Division of Consumer Protection, and [~~Title 63,~~
8411 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, the division may initiate
8412 proceedings to deny, suspend, or revoke a certificate of registration to operate a proprietary
8413 school under this chapter if:

- 8414 (a) the division finds that the order is in the public interest; and
- 8415 (b) (i) the registration statement or renewal statement is incomplete, false, or misleading
8416 in any respect;

8417 (ii) the division determines that the educational credential associated with the
8418 proprietary school represents the undertaking or completion of educational achievement that has
8419 not been undertaken and earned; or

8420 (iii) the proprietary school or an individual described in Subsection
8421 13-34-107(2)(a)(ii)(B) has:

- 8422 (A) violated any provision of:
 - 8423 (I) this chapter;
 - 8424 (II) the rules made by the division pursuant to this chapter; or
 - 8425 (III) a commitment made in a registration statement for a certificate of registration to
8426 operate the proprietary school;
- 8427 (B) caused or allowed to occur a violation of any provision of:
 - 8428 (I) this chapter;
 - 8429 (II) the rules made by the division pursuant to this chapter; or

8430 (III) a commitment made in a registration statement for a certificate of registration to
8431 operate the proprietary school;

8432 (C) been enjoined by any court, or is the subject of an administrative or judicial order
8433 issued in this or another state, if the injunction or order:

8434 (I) includes a finding or admission of fraud, breach of fiduciary duty, or material
8435 misrepresentation; or

8436 (II) was based on a finding of lack of integrity, truthfulness, or mental competence;

8437 (D) been convicted of a crime involving moral turpitude;

8438 (E) obtained or attempted to obtain a certificate of registration under this chapter by
8439 misrepresentation;

8440 (F) failed to timely file with the division any report required by:

8441 (I) this chapter; or

8442 (II) rules made by the division pursuant to this chapter;

8443 (G) failed to furnish information requested by the division; or

8444 (H) failed to pay an administrative fine imposed by the division in accordance with this
8445 chapter.

8446 (2) Division staff may place reasonable limits upon a proprietary school's continued
8447 certificate of registration to operate if:

8448 (a) there are serious concerns about the proprietary school's ability to provide the
8449 training in the manner approved by the division; and

8450 (b) limitation is warranted to protect the students' interests.

8451 (3) The division may:

8452 (a) conduct a criminal background check on an individual described in Subsection
8453 13-34-107(2)(a)(ii)(B); and

8454 (b) require a proprietary school to provide to the division any information necessary to
8455 conduct a criminal background check on an individual described in Subsection
8456 13-34-107(2)(a)(ii)(B).

8457 Section 151. Section **13-35-104** is amended to read:

8458 **13-35-104. Powers and duties of the advisory board and the executive director.**

8459 (1) (a) Except as provided in Subsection 13-35-106(3), the advisory board shall make
8460 recommendations to the executive director on the administration and enforcement of this
8461 chapter, including adjudicative and rulemaking proceedings.

8462 (b) The executive director shall:

8463 (i) consider the advisory board's recommendations; and

8464 (ii) issue any final decision by the department.

8465 (2) The executive director, in consultation with the advisory board, shall make rules for
8466 the administration of this chapter in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
8467 3, Utah Administrative Rulemaking Act.

8468 (3) (a) An adjudicative proceeding under this chapter shall be conducted in accordance
8469 with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

8470 (b) In an adjudicative proceeding under this chapter, any order issued by the executive
8471 director:

8472 (i) shall comply with Section [~~63-46b-10~~] 63G-4-208, whether the proceeding is a
8473 formal or an informal adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter
8474 4, Administrative Procedures Act; and

8475 (ii) if the order modifies or rejects a finding of fact in a recommendation from the
8476 advisory board, shall be made on the basis of information learned from the executive director's:

8477 (A) personal attendance at the hearing; or

8478 (B) review of the record developed at the hearing.

8479 Section 152. Section **13-35-105** is amended to read:

8480 **13-35-105. Registration -- Fees.**

8481 (1) A franchisee or franchisor doing business in this state shall:

8482 (a) annually register or renew its registration with the department in a manner
8483 established by the department; and

8484 (b) pay an annual registration fee in an amount determined by the department in
8485 accordance with Sections 13-1-2 and [~~63-38-3.2~~] 63J-1-303.

8486 (2) The department shall register or renew the registration of a franchisee or franchisor
8487 if the franchisee or franchisor complies with this chapter and rules made by the department
8488 under this chapter.

8489 (3) A franchisee or franchisor registered under this section shall comply with this
8490 chapter and any rules made by the department under this chapter including any amendments to
8491 this chapter or the rules made after a franchisee or franchisor enter into a franchise agreement.

8492 (4) The fee imposed under Subsection (1)(b) shall be collected by the department and
8493 deposited into the Commerce Service Fund.

8494 (5) Notwithstanding Subsection (1), an agent, officer, or field or area representative of
8495 a franchisor does not need to be registered under this section if the franchisor is registered under
8496 this section.

8497 Section 153. Section **13-35-106** is amended to read:

8498 **13-35-106. Administrative proceedings commenced by the agency.**

8499 (1) Except as provided in Subsection (3), after a hearing and after receipt of the
8500 advisory board's recommendation, if the executive director finds that a person has violated this
8501 chapter or any rule made under this chapter, the executive director may:

- 8502 (a) issue a cease and desist order; and
- 8503 (b) assess an administrative fine.

8504 (2) (a) In determining the amount and appropriateness of an administrative fine under
8505 Subsection (1), the executive director shall consider:

- 8506 (i) the gravity of the violation;
- 8507 (ii) any history of previous violations; and
- 8508 (iii) any attempt made by the person to retaliate against another person for seeking relief
8509 under this chapter or other federal or state law relating to the motor vehicle industry.

8510 (b) In addition to any other action permitted under Subsection (1), the department may
8511 file an action with a court seeking to enforce the executive director's order and pursue the
8512 executive director's assessment of a fine in an amount not to exceed \$5,000 for each day a
8513 person violates an order of the executive director.

8514 (3) (a) In addition to the grounds for issuing an order on an emergency basis listed in
8515 Subsection [~~63-46b-20~~] 63G-4-502(1), the executive director may issue an order on an
8516 emergency basis if the executive director determines that irreparable damage is likely to occur if
8517 immediate action is not taken.

8518 (b) In issuing an emergency order under Subsection (3)(a), the executive director shall
8519 comply with the requirements of Subsections [~~63-46b-20~~] 63G-4-502(2) and (3).

8520 Section 154. Section **13-35-107** is amended to read:

8521 **13-35-107. Administrative proceedings -- Request for agency action.**

8522 (1) (a) A person may commence an adjudicative proceeding in accordance with this
8523 chapter and with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act,
8524 to:

8525 (i) remedy a violation of this chapter;

8526 (ii) obtain approval of an act regulated by this chapter; or

8527 (iii) obtain any determination that this chapter specifically authorizes that person to
8528 request.

8529 (b) A person shall commence an adjudicative proceeding by filing a request for agency
8530 action in accordance with Section [~~63-46b-3~~] 63G-4-201.

8531 (2) After receipt of the advisory board's recommendation, the executive director shall
8532 apportion in a fair and equitable manner between the parties any costs of the adjudicative
8533 proceeding, including reasonable [~~attorney's~~] attorney fees.

8534 Section 155. Section **13-39-201** is amended to read:

8535 **13-39-201. Establishment of child protection registry.**

8536 (1) The division shall:

8537 (a) establish and operate a child protection registry to compile and secure a list of
8538 contact points the division has received pursuant to this section; or

8539 (b) contract with a third party to establish and secure the registry described in
8540 Subsection (1)(a).

8541 (2) (a) The division shall implement the registry described in this section with respect to

8542 email addresses beginning on July 1, 2005.

8543 (b) The division shall implement the registry described in this section with respect to
8544 instant message identities.

8545 (c) The division shall implement the registry described in this section with respect to
8546 mobile or other telephone numbers.

8547 (3) (a) A person may register a contact point with the division pursuant to rules
8548 established by the division under Subsection 13-39-203(1) if:

8549 (i) the contact point belongs to a minor;

8550 (ii) a minor has access to the contact point; or

8551 (iii) the contact point is used in a household in which a minor is present.

8552 (b) A school or other institution that primarily serves minors may register its domain
8553 name with the division pursuant to rules made by the division under Subsection 13-39-203(1).

8554 (c) The division shall provide a disclosure in a confirmation message sent to a person
8555 who registers a contact point under this section that reads: "No solution is completely secure.
8556 The most effective way to protect children on the Internet is to supervise use and review all
8557 email messages and other correspondence. Under law, theft of a contact point from the Child
8558 Protection Registry is a second degree felony. While every attempt will be made to secure the
8559 Child Protection Registry, registrants and their guardians should be aware that their contact
8560 points may be at a greater risk of being misappropriated by marketers who choose to disobey
8561 the law."

8562 (4) A person desiring to send a communication described in Subsection 13-39-202(1) to
8563 a contact point or domain shall:

8564 (a) use a mechanism established by rule made by the division under Subsection
8565 13-39-203(2); and

8566 (b) pay a fee for use of the mechanism described in Subsection (4)(a) determined by the
8567 division in accordance with Section [~~63-38-3.2~~] 63J-1-303.

8568 (5) The division may implement a program to offer discounted compliance fees to
8569 senders who meet enhanced security conditions established and verified by the division, the third

8570 party registry provider, or a designee.

8571 (6) The contents of the registry, and any complaint filed about a sender who violates
8572 this chapter, are not subject to public disclosure under [~~Title 63, Chapter 2~~] Title 63G, Chapter
8573 2, Government Records Access and Management Act.

8574 (7) The state shall promote the registry on the state's official Internet website.

8575 Section 156. Section **13-39-203** is amended to read:

8576 **13-39-203. Rulemaking authority.**

8577 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
8578 Rulemaking Act, the division shall make rules to establish procedures under which:

8579 (1) (a) a person may register a contact point with the division under Section 13-39-201,
8580 including:

8581 (i) the information necessary to register an instant message identity; and

8582 (ii) for purposes of Subsection 13-39-102(1)(b)(iv), an electronic address that is similar
8583 to a contact point listed in Subsection 13-39-102(1); and

8584 (b) a school or other institution that primarily serves minors may register its domain
8585 name with the division under Section 13-39-201;

8586 (2) the division shall:

8587 (a) provide a mechanism under which a person described in Subsection 13-39-201(4)
8588 may verify compliance with the registry to remove registered contact points from the person's
8589 communications; and

8590 (b) establish the mechanism described in Subsection (2)(a) in a manner that protects the
8591 privacy and security of a contact point registered with the division under Section 13-39-201;
8592 and

8593 (3) the division may:

8594 (a) implement a program offering discounted fees to a sender who meets enhanced
8595 security conditions established and verified by the division, the third party registry provider, or a
8596 designee; and

8597 (b) allow the third party registry provider to assist in any public or industry awareness

8598 campaign promoting the registry.

8599 Section 157. Section **13-41-102** is amended to read:

8600 **13-41-102. Definitions.**

8601 For purposes of this chapter:

8602 (1) "Consumer" means a person who acquires a good or service for consumption.

8603 (2) "Division" means the Division of Consumer Protection.

8604 (3) (a) "Emergency territory" means the geographical area:

8605 (i) for which there has been a state of emergency declared; and

8606 (ii) that is directly affected by the events giving rise to a state of emergency.

8607 (b) "Emergency territory" does not include a geographical area that is affected by the

8608 events giving rise to a state of emergency only by economic market forces.

8609 (4) "Excessive price" means a price for a good or service that exceeds by more than

8610 10% the average price charged by that person for that good or service in the 30-day period

8611 immediately preceding the day on which the state of emergency is declared.

8612 (5) "Good" means any personal property displayed, held, or offered for sale by a

8613 merchant that is necessary for consumption or use as a direct result of events giving rise to a

8614 state of emergency.

8615 (6) "Retail" means the level of distribution where a good or service is typically sold

8616 directly, or otherwise provided, to a member of the public who is an end-user and does not

8617 resell the good or service.

8618 (7) "Service" means any activity that is performed in whole or in part for the purpose of

8619 financial gain including, but not limited to, personal service, professional service, rental, leasing,

8620 or licensing for use that is necessary for consumption or use as a direct result of events giving

8621 rise to a state of emergency.

8622 (8) "State of emergency" means a declaration of:

8623 (a) an emergency or major disaster by the President of the United States of America; or

8624 (b) a state of emergency by the governor under Section [~~63-5a-5~~] 63K-4-203.

8625 Section 158. Section **13-42-105** is amended to read:

8626 **13-42-105. Application for registration -- Form, fee, and accompanying**
8627 **documents.**

8628 (1) An application for registration as a provider must be in a form prescribed by the
8629 administrator.

8630 (2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an
8631 application for registration as a provider must be accompanied by:

8632 (a) the fee established by the administrator in accordance with Section [~~63-38-3.2~~]
8633 63J-1-303;

8634 (b) the bond required by Section 13-42-113;

8635 (c) identification of all trust accounts required by Section 13-42-122 and an irrevocable
8636 consent authorizing the administrator to review and examine the trust accounts;

8637 (d) evidence of insurance in the amount of \$250,000:

8638 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the
8639 applicant or a director, employee, or agent of the applicant;

8640 (ii) issued by an insurance company authorized to do business in this state and rated at
8641 least A by a nationally recognized rating organization;

8642 (iii) with no deductible;

8643 (iv) payable to the applicant, the individuals who have agreements with the applicant,
8644 and this state, as their interests may appear; and

8645 (v) not subject to cancellation by the applicant without the approval of the
8646 administrator;

8647 (e) a record consenting to the jurisdiction of this state containing:

8648 (i) the name, business address, and other contact information of its registered agent in
8649 this state for purposes of service of process; or

8650 (ii) the appointment of the administrator as agent of the provider for purposes of service
8651 of process; and

8652 (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,
8653 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal

8654 Revenue Code, 26 U.S.C. Section 501.

8655 Section 159. Section **13-42-109** is amended to read:

8656 **13-42-109. Certification of registration -- Issuance or denial.**

8657 (1) Except as otherwise provided in Subsections (2) and (3), the administrator shall
8658 issue a certificate of registration as a provider to a person that complies with Sections
8659 13-42-105 and 13-42-106.

8660 (2) The administrator may deny registration if:

8661 (a) the application contains information that is materially erroneous or incomplete;

8662 (b) an officer, director, or owner of the applicant has been convicted of a crime, or
8663 suffered a civil judgment, involving dishonesty or the violation of state or federal securities
8664 laws;

8665 (c) the applicant or any of its officers, directors, or owners has defaulted in the payment
8666 of money collected for others; or

8667 (d) the administrator finds that the financial responsibility, experience, character, or
8668 general fitness of the applicant or its owners, directors, employees, or agents does not warrant
8669 belief that the business will be operated in compliance with this chapter.

8670 (3) The administrator shall deny registration if:

8671 (a) the application is not accompanied by the fee established by the administrator in
8672 accordance with Section [~~63-38-3.2~~] 63J-1-303; or

8673 (b) with respect to an applicant that is organized as a not-for-profit entity or has
8674 obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501, the
8675 applicant's board of directors is not independent of the applicant's employees and agents.

8676 (4) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
8677 board of directors is not independent for purposes of Subsection (3) if more than one-fourth of
8678 its members:

8679 (a) are affiliates of the applicant, as defined in Subsection 13-42-102(2)(a) or
8680 13-42-102(2)(b)(i), (ii), (iv), (v), (vi), or (vii); or

8681 (b) after the date ten years before first becoming a director of the applicant, were

8682 employed by or directors of a person that received from the applicant more than \$25,000 in
8683 either the current year or the preceding year.

8684 Section 160. Section **13-42-110** is amended to read:

8685 **13-42-110. Certificate of registration -- Timing.**

8686 (1) The administrator shall approve or deny an initial registration as a provider within
8687 120 days after an application is filed. In connection with a request pursuant to Subsection
8688 13-42-106(19) for additional information, the administrator may extend the 120-day period for
8689 not more than 60 days. Within seven days after denying an application, the administrator, in a
8690 record, shall inform the applicant of the reasons for the denial.

8691 (2) If the administrator denies an application for registration as a provider or does not
8692 act on an application within the time prescribed in Subsection (1), the applicant may appeal and
8693 request a hearing pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
8694 Procedures Act.

8695 (3) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a
8696 provider is valid for one year.

8697 Section 161. Section **13-42-111** is amended to read:

8698 **13-42-111. Renewal of registration.**

8699 (1) A provider must obtain a renewal of its registration annually.

8700 (2) An application for renewal of registration as a provider must be in a form prescribed
8701 by the administrator, signed under penalty of perjury, and:

8702 (a) be filed no fewer than 30 and no more than 60 days before the registration expires;

8703 (b) be accompanied by the fee established by the administrator in accordance with

8704 Section [~~63-38-3-2~~] 63J-1-303 and the bond required by Section 13-42-113;

8705 (c) contain the matter required for initial registration as a provider by Subsections
8706 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct
8707 audits, for the applicant's fiscal year immediately preceding the application;

8708 (d) disclose any changes in the information contained in the applicant's application for
8709 registration or its immediately previous application for renewal, as applicable;

8710 (e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the
8711 highest daily balance in the trust account required by Section 13-42-122 during the six-month
8712 period immediately preceding the application:

8713 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the
8714 applicant or a director, employee, or agent of the applicant;

8715 (ii) issued by an insurance company authorized to do business in this state and rated at
8716 least A by a nationally recognized rating organization;

8717 (iii) with no deductible;

8718 (iv) payable to the applicant, the individuals who have agreements with the applicant,
8719 and this state, as their interests may appear; and

8720 (v) not subject to cancellation by the applicant without the approval of the
8721 administrator;

8722 (f) disclose the total amount of money received by the applicant pursuant to plans
8723 during the preceding 12 months from or on behalf of individuals who reside in this state and the
8724 total amount of money distributed to creditors of those individuals during that period;

8725 (g) disclose, to the best of the applicant's knowledge, the gross amount of money
8726 accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals
8727 who reside in this state and with whom the applicant has agreements; and

8728 (h) provide any other information that the administrator reasonably requires to perform
8729 the administrator's duties under this section.

8730 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)
8731 and the addresses required by Subsection 13-42-106(4), the administrator shall make the
8732 information in an application for renewal of registration as a provider available to the public.

8733 (4) If a registered provider files a timely and complete application for renewal of
8734 registration, the registration remains effective until the administrator, in a record, notifies the
8735 applicant of a denial and states the reasons for the denial.

8736 (5) If the administrator denies an application for renewal of registration as a provider,
8737 the applicant, within 30 days after receiving notice of the denial, may appeal and request a

8738 hearing pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
8739 Act. Subject to Section 13-42-134, while the appeal is pending the applicant shall continue to
8740 provide debt-management services to individuals with whom it has agreements. If the denial is
8741 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall
8742 continue to provide debt-management services to individuals with whom it has agreements until,
8743 with the approval of the administrator, it transfers the agreements to another registered provider
8744 or returns to the individuals all unexpended money that is under the applicant's control.

8745 Section 162. Section **13-42-112** is amended to read:

8746 **13-42-112. Registration in another state -- Rulemaking.**

8747 (1) (a) Subject to rules made by the administrator, if a provider holds a license or
8748 certificate of registration in another state authorizing it to provide debt-management services,
8749 the provider may submit a copy of that license or certificate and the application for it instead of
8750 an application in the form prescribed by Subsection 13-42-105(1), Section 13-42-106, or
8751 Subsection 13-42-111(2).

8752 (b) The administrator shall accept the application and the license or certificate from the
8753 other state as an application for registration as a provider or for renewal of registration as a
8754 provider, as appropriate, in this state if:

8755 (i) the application in the other state contains information substantially similar to or more
8756 comprehensive than that required in an application submitted in this state;

8757 (ii) the applicant provides the information required by Subsections 13-42-106(1), (3),
8758 (10), (12), and (13);

8759 (iii) the applicant, under penalty of perjury, certifies that the information contained in
8760 the application is current or, to the extent it is not current, supplements the application to make
8761 the information current; and

8762 (iv) the applicant files a surety bond or substitute in accordance with Section 13-42-113
8763 or 13-42-114 that is solely payable or available to this state and to individuals who reside in this
8764 state.

8765 (2) The administrator, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

8766 Utah Administrative Rulemaking Act, shall make rules designating the states in which a provider
8767 may have a license or certificate that may be submitted to the administrator in compliance with
8768 this section.

8769 Section 163. Section **13-42-132** is amended to read:

8770 **13-42-132. Powers of administrator.**

8771 (1) The administrator may act on its own initiative or in response to complaints and may
8772 receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to
8773 the attorney general, and seek or provide remedies as provided in this chapter.

8774 (2) The administrator may investigate and examine, in this state or elsewhere, by
8775 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or
8776 offers to provide debt-management services, or a person to which a provider has delegated its
8777 obligations under an agreement or this chapter, to determine compliance with this chapter.
8778 Information that identifies individuals who have agreements with the provider shall not be
8779 disclosed to the public. In connection with the investigation, the administrator may:

8780 (a) charge the person the reasonable expenses necessarily incurred to conduct the
8781 examination;

8782 (b) require or permit a person to file a statement under oath as to all the facts and
8783 circumstances of a matter to be investigated; and

8784 (c) seek a court order authorizing seizure from a bank at which the person maintains a
8785 trust account required by Section 13-42-122, any or all money, books, records, accounts, and
8786 other property of the provider that is in the control of the bank and relates to individuals who
8787 reside in this state.

8788 (3) The administrator may adopt rules to implement the provisions of this chapter in
8789 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
8790 Act.

8791 (4) The administrator may enter into cooperative arrangements with any other federal
8792 or state agency having authority over providers and may exchange with any of those agencies
8793 information about a provider, including information obtained during an examination of the

8794 provider.

8795 (5) The administrator shall establish fees in accordance with Section [~~63-38-3.2~~
 8796 63J-1-303] to be paid by providers for the expense of administering this chapter.

8797 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in
 8798 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135
 8799 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price
 8800 Index for All Urban Consumers or, if that index is not available, another index adopted by rule
 8801 by the administrator. The administrator shall adopt a base year and adjust the dollar amounts,
 8802 effective on July 1 of each year, if the change in the index from the base year, as of December
 8803 31 of the preceding year, is at least 10%. The dollar amount must be rounded to the nearest
 8804 \$100, except that the amounts in Section 13-42-123 must be rounded to the nearest dollar.

8805 (7) The administrator shall notify registered providers of any change in dollar amounts
 8806 made pursuant to Subsection (6) and make that information available to the public.

8807 Section 164. Section ~~13-42-134~~ is amended to read:

8808 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

8809 (1) In this section, "insolvent" means:

8810 (a) having generally ceased to pay debts in the ordinary course of business other than as
 8811 a result of good-faith dispute;

8812 (b) being unable to pay debts as they become due; or

8813 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Section
 8814 101 et seq.

8815 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration
 8816 if:

8817 (a) a fact or condition exists that, if it had existed when the registrant applied for
 8818 registration as a provider, would have been a reason for denying registration;

8819 (b) the provider has committed a material violation of this chapter or a rule or order of
 8820 the administrator under this chapter;

8821 (c) the provider is insolvent;

8822 (d) the provider or an employee or affiliate of the provider has refused to permit the
8823 administrator to make an examination authorized by this chapter, failed to comply with
8824 Subsection 13-42-132(2)(b) within 15 days after request, or made a material misrepresentation
8825 or omission in complying with Subsection 13-42-132(2)(b); or

8826 (e) the provider has not responded within a reasonable time and in an appropriate
8827 manner to communications from the administrator.

8828 (3) If a provider does not comply with Subsection 13-42-122(6) or if the administrator
8829 otherwise finds that the public health or safety or general welfare requires emergency action, the
8830 administrator may order a summary suspension of the provider's registration, effective on the
8831 date specified in the order.

8832 (4) If the administrator suspends, revokes, or denies renewal of the registration of a
8833 provider, the administrator may seek a court order authorizing seizure of any or all of the
8834 money in a trust account required by Section 13-42-122, books, records, accounts, and other
8835 property of the provider which are located in this state.

8836 (5) If the administrator suspends or revokes a provider's registration, the provider may
8837 appeal and request a hearing pursuant to ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4,
8838 Administrative Procedures Act.

8839 Section 165. Section **13-43-203** is amended to read:

8840 **13-43-203. Office of the Property Rights Ombudsman -- Duties.**

8841 (1) The Office of the Property Rights Ombudsman shall:

8842 (a) develop and maintain expertise in and understanding of takings, eminent domain,
8843 and land use law;

8844 (b) assist state agencies and local governments in developing the guidelines required by
8845 ~~[Title 63, Chapter 90a]~~ Title 63L, Chapter 4, Constitutional Taking Issues;

8846 (c) at the request of a state agency or local government, assist the state agency or local
8847 government, in analyzing actions with potential takings implications or other land use issues;

8848 (d) advise real property owners who have a legitimate potential or actual takings claim
8849 against a state or local government entity or have questions about takings, eminent domain, and

8850 land use law;

8851 (e) identify state or local government actions that have potential takings implications
8852 and, if appropriate, advise those state or local government entities about those implications; and

8853 (f) provide information to private citizens, civic groups, government entities, and other
8854 interested parties about takings, eminent domain, and land use law and their rights and
8855 responsibilities under the takings, eminent domain, or land use laws through seminars and
8856 publications, and by other appropriate means.

8857 (2) The Office of the Property Rights Ombudsman may not represent private property
8858 owners, state agencies, or local governments in court or in adjudicative proceedings under [~~Title~~
8859 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

8860 (3) No member of the Office of the Property Rights Ombudsman nor a neutral third
8861 party rendering an advisory opinion under Section 13-43-205 or 13-43-206, may be compelled
8862 to testify in a civil action filed concerning the subject matter of any review, mediation, or
8863 arbitration by, or arranged through, the office.

8864 (4) (a) Except as provided in Subsection (4)(b), evidence of a review by the Office of
8865 the Property Rights Ombudsman and the opinions, writings, findings, and determinations of the
8866 Office of the Property Rights Ombudsman are not admissible as evidence in a judicial action.

8867 (b) Subsection (4)(a) does not apply to:

8868 (i) actions brought under authority of Title 78, Chapter 6, Small Claims Courts;

8869 (ii) a judicial confirmation or review of the arbitration itself as authorized in Title 78,
8870 Chapter 31a, Utah Uniform Arbitration Act;

8871 (iii) actions for de novo review of an arbitration award or issue brought under the
8872 authority of Subsection 13-43-204(3)(a)(i); or

8873 (iv) advisory opinions provided for in Sections 13-43-205 and 13-43-206.

8874 Section 166. Section **13-43-204** is amended to read:

8875 **13-43-204. Office of Property Rights Ombudsman -- Arbitration or mediation of**
8876 **takings or eminent domain disputes.**

8877 (1) If requested by the private property owner and otherwise appropriate, the Office of

8878 the Property Rights Ombudsman shall mediate, or conduct or arrange arbitration for, disputes
8879 between private property owners and government entities that involve:

8880 (a) takings or eminent domain issues;
8881 (b) actions for eminent domain under Title 78, Chapter 34, Eminent Domain; or
8882 (c) disputes about relocation assistance under Title 57, Chapter 12, Utah Relocation
8883 Assistance Act.

8884 (2) If arbitration or mediation is requested by a private property owner under this
8885 section, Section 57-12-14 or 78-34-21, and arranged by the Office of the Property Rights
8886 Ombudsman, the government entity or condemning entity shall participate in the mediation or
8887 arbitration as if the matter were ordered to mediation or arbitration by a court.

8888 (3) (a) (i) In conducting or arranging for arbitration under Subsection (1), the Office of
8889 the Property Rights Ombudsman shall follow the procedures and requirements of Title 78,
8890 Chapter 31a, Utah Uniform Arbitration Act.

8891 (ii) In applying Title 78, Chapter 31a, Utah Uniform Arbitration Act, the arbitrator and
8892 parties shall treat the matter as if:

8893 (A) it were ordered to arbitration by a court; and

8894 (B) the Office of the Property Rights Ombudsman or other arbitrator chosen as
8895 provided for in this section was appointed as arbitrator by the court.

8896 (iii) For the purpose of an arbitration conducted under this section, if the dispute to be
8897 arbitrated is not already the subject of legal action, the district court having jurisdiction over the
8898 county where the private property involved in the dispute is located is the court referred to in
8899 Title 78, Chapter 31a, Utah Uniform Arbitration Act.

8900 (iv) An arbitration award under this chapter may not be vacated under the provisions of
8901 Subsection 78-31a-124(1)(e) because of the lack of an arbitration agreement between the
8902 parties.

8903 (b) The Office of the Property Rights Ombudsman shall issue a written statement
8904 declining to arbitrate or to appoint an arbitrator when, in the opinion of the Office of the
8905 Property Rights Ombudsman:

8906 (i) the issues are not ripe for review;
8907 (ii) assuming the alleged facts are true, no cause of action exists under United States or
8908 Utah law;
8909 (iii) all issues raised are beyond the scope of the Office of the Property Rights
8910 Ombudsman's statutory duty to review; or
8911 (iv) the arbitration is otherwise not appropriate.
8912 (c) (i) The Office of the Property Rights Ombudsman shall appoint another person to
8913 arbitrate a dispute when:
8914 (A) either party objects to the Office of the Property Rights Ombudsman serving as the
8915 arbitrator and agrees to pay for the services of another arbitrator;
8916 (B) the Office of the Property Rights Ombudsman declines to arbitrate the dispute for a
8917 reason other than those stated in Subsection (3)(b) and one or both parties are willing to pay for
8918 the services of another arbitrator; or
8919 (C) the Office of the Property Rights Ombudsman determines that it is appropriate to
8920 appoint another person to arbitrate the dispute with no charge to the parties for the services of
8921 the appointed arbitrator.
8922 (ii) In appointing another person to arbitrate a dispute, the Office of the Property Rights
8923 Ombudsman shall appoint an arbitrator who is agreeable to:
8924 (A) both parties; or
8925 (B) the Office of the Property Rights Ombudsman and the party paying for the
8926 arbitrator.
8927 (iii) The Office of the Property Rights Ombudsman may, on its own initiative or upon
8928 agreement of both parties, appoint a panel of arbitrators to conduct the arbitration.
8929 (iv) The Department of Commerce may pay an arbitrator per diem and reimburse
8930 expenses incurred in the performance of the arbitrator's duties at the rates established by the
8931 Division of Finance under Sections 63A-3-106 and 63A-3-107.
8932 (d) In arbitrating a dispute, the arbitrator shall apply the relevant statutes, case law,
8933 regulations, and rules of Utah and the United States in conducting the arbitration and in

8934 determining the award.

8935 (e) The property owner and government entity may agree in advance of arbitration that
8936 the arbitration is binding and that no de novo review may occur.

8937 (f) Arbitration by or through the Office of the Property Rights Ombudsman is not
8938 necessary before bringing legal action to adjudicate any claim.

8939 (g) The lack of arbitration by or through the Office of the Property Rights Ombudsman
8940 does not constitute, and may not be interpreted as constituting, a failure to exhaust available
8941 administrative remedies or as a bar to bringing legal action.

8942 (h) Arbitration under this section is not subject to [~~Title 63, Chapter 46b~~] Title 63G,
8943 Chapter 4, Administrative Procedures Act, or Title 78, Chapter 31b, Alternative Dispute
8944 Resolution Act.

8945 (i) Within 30 days after an arbitrator issues a final award, and except as provided in
8946 Subsection (3)(e), any party may submit the award, or any issue upon which the award is based,
8947 to the district court for de novo review.

8948 (4) The filing with the Office of the Property Rights Ombudsman of a request for
8949 mediation or arbitration of a constitutional taking issue does not stay any county or municipal
8950 land use decision, including the decision of a board of adjustment.

8951 (5) Members of the Office of the Property Rights Ombudsman may not be compelled to
8952 testify in a civil action filed concerning the subject matter of any review, mediation, or
8953 arbitration by the Office of the Property Rights Ombudsman.

8954 Section 167. Section **13-43-206** is amended to read:

8955 **13-43-206. Advisory opinion -- Process.**

8956 (1) A request for an advisory opinion under Section 13-43-205 shall be:

8957 (a) filed with the Office of the Property Rights Ombudsman; and

8958 (b) accompanied by a filing fee of \$150.

8959 (2) The Office of the Property Rights Ombudsman may establish policies providing for
8960 partial fee waivers for a person who is financially unable to pay the entire fee.

8961 (3) A person requesting an advisory opinion need not exhaust administrative remedies,

8962 including remedies described under Section 10-9a-801 or 17-27a-801, before requesting an
8963 advisory opinion.

8964 (4) The Office of the Property Rights Ombudsman shall:

8965 (a) deliver notice of the request to opposing parties indicated in the request;

8966 (b) inquire of all parties if there are other necessary parties to the dispute; and

8967 (c) deliver notice to all necessary parties.

8968 (5) If a governmental entity is an opposing party, the Office of the Property Rights

8969 Ombudsman shall deliver the request in the manner provided for in Section [~~63-30d-301~~]

8970 63G-7-301.

8971 (6) (a) The Office of the Property Rights Ombudsman shall promptly determine if the
8972 parties can agree to a neutral third party to issue an advisory opinion.

8973 (b) If no agreement can be reached within four business days after notice is delivered
8974 pursuant to Subsections (4) and (5), the Office of the Property Rights Ombudsman shall appoint
8975 a neutral third party to issue an advisory opinion.

8976 (7) All parties that are the subject of the request for advisory opinion shall:

8977 (a) share equally in the cost of the advisory opinion; and

8978 (b) provide financial assurance for payment that the neutral third party requires.

8979 (8) The neutral third party shall comply with the provisions of Section 78-31a-109, and
8980 shall promptly:

8981 (a) seek a response from all necessary parties to the issues raised in the request for
8982 advisory opinion;

8983 (b) investigate and consider all responses; and

8984 (c) issue a written advisory opinion within 15 business days after the appointment of the
8985 neutral third party under Subsection (6)(b), unless:

8986 (i) the parties agree to extend the deadline; or

8987 (ii) the neutral third party determines that the matter is complex and requires additional
8988 time to render an opinion, which may not exceed 30 calendar days.

8989 (9) An advisory opinion shall include a statement of the facts and law supporting the

8990 opinion's conclusions.

8991 (10) (a) Copies of any advisory opinion issued by the Office of the Property Rights
8992 Ombudsman shall be delivered as soon as practicable to all necessary parties.

8993 (b) A copy of the advisory opinion shall be delivered to the government entity in the
8994 manner provided for in Section [~~63-30d-401~~] 63G-7-401.

8995 (11) An advisory opinion issued by the Office of the Property Rights Ombudsman is not
8996 binding on any party to, nor admissible as evidence in, a dispute involving land use law except
8997 as provided in Subsection (12).

8998 (12) (a) If the same issue that is the subject of an advisory opinion is listed as a cause of
8999 action in litigation, and that cause of action is litigated on the same facts and circumstances and
9000 is resolved consistent with the advisory opinion, the substantially prevailing party on that cause
9001 of action may collect reasonable attorney fees and court costs pertaining to the development of
9002 that cause of action from the date of the delivery of the advisory opinion to the date of the
9003 court's resolution.

9004 (b) Nothing in this Subsection (12) is intended to create any new cause of action under
9005 land use law.

9006 (13) Unless filed by the local government, a request for an advisory opinion under
9007 Section 13-43-205 does not stay the progress of a land use application, or the effect of a land
9008 use decision.

9009 Section 168. Section **14-1-18** is amended to read:

9010 **14-1-18. Definitions -- Application of Procurement Code to payment and**
9011 **performance bonds.**

9012 (1) (a) For purposes of this chapter, "political subdivision" means any county, city,
9013 town, school district, local district, special service district, community development and renewal
9014 agency, public corporation, institution of higher education of the state, public agency of any
9015 political subdivision, and, to the extent provided by law, any other entity which expends public
9016 funds for construction.

9017 (b) For purposes of applying Section [~~63-56-504~~] 63G-6-505 to a political subdivision,

9018 "state" includes "political subdivision."

9019 (2) Section [~~63-56-504~~] 63G-6-505 applies to all contracts for the construction,
9020 alteration, or repair of any public building or public work of the state or a political subdivision
9021 of the state.

9022 Section 169. Section **15-9-103** is amended to read:

9023 **15-9-103. Administration -- Rulemaking -- Service of process -- Athlete Agents**
9024 **Licensing Board.**

9025 (1) (a) This chapter shall be administered by the Division of Occupational and
9026 Professional Licensing and is subject to the requirements of Title 58, Chapter 1, Division of
9027 Occupational and Professional Licensing Act, so long as the requirements of Title 58, Chapter
9028 1, are not inconsistent with the requirements of this chapter.

9029 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
9030 Administrative Rulemaking Act, the division may make rules necessary to implement the
9031 provisions of this chapter.

9032 (2) By acting as an athlete agent in this state, a nonresident individual appoints the
9033 director of the division as the individual's agent for service of process in any civil action in this
9034 state related to the individual's acting as an athlete agent in this state.

9035 (3) (a) There is created the Athlete Agents Licensing Board consisting of four athlete
9036 agents and one member of the general public.

9037 (b) The Athlete Agents Licensing Board shall be appointed and serve in accordance
9038 with Section 58-1-201.

9039 (c) The duties and responsibilities of the Athlete Agents Licensing Board are in
9040 accordance with Sections 58-1-202 and 58-1-203.

9041 (d) In addition, the Athlete Agents Licensing Board shall designate one of its members
9042 on a permanent or rotating basis to:

9043 (i) assist the division in reviewing complaints concerning the unlawful or unprofessional
9044 conduct of a licensee; and

9045 (ii) advise the division in its investigation of these complaints.

9046 (e) A member of the Athlete Agents Licensing Board who has, under Subsection (3)(d),
9047 reviewed a complaint or advised in its investigation may be disqualified from participating with
9048 the board when the board serves as a presiding officer in an adjudicative proceeding concerning
9049 the complaint.

9050 Section 170. Section **15-9-105** is amended to read:

9051 **15-9-105. Registration as an athlete agent -- Form -- Requirements.**

9052 (1) An applicant for registration shall submit an application for registration to the
9053 division in a form prescribed by the division. An application filed under this section is a public
9054 record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
9055 Management Act. The application must be in the name of an individual and, except as
9056 otherwise provided in Subsection (2), signed or otherwise authenticated by the applicant under
9057 penalty of perjury and state or contain:

9058 (a) the name of the applicant and the address of the applicant's principal place of
9059 business;

9060 (b) the name of the applicant's business or employer, if applicable;

9061 (c) any business or occupation engaged in by the applicant for the five years
9062 immediately preceding the date of submission of the application;

9063 (d) a description of the applicant's:

9064 (i) formal training as an athlete agent;

9065 (ii) practical experience as an athlete agent; and

9066 (iii) educational background relating to the applicant's activities as an athlete agent;

9067 (e) the names and addresses of three individuals not related to the applicant who are
9068 willing to serve as references;

9069 (f) the name, sport, and last-known team for each individual for whom the applicant
9070 acted as an athlete agent during the five years next preceding the date of submission of the
9071 application;

9072 (g) the names and addresses of all persons who are:

9073 (i) with respect to the athlete agent's business if it is not a corporation, the partners,

9074 members, officers, managers, associates, or profit-sharers of the business; and

9075 (ii) with respect to a corporation employing the athlete agent, the officers, directors,
9076 and any shareholder of the corporation having an interest of 5% or greater;

9077 (h) whether the applicant or any person named pursuant to Subsection (1)(g) has been
9078 convicted of a crime that, if committed in this state, would be a crime involving moral turpitude
9079 or a felony, and identify the crime;

9080 (i) whether there has been any administrative or judicial determination that the applicant
9081 or any person named pursuant to Subsection (1)(g) has made a false, misleading, deceptive, or
9082 fraudulent representation;

9083 (j) any instance in which the conduct of the applicant or any person named pursuant to
9084 Subsection (1)(g) resulted in the imposition of a sanction, suspension, or declaration of
9085 ineligibility to participate in an interscholastic or intercollegiate athletic event on a
9086 student-athlete or educational institution;

9087 (k) any sanction, suspension, or disciplinary action taken against the applicant or any
9088 person named pursuant to Subsection (1)(g) arising out of occupational or professional
9089 conduct; and

9090 (l) whether there has been any denial of an application for, suspension or revocation of,
9091 or refusal to renew, the registration or licensure of the applicant or any person named pursuant
9092 to Subsection (1)(g) as an athlete agent in any state.

9093 (2) An individual who has submitted an application for, and holds a certificate of,
9094 registration or licensure as an athlete agent in another state, may submit a copy of the
9095 application and certificate in lieu of submitting an application in the form prescribed pursuant to
9096 Subsection (1). The division shall accept the application and the certificate from the other state
9097 as an application for registration in this state if the application to the other state:

9098 (a) was submitted in the other state within six months immediately preceding the
9099 submission of the application in this state and the applicant certifies that the information
9100 contained in the application is current;

9101 (b) contains information substantially similar to or more comprehensive than that

9102 required in an application submitted in this state; and

9103 (c) was signed by the applicant under penalty of perjury.

9104 Section 171. Section **15-9-106** is amended to read:

9105 **15-9-106. Certificate of registration -- Issuance or denial -- Renewal.**

9106 (1) Except as otherwise provided in Subsection (2), the division shall issue a certificate
9107 of registration to an individual who complies with Subsection 15-9-105(1) or whose application
9108 has been accepted under Subsection 15-9-105(2).

9109 (2) The division may refuse to issue a certificate of registration if the division
9110 determines that the applicant has engaged in conduct that has a significant adverse effect on the
9111 applicant's fitness to act as an athlete agent. In making the determination, the division may
9112 consider whether the applicant has:

9113 (a) been convicted of a crime that, if committed in this state, would be a crime involving
9114 moral turpitude or a felony;

9115 (b) made a materially false, misleading, deceptive, or fraudulent representation in the
9116 application or as an athlete agent;

9117 (c) engaged in conduct that would disqualify the applicant from serving in a fiduciary
9118 capacity;

9119 (d) engaged in conduct prohibited by Section 15-9-114;

9120 (e) had a registration or licensure as an athlete agent suspended, revoked, or denied or
9121 been refused renewal of registration or licensure as an athlete agent in any state;

9122 (f) engaged in conduct the consequence of which was that a sanction, suspension, or
9123 declaration of ineligibility to participate in an interscholastic or intercollegiate athletic event was
9124 imposed on a student-athlete or educational institution; or

9125 (g) engaged in conduct that significantly, adversely reflects on the applicant's credibility,
9126 honesty, or integrity.

9127 (3) In making a determination under Subsection (2), the division shall consider:

9128 (a) how recently the conduct occurred;

9129 (b) the nature of the conduct and the context in which it occurred; and

9130 (c) any other relevant conduct of the applicant.

9131 (4) An athlete agent may apply to renew a registration by submitting an application for
9132 renewal in a form prescribed by the division. An application filed under this section is a public
9133 record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
9134 Management Act. The application for renewal must be signed by the applicant under penalty of
9135 perjury and must contain current information on all matters required in an original registration.

9136 (5) An individual who has submitted an application for renewal of registration or
9137 licensure in another state, in lieu of submitting an application for renewal in the form prescribed
9138 pursuant to Subsection (4), may file a copy of the application for renewal and a valid certificate
9139 of registration or licensure from the other state. The division shall accept the application for
9140 renewal from the other state as an application for renewal in this state if the application to the
9141 other state:

9142 (a) was submitted in the other state within six months immediately preceding the filing
9143 in this state and the applicant certifies the information contained in the application for renewal is
9144 current;

9145 (b) contains information substantially similar to or more comprehensive than that
9146 required in an application for renewal submitted in this state; and

9147 (c) was signed by the applicant under penalty of perjury.

9148 (6) A certificate of registration or a renewal of a registration is valid for two years.
9149 Section 172. Section **15-9-107** is amended to read:

9150 **15-9-107. Suspension, revocation, or refusal to renew registration.**

9151 (1) The division may suspend, revoke, or refuse to renew a registration for conduct that
9152 would have justified denial of registration under Subsection 15-9-106(2).

9153 (2) The division may suspend, revoke, or refuse to renew a certificate of registration or
9154 licensure only after proper notice and an opportunity for a hearing. [~~Title 63, Chapter 46b~~]
9155 Title 63G, Chapter 4, Administrative Procedures Act, applies to this chapter.

9156 Section 173. Section **15-9-109** is amended to read:

9157 **15-9-109. Registration and renewal fees.**

9158 (1) An application for registration or renewal of registration must be accompanied by a
9159 fee in an amount determined by the division in accordance with Section [~~63-38-3.2~~] 63J-1-303.

9160 (2) The division shall establish fees for:

9161 (a) an initial application for registration;

9162 (b) an application for registration based upon a certificate of registration or licensure
9163 issued by another state;

9164 (c) an application for renewal of registration; and

9165 (d) an application for renewal of registration based upon an application for renewal of
9166 registration or licensure submitted in another state.

9167 Section 174. Section **16-6a-107** is amended to read:

9168 **16-6a-107. Fees.**

9169 (1) Unless otherwise provided by statute, the division shall charge and collect a fee for
9170 services established by the division in accordance with Section [~~63-38-3.2~~] 63J-1-303 including
9171 fees:

9172 (a) for furnishing a certified copy of any document, instrument, or paper relating to a
9173 domestic or foreign nonprofit corporation; and

9174 (b) for the certificate and affixing the seal to a certified copy described in Subsection
9175 (1)(a).

9176 (2) (a) The division shall provide expedited, 24-hour processing of any item under this
9177 section upon request.

9178 (b) The division shall charge and collect additional fees established by the division in
9179 accordance with Section [~~63-38-3.2~~] 63J-1-303 for expedited service provided under
9180 Subsection (2)(a).

9181 (3) (a) The division shall charge and collect a fee determined by the division in
9182 accordance with Section [~~63-38-3.2~~] 63J-1-303 at the time of any service of process on the
9183 director of the division as resident agent of a domestic or foreign nonprofit corporation.

9184 (b) The fee paid under Subsection (3)(a) may be recovered as taxable costs by the party
9185 to the suit or action causing the service to be made if the party prevails in the suit or action.

9186 Section 175. Section **16-6a-111** is amended to read:

9187 **16-6a-111. Appeal from division's refusal to file document.**

9188 If the division refuses to file a document delivered to it for filing, in accordance with
9189 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, the following may
9190 appeal the refusal to the executive director:

- 9191 (1) the domestic or foreign nonprofit corporation for which the filing was requested; or
- 9192 (2) the representative of the domestic or foreign nonprofit corporation for which filing
9193 was requested.

9194 Section 176. Section **16-6a-1413** is amended to read:

9195 **16-6a-1413. Appeal from denial of reinstatement.**

9196 (1) If the division denies a nonprofit corporation's application for reinstatement
9197 following administrative dissolution under Section 16-6a-1411, the division shall mail to the
9198 nonprofit corporation in the manner provided in Subsection 16-6a-1411(6) written notice:

- 9199 (a) setting forth the reasons for denying the application; and
- 9200 (b) stating that the nonprofit corporation has the right to appeal the division's
9201 determination to the executive director as provided in Subsection (2).

9202 (2) If the division denies a nonprofit corporation's application for reinstatement
9203 following administrative dissolution, in accordance with [~~Title 63, Chapter 46b~~] Title 63G,
9204 Chapter 4, Administrative Procedures Act, the following may appeal the denial to the executive
9205 director:

- 9206 (a) the nonprofit corporation for which the reinstatement was requested; or
- 9207 (b) the representative of the nonprofit corporation for which reinstatement was
9208 requested.

9209 Section 177. Section **16-6a-1502** is amended to read:

9210 **16-6a-1502. Consequences of conducting affairs without authority.**

9211 (1) A foreign nonprofit corporation, its successor, or anyone acting on its behalf,
9212 conducting affairs in this state without authority may not be permitted to maintain a proceeding
9213 in any court in this state until an application for authority to conduct affairs is filed.

9214 (2) (a) A foreign nonprofit corporation or successor that conducts affairs in this state
9215 without authority shall be liable to this state in an amount equal to the sum of:

9216 (i) all fees imposed by this chapter or prior law that would have been paid for all years
9217 or portions of years during which it conducted affairs in this state without authority; and

9218 (ii) all penalties imposed by the division for failure to pay the fees described in
9219 Subsection (2)(a)(i).

9220 (b) An application for authority to conduct affairs may not be filed until payment of the
9221 amounts due under this Subsection (2) is made.

9222 (3) (a) A court may stay a proceeding commenced by a foreign nonprofit corporation,
9223 its successor, or assignee until it determines whether the foreign nonprofit corporation, its
9224 successor, or assignee is required to file an application for authority to conduct affairs.

9225 (b) If the court determines that a foreign nonprofit corporation, its successor, or
9226 assignee is required to file an application for authority to conduct affairs, the court may further
9227 stay the proceeding until the required application for authority to conduct affairs has been filed
9228 with the division.

9229 (4) (a) A foreign nonprofit corporation that conducts affairs in this state without
9230 authority is subject to a civil penalty, payable to this state, of \$100 for each day in which it
9231 transacts business in this state without authority.

9232 (b) Notwithstanding Subsection (4)(a), the civil penalty imposed under Subsection
9233 (4)(a) may not exceed a total of \$5,000 for each year.

9234 (c) The following are subject to a civil penalty payable to the state not exceeding
9235 \$1,000:

9236 (i) each officer of a foreign nonprofit corporation who authorizes, directs, or
9237 participates in the conducting of affairs in this state without authority; and

9238 (ii) each agent of a foreign nonprofit corporation who transacts business in this state on
9239 behalf of a foreign nonprofit corporation that is not authorized.

9240 (d) The division may make rules to carry out the provisions of this Subsection (4),
9241 including procedures to request the division to abate for reasonable cause a penalty imposed

9242 under this Subsection (4).

9243 (e) If the division imposes a civil penalty under this Subsection (4) on a foreign
9244 nonprofit corporation, in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
9245 Administrative Procedures Act, the following may appeal the civil penalty to the executive
9246 director:

- 9247 (i) the foreign nonprofit corporation; or
- 9248 (ii) the representative of the foreign nonprofit corporation.

9249 (5) (a) The civil penalties set forth in Subsection (4) may be recovered in an action
9250 brought:

- 9251 (i) in an appropriate court in Salt Lake County; or
- 9252 (ii) in any other county in this state in which the foreign nonprofit corporation:
 - 9253 (A) has a registered, principal, or business office; or
 - 9254 (B) has conducted affairs.

9255 (b) Upon a finding by the court that a foreign nonprofit corporation or any of its
9256 officers or agents have conducted affairs in this state in violation of this part, in addition to or
9257 instead of a civil penalty, the court shall issue an injunction restraining:

- 9258 (i) the further conducting of affairs of the foreign nonprofit corporation; and
- 9259 (ii) the further exercise of any corporate rights and privileges in this state.

9260 (c) Upon issuance of the injunction described in Subsection (5)(b), the foreign nonprofit
9261 corporation shall be enjoined from conducting affairs in this state until:

- 9262 (i) all civil penalties have been paid, plus any interest and court costs assessed by the
9263 court; and
- 9264 (ii) the foreign nonprofit corporation has otherwise complied with the provisions of this
9265 part.

9266 (6) Notwithstanding Subsections (1) and (2), the failure of a foreign nonprofit
9267 corporation to have authority to conduct affairs in this state does not:

- 9268 (a) impair the validity of its corporate acts; or
- 9269 (b) prevent the foreign nonprofit corporation from defending any proceeding in this

9270 state.

9271 Section 178. Section **16-6a-1517** is amended to read:

9272 **16-6a-1517. Appeal from revocation.**

9273 If the division revokes the authority of a foreign nonprofit corporation to conduct affairs
9274 in this state, in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
9275 Procedures Act, the following may appeal the refusal to the executive director:

9276 (1) the foreign nonprofit corporation; or

9277 (2) the representative of the foreign nonprofit corporation.

9278 Section 179. Section **16-7-11** is amended to read:

9279 **16-7-11. Fees for filing documents and issuing certificates.**

9280 The division shall charge and collect a fee determined by it pursuant to Section
9281 [~~63-38-3.2~~] 63J-1-303 for:

9282 (1) filing articles of incorporation of a corporation sole and issuing a certificate of
9283 incorporation;

9284 (2) filing articles of amendment and issuing a certificate of amendment;

9285 (3) issuing each additional certificate of incorporation or amendment;

9286 (4) filing a certificate of authorized agent and issuing the agent's certificate;

9287 (5) filing a revocation of authority;

9288 (6) furnishing a certified copy of any document, instrument, or paper relating to a
9289 corporation sole and affixing its seal;

9290 (7) issuing a certificate of dissolution; and

9291 (8) issuing a certificate of merger or consolidation.

9292 Section 180. Section **16-10a-122** is amended to read:

9293 **16-10a-122. Fees.**

9294 Unless otherwise provided by statute, the division shall charge and collect fees for
9295 services as provided in Section [~~63-38-3.2~~] 63J-1-303.

9296 Section 181. Section **16-10a-1423** is amended to read:

9297 **16-10a-1423. Appeal from denial of reinstatement.**

9298 If the division denies a corporation's application for reinstatement under Section
9299 16-10a-1422 following administrative dissolution, the division shall mail to the corporation in
9300 the manner provided in Subsection 16-10a-1421(6) written notice:

9301 (1) setting forth the reasons for denying the application; and

9302 (2) stating that the corporation has the right to appeal the division's determination to the
9303 executive director of the Department of Commerce in accordance with [~~Title 63, Chapter 46b~~]
9304 Title 63G, Chapter 4, Administrative Procedures Act.

9305 Section 182. Section **16-12-3** is amended to read:

9306 **16-12-3. Declaration of trust -- Filing fee.**

9307 An original and one copy of the declaration of trust of a real estate investment trust shall
9308 be delivered to the Division of Corporations and Commercial Code, and [~~he~~] the division shall
9309 endorse on the original and one copy the word "filed." The Division of Corporations and
9310 Commercial Code shall file the original in [~~his~~] the division's office, and shall return the copy to
9311 the trustees or their representatives. The Division of Corporations and Commercial Code may
9312 charge a fee pursuant to Section [~~63-38-3.2~~] 63J-1-303 for the filing.

9313 Section 183. Section **16-13-12** is amended to read:

9314 **16-13-12. Licensing, supervision, and examination by commissioner of financial**
9315 **institutions -- Fees.**

9316 A development corporation shall be licensed, supervised, and examined by the
9317 commissioner of financial institutions and shall make such report of its condition from time to
9318 time as the commissioner shall require. A development corporation shall pay a fee determined
9319 by the commissioner pursuant to Section [~~63-38-3.2~~] 63J-1-303 for a license and for each
9320 examination.

9321 Section 184. Section **16-15-105** is amended to read:

9322 **16-15-105. Filing of certificate -- Fees.**

9323 (1) A business trust is registered when two copies of the certificate of registration are
9324 filed with the division. The documents to be filed shall be true copies made by photographic,
9325 xerographic, electronic, or other process that provides similar copy accuracy of a document that

9326 has been properly executed.

9327 (2) The division shall endorse the original and one copy of a certificate of registration
9328 and:

9329 (a) file the original in the division office; and

9330 (b) return the copy to the trustee or the trustee's representative.

9331 (3) The division may charge a fee in accordance with Section [~~63-38-3.2~~] 63J-1-303 for
9332 the filing.

9333 Section 185. Section **16-15-107** is amended to read:

9334 **16-15-107. Expiration of filing -- Notice.**

9335 (1) A filing under this chapter shall be effective for a period of three years from the date
9336 of filing plus the notice period provided in Subsection (2).

9337 (2) (a) If no new filing is made by or on behalf of the trust who made the original filing
9338 within three years of the date of filing, the division shall send a notice by regular mail, postage
9339 prepaid, to the address shown for the registered office in the filing indicating that it will expire
9340 30 days after the division mailed the notice.

9341 (b) If no new filing is made within 30 days after the date of the division mailing the
9342 notice, the business trust's registration expires.

9343 (3) If the registration of a business trust has expired or has been canceled for failure to
9344 maintain a registered agent, the business trust may not conduct business in this state until it has
9345 newly registered with the division under this chapter.

9346 (4) The division may charge a fee in accordance with Section [~~63-38-3.2~~] 63J-1-303 for
9347 the renewal of a registration.

9348 Section 186. Section **16-15-108** is amended to read:

9349 **16-15-108. When amendments are required.**

9350 (1) An amended certificate shall be filed with the division not later than 30 days after
9351 any change in:

9352 (a) any person acting as a trustee of the trust, or the address of any trustee;

9353 (b) the registered agent of the trust;

- 9354 (c) the registered office of the business trust; or
- 9355 (d) in any information required to be filed with the division under this chapter.
- 9356 (2) The amended certificate shall be signed by each trustee of the business trust and
- 9357 filed in the same manner as a certificate of registration under Section 16-15-105.
- 9358 (3) The division may charge a fee in accordance with Section [~~63-38-3.2~~] 63J-1-303 for
- 9359 amending a certificate of registration.

9360 Section 187. Section **17-15-24** is amended to read:

9361 **17-15-24. Procurement -- Use of recycled goods.**

9362 The procurement officer or other person responsible for purchasing supplies for each

9363 county and each entity created by a county or joined by a county shall:

- 9364 (1) maintain for reference a copy of the current listing of recycled items available on a
- 9365 state contract as issued by the chief procurement officer appointed under Section [~~63-56-204~~]
- 9366 63G-6-204; and

- 9367 (2) give recycled items consideration when inviting bids and purchasing supplies, in
- 9368 compliance with Section 11-37-101.

9369 Section 188. Section **17-16-21** is amended to read:

9370 **17-16-21. Fees of county officers.**

- 9371 (1) As used in this section, "county officer" means all of the county officers enumerated
- 9372 in Section 17-53-101 except county recorders, county constables, and county sheriffs.

- 9373 (2) (a) Each county officer shall collect, in advance, for exclusive county use and
- 9374 benefit:

- 9375 (i) all fees established by the county legislative body under Section 17-53-211; and
- 9376 (ii) any other fees authorized or required by law.

- 9377 (b) As long as the displaced homemaker program is authorized by Section 35A-3-114,
- 9378 the county clerk shall:

- 9379 (i) assess \$20 in addition to whatever fee for a marriage license is established under
- 9380 authority of this section; and

- 9381 (ii) transmit \$20 from each marriage license fee to the Division of Finance to be credited

9382 to the displaced homemaker program.

9383 (c) As long as the Children's Legal Defense Account is authorized by Section
9384 [~~63-63a-8~~] 51-9-408, the county clerk shall:

9385 (i) assess \$10 in addition to whatever fee for a marriage license is established under
9386 authority of this section and in addition to the \$20 assessed for the displaced homemaker
9387 program; and

9388 (ii) transmit \$10 from each marriage license fee to the Division of Finance for deposit in
9389 the Children's Legal Defense Account.

9390 (3) This section does not apply to any fees currently being assessed by the state but
9391 collected by county officers.

9392 Section 189. Section **17-16a-4** is amended to read:

9393 **17-16a-4. Prohibited use of official position -- Exception.**

9394 (1) Except as provided in Subsection (3), it is an offense for an elected or appointed
9395 officer, under circumstances not amounting to a violation of Section [~~63-56-1001~~] 63G-6-1001
9396 or 76-8-105, to:

9397 (a) disclose confidential information acquired by reason of [~~his~~] the officer's official
9398 position or use that information to secure special privileges or exemptions for himself or others;

9399 (b) use or attempt to use [~~his~~] the officer's official position to secure special privileges
9400 for [~~himself~~] the officer or for others; or

9401 (c) knowingly receive, accept, take, seek or solicit, directly or indirectly, any gift or
9402 loan for [~~himself~~] the officer or for another, if the gift or loan tends to influence [~~him~~] the officer
9403 in the discharge of [~~his~~] the officer's official duties.

9404 (2) This section is inapplicable to:

9405 (a) an occasional nonpecuniary gift having a value of less than \$50;

9406 (b) an award publicly presented;

9407 (c) any bona fide loan made in the ordinary course of business; or

9408 (d) political campaign contributions actually used in a political campaign.

9409 (3) A member of a county legislative body who is also a member of the governing board

9410 of a provider of mental health or substance abuse services under contract with the county does
9411 not commit an offense under Subsection (1)(a) or (b) by discharging, in good faith, the duties
9412 and responsibilities of each position, if the county legislative body member does not participate
9413 in the process of selecting the mental health or substance abuse service provider.

9414 Section 190. Section **17-21-17** is amended to read:

9415 **17-21-17. Prohibited acts.**

9416 (1) Upon acceptance of an instrument entitled to be recorded, the recorder may not:

9417 (a) record the instrument in any manner other than the manner required by this chapter;

9418 or

9419 (b) alter, change, obliterate, or insert any new matter in any instrument of record.

9420 (2) A recorder does not violate this section by:

9421 (a) denying access to:

9422 (i) an instrument of record that has been classified as private under Section [~~63-2-302~~]

9423 63G-2-302; or

9424 (ii) a portion of an instrument of record that has been classified as private under Section

9425 [~~63-2-302~~] 63G-2-302; or

9426 (b) placing an endorsement, reference, or other note on a document in the course of the
9427 recorder's work.

9428 Section 191. Section **17-21-19** is amended to read:

9429 **17-21-19. Records open to inspection -- Copies.**

9430 (1) Unless otherwise classified as private under Section [~~63-2-302~~] 63G-2-302, all

9431 instruments of record and all indexes required by this chapter are open to public inspection

9432 during office hours.

9433 (2) Upon payment of the applicable fee, a person may obtain copies of a public record.

9434 Section 192. Section **17-27a-203** is amended to read:

9435 **17-27a-203. Notice of intent to prepare a general plan or comprehensive general**
9436 **plan amendments in certain counties.**

9437 (1) Before preparing a proposed general plan or a comprehensive general plan

9438 amendment, each county of the first or second class shall provide ten calendar days notice of its
9439 intent to prepare a proposed general plan or a comprehensive general plan amendment to:

- 9440 (a) each affected entity;
- 9441 (b) the Automated Geographic Reference Center created in Section 63F-1-506;
- 9442 (c) the association of governments, established pursuant to an interlocal agreement
9443 under Title 11, Chapter 13, Interlocal Cooperation Act, of which the county is a member; and
- 9444 (d) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202.

9445 (2) Each notice under Subsection (1) shall:

- 9446 (a) indicate that the county intends to prepare a general plan or a comprehensive
9447 general plan amendment, as the case may be;
- 9448 (b) describe or provide a map of the geographic area that will be affected by the general
9449 plan or amendment;
- 9450 (c) be sent by mail, e-mail, or other effective means;
- 9451 (d) invite the affected entities to provide information for the county to consider in the
9452 process of preparing, adopting, and implementing a general plan or amendment concerning:
 - 9453 (i) impacts that the use of land proposed in the proposed general plan or amendment
9454 may have; and
 - 9455 (ii) uses of land within the county that the affected entity is considering that may
9456 conflict with the proposed general plan or amendment; and
- 9457 (e) include the address of an Internet website, if the county has one, and the name and
9458 telephone number of a person where more information can be obtained concerning the county's
9459 proposed general plan or amendment.

9460 Section 193. Section **17-27a-402** is amended to read:

9461 **17-27a-402. Information and technical assistance from the state.**

9462 Each state official, department, and agency shall:

- 9463 (1) promptly deliver any data and information requested by a county, unless the
9464 disclosure is prohibited by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
9465 Access and Management Act; and

9466 (2) furnish any other technical assistance and advice that they have available to the
9467 county without additional cost to the county.

9468 Section 194. Section **17-43-202** is amended to read:

9469 **17-43-202. Local substance abuse authorities -- Requirements prior to**
9470 **distributing public funds.**

9471 (1) Each local substance abuse authority shall award all public funds in compliance
9472 with:

9473 (a) the requirements of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
9474 Code; or

9475 (b) a county procurement ordinance that requires similar procurement practices.

9476 (2) If all initial bids on the project are rejected, the authority shall publish a new
9477 invitation to bid. If no satisfactory bid is received by the authority when the bids received from
9478 the second invitation are opened, the authority may execute a contract without requiring
9479 competitive bidding.

9480 (3) A local substance abuse authority need not comply with the procurement provisions
9481 of this section when it disburses public funds to another political subdivision of the state or an
9482 institution of higher education of the state.

9483 (4) Each contract awarded by a local substance abuse authority shall be for a fixed
9484 amount and limited period. A contract may be modified due to changes in available funding for
9485 the same contract purpose without competition.

9486 Section 195. Section **17-43-302** is amended to read:

9487 **17-43-302. Local mental health authorities -- Requirements prior to distributing**
9488 **public funds.**

9489 (1) Each local mental health authority shall award all public funds by complying with
9490 the requirements of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, or by
9491 complying with a county procurement ordinance which requires similar procurement practices.

9492 (2) If all initial bids on the project are rejected, the authority shall publish a new
9493 invitation to bid in the manner specified in this section. If no satisfactory bid is received by the

9494 authority when the bids received from the second invitation are opened, the authority may
9495 execute a contract without requiring competitive bidding.

9496 (3) The local mental health authority need not comply with the procurement provisions
9497 of this section when it disburses public funds to another political subdivision of the state or an
9498 institution of higher education of the state.

9499 (4) Each contract awarded by a local mental health authority shall be for a fixed amount
9500 and limited period. A contract may be modified due to changes in available funding for the same
9501 contract purpose without competition.

9502 Section 196. Section **17-50-302** is amended to read:

9503 **17-50-302. General county powers.**

9504 (1) A county may:

9505 (a) as prescribed by statute, levy, assess, and collect taxes, borrow money, and levy and
9506 collect special assessments for benefits conferred; and

9507 (b) provide services, exercise powers, and perform functions that are reasonably related
9508 to the safety, health, morals, and welfare of their inhabitants, except as limited or prohibited by
9509 statute.

9510 (2) (a) A county may:

9511 (i) sue and be sued;

9512 (ii) subject to Subsection (2)(c), acquire real property by tax sale, purchase, lease,
9513 contract, or gift, and hold the real property as necessary and proper for county purposes;

9514 (iii) (A) subject to Subsection (2)(b), acquire real property by condemnation, as
9515 provided in Title 78, Chapter 34, Eminent Domain; and

9516 (B) hold the real property as necessary and proper for county purposes;

9517 (iv) as may be necessary to the exercise of its powers, acquire personal property by
9518 purchase, lease, contract, or gift, and hold such personal property; and

9519 (v) manage and dispose of its property as the interests of its inhabitants may require.

9520 (b) (i) For purposes of Subsection (2)(a)(iii), water rights that are not appurtenant to
9521 land do not constitute real property that may be acquired by the county through condemnation.

9522 (ii) Nothing in Subsection (2)(a)(iii) may be construed to authorize a county to acquire
9523 by condemnation the rights to water unless the land to which those water rights are appurtenant
9524 is acquired by condemnation.

9525 (c) (i) Except as provided in Subsection (2)(c)(iv), each county intending to acquire real
9526 property for the purpose of expanding the county's infrastructure or other facilities used for
9527 providing services that the county offers or intends to offer shall provide written notice, as
9528 provided in this Subsection (2)(c), of its intent to acquire the property if:

9529 (A) the property is located:

9530 (I) outside the boundaries of the unincorporated area of the county; and

9531 (II) in a county of the first or second class; and

9532 (B) the intended use of the property is contrary to:

9533 (I) the anticipated use of the property under the general plan of the county in whose
9534 unincorporated area or the municipality in whose boundaries the property is located; or

9535 (II) the property's current zoning designation.

9536 (ii) Each notice under Subsection (2)(c)(i) shall:

9537 (A) indicate that the county intends to acquire real property;

9538 (B) identify the real property; and

9539 (C) be sent to:

9540 (I) each county in whose unincorporated area and each municipality in whose
9541 boundaries the property is located; and

9542 (II) each affected entity.

9543 (iii) A notice under this Subsection (2)(c) is a protected record as provided in
9544 Subsection [~~63-2-304~~] 63G-2-305(7).

9545 (iv) (A) The notice requirement of Subsection (2)(c)(i) does not apply if the county
9546 previously provided notice under Section 17-27a-203 identifying the general location within the
9547 municipality or unincorporated part of the county where the property to be acquired is located.

9548 (B) If a county is not required to comply with the notice requirement of Subsection
9549 (2)(c)(i) because of application of Subsection (2)(c)(iv)(A), the county shall provide the notice

9550 specified in Subsection (2)(c)(i) as soon as practicable after its acquisition of the real property.

9551 Section 197. Section **17-50-401** is amended to read:

9552 **17-50-401. Review of claims by county executive -- Auditor review -- Attorney**
9553 **review -- Claim requirements -- Approval or disapproval of claim -- Written explanation**
9554 **of claim process.**

9555 (1) Subject to Subsection (3), each county executive shall review each claim against the
9556 county and disapprove or, if payment appears to the county executive to be just, lawful, and
9557 properly due and owing, approve the claim.

9558 (2) Upon receiving a notice of claim under Section [~~63-301-401~~] 63G-7-401, the
9559 county clerk shall deliver the notice of claim to the county executive.

9560 (3) (a) The county executive shall forward all claims regarding liability to the county
9561 attorney, or, in a county that has a district attorney but not a county attorney, to the district
9562 attorney for the attorney's review and recommendation to the county executive regarding
9563 liability and payment.

9564 (b) Except as provided in Section 17-50-405, the county executive shall forward all
9565 claims requesting payment for goods or services to the county auditor for the auditor's review
9566 and recommendation to the county executive.

9567 (4) Each claim for goods or services against a county shall:

9568 (a) itemize the claim, giving applicable names, dates, and particular goods provided or
9569 services rendered;

9570 (b) if the claim is for service of process, state the character of process served, upon
9571 whom served, the number of days engaged, and the number of miles traveled;

9572 (c) be duly substantiated as to its correctness and as to the fact that it is justly due;

9573 (d) if the claim is for materials furnished, state to whom the materials were furnished, by
9574 whom ordered, and the quantity and price agreed upon; and

9575 (e) be presented to the county executive within a year after the last item of the account
9576 or credit accrued.

9577 (5) If the county executive refuses to hear or consider a claim because it is not properly

9578 made out, the county executive shall cause notice of the refusal to be given to the claimant or
9579 the claimant's agent and shall allow a reasonable amount of time for the claim to be properly
9580 itemized and substantiated.

9581 (6) Each county shall prepare and make available to a person submitting or intending to
9582 submit a claim under this part a written explanation, in simple and easy to understand language,
9583 of how to submit a claim to the county and of the county's process for receiving, reviewing, and
9584 deciding a claim.

9585 (7) Nothing in this section may be construed to modify the requirements of Section
9586 [~~63-30d-401~~] 63G-7-401.

9587 Section 198. Section **17-53-225** is amended to read:

9588 **17-53-225. County legislative body may adopt Utah Procurement Code --**
9589 **Retention of records.**

9590 (1) A county legislative body may adopt any or all of the provisions of [~~Title 63,~~
9591 ~~Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, or the rules promulgated pursuant
9592 to that code.

9593 (2) Whenever any county is required by law to receive bids for purchases, construction,
9594 repairs, or any other purpose requiring the expenditure of funds, that county shall keep on file
9595 all bids received, together with proof of advertisement by publication or otherwise, for:

9596 (a) at least three years following the letting of any contract pursuant to those bids; or

9597 (b) three years following the first advertisement for the bids, if all bids pursuant to that
9598 advertisement are rejected.

9599 Section 199. Section **17-53-311** is amended to read:

9600 **17-53-311. Contracting for management, maintenance, operation, or construction**
9601 **of jails.**

9602 (1) (a) With the approval of the sheriff, a county executive may contract with private
9603 contractors for management, maintenance, operation, and construction of county jails.

9604 (b) A county executive may include a provision in the contract that allows use of a
9605 building authority created under the provisions of Title 17A, Chapter 3, Part 9, Municipal

9606 Building Authorities, to construct or acquire a jail facility.

9607 (c) A county executive may include a provision in the contract that requires that any jail
9608 facility meet any federal, state, or local standards for the construction of jails.

9609 (2) If a county executive contracts only for the management, maintenance, or operation
9610 of a jail, the county executive shall include provisions in the contract that:

9611 (a) require the private contractor to post a performance bond in the amount set by the
9612 county legislative body;

9613 (b) establish training standards that must be met by jail personnel;

9614 (c) require the private contractor to provide and fund training for jail personnel so that
9615 the personnel meet the standards established in the contract and any other federal, state, or local
9616 standards for the operation of jails and the treatment of jail prisoners;

9617 (d) require the private contractor to indemnify the county for errors, omissions,
9618 defalcations, and other activities committed by the private contractor that result in liability to the
9619 county;

9620 (e) require the private contractor to show evidence of liability insurance protecting the
9621 county and its officers, employees, and agents from liability arising from the construction,
9622 operation, or maintenance of the jail, in an amount not less than those specified in [~~Title 63,~~
9623 ~~Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah;

9624 (f) require the private contractor to:

9625 (i) receive all prisoners committed to the jail by competent authority; and

9626 (ii) provide them with necessary food, clothing, and bedding in the manner prescribed
9627 by the governing body; and

9628 (g) prohibit the use of inmates by the private contractor for private business purposes of
9629 any kind.

9630 (3) A contractual provision requiring the private contractor to maintain liability
9631 insurance in an amount not less than the liability limits established by [~~Title 63, Chapter 30d~~]
9632 Title 63G, Chapter 7, Governmental Immunity Act of Utah, may not be construed as waiving
9633 the limitation on damages recoverable from a governmental entity or its employees established

9634 by that chapter.

9635 Section 200. Section **17-53-313** is amended to read:

9636 **17-53-313. Hiring of professional architect, engineer, or surveyor.**

9637 Notwithstanding the adoption of some or all of the provisions of [~~Title 63, Chapter 56]~~

9638 Title 63G, Chapter 6, Utah Procurement Code, under Section 17-53-225, each county executive

9639 that engages the services of a professional architect, engineer, or surveyor and considers more

9640 than one such professional for the engagement:

9641 (1) shall consider, as a minimum, in the selection process:

9642 (a) the qualifications, experience, and background of each firm submitting a proposal;

9643 (b) the specific individuals assigned to the project and the time commitments of each to
9644 the project; and

9645 (c) the project schedule and the approach to the project that the firm will take; and

9646 (2) may engage the services of a professional architect, engineer, or surveyor based on
9647 the criteria under Subsection (1) rather than solely on lowest cost.

9648 Section 201. Section **17B-1-106** is amended to read:

9649 **17B-1-106. Notice before preparing or amending a long-range plan or acquiring**
9650 **certain property.**

9651 (1) As used in this section:

9652 (a) (i) "Affected entity" means each county, municipality, local district under this title,
9653 special service district, school district, interlocal cooperation entity established under Title 11,
9654 Chapter 13, Interlocal Cooperation Act, and specified public utility:

9655 (A) whose services or facilities are likely to require expansion or significant
9656 modification because of an intended use of land; or

9657 (B) that has filed with the local district a copy of the general or long-range plan of the
9658 county, municipality, local district, school district, interlocal cooperation entity, or specified
9659 public utility.

9660 (ii) "Affected entity" does not include the local district that is required under this section
9661 to provide notice.

9662 (b) "Specified public utility" means an electrical corporation, gas corporation, or
9663 telephone corporation, as those terms are defined in Section 54-2-1.

9664 (2) (a) If a local district under this title located in a county of the first or second class
9665 prepares a long-range plan regarding its facilities proposed for the future or amends an already
9666 existing long-range plan, the local district shall, before preparing a long-range plan or
9667 amendments to an existing long-range plan, provide written notice, as provided in this section,
9668 of its intent to prepare a long-range plan or to amend an existing long-range plan.

9669 (b) Each notice under Subsection (2)(a) shall:

9670 (i) indicate that the local district intends to prepare a long-range plan or to amend a
9671 long-range plan, as the case may be;

9672 (ii) describe or provide a map of the geographic area that will be affected by the
9673 long-range plan or amendments to a long-range plan;

9674 (iii) be sent to:

9675 (A) each county in whose unincorporated area and each municipality in whose
9676 boundaries is located the land on which the proposed long-range plan or amendments to a
9677 long-range plan are expected to indicate that the proposed facilities will be located;

9678 (B) each affected entity;

9679 (C) the Automated Geographic Reference Center created in Section 63F-1-506;

9680 (D) each association of governments, established pursuant to an interlocal agreement
9681 under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality
9682 described in Subsection (2)(b)(iii)(A) is a member; and

9683 (E) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202;

9684 (iv) with respect to the notice to counties and municipalities described in Subsection
9685 (2)(b)(iii)(A) and affected entities, invite them to provide information for the local district to
9686 consider in the process of preparing, adopting, and implementing the long-range plan or
9687 amendments to a long-range plan concerning:

9688 (A) impacts that the use of land proposed in the proposed long-range plan or
9689 amendments to a long-range plan may have on the county, municipality, or affected entity; and

9690 (B) uses of land that the county, municipality, or affected entity is planning or
9691 considering that may conflict with the proposed long-range plan or amendments to a long-range
9692 plan; and

9693 (v) include the address of an Internet website, if the local district has one, and the name
9694 and telephone number of a person where more information can be obtained concerning the local
9695 district's proposed long-range plan or amendments to a long-range plan.

9696 (3) (a) Except as provided in Subsection (3)(d), each local district intending to acquire
9697 real property in a county of the first or second class for the purpose of expanding the district's
9698 infrastructure or other facilities used for providing the services that the district is authorized to
9699 provide shall provide written notice, as provided in this Subsection (3), of its intent to acquire
9700 the property if the intended use of the property is contrary to:

- 9701 (i) the anticipated use of the property under the county or municipality's general plan; or
- 9702 (ii) the property's current zoning designation.

9703 (b) Each notice under Subsection (3)(a) shall:

- 9704 (i) indicate that the local district intends to acquire real property;
- 9705 (ii) identify the real property; and
- 9706 (iii) be sent to:

9707 (A) each county in whose unincorporated area and each municipality in whose
9708 boundaries the property is located; and

9709 (B) each affected entity.

9710 (c) A notice under this Subsection (3) is a protected record as provided in Subsection
9711 ~~[63-2-304]~~ 63G-2-305(7).

9712 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the local district
9713 previously provided notice under Subsection (2) identifying the general location within the
9714 municipality or unincorporated part of the county where the property to be acquired is located.

9715 (ii) If a local district is not required to comply with the notice requirement of
9716 Subsection (3)(a) because of application of Subsection (3)(d)(i), the local district shall provide
9717 the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real

9718 property.

9719 Section 202. Section **17B-1-108** is amended to read:

9720 **17B-1-108. Restrictions on local district procurement of architect-engineer**
9721 **services.**

9722 (1) As used in this section:

9723 (a) "Architect-engineer services" means those professional services within the scope of
9724 the practice of architecture as defined in Section 58-3a-102.

9725 (b) "Engineer services" means those professional services within the scope of the
9726 practice of professional engineering as defined in Section 58-22-102.

9727 (2) When a local district elects to obtain architect services or engineering services by
9728 using a competitive procurement process and has provided public notice of its competitive
9729 procurement process:

9730 (a) a higher education entity, or any part of one, may not submit a proposal in response
9731 to the local district's competitive procurement process; and

9732 (b) the local district may not award a contract to perform the architect services or
9733 engineering services solicited in the competitive procurement process to a higher education
9734 entity or any part of one.

9735 (3) Notwithstanding Subsection [~~63-56-102~~] 63G-6-104(3)(d), each local district board
9736 that engages the services of a professional architect, engineer, or surveyor and considers more
9737 than one such professional for the engagement:

9738 (a) shall consider, as a minimum, in the selection process:

9739 (i) the qualifications, experience, and background of each firm submitting a proposal;

9740 (ii) the specific individuals assigned to the project and the time commitments of each to
9741 the project; and

9742 (iii) the project schedule and the approach to the project that the firm will take; and

9743 (b) may engage the services of a professional architect, engineer, or surveyor based on
9744 the criteria under Subsection (3)(a) rather than solely on lowest cost.

9745 Section 203. Section **17B-2a-818** is amended to read:

9746 **17B-2a-818. Requirements applicable to public transit district contracts.**

9747 (1) If the expenditure required to construct district facilities or works exceeds \$25,000,
9748 the construction shall be let as provided in [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah
9749 Procurement Code.

9750 (2) (a) The board of trustees of a public transit district shall advertise each bid or
9751 proposal through public notice as the board determines.

9752 (b) A notice under Subsection (2)(a) may:

9753 (i) include publication in:

9754 (A) a newspaper of general circulation in the district;

9755 (B) a trade journal; or

9756 (C) other method determined by the board; and

9757 (ii) be made at least once, not less than ten days before the expiration of the period
9758 within which bids or proposals are received.

9759 (3) (a) The board of trustees may, in its discretion:

9760 (i) reject any or all bids or proposals; and

9761 (ii) readvertise or give notice again.

9762 (b) If, after rejecting bids or proposals, the board of trustees determines and declares by
9763 a two-thirds vote of all members present that in the board's opinion the supplies, equipment, and
9764 materials may be purchased at a lower price in the open market, the board may purchase the
9765 supplies, equipment, and materials in the open market, notwithstanding any provisions requiring
9766 contracts, bids, proposals, advertisement, or notice.

9767 (4) The board of trustees of a public transit district may let a contract without
9768 advertising for or inviting bids if:

9769 (a) the board finds, upon a two-thirds vote of all members present, that a repair,
9770 alteration, or other work or the purchase of materials, supplies, equipment, or other property is
9771 of urgent necessity; or

9772 (b) the district's general manager certifies by affidavit that there is only one source for
9773 the required supplies, equipment, materials, or construction items.

9774 (5) If a public transit district retains or withholds any payment on a contract with a
9775 private contractor to construct facilities under this section, the board shall retain or withhold
9776 and release the payment as provided in Section 13-8-5.

9777 Section 204. Section **17C-2-602** is amended to read:

9778 **17C-2-602. Prerequisites to the acquisition of property by eminent domain --**
9779 **Civil action authorized -- Record of good faith negotiations to be retained.**

9780 (1) Before an agency may acquire property by eminent domain, the agency shall:

9781 (a) negotiate in good faith with the affected record property owner;

9782 (b) provide to each affected record property owner a written declaration that includes:

9783 (i) an explanation of the eminent domain process and the reasons for using it, including:

9784 (A) the need for the agency to obtain an independent appraisal that indicates the fair
9785 market value of the property and how the fair market value was determined;

9786 (B) a statement that the agency may adopt a resolution authorizing the agency to make
9787 an offer to the record property owner to purchase the property for the fair market value amount
9788 determined by the appraiser and that, if the offer is rejected, the agency has the right to acquire
9789 the property through an eminent domain proceeding; and

9790 (C) a statement that the agency will prepare an offer that will include the price the
9791 agency is offering for the property, an explanation of how the agency determined the price being
9792 offered, the legal description of the property, conditions of the offer, and the time at which the
9793 offer will expire;

9794 (ii) an explanation of the record property owner's relocation rights under Title 57,
9795 Chapter 12, Utah Relocation Assistance Act, and how to receive relocation assistance; and

9796 (iii) a statement that the owner has the right to receive just compensation and an
9797 explanation of how to obtain it; and

9798 (c) provide to the affected record property owner or the owner's designated
9799 representative a notice that is printed in a type size of at least ten-point type that contains:

9800 (i) a description of the property to be acquired;

9801 (ii) the name of the agency acquiring the property and the agency's contact person and

9802 telephone number; and

9803 (iii) a copy of Title 57, Chapter 12, Utah Relocation Assistance Act.

9804 (2) A person may bring a civil action against an agency for a violation of Subsection

9805 (1)(b) that results in damage to that person.

9806 (3) Each agency shall keep a record and evidence of the good faith negotiations

9807 required under Subsection (1)(a) and retain the record and evidence as provided in:

9808 (a) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and

9809 Management Act; or

9810 (b) an ordinance or policy that the agency had adopted under Section [~~63-2-701~~]

9811 63G-2-701.

9812 (4) A record property owner whose property is being taken by an agency through the

9813 exercise of eminent domain may elect to receive for the real property being taken:

9814 (a) fair market value; or

9815 (b) replacement property under Section 57-12-7.

9816 Section 205. Section **19-1-201** is amended to read:

9817 **19-1-201. Powers of department.**

9818 (1) The department shall:

9819 (a) enter into cooperative agreements with the Department of Health to delineate

9820 specific responsibilities to assure that assessment and management of risk to human health from

9821 the environment are properly administered;

9822 (b) consult with the Department of Health and enter into cooperative agreements, as

9823 needed, to ensure efficient use of resources and effective response to potential health and safety

9824 threats from the environment, and to prevent gaps in protection from potential risks from the

9825 environment to specific individuals or population groups; and

9826 (c) coordinate implementation of environmental programs to maximize efficient use of

9827 resources by developing, with local health departments, a Comprehensive Environmental

9828 Service Delivery Plan that:

9829 (i) recognizes that the department and local health departments are the foundation for

9830 providing environmental health programs in the state;

9831 (ii) delineates the responsibilities of the department and each local health department for
9832 the efficient delivery of environmental programs using federal, state, and local authorities,
9833 responsibilities, and resources;

9834 (iii) provides for the delegation of authority and pass through of funding to local health
9835 departments for environmental programs, to the extent allowed by applicable law, identified in
9836 the plan, and requested by the local health department; and

9837 (iv) is reviewed and updated annually.

9838 (2) The department may:

9839 (a) investigate matters affecting the environment;

9840 (b) investigate and control matters affecting the public health when caused by
9841 environmental hazards;

9842 (c) prepare, publish, and disseminate information to inform the public concerning issues
9843 involving environmental quality;

9844 (d) establish and operate programs, as authorized by this title, necessary for protection
9845 of the environment and public health from environmental hazards;

9846 (e) use local health departments in the delivery of environmental health programs to the
9847 extent provided by law;

9848 (f) enter into contracts with local health departments or others to meet responsibilities
9849 established under this title;

9850 (g) acquire real and personal property by purchase, gift, devise, and other lawful means;

9851 (h) prepare and submit to the governor a proposed budget to be included in the budget
9852 submitted by the governor to the Legislature;

9853 (i) (i) establish a schedule of fees that may be assessed for actions and services of the
9854 department according to the procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303;
9855 and

9856 (ii) in accordance with Section [~~63-38-3.2~~] 63J-1-303, all fees shall be reasonable, fair,
9857 and reflect the cost of services provided;

9858 (j) prescribe by rule reasonable requirements not inconsistent with law relating to
9859 environmental quality for local health departments;

9860 (k) perform the administrative functions of the boards established by Section 19-1-106,
9861 including the acceptance and administration of grants from the federal government and from
9862 other sources, public or private, to carry out the board's functions; and

9863 (l) upon the request of any board or the executive secretary, provide professional,
9864 technical, and clerical staff and field and laboratory services, the extent of which are limited by
9865 the funds available to the department for the staff and services.

9866 Section 206. Section **19-1-301** is amended to read:

9867 **19-1-301. Adjudicative proceedings.**

9868 The department and its boards shall comply with the procedures and requirements of
9869 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

9870 Section 207. Section **19-1-305** is amended to read:

9871 **19-1-305. Administrative enforcement proceedings -- Tolling of limitation period.**

9872 Issuing a notice of a violation, an order, or a notice of agency action under this title tolls
9873 the running of the period of limitation for commencing a civil action to assess or collect a
9874 penalty until the sooner of:

9875 (1) the day on which the notice of violation, order, or agency action becomes final
9876 under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act; or

9877 (2) three years from the day on which the department issues a notice or order described
9878 in this section.

9879 Section 208. Section **19-1-306** is amended to read:

9880 **19-1-306. Records of the department.**

9881 (1) Except as provided in this section, records of the department shall be subject to
9882 [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

9883 (2) (a) The standards of the federal Freedom of Information Act, 5 U.S.C. Sec. 552,
9884 and not the standards of Subsections [~~63-2-304~~] 63G-2-305(1) and (2), shall govern access to
9885 records of the department for which business confidentiality has been claimed under Section

9886 [~~63-2-308~~] 63G-2-309, to the extent those records relate to a program:

- 9887 (i) that is delegated, authorized, or for which primacy has been granted to the state;
- 9888 (ii) for which the state is seeking delegation, authorization, or primacy; or
- 9889 (iii) under the federal Comprehensive Environmental Response, Compensation, and
- 9890 Liability Act.

9891 (b) The regulation of the United States Environmental Protection Agency interpreting
9892 the federal Freedom of Information Act, as it appeared at 40 C.F.R. Part 2 on January 1, 1992,
9893 shall also apply to the records described in Subsection (1).

9894 (3) (a) The department may, upon request, make trade secret and confidential business
9895 records available to the United States Environmental Protection Agency insofar as they relate to
9896 a delegated program, to a program for which the state is seeking delegation, or to a program
9897 under the federal Comprehensive Environmental Response, Compensation and Liability Act.

9898 (b) In the event a record is released to the United States Environmental Protection
9899 Agency under Subsection (3)(a), the department shall convey any claim of confidentiality to the
9900 United States Environmental Protection Agency and shall notify the person who submitted the
9901 information of its release.

9902 (4) Trade secret and confidential business records under Subsection (2) shall be
9903 managed as protected records under the Government Records Access and Management Act,
9904 and all provisions of that act shall apply except Subsections [~~63-2-304~~] 63G-2-305(1) and (2).

9905 (5) Records obtained from the United States Environmental Protection Agency and
9906 requested by that agency to be kept confidential shall be managed as protected records under
9907 the Government Records Access and Management Act, and all provisions of that act shall apply
9908 except to the extent they conflict with this [~~subsection~~] section.

9909 Section 209. Section **19-1-403** is amended to read:

9910 **19-1-403. Clean Fuels and Vehicle Technology Fund -- Contents -- Loans or**
9911 **grants made with fund monies.**

9912 (1) (a) There is created a revolving fund known as the Clean Fuels and Vehicle
9913 Technology Fund.

- 9914 (b) The fund consists of:
- 9915 (i) appropriations to the fund;
- 9916 (ii) other public and private contributions made under Subsection (1)(d);
- 9917 (iii) interest earnings on cash balances; and
- 9918 (iv) all monies collected for loan repayments and interest on loans.
- 9919 (c) All money appropriated to the fund is nonlapsing.
- 9920 (d) The department may accept contributions from other public and private sources for
- 9921 deposit into the fund.
- 9922 (2) (a) Except as provided in Subsection (3), the department may make a loan or a
- 9923 grant with monies available in the fund for:
- 9924 (i) the conversion of a private sector business vehicle or a government vehicle to use a
- 9925 clean fuel, if certified by the Air Quality Board under Subsection 19-1-405(1)(a);
- 9926 (ii) the purchase of:
- 9927 (A) an OEM vehicle for use as a private sector business vehicle or government vehicle;
- 9928 or
- 9929 (B) a vehicle, certified by the Air Quality Board under Subsection 19-1-405(1)(d), for
- 9930 use as a private sector business vehicle or government vehicle;
- 9931 (iii) the retrofit, certified by the Air Quality Board under Subsection 19-1-405(1)(d), of
- 9932 a private sector business vehicle or government vehicle;
- 9933 (iv) a fuel system, certified by the Air Quality Board under Subsection 19-1-405(1)(d),
- 9934 for a private sector business vehicle or government vehicle; or
- 9935 (v) a state match of a federal or nonfederal grant for any item under this Subsection
- 9936 (2)(a).
- 9937 (b) The amount of a loan for any vehicle under Subsection (2)(a)(i) or (2)(a)(ii)(A) may
- 9938 not exceed:
- 9939 (i) the actual cost of the vehicle conversion;
- 9940 (ii) the incremental cost of purchasing the OEM vehicle; or
- 9941 (iii) the cost of purchasing the OEM vehicle if there is no documented incremental cost.

9942 (c) The amount of a grant for any vehicle under Subsection (2)(a)(i) or (2)(a)(ii)(A)
9943 may not exceed:

9944 (i) 50% of the actual cost of the vehicle conversion minus the amount of any tax credit
9945 claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is requested; or

9946 (ii) 50% of the incremental cost of purchasing an OEM vehicle minus the amount of any
9947 tax credit claimed under Section 59-7-605 or 59-10-1009 for the vehicle for which a grant is
9948 requested.

9949 (d) (i) Except as provided in Subsection (3) and subject to the availability of monies in
9950 the fund, the department may make a loan for the purchase of vehicle refueling equipment for a
9951 private sector business vehicle or a government vehicle.

9952 (ii) The maximum amount loaned per installation of refueling equipment may not
9953 exceed the actual cost of the refueling equipment.

9954 (iii) Except as provided in Subsection (3) and subject to the availability of monies in the
9955 fund, the department may make a grant for a state match of a federal or nonfederal grant for the
9956 purchase of vehicle refueling equipment for a private sector business vehicle or a government
9957 vehicle.

9958 (3) The department may not make a loan or grant under this part for an electric-hybrid
9959 vehicle.

9960 (4) The department may:

9961 (a) reimburse itself for the costs incurred in administering the fund from:

9962 (i) the fund; or

9963 (ii) application fees; and

9964 (b) establish an application fee for a loan or grant from the fund by following the
9965 procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303.

9966 (5) (a) The fund balance may not exceed \$10,000,000.

9967 (b) Interest on cash balances and repayment of loans in excess of the amount necessary
9968 to maintain the fund balance at \$10,000,000 shall be deposited in the General Fund.

9969 (6) (a) Loans made from monies in the fund shall be supported by loan documents

9970 evidencing the intent of the borrower to repay the loan.

9971 (b) The original loan documents shall be filed with the Division of Finance and a copy
9972 shall be filed with the department.

9973 Section 210. Section **19-1-404** is amended to read:

9974 **19-1-404. Department duties -- Rulemaking -- Loan repayment.**

9975 (1) The department shall:

9976 (a) administer the fund created in Section 19-1-403 to encourage government officials
9977 and private sector business vehicle owners and operators to obtain and use clean fuel vehicles;
9978 and

9979 (b) by following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
9980 Chapter 3, Utah Administrative Rulemaking Act, make rules:

9981 (i) specifying the amount of money in the fund to be dedicated annually for grants;

9982 (ii) limiting the amount of a grant given to any person claiming a tax credit under
9983 Section 59-7-605 or 59-10-1009 for the motor vehicle for which a grant is requested to assure
9984 that the sum of the tax credit and grant does not exceed:

9985 (A) 50% of the incremental cost of the OEM vehicle; or

9986 (B) 50% of the cost of conversion equipment;

9987 (iii) limiting the number of motor vehicles per fleet operator that may be eligible for a
9988 grant in a year;

9989 (iv) specifying criteria the department shall consider in prioritizing and awarding loans
9990 and grants;

9991 (v) specifying repayment periods;

9992 (vi) specifying procedures for:

9993 (A) awarding loans and grants; and

9994 (B) collecting loans;

9995 (vii) requiring all loan and grant applicants to:

9996 (A) apply on forms provided by the department;

9997 (B) agree in writing to use the clean fuel for which each vehicle is converted or

9998 purchased using loan or grant proceeds for a minimum of 70% of the vehicle miles traveled
9999 beginning from the time of conversion or purchase of the vehicle;

10000 (C) agree in writing to notify the department if a vehicle converted or purchased using
10001 loan or grant proceeds becomes inoperable through mechanical failure or accident and to pursue
10002 a remedy outlined in department rules;

10003 (D) provide reasonable data to the department on a vehicle converted or purchased with
10004 loan or grant proceeds; and

10005 (E) submit a vehicle converted or purchased with loan or grant proceeds to inspections
10006 by the department as required in department rules and as necessary for administration of the
10007 loan and grant program; and

10008 (viii) specifying the criteria for awarding a state match under Subsection 19-1-403(2).

10009 (2) (a) When developing repayment schedules for the loans, the department shall
10010 consider the projected savings from use of the clean fuel vehicle.

10011 (b) A repayment schedule may not exceed ten years.

10012 (c) The department shall make a loan from the fund for a private sector vehicle at an
10013 interest rate equal to the annual return earned in the state treasurer's Public Treasurer's Pool as
10014 determined the month immediately preceding the closing date of the loan.

10015 (d) The department shall make a loan from the fund for a government vehicle with no
10016 interest rate.

10017 (3) The Division of Finance shall:

10018 (a) collect and account for the loans; and

10019 (b) have custody of all loan documents, including all notes and contracts, evidencing the
10020 indebtedness of the fund.

10021 Section 211. Section **19-1-405** is amended to read:

10022 **19-1-405. Air Quality Board duties -- Rulemaking.**

10023 (1) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
10024 Chapter 3, Utah Administrative Rulemaking Act, the Air Quality Board may make rules to:

10025 (a) certify a motor vehicle on which conversion equipment has been installed if:

10026 (i) before the installation of conversion equipment, the motor vehicle does not exceed
10027 the emission cut points for:

10028 (A) a transient test driving cycle, as specified in 40 CFR 51, Appendix E to Subpart S;

10029 or

10030 (B) an equivalent test for the make, model, and year of the motor vehicle; and

10031 (ii) the motor vehicle's emissions of regulated pollutants, when operating with clean
10032 fuel, is less than the emissions were before the installation of conversion equipment;

10033 (b) recognize a test or standard that demonstrates a reduction in emissions;

10034 (c) recognize a certification standard from another state;

10035 (d) certify a fuel, vehicle, retrofit, or fuel system if it is at least as effective in reducing
10036 air pollution as fuels under Subsection 19-1-402(1)(a) or vehicles under Subsection
10037 19-1-402(2); or

10038 (e) establish criteria for determining the effectiveness of a fuel, vehicle, retrofit, or fuel
10039 system in reducing air pollution.

10040 (2) A reduction in emissions under Subsection (1)(a)(ii) is demonstrated by:

10041 (a) certification of the conversion equipment by the federal Environmental Protection
10042 Agency or by a state whose certification standards are recognized by the Air Quality Board;

10043 (b) testing the motor vehicle, before and after the installation of the conversion
10044 equipment, in accordance with 40 CFR 86, Control of Air Pollution from New and In-use
10045 Motor Vehicle Engines: Certification and Test Procedures, using all fuel the motor vehicle is
10046 capable of using; or

10047 (c) any other test or standard recognized by the Air Quality Board in rule.

10048 Section 212. Section **19-2-104** is amended to read:

10049 **19-2-104. Powers of board.**

10050 (1) The board may make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
10051 Chapter 3, Utah Administrative Rulemaking Act:

10052 (a) regarding the control, abatement, and prevention of air pollution from all sources
10053 and the establishment of the maximum quantity of air contaminants that may be emitted by any

10054 air contaminant source;

10055 (b) establishing air quality standards;

10056 (c) requiring persons engaged in operations which result in air pollution to:

10057 (i) install, maintain, and use emission monitoring devices, as the board finds necessary;

10058 (ii) file periodic reports containing information relating to the rate, period of emission,

10059 and composition of the air contaminant; and

10060 (iii) provide access to records relating to emissions which cause or contribute to air

10061 pollution;

10062 (d) implementing 15 U.S.C.A. 2601 et seq. Toxic Substances Control Act, Subchapter

10063 II - Asbestos Hazard Emergency Response, and reviewing and approving asbestos management

10064 plans submitted by local education agencies under that act;

10065 (e) establishing a requirement for a diesel emission opacity inspection and maintenance

10066 program for diesel-powered motor vehicles;

10067 (f) implementing an operating permit program as required by and in conformity with

10068 Titles IV and V of the federal Clean Air Act Amendments of 1990;

10069 (g) establishing requirements for county emissions inspection and maintenance

10070 programs after obtaining agreement from the counties that would be affected by the

10071 requirements;

10072 (h) with the approval of the governor, implementing in air quality nonattainment areas

10073 employer-based trip reduction programs applicable to businesses having more than 100

10074 employees at a single location and applicable to federal, state, and local governments to the

10075 extent necessary to attain and maintain ambient air quality standards consistent with the state

10076 implementation plan and federal requirements under the standards set forth in Subsection (2);

10077 and

10078 (i) implementing lead-based paint remediation training, certification, and performance

10079 requirements in accordance with 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,

10080 Subchapter IV -- Lead Exposure Reduction, Sections 402 and 406.

10081 (2) When implementing Subsection (1)(h) the board shall take into consideration:

- 10082 (a) the impact of the business on overall air quality; and
- 10083 (b) the need of the business to use automobiles in order to carry out its business
- 10084 purposes.
- 10085 (3) The board may:
- 10086 (a) hold hearings relating to any aspect of or matter in the administration of this chapter
- 10087 and compel the attendance of witnesses and the production of documents and other evidence,
- 10088 administer oaths and take testimony, and receive evidence as necessary;
- 10089 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders
- 10090 by appropriate administrative and judicial proceedings, and institute judicial proceedings to
- 10091 secure compliance with this chapter;
- 10092 (c) settle or compromise any civil action initiated to compel compliance with this
- 10093 chapter and the rules made under this chapter;
- 10094 (d) secure necessary scientific, technical, administrative, and operational services,
- 10095 including laboratory facilities, by contract or otherwise;
- 10096 (e) prepare and develop a comprehensive plan or plans for the prevention, abatement,
- 10097 and control of air pollution in this state;
- 10098 (f) encourage voluntary cooperation by persons and affected groups to achieve the
- 10099 purposes of this chapter;
- 10100 (g) encourage local units of government to handle air pollution within their respective
- 10101 jurisdictions on a cooperative basis and provide technical and consultative assistance to them;
- 10102 (h) encourage and conduct studies, investigations, and research relating to air
- 10103 contamination and air pollution and their causes, effects, prevention, abatement, and control;
- 10104 (i) determine by means of field studies and sampling the degree of air contamination and
- 10105 air pollution in all parts of the state;
- 10106 (j) monitor the effects of the emission of air contaminants from motor vehicles on the
- 10107 quality of the outdoor atmosphere in all parts of this state and take appropriate action with
- 10108 respect to them;
- 10109 (k) collect and disseminate information and conduct educational and training programs

10110 relating to air contamination and air pollution;

10111 (l) advise, consult, contract, and cooperate with other agencies of the state, local
10112 governments, industries, other states, interstate or interlocal agencies, the federal government,
10113 and with interested persons or groups;

10114 (m) consult, upon request, with any person proposing to construct, install, or otherwise
10115 acquire an air contaminant source in the state concerning the efficacy of any proposed control
10116 device, or system for this source, or the air pollution problem which may be related to the
10117 source, device, or system, but a consultation does not relieve any person from compliance with
10118 this chapter, the rules adopted under it, or any other provision of law;

10119 (n) accept, receive, and administer grants or other funds or gifts from public and private
10120 agencies, including the federal government, for the purpose of carrying out any of the functions
10121 of this chapter;

10122 (o) require the owner and operator of each new source which directly emits or has the
10123 potential to emit 100 tons per year or more of any air contaminant or the owner or operator of
10124 each existing source which by modification will increase emissions or have the potential of
10125 increasing emissions by 100 tons per year or more of any air contaminant, to pay a fee sufficient
10126 to cover the reasonable costs of:

10127 (i) reviewing and acting upon the notice required under Section 19-2-108; and

10128 (ii) implementing and enforcing requirements placed on the sources by any approval
10129 order issued pursuant to notice, not including any court costs associated with any enforcement
10130 action;

10131 (p) assess and collect noncompliance penalties as required in Section 120 of the federal
10132 Clean Air Act, 42 U.S.C. Sec. 7420;

10133 (q) meet the requirements of federal air pollution laws;

10134 (r) establish work practice, certification, and clearance air sampling requirements for
10135 persons who:

10136 (i) contract for hire to conduct demolition, renovation, salvage, encapsulation work
10137 involving friable asbestos-containing materials, or asbestos inspections;

10138 (ii) conduct work described in Subsection (3)(r)(i) in areas to which the general public
10139 has unrestrained access or in school buildings that are subject to the federal Asbestos Hazard
10140 Emergency Response Act of 1986;

10141 (iii) conduct asbestos inspections in facilities subject to 15 U.S.C.A. 2601 et seq., Toxic
10142 Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response; or

10143 (iv) conduct lead paint inspections in facilities subject to 15 U.S.C.A. 2601 et seq.,
10144 Toxic Substances Control Act, Subchapter IV -- Lead Exposure Reduction;

10145 (s) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
10146 seq., Toxic Substances Control Act, Subchapter II - Asbestos Hazard Emergency Response, to
10147 be accredited as inspectors, management planners, abatement project designers, asbestos
10148 abatement contractors and supervisors, or asbestos abatement workers;

10149 (t) establish certification requirements for asbestos project monitors, which shall
10150 provide for experience-based certification of persons who, prior to establishment of the
10151 certification requirements, had received relevant asbestos training, as defined by rule, and had
10152 acquired at least 1,000 hours of experience as project monitors;

10153 (u) establish certification procedures and requirements for certification of the
10154 conversion of a motor vehicle to a clean-fuel vehicle, certifying the vehicle is eligible for the tax
10155 credit granted in Section 59-7-605 or 59-10-1009;

10156 (v) establish a program to certify private sector air quality permitting professionals
10157 (AQPP), as described in Section 19-2-109.5; and

10158 (w) establish certification requirements for persons required under 15 U.S.C.A. 2601 et
10159 seq., Toxic Control Act, Subchapter IV -- Lead Exposure Reduction, to be accredited as
10160 inspectors, risk assessors, supervisors, project designers, or abatement workers.

10161 (4) Any rules adopted under this chapter shall be consistent with provisions of federal
10162 laws, if any, relating to control of motor vehicles or motor vehicle emissions.

10163 (5) Nothing in this chapter authorizes the board to require installation of or payment for
10164 any monitoring equipment by the owner or operator of a source if the owner or operator has
10165 installed or is operating monitoring equipment that is equivalent to equipment which the board

10166 would require under this section.

10167 Section 213. Section **19-2-105.3** is amended to read:

10168 **19-2-105.3. Clean fuel requirements for fleets.**

10169 (1) As used in this section:

10170 (a) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.

10171 (b) "Clean fuel" means:

10172 (i) propane, compressed natural gas, or electricity;

10173 (ii) other fuel the Air Quality Board created in Title 19, Chapter 2, Air Conservation
10174 Act, determines annually on or before July 1 is at least as effective as fuels under Subsection
10175 (1)(b)(i) in reducing air pollution; and

10176 (iii) other fuel that meets the clean fuel vehicle standards in the 1990 Clean Air Act.

10177 (c) "Fleet" means ten or more vehicles:

10178 (i) owned or operated by a single entity as defined by board rule; and

10179 (ii) capable of being fueled or that are fueled at a central location.

10180 (d) "Fleet" does not include motor vehicles that are:

10181 (i) held for lease or rental to the general public;

10182 (ii) held for sale or used as demonstration vehicles by motor vehicle dealers;

10183 (iii) used by motor vehicle manufacturers for product evaluations or tests;

10184 (iv) authorized emergency vehicles as defined in Section 41-6a-102;

10185 (v) registered under Title 41, Chapter 1a, Part 2, Registration, as farm vehicles;

10186 (vi) special mobile equipment as defined in Section 41-1a-102;

10187 (vii) heavy duty trucks with a gross vehicle weight rating of more than 26,000 pounds;

10188 (viii) regularly used by employees to drive to and from work, parked at the employees'
10189 personal residences when they are not at their employment, and not practicably fueled at a
10190 central location;

10191 (ix) owned, operated, or leased by public transit districts; or

10192 (x) exempted by board rule.

10193 (2) (a) After evaluation of reasonably available pollution control strategies, and as part

10194 of the state implementation plan demonstrating attainment of the national ambient air quality
10195 standards, the board may by rule, subject to Subsection (2)(c), require fleets in specified
10196 geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

10197 (i) necessary to demonstrate attainment of the national ambient air quality standards in
10198 any area where they are required; and

10199 (ii) reasonably cost effective when compared to other similarly beneficial control
10200 strategies for demonstrating attainment of the national ambient air quality standards.

10201 (b) State implementation plans developed prior to July 1, 1995, may require fleets to
10202 use clean fuels no earlier than July 1, 1995, unless the board determines fleet use of clean fuels
10203 is necessary prior to July 1, 1995, to demonstrate attainment of the national ambient air quality
10204 standards in any area by an attainment date established by federal law.

10205 (c) The board may not require more than 50% of those trucks in a fleet that are heavy
10206 duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than
10207 26,000 pounds to convert to clean fuels under Subsection (2)(b).

10208 (3) (a) After evaluation of reasonably available pollution control strategies, and as part
10209 of a state implementation plan demonstrating only maintenance of the national ambient air
10210 quality standards, the board may by rule, subject to Subsection (3)(b), require fleets in specified
10211 geographical areas to use clean fuels if the board determines fleet use of clean fuels is:

10212 (i) necessary to demonstrate maintenance of the national ambient air quality standards in
10213 any area where they are required; and

10214 (ii) reasonably cost effective as compared with other similarly beneficial control
10215 strategies for demonstrating maintenance of the national ambient air quality standards.

10216 (b) Under Subsection (3)(a) the board may require no more than:

10217 (i) 30% of a fleet to use clean fuels before January 1, 1998;

10218 (ii) 50% of a fleet to use clean fuels before January 1, 1999; and

10219 (iii) 70% of a fleet to use clean fuels before January 1, 2000.

10220 (c) The board may not require more than 50% of those trucks in a fleet that are heavy
10221 duty trucks having a gross vehicle weight rating of more than 8,500 pounds and not more than

- 10222 26,000 pounds to convert to clean fuels under Subsection (3)(b).
- 10223 (4) Rules the board makes under this section may include:
- 10224 (a) dates by which fleets are required to convert to clean fuels under the provisions of
- 10225 this section;
- 10226 (b) definitions of fleet owners or operators;
- 10227 (c) definitions of vehicles exempted from this section by rule;
- 10228 (d) certification requirements for persons who install clean fuel conversion equipment,
- 10229 including testing and certification standards regarding installers; and
- 10230 (e) certification fees for installers, established under Section [~~63-38-3.2~~] 63J-1-303.
- 10231 (5) Implementation of this section and rules made under this section are subject to the
- 10232 reasonable availability of clean fuel in the local market as determined by the board.

10233 Section 214. Section **19-2-109.1** is amended to read:

10234 **19-2-109.1. Operating permit required -- Emissions fee -- Implementation.**

- 10235 (1) As used in this section and Sections 19-2-109.2 and 19-2-109.3:
- 10236 (a) "EPA" means the federal Environmental Protection Agency.
- 10237 (b) "1990 Clean Air Act" means the federal Clean Air Act as amended in 1990.
- 10238 (c) "Operating permit" means a permit issued by the executive secretary to sources of
- 10239 air pollution that meet the requirements of Titles IV and V of the 1990 Clean Air Act.
- 10240 (d) "Program" means the air pollution operating permit program established under this
- 10241 section to comply with Title V of the 1990 Clean Air Act.
- 10242 (e) "Regulated pollutant" has the same meaning as defined in Title V of the 1990 Clean
- 10243 Air Act and implementing federal regulations.
- 10244 (2) (a) A person may not operate any source of air pollution required to have a permit
- 10245 under Title V of the 1990 Clean Air Act without having obtained an operating permit from the
- 10246 executive secretary under procedures the board establishes by rule.
- 10247 (b) A person is not required to submit an operating permit application until the
- 10248 governor has submitted an operating permit program to the EPA.
- 10249 (c) Any operating permit issued under this section may not become effective until the

10250 day after the EPA issues approval of the permit program or November 15, 1995, whichever
10251 occurs first.

10252 (3) (a) Operating permits issued under this section shall be for a period of five years
10253 unless the board makes a written finding, after public comment and hearing, and based on
10254 substantial evidence in the record, that an operating permit term of less than five years is
10255 necessary to protect the public health and the environment of the state.

10256 (b) The executive secretary may issue, modify, or renew an operating permit only after
10257 providing public notice, an opportunity for public comment, and an opportunity for a public
10258 hearing.

10259 (c) The executive secretary shall, in conformity with the 1990 Clean Air Act and
10260 implementing federal regulations, revise the conditions of issued operating permits to
10261 incorporate applicable federal regulations in conformity with Section 502(b)(9) of the 1990
10262 Clean Air Act, if the remaining period of the permit is three or more years.

10263 (d) The executive secretary may terminate, modify, revoke, or reissue an operating
10264 permit for cause.

10265 (4) (a) The board shall establish a proposed annual emissions fee that conforms with
10266 Title V of the 1990 Clean Air Act for each ton of regulated pollutant, applicable to all sources
10267 required to obtain a permit. The emissions fee established under this section is in addition to
10268 fees assessed under Section 19-2-108 for issuance of an approval order.

10269 (b) In establishing the fee the board shall comply with the provisions of Section
10270 ~~[63-38-3.2]~~ 63J-1-303 that require a public hearing and require the established fee to be
10271 submitted to the Legislature for its approval as part of the department's annual appropriations
10272 request.

10273 (c) The fee shall cover all reasonable direct and indirect costs required to develop and
10274 administer the program and the small business assistance program established under Section
10275 19-2-109.2. The board shall prepare an annual report of the emissions fees collected and the
10276 costs covered by those fees under this Subsection (4).

10277 (d) The fee shall be established uniformly for all sources required to obtain an operating

10278 permit under the program and for all regulated pollutants.

10279 (e) The fee may not be assessed for emissions of any regulated pollutant if the emissions
10280 are already accounted for within the emissions of another regulated pollutant.

10281 (f) An emissions fee may not be assessed for any amount of a regulated pollutant
10282 emitted by any source in excess of 4,000 tons per year of that regulated pollutant.

10283 (5) Emissions fees for the period:

10284 (a) of July 1, 1992, through June 30, 1993, shall be based on the most recent emissions
10285 inventory prepared by the executive secretary; and

10286 (b) on and after July 1, 1993, but prior to issuance of an operating permit, shall be
10287 based on the most recent emissions inventory, unless a source elects prior to July 1, 1992, to
10288 base the fee on allowable emissions, if applicable for a regulated pollutant.

10289 (6) After an operating permit is issued the emissions fee shall be based on actual
10290 emissions for a regulated pollutant unless a source elects, prior to the issuance or renewal of a
10291 permit, to base the fee during the period of the permit on allowable emissions for that regulated
10292 pollutant.

10293 (7) If the owner or operator of a source subject to this section fails to timely pay an
10294 annual emissions fee, the executive secretary may:

10295 (a) impose a penalty of not more than 50% of the fee, in addition to the fee, plus
10296 interest on the fee computed at 12% annually; or

10297 (b) revoke the operating permit.

10298 (8) The owner or operator of a source subject to this section may contest an emissions
10299 fee assessment or associated penalty in an adjudicative hearing under the [~~Title 63, Chapter 46b~~]
10300 Title 63G, Chapter 4, Administrative Procedures Act, as provided in this Subsection (8).

10301 (a) The owner or operator must pay the fee under protest prior to being entitled to a
10302 hearing. Payment of an emissions fee or penalty under protest is not a waiver of the right to
10303 contest the fee or penalty under this [~~subsection~~] section.

10304 (b) A request for a hearing under this subsection shall be made after payment of the
10305 emissions fee and within six months after the emissions fee was due.

10306 (9) To reinstate an operating permit revoked under Subsection (7) the owner or
10307 operator shall pay all outstanding emissions fees, a penalty of not more than 50% of all
10308 outstanding fees, and interest on the outstanding emissions fees computed at 12% annually.

10309 (10) All emissions fees and penalties collected by the department under this section shall
10310 be deposited in the General Fund as the Air Pollution Operating Permit Program dedicated
10311 credit to be used solely to pay for the reasonable direct and indirect costs incurred by the
10312 department in developing and administering the program and the small business assistance
10313 program under Section 19-2-109.2.

10314 (11) Failure of the executive secretary to act on any operating permit application or
10315 renewal is a final administrative action only for the purpose of obtaining judicial review by any
10316 of the following persons to require the executive secretary to take action on the permit or its
10317 renewal without additional delay:

- 10318 (a) the applicant;
- 10319 (b) any person who participated in the public comment process; or
- 10320 (c) any other person who could obtain judicial review of that action under applicable
10321 law.

10322 Section 215. Section **19-2-109.3** is amended to read:

10323 **19-2-109.3. Public access to information.**

10324 A copy of each permit application, compliance plan, emissions or compliance monitoring
10325 report, certification, and each operating permit issued under this chapter shall be made available
10326 to the public in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
10327 Records Access and Management Act.

10328 Section 216. Section **19-2-109.5** is amended to read:

10329 **19-2-109.5. Private sector air quality permitting professionals certification**
10330 **program.**

10331 (1) As used in this section, "AQPP" means an air quality permitting professional.

10332 (2) The board may establish a program to certify private sector AQPPs, including
10333 consultants and employees of companies that may seek air quality permits from the division.

10334 Any program established under this section shall include:

10335 (a) a training program established and operated by the department, which describes and
10336 explains the state law and rules regarding the air quality permit application and approval
10337 procedure under this chapter;

10338 (b) the requirement to pass an exam to measure qualifications of AQPP applicants;

10339 (c) an option for certification of an AQPP by passing the exam without undergoing any
10340 training required under the program;

10341 (d) an application process, including a fee established under Section [~~63-38-3.2~~]
10342 63J-1-303 that covers the costs of the training, testing, and application process and the
10343 department's maintenance of a list of certified AQPPs;

10344 (e) certification of qualified AQPP applicants;

10345 (f) maintenance by the department of a current list of certified AQPPs, which is
10346 available to the public; [~~and~~]

10347 (g) procedures for the expedited review by the department of air quality permit
10348 applications submitted by certified AQPPs; and

10349 (h) professional standards for AQPPs.

10350 (3) The board may not require AQPP certification as a condition of preparing or
10351 submitting a notice of intent or operating permit application under this chapter.

10352 (4) Any program under this section shall provide for revocation of any certification
10353 issued under this section if the department determines, through an administrative hearing
10354 conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act,
10355 that the AQPP:

10356 (a) knowingly or negligently submitted false information or data as part of an air quality
10357 permit application;

10358 (b) prepared more than three air quality permit applications in one calendar year in a
10359 manner that each did not substantially comply with department application requirements; or

10360 (c) prepared any air quality permit application in violation of the professional standards
10361 defined by department rule.

10362 Section 217. Section **19-2-112** is amended to read:

10363 **19-2-112. Generalized condition of air pollution creating emergency -- Sources**
10364 **causing imminent danger to health -- Powers of executive director -- Declaration of**
10365 **emergency.**

10366 (1) (a) [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act,
10367 and any other provision of law to the contrary notwithstanding, if the executive director finds
10368 that a generalized condition of air pollution exists and that it creates an emergency requiring
10369 immediate action to protect human health or safety, the executive director, with the concurrence
10370 of the governor, shall order persons causing or contributing to the air pollution to reduce or
10371 discontinue immediately the emission of air contaminants.

10372 (b) The order shall fix a place and time, not later than 24 hours after its issuance, for a
10373 hearing to be held before the governor.

10374 (c) Not more than 24 hours after the commencement of this hearing, and without
10375 adjournment of it, the governor shall affirm, modify, or set aside the order of the executive
10376 director.

10377 (2) In the absence of a generalized condition of air pollution referred to in Subsection
10378 (1), but if the executive director finds that emissions from the operation of one or more air
10379 contaminant sources is causing imminent danger to human health or safety, ~~he~~ the executive
10380 director may commence adjudicative proceedings under Section [~~63-46b-20~~] 63G-4-502.

10381 (3) Nothing in this section limits any power that the governor or any other officer has to
10382 declare an emergency and act on the basis of that declaration.

10383 Section 218. Section **19-2-115** is amended to read:

10384 **19-2-115. Violations -- Penalties -- Reimbursement for expenses.**

10385 (1) As used in this section, the terms "knowingly," "willfully," and "criminal negligence"
10386 shall mean as defined in Section 76-2-103.

10387 (2) (a) A person who violates this chapter, or any rule, order, or permit issued or made
10388 under this chapter is subject in a civil proceeding to a penalty not to exceed \$10,000 per day for
10389 each violation.

10390 (b) Subsection (2)(a) also applies to rules made under the authority of Section
10391 19-2-104, for implementation of 15 U.S.C.A. 2601 et seq., Toxic Substances Control Act,
10392 Subchapter II - Asbestos Hazard Emergency Response.

10393 (c) Penalties assessed for violations described in 15 U.S.C.A. 2647, Toxic Substances
10394 Control Act, Subchapter II - Asbestos Hazard Emergency Response, may not exceed the
10395 amounts specified in that section and shall be used in accordance with that section.

10396 (3) A person is guilty of a class A misdemeanor and is subject to imprisonment under
10397 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person
10398 knowingly violates any of the following under this chapter:

10399 (a) an applicable standard or limitation;

10400 (b) a permit condition; or

10401 (c) a fee or filing requirement.

10402 (4) A person is guilty of a third degree felony and is subject to imprisonment under
10403 Section 76-3-203 and a fine of not more than \$25,000 per day of violation who knowingly:

10404 (a) makes any false material statement, representation, or certification, in any notice or
10405 report required by permit; or

10406 (b) renders inaccurate any monitoring device or method required to be maintained by
10407 this chapter or applicable rules made under this chapter.

10408 (5) Any fine or penalty assessed under Subsections (2) or (3) is in lieu of any penalty
10409 under Section 19-2-109.1.

10410 (6) A person who willfully violates Section 19-2-120 is guilty of a class A
10411 misdemeanor.

10412 (7) A person who knowingly violates any requirement of an applicable implementation
10413 plan adopted by the board, more than 30 days after having been notified in writing by the
10414 executive secretary that the person is violating the requirement, knowingly violates an order
10415 issued under Subsection 19-2-110(1)(a), or knowingly handles or disposes of asbestos in
10416 violation of a rule made under this chapter is guilty of a third degree felony and subject to
10417 imprisonment under Section 76-3-203 and a fine of not more than \$25,000 per day of violation

10418 in the case of the first offense, and not more than \$50,000 per day of violation in the case of
10419 subsequent offenses.

10420 (8) (a) As used in this section:

10421 (i) "Hazardous air pollutant" means any hazardous air pollutant listed under 42 USC
10422 7412 or any extremely hazardous substance listed under 42 USC 11002(a)(2).

10423 (ii) "Organization" means a legal entity, other than a government, established or
10424 organized for any purpose, and includes a corporation, company, association, firm, partnership,
10425 joint stock company, foundation, institution, trust, society, union, or any other association of
10426 persons.

10427 (iii) "Serious bodily injury" means bodily injury which involves a substantial risk of
10428 death, unconsciousness, extreme physical pain, protracted and obvious disfigurement, or
10429 protracted loss or impairment of the function of a bodily member, organ, or mental faculty.

10430 (b) (i) A person is guilty of a class A misdemeanor and subject to imprisonment under
10431 Section 76-3-204 and a fine of not more than \$25,000 per day of violation if that person with
10432 criminal negligence:

10433 (A) releases into the ambient air any hazardous air pollutant; and

10434 (B) places another person in imminent danger of death or serious bodily injury.

10435 (ii) As used in this Subsection (8)(b), "person" does not include an employee who is
10436 carrying out the employee's normal activities and who is not a part of senior management
10437 personnel or a corporate officer.

10438 (c) A person is guilty of a second degree felony and is subject to imprisonment under
10439 Section 76-3-203 and a fine of not more than \$50,000 per day of violation if that person:

10440 (i) knowingly releases into the ambient air any hazardous air pollutant; and

10441 (ii) knows at the time that ~~he~~ the person is placing another person in imminent danger
10442 of death or serious bodily injury.

10443 (d) If a person is an organization, it shall, upon conviction of violating Subsection
10444 (8)(c), be subject to a fine of not more than \$1,000,000.

10445 (e) (i) A defendant who is an individual is considered to have acted knowingly under

10446 Subsections (8)(c) and (d), if:

10447 (A) the defendant's conduct placed another person in imminent danger of death or
10448 serious bodily injury; and

10449 (B) the defendant was aware of or believed that there was an imminent danger of death
10450 or serious bodily injury to another person.

10451 (ii) Knowledge possessed by a person other than the defendant may not be attributed to
10452 the defendant.

10453 (iii) Circumstantial evidence may be used to prove that the defendant possessed actual
10454 knowledge, including evidence that the defendant took affirmative steps to be shielded from
10455 receiving relevant information.

10456 (f) (i) It is an affirmative defense to prosecution under this Subsection (8) that the
10457 conduct charged was freely consented to by the person endangered and that the danger and
10458 conduct charged were reasonably foreseeable hazards of:

10459 (A) an occupation, a business, a profession; or

10460 (B) medical treatment or medical or scientific experimentation conducted by
10461 professionally approved methods and the other person was aware of the risks involved prior to
10462 giving consent.

10463 (ii) The defendant has the burden of proof to establish any affirmative defense under this
10464 Subsection (8)(f) and must prove that defense by a preponderance of the evidence.

10465 (9) (a) Except as provided in Subsection (9)(b), and unless prohibited by federal law, all
10466 penalties assessed and collected under the authority of this section shall be deposited in the
10467 General Fund.

10468 (b) The department may reimburse itself and local governments from monies collected
10469 from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

10470 (c) The department shall regulate reimbursements by making rules in accordance with

10471 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

10472 (i) define qualifying environmental enforcement activities; and

10473 (ii) define qualifying extraordinary expenses.

10474 Section 219. Section **19-3-104** is amended to read:

10475 **19-3-104. Registration and licensing of radiation sources by department --**
10476 **Assessment of fees -- Rulemaking authority and procedure -- Siting criteria.**

10477 (1) As used in this section:

10478 (a) "Decommissioning" includes financial assurance.

10479 (b) "Source material" and "byproduct material" have the same definitions as in 42
10480 U.S.C.A. 2014, Atomic Energy Act of 1954, as amended.

10481 (2) The board may require the registration or licensing of radiation sources that
10482 constitute a significant health hazard.

10483 (3) All sources of ionizing radiation, including ionizing radiation producing machines,
10484 shall be registered or licensed by the department.

10485 (4) The board may make rules:

10486 (a) necessary for controlling exposure to sources of radiation that constitute a
10487 significant health hazard;

10488 (b) to meet the requirements of federal law relating to radiation control to ensure the
10489 radiation control program under this part is qualified to maintain primacy from the federal
10490 government;

10491 (c) to establish:

10492 (i) board accreditation requirements and procedures for mammography facilities; and

10493 (ii) certification procedure and qualifications for persons who survey mammography
10494 equipment and oversee quality assurance practices at mammography facilities; and

10495 (d) as necessary regarding the possession, use, transfer, or delivery of source and
10496 byproduct material and the disposal of byproduct material to establish requirements for:

10497 (i) the licensing, operation, decontamination, and decommissioning, including financial
10498 assurances; and

10499 (ii) the reclamation of sites, structures, and equipment used in conjunction with the
10500 activities described in this Subsection (4).

10501 (5) (a) On and after January 1, 2003, a fee is imposed for the regulation of source and

10502 byproduct material and the disposal of byproduct material at uranium mills or commercial waste
10503 facilities, as provided in this Subsection (5).

10504 (b) On and after January 1, 2003 through March 30, 2003:

10505 (i) \$6,667 per month for uranium mills or commercial sites disposing of or reprocessing
10506 byproduct material; and

10507 (ii) \$4,167 per month for those uranium mills the executive secretary has determined are
10508 on standby status.

10509 (c) On and after March 31, 2003 through June 30, 2003 the same fees as in Subsection
10510 (5)(b) apply, but only if the federal Nuclear Regulatory Commission grants to Utah an
10511 amendment for agreement state status for uranium recovery regulation on or before March 30,
10512 2003.

10513 (d) If the Nuclear Regulatory Commission does not grant the amendment for state
10514 agreement status on or before March 30, 2003, fees under Subsection (5)(e) do not apply and
10515 are not required to be paid until on and after the later date of:

10516 (i) October 1, 2003; or

10517 (ii) the date the Nuclear Regulatory Commission grants to Utah an amendment for
10518 agreement state status for uranium recovery regulation.

10519 (e) For the payment periods beginning on and after July 1, 2003, the department shall
10520 establish the fees required under Subsection (5)(a) under Section [~~63-38-3.2~~] 63J-1-303, subject
10521 to the restrictions under Subsection (5)(d).

10522 (f) The department shall deposit fees it receives under this Subsection (5) into the
10523 Environmental Quality Restricted Account created in Section 19-1-108.

10524 (6) (a) The department shall assess fees for registration, licensing, and inspection of
10525 radiation sources under this section.

10526 (b) The department shall comply with the requirements of Section [~~63-38-3.2~~]
10527 63J-1-303 in assessing fees for licensure and registration.

10528 (7) The department shall coordinate its activities with the Department of Health rules
10529 made under Section 26-21a-203.

10530 (8) (a) Except as provided in Subsection (9), the board may not adopt rules, for the
10531 purpose of the state assuming responsibilities from the United States Nuclear Regulatory
10532 Commission with respect to regulation of sources of ionizing radiation, that are more stringent
10533 than the corresponding federal regulations which address the same circumstances.

10534 (b) In adopting those rules, the board may incorporate corresponding federal
10535 regulations by reference.

10536 (9) (a) The board may adopt rules more stringent than corresponding federal
10537 regulations for the purpose described in Subsection (8) only if it makes a written finding after
10538 public comment and hearing and based on evidence in the record that corresponding federal
10539 regulations are not adequate to protect public health and the environment of the state.

10540 (b) Those findings shall be accompanied by an opinion referring to and evaluating the
10541 public health and environmental information and studies contained in the record which form the
10542 basis for the board's conclusion.

10543 (10) (a) The board shall by rule:

10544 (i) authorize independent qualified experts to conduct inspections required under this
10545 chapter of x-ray facilities registered with the division; and

10546 (ii) establish qualifications and certification procedures necessary for independent
10547 experts to conduct these inspections.

10548 (b) Independent experts under this Subsection (10) are not considered employees or
10549 representatives of the division or the state when conducting the inspections.

10550 (11) (a) The board may by rule establish criteria for siting commercial low-level
10551 radioactive waste treatment or disposal facilities, subject to the prohibition imposed by Section
10552 19-3-103.7.

10553 (b) Subject to Subsection 19-3-105(10), any facility under Subsection (11)(a) for which
10554 a radioactive material license is required by this section shall comply with those criteria.

10555 (c) Subject to Subsection 19-3-105(10), a facility may not receive a radioactive material
10556 license until siting criteria have been established by the board. The criteria also apply to
10557 facilities that have applied for but not received a radioactive material license.

10558 (12) The board shall by rule establish financial assurance requirements for closure and
10559 postclosure care of radioactive waste land disposal facilities, taking into account existing
10560 financial assurance requirements.

10561 Section 220. Section **19-3-106.4** is amended to read:

10562 **19-3-106.4. Generator site access permits.**

10563 (1) A generator or broker may not transfer radioactive waste to a commercial
10564 radioactive waste treatment or disposal facility in the state without first obtaining a generator
10565 site access permit from the executive secretary.

10566 (2) The board may make rules pursuant to Section 19-3-104 governing a generator site
10567 access permit program.

10568 (3) (a) Except as provided in Subsection (3)(b), the department shall establish fees for
10569 generator site access permits in accordance with Section [~~63-38-3.2~~] 63J-1-303.

10570 (b) On and after July 1, 2001 through June 30, 2002, the fees are:

10571 (i) \$1,300 for generators transferring 1,000 or more cubic feet of radioactive waste per
10572 year;

10573 (ii) \$500 for generators transferring less than 1,000 cubic feet of radioactive waste per
10574 year; and

10575 (iii) \$5,000 for brokers.

10576 (c) The department shall deposit fees received under this section into the Environmental
10577 Quality Restricted Account created in Section 19-1-108.

10578 (4) This section does not apply to a generator or broker transferring radioactive waste
10579 to a uranium mill licensed under 10 C.F.R. Part 40, Domestic Licensing of Source Material.

10580 Section 221. Section **19-3-109** is amended to read:

10581 **19-3-109. Civil penalties -- Appeals.**

10582 (1) A person who violates any provision of Sections 19-3-104 through 19-3-113, any
10583 rule or order issued under the authority of those sections, or the terms of a license, permit, or
10584 registration certificate issued under the authority of those sections is subject to a civil penalty
10585 not to exceed \$5,000 for each violation.

10586 (2) The board may assess and make a demand for payment of a penalty under this
10587 section and may compromise or remit that penalty.

10588 (3) In order to make demand for payment of a penalty assessed under this section, the
10589 board shall issue a notice of agency action, specifying, in addition to the requirements for
10590 notices of agency action contained in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
10591 Administrative Procedures Act:

10592 (a) the date, facts, and nature of each act or omission charged;

10593 (b) the provision of the statute, rule, order, license, permit, or registration certificate
10594 that is alleged to have been violated;

10595 (c) each penalty that the bureau proposes to impose, together with the amount and date
10596 of effect of that penalty; and

10597 (d) that failure to pay the penalty or respond may result in a civil action for collection.

10598 (4) A person notified according to Subsection (3) may request an adjudicative
10599 proceeding.

10600 (5) Upon request by the board, the attorney general may institute a civil action to
10601 collect a penalty imposed under this section.

10602 (6) (a) Except as provided in Subsection (b), the department shall deposit all monies
10603 collected from civil penalties imposed under this section into the General Fund.

10604 (b) The department may reimburse itself and local governments from monies collected
10605 from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

10606 (c) The department shall regulate reimbursements by making rules that:

10607 (i) define qualifying environmental enforcement activities; and

10608 (ii) define qualifying extraordinary expenses.

10609 Section 222. Section **19-3-111** is amended to read:

10610 **19-3-111. Impounding of radioactive material.**

10611 (1) The board may impound the radioactive material of any person if:

10612 (a) the material poses an imminent threat or danger to the public health or safety; or

10613 (b) that person is violating:

10614 (i) any provision of Sections 19-3-104 through 19-3-113;
10615 (ii) any rules or orders enacted or issued under the authority of those sections; or
10616 (iii) the terms of a license, permit, or registration certificate issued under the authority
10617 of those sections.

10618 (2) Before any dispositive action may be taken with regard to impounded radioactive
10619 materials, the board shall comply with the procedures and requirements of [~~Title 63, Chapter~~
10620 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

10621 Section 223. Section **19-3-303** is amended to read:

10622 **19-3-303. Definitions.**

10623 As used in this part:

10624 (1) "Final judgment" means a final ruling or judgment, including any supporting
10625 opinion, that determines the rights of the parties and concerning which all appellate remedies
10626 have been exhausted or the time for appeal has expired.

10627 (2) "Goods" means any materials or supplies, whether raw, processed, or manufactured.

10628 (3) "Greater than class C radioactive waste" means low-level radioactive waste that has
10629 higher concentrations of specific radionuclides than allowed for class C waste.

10630 (4) "Gross value of the contract" means the totality of the consideration received for
10631 any goods, services, or municipal-type services delivered or rendered in the state without any
10632 deduction for expense paid or accrued with respect to it.

10633 (5) "High-level nuclear waste" has the same meaning as in Section 19-3-102.

10634 (6) "Municipal-type services" includes, but is not limited to:

10635 (a) fire protection service;

10636 (b) waste and garbage collection and disposal;

10637 (c) planning and zoning;

10638 (d) street lighting;

10639 (e) life support and paramedic services;

10640 (f) water;

10641 (g) sewer;

- 10642 (h) electricity;
- 10643 (i) natural gas or other fuel; or
- 10644 (j) law enforcement.
- 10645 (7) "Organization" means a corporation, limited liability company, partnership, limited
- 10646 liability partnership, joint venture, consortium, association, trust, or other entity formed to
- 10647 undertake an enterprise, whether or not for profit.
- 10648 (8) "Placement" means transportation, transfer, storage, decay in storage, treatment, or
- 10649 disposal.
- 10650 (9) "Political subdivision" means any county, city, town, school district, public transit
- 10651 district, redevelopment agency, special improvement or taxing district, or other governmental
- 10652 subdivision or public corporation.
- 10653 (10) "Rule" means a rule made by the department under [~~Title 63, Chapter 46a~~] Title
- 10654 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 10655 (11) "Service" or "services" means any work or governmental program which provides
- 10656 a benefit.
- 10657 (12) "Storage facility" means any facility which stores, holds, or otherwise provides for
- 10658 the emplacement of waste regardless of the intent to recover that waste for subsequent use,
- 10659 processing, or disposal.
- 10660 (13) "Transfer facility" means any facility which transfers waste from and between
- 10661 transportation modes, vehicles, cars, or other units, and includes rail terminals and intermodal
- 10662 transfer points.
- 10663 (14) "Waste" or "wastes" means high-level nuclear waste and greater than class C
- 10664 radioactive waste.
- 10665 Section 224. Section **19-3-308** is amended to read:
- 10666 **19-3-308. Application fee and annual fees.**
- 10667 (1) (a) Any application for a waste transfer, storage, decay in storage, treatment, or
- 10668 disposal facility shall be accompanied by an initial fee of \$5,000,000.
- 10669 (b) The applicant shall subsequently pay an additional fee to cover the costs to the state

10670 associated with review of the application, including costs to the state and the state's contractors
10671 for permitting, technical, administrative, legal, safety, and emergency response reviews,
10672 planning, training, infrastructure, and other impact analyses, studies, and services required to
10673 evaluate a proposed facility.

10674 (2) For the purpose of funding the state oversight and inspection of any waste transfer,
10675 storage, decay in storage, treatment, or disposal facility, and to establish state infrastructure,
10676 including, but not limited to providing for state Department of Environmental Quality, state
10677 Department of Transportation, state Department of Public Safety, and other state agencies'
10678 technical, administrative, legal, infrastructure, maintenance, training, safety, socio-economic,
10679 law enforcement, and emergency resources necessary to respond to these facilities, the owner or
10680 operator shall pay to the state a fee as established by department rule under Section [~~63-38-3.2~~
10681 63J-1-303], to be assessed:

10682 (a) per ton of storage cask and high level nuclear waste per year for storage, decay in
10683 storage, treatment, or disposal of high level nuclear waste;

10684 (b) per ton of transportation cask and high level nuclear waste for each transfer of high
10685 level nuclear waste;

10686 (c) per ton of storage cask and greater than class C radioactive waste for the storage,
10687 decay in storage, treatment, or disposal of greater than class C radioactive waste; and

10688 (d) per ton of transportation cask and greater than class C radioactive waste for each
10689 transfer of greater than class C radioactive waste.

10690 (3) Funds collected under Subsection (2) shall be placed in the Nuclear Accident and
10691 Hazard Compensation Account, created in Subsection 19-3-309(3).

10692 (4) The owner or operator of the facility shall pay the fees imposed under this section to
10693 the department on or before the 15th day of the month following the month in which the fee
10694 accrued.

10695 (5) Annual fees due under this part accrue on July 1 of each year and shall be paid to
10696 the department by July 15 of that year.

10697 Section 225. Section **19-3-315** is amended to read:

10698 **19-3-315. Transportation requirements.**

10699 (1) A person may not transport wastes in the state, including on highways, roads, rail,
10700 by air, or otherwise, without:

10701 (a) having received approval from the state Department of Transportation; and

10702 (b) having demonstrated compliance with rules of the state Department of
10703 Transportation.

10704 (2) The Department of Transportation may:

10705 (a) make rules requiring a transport and route approval permit, weight restrictions,
10706 tracking systems, and state escort; and

10707 (b) assess appropriate fees as established under Section [~~63-38-3.2~~] 63J-1-303 for each
10708 shipment of waste, consistent with the requirements and limitations of federal law.

10709 (3) The Department of Environmental Quality shall establish any other transportation
10710 rules as necessary to protect the public health, safety, and environment.

10711 (4) Unless expressly authorized by the governor, with the concurrence of the
10712 Legislature, an easement or other interest in property may not be granted upon any lands within
10713 the state for a right of way for any carrier transportation system that:

10714 (a) is not a class I common or contract rail carrier organized and doing business prior to
10715 January 1, 1999; and

10716 (b) transports high level nuclear waste or greater than class C radioactive waste to a
10717 storage facility within the state.

10718 Section 226. Section **19-4-104** is amended to read:

10719 **19-4-104. Powers of board.**

10720 (1) The board may:

10721 (a) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
10722 Administrative Rulemaking Act:

10723 (i) establishing standards that prescribe the maximum contaminant levels in any public
10724 water system and provide for monitoring, record-keeping, and reporting of water quality related
10725 matters;

10726 (ii) governing design, construction, operation, and maintenance of public water systems;
10727 (iii) granting variances and exemptions to the requirements established under this
10728 chapter that are not less stringent than those allowed under federal law;
10729 (iv) protecting watersheds and water sources used for public water systems; and
10730 (v) governing capacity development in compliance with Section 1420 of the federal
10731 Safe Drinking Water Act, 42 U.S.C.A. 300f et seq.;

10732 (b) issue orders necessary to enforce the provisions of this chapter, enforce the orders
10733 by appropriate administrative and judicial proceedings, and institute judicial proceedings to
10734 secure compliance with this chapter;

10735 (c) (i) hold hearings relating to the administration of this chapter and compel the
10736 attendance of witnesses, the production of documents and other evidence, administer oaths and
10737 take testimony, and receive evidence as necessary; or

10738 (ii) appoint hearing officers and authorize them to exercise powers under this
10739 Subsection (1)(c);

10740 (d) require the submission to the executive secretary of plans and specifications for
10741 construction of, substantial addition to, or alteration of public water systems for review and
10742 approval by the board before that action begins and require any modifications or impose any
10743 conditions that may be necessary to carry out the purposes of this chapter;

10744 (e) advise, consult, cooperate with, provide technical assistance to, and enter into
10745 agreements, contracts, or cooperative arrangements with state, federal, or interstate agencies,
10746 municipalities, local health departments, educational institutions, or others necessary to carry
10747 out the purposes of this chapter and to support the laws, ordinances, rules, and regulations of
10748 local jurisdictions;

10749 (f) request and accept financial assistance from other public agencies, private entities,
10750 and the federal government to carry out the purposes of this chapter;

10751 (g) develop and implement an emergency plan to protect the public when declining
10752 drinking water quality or quantity creates a serious health risk and issue emergency orders if a
10753 health risk is imminent;

10754 (h) authorize employees or agents of the department, after reasonable notice and
10755 presentation of credentials, to enter any part of a public water system at reasonable times to
10756 inspect the facilities and water quality records required by board rules, conduct sanitary surveys,
10757 take samples, and investigate the standard of operation and service delivered by public water
10758 systems;

10759 (i) meet the requirements of federal law related or pertaining to drinking water; and

10760 (j) exercise all other incidental powers necessary to carry out the purpose of this
10761 chapter.

10762 (2) (a) The board may adopt and enforce standards and establish fees for certification of
10763 operators of any public water system.

10764 (b) The board may not require certification of operators for a water system serving a
10765 population of 800 or less except:

10766 (i) to the extent required for compliance with Section 1419 of the federal Safe Drinking
10767 Water Act, 42 U.S.C.A. 300f et seq.; and

10768 (ii) for a system that is required to treat its drinking water.

10769 (c) The certification program shall be funded from certification and renewal fees.

10770 (3) Routine extensions or repairs of existing public water systems that comply with the
10771 rules and do not alter the system's ability to provide an adequate supply of water are exempt
10772 from the provisions of Subsection (1)(d).

10773 (4) (a) The board may adopt and enforce standards and establish fees for certification of
10774 persons engaged in administering cross connection control programs or backflow prevention
10775 assembly training, repair, and maintenance testing.

10776 (b) The certification program shall be funded from certification and renewal fees.

10777 Section 227. Section **19-4-109** is amended to read:

10778 **19-4-109. Violations -- Penalties -- Reimbursement for expenses.**

10779 (1) Any person that violates any rule or order made or issued pursuant to this chapter is
10780 subject to a civil penalty of not more than \$1,000 per day for each day of violation. The board
10781 may assess and make a demand for payment of a penalty under this section by directing the

10782 executive secretary to issue a notice of agency action under [~~Title 63, Chapter 46b~~] Title 63G,
10783 Chapter 4, Administrative Procedures Act.

10784 (2) (a) Any person that willfully violates any rule or order made or issued pursuant to
10785 this chapter, or that willfully fails to take any corrective action required by such an order, is
10786 guilty of a class B misdemeanor and subject to a fine of not more than \$5,000 per day for each
10787 day of violation.

10788 (b) In addition, the person is subject, in a civil proceeding, to a penalty of not more than
10789 \$5,000 per day for each day of violation.

10790 (3) (a) Except as provided in Subsection (b), all penalties assessed and collected under
10791 the authority of this section shall be deposited in the General Fund.

10792 (b) The department may reimburse itself and local governments from monies collected
10793 from civil penalties for extraordinary expenses incurred in environmental enforcement activities.

10794 (c) The department shall regulate reimbursements by making rules that:

10795 (i) define qualifying environmental enforcement activities; and

10796 (ii) define qualifying extraordinary expenses.

10797 Section 228. Section **19-5-104** is amended to read:

10798 **19-5-104. Powers and duties of board.**

10799 (1) The board has the following powers and duties, but the board shall give priority to
10800 pollution that results in hazards to the public health:

10801 (a) develop programs for the prevention, control, and abatement of new or existing
10802 pollution of the waters of the state;

10803 (b) advise, consult, and cooperate with other agencies of the state, the federal
10804 government, other states, and interstate agencies, and with affected groups, political
10805 subdivisions, and industries to further the purposes of this chapter;

10806 (c) encourage, participate in, or conduct studies, investigations, research, and
10807 demonstrations relating to water pollution and causes of water pollution as the board finds
10808 necessary to discharge its duties;

10809 (d) collect and disseminate information relating to water pollution and the prevention,

10810 control, and abatement of water pollution;

10811 (e) adopt, modify, or repeal standards of quality of the waters of the state and classify

10812 those waters according to their reasonable uses in the interest of the public under conditions the

10813 board may prescribe for the prevention, control, and abatement of pollution;

10814 (f) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

10815 Administrative Rulemaking Act, taking into account Subsection (2), to:

10816 (i) implement the awarding of construction loans to political subdivisions and municipal

10817 authorities under Section 11-8-2, including:

10818 (A) requirements pertaining to applications for loans;

10819 (B) requirements for determination of eligible projects;

10820 (C) requirements for determination of the costs upon which loans are based, which

10821 costs may include engineering, financial, legal, and administrative expenses necessary for the

10822 construction, reconstruction, and improvement of sewage treatment plants, including major

10823 interceptors, collection systems, and other facilities appurtenant to the plant;

10824 (D) a priority schedule for awarding loans, in which the board may consider in addition

10825 to water pollution control needs any financial needs relevant, including per capita cost, in

10826 making a determination of priority; and

10827 (E) requirements for determination of the amount of the loan;

10828 (ii) implement the awarding of loans for nonpoint source projects pursuant to Section

10829 73-10c-4.5;

10830 (iii) set effluent limitations and standards subject to Section 19-5-116;

10831 (iv) implement or effectuate the powers and duties of the board; and

10832 (v) protect the public health for the design, construction, operation, and maintenance of

10833 underground wastewater disposal systems, liquid scavenger operations, and vault and earthen

10834 pit privies;

10835 (g) issue, modify, or revoke orders:

10836 (i) prohibiting or abating discharges;

10837 (ii) requiring the construction of new treatment works or any parts of them, or requiring

10838 the modification, extension, or alteration of existing treatment works as specified by board rule
10839 or any parts of them, or the adoption of other remedial measures to prevent, control, or abate
10840 pollution;

10841 (iii) setting standards of water quality, classifying waters or evidencing any other
10842 determination by the board under this chapter; and

10843 (iv) requiring compliance with this chapter and with rules made under this chapter;

10844 (h) review plans, specifications, or other data relative to disposal systems or any part of
10845 disposal systems, and issue construction permits for the installation or modification of treatment
10846 works or any parts of them;

10847 (i) after public notice and opportunity for a public hearing, issue, continue in effect,
10848 revoke, modify, or deny discharge permits under reasonable conditions the board may prescribe
10849 to control the management of sewage sludge or to prevent or control the discharge of
10850 pollutants, including effluent limitations for the discharge of wastes into the waters of the state;

10851 (j) give reasonable consideration in the exercise of its powers and duties to the
10852 economic impact of water pollution control on industry and agriculture;

10853 (k) exercise all incidental powers necessary to carry out the purposes of this chapter,
10854 including delegation to the department of its duties as appropriate to improve administrative
10855 efficiency;

10856 (l) meet the requirements of federal law related to water pollution;

10857 (m) establish and conduct a continuing planning process for control of water pollution
10858 including the specification and implementation of maximum daily loads of pollutants;

10859 (n) make rules governing inspection, monitoring, recordkeeping, and reporting
10860 requirements for underground injections and require permits for them, to protect drinking water
10861 sources, except for wells, pits, and ponds covered by Section 40-6-5 regarding gas and oil,
10862 recognizing that underground injection endangers drinking water sources if:

10863 (i) injection may result in the presence of any contaminant in underground water which
10864 supplies or can reasonably be expected to supply any public water system, as defined in Section
10865 19-4-102; and

10866 (ii) the presence of the contaminant may result in the public water system not complying
10867 with any national primary drinking water standards or may otherwise adversely affect the health
10868 of persons;

10869 (o) make rules governing sewage sludge management, including permitting, inspecting,
10870 monitoring, recordkeeping, and reporting requirements;

10871 (p) adopt and enforce rules and establish fees to cover the costs of testing for
10872 certification of operators of treatment works and sewerage systems operated by political
10873 subdivisions;

10874 (q) notwithstanding the provisions of Section 19-4-112, make rules governing design
10875 and construction of irrigation systems which convey sewage treatment facility effluent of human
10876 origin in pipelines under pressure, unless contained in surface pipes wholly on private property
10877 and for agricultural purposes, and which are constructed after May 4, 1998; and

10878 (r) (i) approve, approve in part, approve with conditions, or deny, in writing, an
10879 application for water reuse under Title 73, Chapter 3c, Wastewater Reuse Act; and

10880 (ii) issue an operating permit for water reuse under Title 73, Chapter 3c, Wastewater
10881 Reuse Act.

10882 (2) In determining eligible project costs and in establishing priorities pursuant to
10883 Subsection (1)(f)(i), the board shall take into consideration the availability of federal grants.

10884 (3) In establishing certification rules under Subsection (1)(p), the board shall:

10885 (a) base the requirements for certification on the size, treatment process type, and
10886 complexity of the treatment works and sewerage systems operated by political subdivisions;

10887 (b) allow operators until three years after the date of adoption of the rules to obtain
10888 initial certification;

10889 (c) allow new operators one year from the date they are hired by a treatment plant or
10890 sewerage system or three years after the date of adoption of the rules, whichever occurs later,
10891 to obtain certification;

10892 (d) issue certification upon application and without testing, at a grade level comparable
10893 to the grade of current certification to operators who are currently certified under the voluntary

10894 certification plan for wastewater works operators as recognized by the board; and

10895 (e) issue a certification upon application and without testing that is valid only at the
10896 treatment works or sewerage system where that operator is currently employed if the operator:

10897 (i) is in charge of and responsible for the treatment works or sewerage system on March
10898 16, 1991;

10899 (ii) has been employed at least ten years in the operation of that treatment works or
10900 sewerage system prior to March 16, 1991; and

10901 (iii) demonstrates to the board [~~his~~] the operator's capability to operate the treatment
10902 works or sewerage system at which [~~he~~] the operator is currently employed by providing
10903 employment history and references as required by the board.

10904 Section 229. Section **19-5-113** is amended to read:

10905 **19-5-113. Power of board to enter property for investigation -- Records and**
10906 **reports required of owners or operators.**

10907 (1) The board or its authorized representative has, after presentation of credentials, the
10908 authority to enter at reasonable times upon any private or public property for the purpose of:

10909 (a) sampling, inspecting, or investigating matters or conditions relating to pollution or
10910 the possible pollution of any waters of the state, effluents or effluent sources, monitoring
10911 equipment, or sewage sludge; and

10912 (b) reviewing and copying records required to be maintained under this chapter.

10913 (2) (a) The board may require a person managing sewage sludge, or the owner or
10914 operator of a disposal system, including a system discharging into publicly[=]owned treatment
10915 works, to:

10916 (i) establish and maintain reasonable records and make reports relating to the operation
10917 of the system or the management of the sewage sludge;

10918 (ii) install, use, and maintain monitoring equipment or methods;

10919 (iii) sample, and analyze effluents or sewage sludges; and

10920 (iv) provide other information reasonably required.

10921 (b) The records, reports, and information shall be available to the public except as

10922 provided in Subsection 19-1-306(2) or Subsections [~~63-2-304~~] 63G-2-305(1) and (2),
10923 Government Records Access and Management Act, as appropriate, for other than effluent
10924 information.

10925 Section 230. Section **19-5-120** is amended to read:

10926 **19-5-120. Sewage permit program fee.**

10927 (1) The department may assess a fee established under Section [~~63-38-3.2~~] 63J-1-303
10928 against persons required to obtain a permit under Section 19-5-108 for the management of
10929 sewage sludge, to be applied to the costs of administering the sewage permit program required
10930 by this chapter.

10931 (2) The total of the combined fees assessed against all permittees under this section may
10932 not be more than \$28,000 annually.

10933 (3) In establishing the fee for each sludge disposal permit holder, the department shall
10934 take into account the proportionate size of the population served by the permit holder.

10935 (4) All proceeds from the fee shall be applied to the administering of the sewage permit
10936 program required by this chapter.

10937 Section 231. Section **19-5-121** is amended to read:

10938 **19-5-121. Underground wastewater disposal systems -- Certification required to**
10939 **design, inspect, maintain, or conduct percolation or soil tests -- Exemptions -- Rules --**
10940 **Fees.**

10941 (1) As used in this section, "maintain" does not include the pumping of an underground
10942 wastewater disposal system.

10943 (2) (a) Except as provided in Subsections (2)(b) and (2)(c), beginning January 1, 2002,
10944 a person may not design, inspect, maintain, or conduct percolation or soil tests for an
10945 underground wastewater disposal system, without first obtaining certification from the board.

10946 (b) An individual is not required to obtain certification from the board to maintain an
10947 underground wastewater disposal system that serves a noncommercial, private residence owned
10948 by the individual or a member of the individual's family and in which the individual or a member
10949 of the individual's family resides or an employee of the individual resides without payment of

10950 rent.

10951 (c) The board shall make rules allowing an uncertified individual to conduct percolation
10952 or soil tests for an underground wastewater disposal system that serves a noncommercial,
10953 private residence owned by the individual and in which the individual resides or intends to
10954 reside, or which is intended for use by an employee of the individual without payment of rent, if
10955 the individual:

10956 (i) has the capability of properly conducting the tests; and

10957 (ii) is supervised by a certified individual when conducting the tests.

10958 (3) (a) The board shall adopt and enforce rules for the certification and recertification of
10959 individuals who design, inspect, maintain, or conduct percolation or soil tests for underground
10960 wastewater disposal systems.

10961 (b) (i) The rules shall specify requirements for education and training and the type and
10962 duration of experience necessary to obtain certification.

10963 (ii) The rules shall recognize the following in meeting the requirements for certification:

10964 (A) the experience of a contractor licensed under Title 58, Chapter 55, Utah
10965 Construction Trades Licensing Act, who has five or more years of experience installing
10966 underground wastewater disposal systems;

10967 (B) the experience of an environmental health scientist licensed under Title 58, Chapter
10968 20a, Environmental Health Scientist Act; or

10969 (C) the educational background of a professional engineer licensed under Title 58,
10970 Chapter 22, Professional Engineers and Professional Land Surveyors Licensing Act.

10971 (iii) If eligibility for certification is based on experience, the applicant for certification
10972 must show proof of experience.

10973 (4) The department may establish fees in accordance with Section [~~63-38-3-2~~]
10974 63J-1-303 for the testing and certification of individuals who design, inspect, maintain, or
10975 conduct percolation or soil tests for underground wastewater disposal systems.

10976 Section 232. Section **19-5-122** is amended to read:

10977 **19-5-122. Underground wastewater disposal systems -- Fee imposed on new**

10978 systems.

10979 (1) Beginning July 1, 2001, a one-time fee is imposed on each new underground
 10980 wastewater disposal system installed.

10981 (2) (a) From July 1, 2001 through June 30, 2002, the fee shall be \$25.

10982 (b) Beginning July 1, 2002, the fee shall be established by the department in accordance
 10983 with Section [~~63-38-3.2~~] 63J-1-303.

10984 (3) (a) The fee shall be paid when plans and specifications for the construction of a new
 10985 underground wastewater disposal system are approved by the local health department or the
 10986 Department of Environmental Quality.

10987 (b) A local health department shall remit the fee revenue to the Division of Finance
 10988 quarterly.

10989 (4) The fee revenue shall be:

10990 (a) deposited into the Underground Wastewater Disposal Restricted Account created in
 10991 Section 19-5-123; and

10992 (b) used to pay for costs of underground wastewater disposal system training programs.
 10993 Section 233. Section **19-6-102.6** is amended to read:

10994 **19-6-102.6. Legislative participation in landfill siting disputes.**

10995 (1) (a) Upon the Legislature's receipt of a written request by a county governing body
 10996 or a member of the Legislature whose district is involved in a landfill siting dispute, the
 10997 president of the Senate and the speaker of the House shall appoint a committee as described
 10998 under Subsection (2) and volunteers under Subsection (3) to actively seek an acceptable
 10999 location for a municipal landfill if there is a dispute between two or more counties regarding the
 11000 proposed site of a municipal landfill.

11001 (b) The president and the speaker shall consult with the legislators appointed under this
 11002 subsection regarding their appointment of members of the committee under Subsection (2), and
 11003 volunteers under Subsection (3).

11004 (2) The committee shall consist of the following members, appointed jointly by the
 11005 president and the speaker:

- 11006 (a) two members from the Senate:
- 11007 (i) one member from the county where the proposed landfill site is located; and
- 11008 (ii) one member from the other county involved in the dispute, but if more than one
- 11009 other county is involved, still only one senator from one of those counties;
- 11010 (b) two members from the House:
- 11011 (i) one member from the county where the proposed landfill site is located; and
- 11012 (ii) one member from the other county involved in the dispute, but if more than one
- 11013 other county is involved, still only one representative from one of those counties;
- 11014 (c) one individual whose current principal residence is within a community located
- 11015 within 20 miles of any exterior boundary of the proposed landfill site, but if no community is
- 11016 located within 20 miles of the community, then an individual whose current residence is in the
- 11017 community nearest the proposed landfill site;
- 11018 (d) two resident citizens from the county where the proposed landfill site is located; and
- 11019 (e) three resident citizens from the other county involved in the dispute, but if more
- 11020 than one other county is involved, still only three citizen representatives from those counties.
- 11021 (3) Two volunteers shall be appointed under Subsection (1). The volunteers shall be
- 11022 individuals who agree to assist, as requested, the committee members who represent the
- 11023 interests of the county where the proposed landfill site is located.
- 11024 (4) (a) Funding and staffing for the committee shall be provided jointly and equally by
- 11025 the Senate and the House.
- 11026 (b) The Department of Environmental Quality shall, at the request of the committee and
- 11027 as funds are available within the department's existing budget, provide support in arranging for
- 11028 committee hearings to receive public input and secretarial staff to make a record of those
- 11029 hearings.
- 11030 (5) The committee shall:
- 11031 (a) appoint a chair from among its members; and
- 11032 (b) meet as necessary, but not less often than once per month, until its work is
- 11033 completed.

11034 (6) The committee shall report in writing the results of its work and any
11035 recommendations it may have for legislative action to the interim committees of the Legislature
11036 as directed by the Legislative Management Committee.

11037 (7) (a) All action by the division, the executive secretary, or the division board of the
11038 Department of Environmental Quality regarding any proposed municipal landfill site, regarding
11039 which a request has been submitted under Subsection (1), is tolled for one year from the date
11040 the request is submitted, or until the committee completes its work under this section,
11041 whichever occurs first. This Subsection (7) also tolls the time limits imposed by Subsection
11042 19-6-108(13).

11043 (b) This Subsection (7) applies to any proposed landfill site regarding which the
11044 department has not granted final approval on or before March 21, 1995.

11045 (c) As used in this Subsection (7), "final approval" means final agency action taken after
11046 conclusion of proceedings under Sections [~~63-46b-9~~] 63G-4-207 through [~~63-46b-18~~]
11047 63G-4-405.

11048 (8) This section does not apply to a municipal solid waste facility that is, on or before
11049 March 23, 1994:

11050 (a) operating under an existing permit or the renewal of an existing permit issued by the
11051 local health department or other authority granted by the Department of Environmental Quality;
11052 or

11053 (b) operating under the approval of the local health department, regardless of whether a
11054 formal permit has been issued.

11055 Section 234. Section **19-6-105** is amended to read:

11056 **19-6-105. Rules of board.**

11057 (1) The board may make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
11058 Chapter 3, Utah Administrative Rulemaking Act:

11059 (a) establishing minimum standards for protection of human health and the
11060 environment, for the storage, collection, transport, recovery, treatment, and disposal of solid
11061 waste, including requirements for the approval of plans for the construction, extension,

11062 operation, and closure of solid waste disposal sites;

11063 (b) identifying wastes which are determined to be hazardous, including wastes
11064 designated as hazardous under Sec. 3001 of the Resource Conservation and Recovery Act of
11065 1976, 42 U.S.C., Sec. 6921, et seq.;

11066 (c) governing generators and transporters of hazardous wastes and owners and
11067 operators of hazardous waste treatment, storage, and disposal facilities, including requirements
11068 for keeping records, monitoring, submitting reports, and using a manifest, without treating
11069 high-volume wastes such as cement kiln dust, mining wastes, utility waste, gas and oil drilling
11070 muds, and oil production brines in a manner more stringent than they are treated under federal
11071 standards;

11072 (d) requiring an owner or operator of a treatment, storage, or disposal facility that is
11073 subject to a plan approval under Section 19-6-108 or which received waste after July 26, 1982,
11074 to take appropriate corrective action or other response measures for releases of hazardous
11075 waste or hazardous waste constituents from the facility, including releases beyond the
11076 boundaries of the facility;

11077 (e) specifying the terms and conditions under which the board shall approve,
11078 disapprove, revoke, or review hazardous wastes operation plans;

11079 (f) governing public hearings and participation under this part;

11080 (g) establishing standards governing underground storage tanks, in accordance with
11081 Title 19, Chapter 6, Part 4, Underground Storage Tank Act;

11082 (h) relating to the collection, transportation, processing, treatment, storage, and
11083 disposal of infectious waste in health facilities in accordance with the requirements of Section
11084 19-6-106;

11085 (i) defining closure plans as major or minor;

11086 (j) defining modification plans as major or minor; and

11087 (k) prohibiting refuse, offal, garbage, dead animals, decaying vegetable matter, or
11088 organic waste substance of any kind to be thrown, or remain upon or in any street, road, ditch,
11089 canal, gutter, public place, private premises, vacant lot, watercourse, lake, pond, spring, or well.

11090 (2) If any of the following are determined to be hazardous waste and are therefore
11091 subjected to the provisions of this part, the board shall, in the case of landfills or surface
11092 impoundments that receive the solid wastes, take into account the special characteristics of the
11093 wastes, the practical difficulties associated with applying requirements for other wastes to the
11094 wastes, and site specific characteristics, including the climate, geology, hydrology, and soil
11095 chemistry at the site, if the modified requirements assure protection of human health and the
11096 environment and are no more stringent than federal standards applicable to wastes:

11097 (a) solid waste from the extraction, beneficiation, or processing of ores and minerals,
11098 including phosphate rock and overburden from the mining of uranium;

11099 (b) fly ash waste, bottom ash waste, slag waste, and flue gas emission control waste
11100 generated primarily from the combustion of coal or other fossil fuels; and

11101 (c) cement kiln dust waste.

11102 (3) The board shall establish criteria for siting commercial hazardous waste treatment,
11103 storage, and disposal facilities, including commercial hazardous waste incinerators. Those
11104 criteria shall apply to any facility or incinerator for which plan approval is required under
11105 Section 19-6-108.

11106 Section 235. Section **19-6-108.3** is amended to read:

11107 **19-6-108.3. Executive secretary to issue written assurances, make determinations,**
11108 **and partition operation plans -- Board to make rules.**

11109 (1) Based upon risk to human health or the environment from potential exposure to
11110 hazardous waste, the executive secretary may:

11111 (a) even if corrective action is incomplete, issue an enforceable written assurance to a
11112 person acquiring an interest in real property covered by an operation plan that the person to
11113 whom the assurance is issued:

11114 (i) is not a permittee under the operation plan; and

11115 (ii) will not be subject to an enforcement action under this part for contamination that
11116 exists or for violations under this part that occurred before the person acquired the interest in
11117 the real property covered by the operation plan;

11118 (b) determine that corrective action to the real property covered by the operation plan

11119 is:

11120 (i) complete;

11121 (ii) incomplete;

11122 (iii) unnecessary with an environmental covenant; or

11123 (iv) unnecessary without an environmental covenant; and

11124 (c) partition from an operation plan a portion of real property subject to the operation

11125 plan after determining that corrective action for that portion of real property is:

11126 (i) complete;

11127 (ii) unnecessary with an environmental covenant; or

11128 (iii) unnecessary without an environmental covenant.

11129 (2) If the executive secretary determines that an environmental covenant is necessary

11130 under Subsection (1)(b) or (c), the executive secretary shall require that the real property be

11131 subject to an environmental covenant according to Title 57, Chapter 25, Uniform Environmental

11132 Covenants Act.

11133 (3) An assurance issued under Subsection (1) protects the person to whom the

11134 assurance is issued from any cost recovery and contribution action under state law.

11135 (4) By following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,

11136 Chapter 4, Administrative Procedures Act, the board may adopt rules to administer this section.

11137 Section 236. Section **19-6-303** is amended to read:

11138 **19-6-303. Rulemaking provisions.**

11139 The executive director may regulate hazardous substances releases by making rules in

11140 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking

11141 Act, consistent with the substantive requirements of CERCLA, to establish the requirements for

11142 remedial investigation studies and remedial action plans.

11143 Section 237. Section **19-6-321** is amended to read:

11144 **19-6-321. Construction with other state and federal laws -- Governmental**

11145 **immunity.**

11146 (1) Except as provided in Subsection (2), nothing in this part affects or modifies in any
11147 way the obligations or liability of any person under a contract or any other provision of this part
11148 or state or federal law, including common law, for damages, indemnification, injury, or loss
11149 associated with a hazardous material or substance release or a substantial threat of a hazardous
11150 material or substance release.

11151 (2) In addition to the governmental immunity granted in [~~Title 63, Chapter 30d~~] Title
11152 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are
11153 not liable for actions performed under this part except as a result of intentional misconduct or
11154 gross negligence including reckless, willful, or wanton misconduct.

11155 (3) Nothing in this part affects, limits, or modifies in any way the authority granted to
11156 the state, any state agency, or any political subdivision under other state or federal law.

11157 Section 238. Section **19-6-326** is amended to read:

11158 **19-6-326. Written assurances.**

11159 (1) Based upon risk to human health or the environment from potential exposure to
11160 hazardous substances or materials, the executive director may issue enforceable written
11161 assurances to a bona fide prospective purchaser, contiguous property owner, or innocent
11162 landowner of real property that no enforcement action under this part may be initiated regarding
11163 that real property against the person to whom the assurances are issued.

11164 (2) An assurance granted under Subsection (1) grants the person to whom the
11165 assurance is issued protection from imposition of any state law cost recovery and contribution
11166 actions under this part.

11167 (3) The executive director may make rules in accordance with [~~Title 63, Chapter 46a~~]
11168 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary for the administration
11169 of this section.

11170 Section 239. Section **19-6-403** is amended to read:

11171 **19-6-403. Powers and duties of board.**

11172 (1) (a) The board shall regulate underground storage tanks and petroleum storage tanks
11173 by applying the provisions of this part and by making rules for:

- 11174 (i) certification of tank installers, inspectors, testers, and removers;
- 11175 (ii) registration of tanks;
- 11176 (iii) administration of the petroleum storage tank program;
- 11177 (iv) format and required information regarding records to be kept by tank owners or
- 11178 operators who are participating in the fund;
- 11179 (v) voluntary participation in the fund for above ground petroleum storage tanks and
- 11180 tanks exempt from regulation under 40 C.F.R., Part 280, Subpart (B), and specified in Section
- 11181 19-6-415; and
- 11182 (vi) certification of underground storage tank consultants, including requirements for
- 11183 minimum education or experience, which rules shall recognize the educational background of a
- 11184 professional engineer licensed under Title 58, Chapter 22, Professional Engineers and Land
- 11185 Surveyors Licensing Act, as meeting the education requirements for certification, but shall
- 11186 require proof of experience that meets certification requirements.
- 11187 (b) The board shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 11188 Chapter 3, Utah Administrative Rulemaking Act, adopting requirements for underground
- 11189 storage tanks contained in Subtitle I of the Resource Conservation and Recovery Act, 42
- 11190 U.S.C. Section 6991c, et seq., and other future applicable final federal regulations.
- 11191 (2) The board shall ensure that the rules made under the authority of Subsection (1)
- 11192 meet federal requirements for the state's assumption of primacy in the regulation of
- 11193 underground storage tanks, as provided in Section 9004 of the Resource Conservation and
- 11194 Recovery Act, 42 U.S.C. Section 6991c, et seq.
- 11195 Section 240. Section **19-6-405.3** is amended to read:
- 11196 **19-6-405.3. Creation of Petroleum Storage Tank Loan Fund -- Purposes -- Loan**
- 11197 **eligibility -- Loan restrictions -- Rulemaking.**
- 11198 (1) There is created the revolving loan fund entitled the Petroleum Storage Tank Loan
- 11199 Fund.
- 11200 (2) The sources of monies for the loan fund are:
- 11201 (a) appropriations to the loan fund;

11202 (b) principal and interest received from the repayment of loans made by the executive
11203 secretary under Subsection (3); and

11204 (c) all investment income derived from money in the fund.

11205 (3) The executive secretary may loan, in accordance with this section, monies available
11206 in the loan fund to persons to be used for:

11207 (a) upgrading petroleum storage tanks and associated piping with corrosion protection,
11208 or spill and overflow prevention equipment as necessary to meet the federal deadline required
11209 under 40 CFR 280.21;

11210 (b) replacing underground storage tanks; or

11211 (c) permanently closing underground storage tanks.

11212 (4) A person may apply to the executive secretary for a loan under Subsection (3) if all
11213 tanks owned or operated by that person are in substantial compliance with all state and federal
11214 requirements or will be brought into substantial compliance using money from the loan fund.

11215 (5) The executive secretary shall consider loan applications under Subsection (4) to
11216 meet the following objectives:

11217 (a) support availability of gasoline in rural parts of the state;

11218 (b) support small businesses; and

11219 (c) reduce the threat of a petroleum release endangering the environment.

11220 (6) Loans made under this section shall:

11221 (a) be for no more than \$45,000 for all tanks at any one facility;

11222 (b) be for no more than \$15,000 per tank;

11223 (c) be for no more than 80% of the total cost of:

11224 (i) upgrading a tank and associated piping to meet requirements of 40 CFR 280.21;

11225 (ii) replacing the underground storage tank; or

11226 (iii) permanently closing the underground storage tank;

11227 (d) have a fixed annual interest rate of 3%;

11228 (e) have a term no longer than ten years;

11229 (f) be made on the condition the loan applicant obtains adequate security for the loan as

11230 established by board rule under Subsection (7); and

11231 (g) comply with rules made by the board under Subsection (7).

11232 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

11233 Administrative Rulemaking Act, the board shall make rules establishing:

11234 (a) form, content, and procedure for loan applications;

11235 (b) criteria and procedures for prioritizing loan applications;

11236 (c) requirements and procedures for securing loans;

11237 (d) procedures for making the loans;

11238 (e) procedures for administering and ensuring repayment of loans, including late

11239 payment penalties; and

11240 (f) procedures for recovering on defaulted loans.

11241 (8) The decisions of the executive secretary in loaning money from the loan fund and

11242 otherwise administering the loan fund are not subject to [~~Title 63, Chapter 46b~~] Title 63G,

11243 Chapter 4, Administrative Procedures Act.

11244 (9) The Legislature shall appropriate monies for administration of the loan fund to the

11245 department from the loan fund.

11246 (10) The executive secretary may enter into agreements with public entities or private

11247 organizations to perform any tasks associated with administration of the loan fund.

11248 Section 241. Section **19-6-408** is amended to read:

11249 **19-6-408. Underground storage tank registration fee -- Processing fee for tanks**

11250 **not in the program.**

11251 (1) The department may assess an annual underground storage tank registration fee

11252 against owners or operators of underground storage tanks that have not been closed. These

11253 fees shall be:

11254 (a) billed per facility;

11255 (b) due on July 1 annually;

11256 (c) deposited with the department as dedicated credits;

11257 (d) used by the department for the administration of the underground storage tank

11258 program outlined in this part; and

11259 (e) established under Section [~~63-38-3.2~~] 63J-1-303.

11260 (2) (a) In addition to the fee under Subsection (1), an owner or operator who elects to
11261 demonstrate financial assurance through a mechanism other than the Environmental Assurance
11262 Program shall pay a processing fee of:

11263 (i) for fiscal year 1997-98, \$1,000 for each financial assurance mechanism document
11264 submitted to the division for review; and

11265 (ii) on and after July 1, 1998, a processing fee established under Section [~~63-38-3.2~~]
11266 63J-1-303.

11267 (b) If a combination of financial assurance mechanisms is used to demonstrate financial
11268 assurance, the fee under Subsection (2)(a) shall be paid for each document submitted.

11269 (c) As used in this Subsection (2), "financial assurance mechanism document" may be a
11270 single document that covers more than one facility through a single financial assurance
11271 mechanism.

11272 (3) Any funds provided for administration of the underground storage tank program
11273 under this section that are not expended at the end of the fiscal year lapse into the Petroleum
11274 Storage Tank Restricted Account created in Section 19-6-405.5.

11275 (4) The executive secretary shall provide all owners or operators who pay the annual
11276 underground storage tank registration fee a certificate of registration.

11277 (5) (a) The executive secretary may issue a notice of agency action assessing a civil
11278 penalty of \$1,000 per facility if an owner or operator of an underground storage tank facility
11279 fails to pay the required fee within 60 days after the July 1 due date.

11280 (b) The registration fee and late payment penalty accrue interest at 12% per annum.

11281 (c) If the registration fee, late payment penalty, and interest accrued under this
11282 Subsection (5) are not paid in full within 60 days after the July 1 due date any certificate of
11283 compliance issued prior to the July 1 due date lapses. The executive secretary may not reissue
11284 the certificate of compliance until full payment under this Subsection (5) is made to the
11285 department.

11286 (d) The executive secretary may waive any penalty assessed under this Subsection (5) if
11287 no fuel has been dispensed from the tank on or after July 1, 1991.

11288 Section 242. Section **19-6-410.5** is amended to read:

11289 **19-6-410.5. Environmental assurance program -- Participant fee.**

11290 (1) As used in this section:

11291 (a) "Cash balance" means cash plus investments and current accounts receivable minus
11292 current accounts payable, excluding the liabilities estimated by the state risk manager.

11293 (b) "Commission" means the State Tax Commission, as defined in Section 59-1-101.

11294 (2) (a) There is created an Environmental Assurance Program.

11295 (b) The program shall provide to participating owners and operators, upon payment of
11296 the fee imposed under Subsection (4), assistance with satisfying the financial responsibility
11297 requirements of 40 CFR, Part 280, Subpart H, by providing funds from the Petroleum Storage
11298 Tank Trust Fund established in Section 19-6-409, subject to the terms and conditions of
11299 Chapter 6, Part 4, Underground Storage Tank Act, and rules implemented under that part.

11300 (3) (a) Subject to Subsection (3)(b), participation in the program is voluntary.

11301 (b) Each owner and operator seeking to satisfy financial responsibility requirements
11302 through the program shall use the program for all petroleum underground storage tanks that the
11303 owner or operator owns or operates.

11304 (4) (a) There is assessed an environmental assurance fee of 1/2 cent per gallon on the
11305 first sale or use of petroleum products in the state.

11306 (b) The environmental assurance fee and any other revenue collected under this section
11307 shall be deposited in the Petroleum Storage Tank Trust Fund created in Section 19-6-409 and
11308 used solely for the purposes listed in Section 19-6-409.

11309 (5) (a) The commission shall collect the environmental assurance fee and any penalties
11310 and interest imposed under this section.

11311 (b) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
11312 Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules to establish:

11313 (i) the method of payment of the environmental assurance fee;

11314 (ii) the procedure for reimbursement or exemption of owners or operators who do not
11315 participate in the program, including owners and operators of above ground storage tanks; and

11316 (iii) the procedure for confirming with the department those owners and operators who
11317 qualify for reimbursement or exemption under Subsection (5)(b)(ii).

11318 (c) The commission may retain an amount not to exceed 2.5% of fees collected under
11319 this section for the cost to it of rendering its services.

11320 (6) (a) The person or entity responsible for payment of the fee under this section shall,
11321 by the last day of the month following the month in which the sale occurs:

11322 (i) complete and submit the form prescribed by the commission; and

11323 (ii) pay the fee to the commission.

11324 (b) (i) The penalties and interest for failure to file the form or to pay the environmental
11325 assurance fee are the same as the penalties and interest under Sections 59-1-401 and 59-1-402.

11326 (ii) The commission shall deposit penalties and interest collected under this section in
11327 the Petroleum Storage Tank Trust Fund.

11328 (c) The commission shall report to the department any person or entity who is
11329 delinquent in payment of the fee under this section.

11330 (7) (a) (i) If the cash balance of the Petroleum Storage Tank Trust Fund on June 30 of
11331 any year exceeds \$20,000,000, the assessment of the environmental assurance fee as provided in
11332 Subsection (4) is reduced to 1/4 cent per gallon beginning November 1.

11333 (ii) The reduction shall remain in effect until modified by the Legislature in a general or
11334 special session.

11335 (b) The commission shall determine the cash balance of the fund each year as of June
11336 30.

11337 (c) Before September 1 of each year, the department shall provide the commission with
11338 the accounts payable of the fund as of June 30.

11339 Section 243. Section **19-6-427** is amended to read:

11340 **19-6-427. Liability of any person under other laws -- Additional state and**
11341 **governmental immunity -- Exceptions.**

11342 (1) Except as provided in Subsection (2), nothing in this part affects or modifies in any
11343 way:

11344 (a) the obligations or liability of any person under any other provision of this part or
11345 state or federal law, including common law, for damages, injury, or loss resulting from a release
11346 or substantial threat of a release of petroleum from an underground storage tank or a petroleum
11347 storage tank; or

11348 (b) the liability of any person for costs incurred except as provided in this part.

11349 (2) In addition to the governmental immunity granted in [~~Title 63, Chapter 30d~~] Title
11350 63G, Chapter 7, Governmental Immunity Act of Utah, the state and its political subdivisions are
11351 not liable for actions performed under this part except as a result of intentional misconduct or
11352 gross negligence including reckless, willful, or wanton misconduct.

11353 Section 244. Section **19-6-704** is amended to read:

11354 **19-6-704. Powers and duties of the board.**

11355 (1) The board shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
11356 Utah Administrative Rulemaking Act, as necessary to administer this part and to comply with
11357 40 CFR 279, Standards for the Management of Used Oil, to ensure the state's primacy to
11358 manage used oil under 40 CFR 279. For these purposes the board shall:

11359 (a) conduct adjudicative hearings as required in this part under [~~Title 63, Chapter 46b~~]
11360 Title 63G, Chapter 4, Administrative Procedures Act;

11361 (b) establish by rule conditions and procedures for registration and revocation of
11362 registration as a used oil collection center, used oil aggregation point, or DIYer used oil
11363 collection center;

11364 (c) provide by rule that used oil aggregation points that do not accept DIYer used oil
11365 are required to comply with used oil collection standards under this part, but are not required to
11366 be permitted or registered;

11367 (d) establish by rule conditions and fees required to obtain permits and operate as used
11368 oil transporters, used oil transfer facilities, used oil processors and rerefiners, and used oil fuel
11369 marketers;

11370 (e) establish by rule the amount of liability insurance or other financial responsibility the
11371 applicant shall have to qualify for a permit under Subsection (1)(d);

11372 (f) establish by rule the form and amount of reclamation surety required for reclamation
11373 of any site or facility required to be permitted under this part;

11374 (g) after public notice and opportunity for a public hearing, hear and act on permit
11375 issues appealed under Subsection 19-6-712(2);

11376 (h) establish by rule standards for tracking, analysis, and recordkeeping regarding used
11377 oil subject to regulation under this part, including:

11378 (i) manifests for handling and transferring used oil;

11379 (ii) analyses necessary to determine if used oil is on-specification or off-specification;

11380 (iii) records documenting date, quantities, and character of used oil transported,
11381 processed, transferred, or sold;

11382 (iv) records documenting persons between whom transactions under this subsection
11383 occurred; and

11384 (v) exemption of DIYer used oil collection centers from this subsection except as
11385 necessary to verify volumes of used oil picked up by a permitted transporter and the
11386 transporter's name and federal EPA identification number;

11387 (i) authorize inspections and audits of facilities, centers, and operations subject to
11388 regulation under this part;

11389 (j) establish by rule standards for:

11390 (i) used oil generators;

11391 (ii) used oil collection centers;

11392 (iii) DIYer used oil collection centers;

11393 (iv) aggregation points;

11394 (v) curbside used oil collection programs;

11395 (vi) used oil transporters;

11396 (vii) used oil transfer facilities;

11397 (viii) used oil burners;

11398 (ix) used oil processors and rerefiners; and
11399 (x) used oil marketers;
11400 (k) establish by rule standards for determining on-specification and off-specification
11401 used oil and specified mixtures of used oil, subject to Section 19-6-707 regarding rebuttable
11402 presumptions;
11403 (l) establish by rule standards for closure, remediation, and response to releases
11404 involving used oil; and
11405 (m) establish a public education program to promote used oil recycling and use of used
11406 oil collection centers.
11407 (2) The board may:
11408 (a) hold hearings relating to any aspect of or matter in the administration of this part
11409 and compel the attendance of witnesses and the production of documents and other evidence,
11410 administer oaths and take testimony, and receive evidence as necessary;
11411 (b) require retention and submission of records required under this part; and
11412 (c) require audits of records and recordkeeping procedures required under this part and
11413 rules made under this part, except that audits of records regarding the fee imposed and collected
11414 by the commission under Sections 19-6-714 and 19-6-715 are the responsibility of the
11415 commission under Section 19-6-716.
11416 Section 245. Section **19-6-721** is amended to read:
11417 **19-6-721. Violations -- Proceedings -- Orders.**
11418 (1) A person who violates any provision of this part or any order, permit, rule, or other
11419 requirement issued or adopted under this part is subject in a civil proceeding to a penalty of not
11420 more than \$10,000 per day for each day of violation, in addition to any fine otherwise imposed
11421 for violation of this part.
11422 (2) (a) The board may bring suit in the name of the state to restrain the person from
11423 continuing the violation and to require the person to perform necessary remediation.
11424 (b) Suit under Subsection (2)(a) may be brought in any court in the state having
11425 jurisdiction in the county of residence of the person charged or in the county where the violation

11426 is alleged to have occurred.

11427 (c) The court may grant prohibitory and mandatory injunctions, including temporary
11428 restraining orders.

11429 (3) When the executive secretary finds a situation exists in violation of this part that
11430 presents an immediate threat to the public health or welfare, the executive secretary may issue
11431 an emergency order under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
11432 Procedures Act.

11433 (4) All penalties collected under this section shall be deposited in the account created in
11434 Section 19-6-719.

11435 Section 246. Section **19-6-803** is amended to read:

11436 **19-6-803. Definitions.**

11437 As used in this part:

11438 (1) "Abandoned waste tire pile" means a waste tire pile regarding which the local
11439 department of health has not been able to:

11440 (a) locate the persons responsible for the tire pile; or

11441 (b) cause the persons responsible for the tire pile to remove it.

11442 (2) (a) "Beneficial use" means the use of chipped tires in a manner that is not recycling,
11443 storage, or disposal, but that serves as a replacement for another product or material for specific
11444 purposes.

11445 (b) "Beneficial use" includes the use of chipped tires:

11446 (i) as daily landfill cover;

11447 (ii) for civil engineering purposes;

11448 (iii) as low-density, light-weight aggregate fill; or

11449 (iv) for septic or drain field construction.

11450 (c) "Beneficial use" does not include the use of waste tires or material derived from
11451 waste tires:

11452 (i) in the construction of fences; or

11453 (ii) as fill, other than low-density, light-weight aggregate fill.

- 11454 (3) "Board" means the Solid and Hazardous Waste Control Board created under
11455 Section 19-1-106.
- 11456 (4) "Chip" or "chipped tire" means a two inch square or smaller piece of a waste tire.
- 11457 (5) "Commission" means the Utah State Tax Commission.
- 11458 (6) (a) "Consumer" means a person who purchases a new tire to satisfy a direct need,
11459 rather than for resale.
- 11460 (b) "Consumer" includes a person who purchases a new tire for a motor vehicle to be
11461 rented or leased.
- 11462 (7) "Crumb rubber" means waste tires that have been ground, shredded, or otherwise
11463 reduced in size such that the particles are less than or equal to 3/8 inch in diameter and are 98%
11464 wire free by weight.
- 11465 (8) "Disposal" means the deposit, dumping, or permanent placement of any waste tire in
11466 or on any land or in any water in the state.
- 11467 (9) "Dispose of" means to deposit, dump, or permanently place any waste tire in or on
11468 any land or in any water in the state.
- 11469 (10) "Division" means the Division of Solid and Hazardous Waste created in Section
11470 19-1-105, within the Department of Environmental Quality.
- 11471 (11) "Executive secretary" means the executive secretary of the Solid and Hazardous
11472 Waste Control Board created in Section 19-1-106.
- 11473 (12) "Fund" means the Waste Tire Recycling Fund created in Section 19-6-807.
- 11474 (13) "Landfill waste tire pile" means a waste tire pile:
- 11475 (a) located within the permitted boundary of a landfill operated by a governmental
11476 entity; and
- 11477 (b) consisting solely of waste tires brought to a landfill for disposal and diverted from
11478 the landfill waste stream to the waste tire pile.
- 11479 (14) "Local health department" means the local health department, as defined in Section
11480 26A-1-102, with jurisdiction over the recycler.
- 11481 (15) "Materials derived from waste tires" means tire sections, tire chips, tire shreadings,

11482 rubber, steel, fabric, or other similar materials derived from waste tires.

11483 (16) "Mobile facility" means a mobile facility capable of cutting waste tires on site so
11484 the waste tires may be effectively disposed of by burial, such as in a landfill.

11485 (17) "New motor vehicle" means a motor vehicle which has never been titled or
11486 registered.

11487 (18) "Passenger tire equivalent" means a measure of mixed sizes of tires where each 25
11488 pounds of whole tires or material derived from waste tires is equal to one waste tire.

11489 (19) "Proceeds of the fee" means the money collected by the commission from payment
11490 of the recycling fee including interest and penalties on delinquent payments.

11491 (20) "Recycler" means a person who:

11492 (a) annually uses, or can reasonably be expected within the next year to use, a minimum
11493 of 100,000 waste tires generated in the state or 1,000 tons of waste tires generated in the state
11494 to recover energy or produce energy, crumb rubber, chipped tires, or an ultimate product; and

11495 (b) is registered as a recycler in accordance with Section 19-6-806.

11496 (21) "Recycling fee" means the fee provided for in Section 19-6-805.

11497 (22) "Shredded waste tires" means waste tires or material derived from waste tires that
11498 has been reduced to a six inch square or smaller.

11499 (23) (a) "Storage" means the placement of waste tires in a manner that does not
11500 constitute disposal of the waste tires.

11501 (b) "Storage" does not include:

11502 (i) the use of waste tires as ballast to maintain covers on agricultural materials or to
11503 maintain covers at a construction site; or

11504 (ii) the storage for five or fewer days of waste tires or material derived from waste tires
11505 that are to be recycled or applied to a beneficial use.

11506 (24) (a) "Store" means to place waste tires in a manner that does not constitute disposal
11507 of the waste tires.

11508 (b) "Store" does not include:

11509 (i) to use waste tires as ballast to maintain covers on agricultural materials or to

11510 maintain covers at a construction site; or

11511 (ii) to store for five or fewer days waste tires or material derived from waste tires that
11512 are to be recycled or applied to a beneficial use.

11513 (25) "Tire" means a pneumatic rubber covering designed to encircle the wheel of a
11514 vehicle in which a person or property is or may be transported or drawn upon a highway.

11515 (26) "Tire retailer" means any person engaged in the business of selling new tires either
11516 as replacement tires or as part of a new vehicle sale.

11517 (27) (a) "Ultimate product" means a product that has as a component materials derived
11518 from waste tires and that the executive secretary finds has a demonstrated market.

11519 (b) "Ultimate product" includes pyrolized materials derived from:

11520 (i) waste tires; or

11521 (ii) chipped tires.

11522 (c) "Ultimate product" does not include a product regarding which a waste tire remains
11523 after the product is disposed of or disassembled.

11524 (28) "Waste tire" means a tire that is no longer suitable for its original intended purpose
11525 because of wear, damage, or defect.

11526 (29) "Waste tire pile" means a pile of 1,000 or more waste tires at one location.

11527 (30) (a) "Waste tire transporter" means a person or entity engaged in picking up or
11528 transporting at one time more than ten whole waste tires, or the equivalent amount of material
11529 derived from waste tires, generated in Utah for the purpose of storage, processing, or disposal.

11530 (b) "Waste tire transporter" includes any person engaged in the business of collecting,
11531 hauling, or transporting waste tires or who performs these functions for another person, except
11532 as provided in Subsection (30)(c).

11533 (c) "Waste tire transporter" does not include:

11534 (i) a person transporting waste tires generated solely by:

11535 (A) that person's personal vehicles;

11536 (B) a commercial vehicle fleet owned or operated by that person or that person's
11537 employer;

11538 (C) vehicles sold, leased, or purchased by a motor vehicle dealership owned or operated
11539 by that person or that person's employer; or

11540 (D) a retail tire business owned or operated by that person or that person's employer;

11541 (ii) a solid waste collector operating under a license issued by a unit of local
11542 government as defined in Section [~~63-51-2~~] 63M-5-103, or a local health department;

11543 (iii) a recycler of waste tires;

11544 (iv) a person transporting tires by rail as a common carrier subject to federal regulation;

11545 or

11546 (v) a person transporting processed or chipped tires.

11547 Section 247. Section **19-6-806** is amended to read:

11548 **19-6-806. Registration of waste tire transporters and recyclers.**

11549 (1) (a) The executive secretary shall register each applicant for registration to act as a
11550 waste tire transporter if the applicant meets the requirements of this section.

11551 (b) An applicant for registration as a waste tire transporter shall:

11552 (i) submit an application in a form prescribed by the executive secretary;

11553 (ii) pay a fee as determined by the board under Section [~~63-38-3-2~~] 63J-1-303;

11554 (iii) provide the name and business address of the operator;

11555 (iv) provide proof of liability insurance or other form of financial responsibility in an
11556 amount determined by board rule, but not more than \$300,000, for any liability the waste tire
11557 transporter may incur in transporting waste tires; and

11558 (v) meet requirements established by board rule.

11559 (c) The holder of a registration under this section shall advise the executive secretary in
11560 writing of any changes in application information provided to the executive secretary within 20
11561 days of the change.

11562 (d) If the executive secretary has reason to believe a waste tire transporter has disposed
11563 of tires other than as allowed under this part, the executive secretary shall conduct an
11564 investigation and, after complying with the procedural requirements of [~~Title 63, Chapter 46b~~]
11565 Title 63G, Chapter 4, Administrative Procedures Act, may revoke the registration.

11566 (2) (a) The executive secretary shall register each applicant for registration to act as a
11567 waste tire recycler if the applicant meets the requirements of this section.

11568 (b) An applicant for registration as a waste tire recycler shall:

11569 (i) submit an application in a form prescribed by the executive secretary;

11570 (ii) pay a fee as determined by the board under Section [~~63-38-3.2~~] 63J-1-303;

11571 (iii) provide the name and business address of the operator of the recycling business;

11572 (iv) provide proof of liability insurance or other form of financial responsibility in an
11573 amount determined by board rule, but not more than \$300,000, for any liability the waste tire
11574 recycler may incur in storing and recycling waste tires;

11575 (v) engage in activities as described under the definition of recycler in Section 19-6-803;

11576 and

11577 (vi) meet requirements established by board rule.

11578 (c) The holder of a registration under this section shall advise the executive secretary in
11579 writing of any changes in application information provided to the executive secretary within 20
11580 days of the change.

11581 (d) If the executive secretary has reason to believe a waste tire recycler has falsified any
11582 information provided in an application for partial reimbursement under this section, the
11583 executive secretary shall, after complying with the procedural requirements of [~~Title 63, Chapter~~
11584 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, revoke the registration.

11585 (3) The board shall establish a uniform fee for registration which shall be imposed by
11586 any unit of local government or local health department that requires a registration fee as part of
11587 the registration of waste tire transporters or waste tire recyclers.

11588 Section 248. Section **19-6-818** is amended to read:

11589 **19-6-818. Local health department rules.**

11590 (1) In accordance with Section 26A-1-121, the local health department shall make
11591 regulations to:

11592 (a) develop an application form; and

11593 (b) establish the procedure to apply for reimbursement.

11594 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
11595 Administrative Rulemaking Act, the commission shall make rules to implement this part.

11596 (3) The local health departments shall take into consideration the removal schedule of
11597 tire transporters or recyclers in a geographical area when making regulations governing the
11598 storage of waste tires at any business that generates waste tires, pending removal of those waste
11599 tires for recycling.

11600 Section 249. Section **19-6-819** is amended to read:

11601 **19-6-819. Powers and duties of the board.**

11602 (1) The board shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
11603 Utah Administrative Rulemaking Act, as necessary to administer this part. For these purposes
11604 the board shall establish by rule:

11605 (a) conditions and procedures for acting to issue or revoke a registration as a waste tire
11606 recycler or transporter under Section 19-6-806;

11607 (b) the amount of liability insurance or other financial responsibility the applicant is
11608 required to have to qualify for registration under Section 19-6-806, which amount may not be
11609 more than \$300,000 for any liability the waste tire transporter or recycler may incur in recycling
11610 or transporting waste tires;

11611 (c) the form and amount of financial assurance required for a site or facility used to
11612 store waste tires, which amount shall be sufficient to ensure the cleanup or removal of waste
11613 tires from that site or facility;

11614 (d) standards and required documentation for tracking and record keeping of waste
11615 tires subject to regulation under this part, including:

11616 (i) manifests for handling and transferring waste tires;

11617 (ii) records documenting date, quantities, and size or type of waste tires transported,
11618 processed, transferred, or sold;

11619 (iii) records documenting persons between whom transactions under this Subsection
11620 (1)(d) occurred and the amounts of waste tires involved in those transactions; and

11621 (iv) requiring that documentation under this Subsection (1)(d) be submitted on a

11622 quarterly basis, and that this documentation be made available for public inspection;

11623 (e) authorize inspections and audits of waste tire recycling, transportation, or storage
11624 facilities and operations subject to this part;

11625 (f) standards for payments authorized under Sections 19-6-809, 19-6-810, 19-6-811,
11626 and 19-6-812;

11627 (g) regarding applications to the executive secretary for reimbursements under Section
11628 19-6-811, the content of the reimbursement application form and the procedure to apply for
11629 reimbursement;

11630 (h) requirements for the storage of waste tires, including permits for storage;

11631 (i) the types of energy recovery or other appropriate environmentally compatible uses
11632 eligible for reimbursement, which:

11633 (i) shall include pyrolization, but not retreading; and
11634 (ii) shall apply to all waste tire recycling and beneficial use reimbursements within the
11635 state;

11636 (j) the applications of waste tires that are not eligible for reimbursement;

11637 (k) the applications of waste tires that are considered to be the storage or disposal of
11638 waste tires; and

11639 (l) provisions governing the storage or disposal of waste tires, including the process for
11640 issuing permits for waste tire storage sites.

11641 (2) The board may:

11642 (a) require retention and submission of the records required under this part;

11643 (b) require audits of the records and record keeping procedures required under this part
11644 and rules made under this part, except that audits of records regarding the fee imposed and
11645 collected by the commission under Sections 19-6-805 and 19-6-808 are the responsibility of the
11646 commission; and

11647 (c) as necessary, make rules requiring additional information as the board determines
11648 necessary to effectively administer Section 19-6-812, which rules may not place an undue
11649 burden on the operation of landfills.

11650 Section 250. Section **19-6-821** is amended to read:

11651 **19-6-821. Violations -- Civil proceedings and penalties -- Orders.**

11652 (1) A person who violates any provision of this part or any order, permit, plan approval,
11653 or rule issued or adopted under this part is subject to a civil penalty of not more than \$10,000
11654 per day for each day of violation as determined in a civil hearing under [~~Title 63, Chapter 46b~~]
11655 Title 63G, Chapter 4, Administrative Procedures Act, except:

11656 (a) any violation of Subsection 19-6-804(1) or (3), regarding landfills, is subject to the
11657 penalty under Subsection 19-6-804(4) rather than the penalties under this section; and

11658 (b) any violation of Subsection 19-6-808(1), (2), or (3) regarding payment of the
11659 recycling fee by the tire retailer is subject to penalties as provided in Subsection 19-6-808(4)
11660 rather than the penalties under this section.

11661 (2) The board may bring an action in the name of the state to restrain a person from
11662 continuing a violation of this part and to require the person to perform necessary remediation
11663 regarding a violation of this part.

11664 (3) When the executive secretary finds a situation exists in violation of this part that
11665 presents an immediate threat to the public health or welfare, the executive secretary may issue
11666 an emergency order under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
11667 Procedures Act.

11668 (4) The executive secretary may revoke the registration of a waste tire recycler or
11669 transporter who violates any provision of this part or any order, plan approval, permit, or rule
11670 issued or adopted under this part.

11671 (5) The executive secretary may revoke the tire storage permit for a storage facility that
11672 is in violation of any provision of this part or any order, plan approval, permit, or rule issued or
11673 adopted under this part.

11674 (6) If a person has been convicted of violating a provision of this part prior to a finding
11675 by the executive secretary of a violation of the same provision in an administrative hearing, the
11676 executive secretary may not assess a civil monetary penalty under this section for the same
11677 offense for which the conviction was obtained.

11678 (7) All penalties collected under this section shall be deposited in the fund.

11679 Section 251. Section **19-6-906** is amended to read:

11680 **19-6-906. Decontamination standards -- Specialist certification standards --**

11681 **Rulemaking.**

11682 (1) The Department of Health shall make rules under [~~Title 63, Chapter 46a~~] Title 63G,
11683 Chapter 3, Utah Administrative Rulemaking Act, in consultation with the local health
11684 departments and the Department of Environmental Quality, to establish:

11685 (a) decontamination and sampling standards and best management practices for the
11686 inspection and decontamination of property and the disposal of contaminated debris under this
11687 part;

11688 (b) appropriate methods for the testing of buildings and interior surfaces, and
11689 furnishings, soil, and septic tanks for contamination; and

11690 (c) when testing for contamination may be required.

11691 (2) The Department of Environmental Quality Solid and Hazardous Waste Control
11692 Board shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
11693 Rulemaking Act, in consultation with the Department of Health and local health departments, to
11694 establish within the Department of Environmental Quality Division of Environmental Response
11695 and Remediation:

11696 (a) certification standards for any private person, firm, or entity involved in the
11697 decontamination of contaminated property; and

11698 (b) a process for revoking the certification of a decontamination specialist who fails to
11699 maintain the certification standards.

11700 (3) All rules made under this part shall be consistent with other state and federal
11701 requirements.

11702 (4) The board has authority to enforce the provisions under Subsection (2).

11703 Section 252. Section **19-6-1003** is amended to read:

11704 **19-6-1003. Board and executive secretary powers.**

11705 (1) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,

11706 Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules:

11707 (a) governing administrative proceedings under this part;

11708 (b) specifying the terms and conditions under which the executive secretary shall
11709 approve, disapprove, revoke, or review a plan submitted by a manufacturer; and

11710 (c) governing reports and educational materials required by this part.

11711 (2) These rules shall include:

11712 (a) time requirements for plan submission, review, approval, and implementation;

11713 (b) a public notice and comment period for a proposed plan; and

11714 (c) safety standards for the collection, packaging, transportation, storage, recycling, and
11715 disposal of mercury switches.

11716 (3) The board may request the attorney general to bring an action for injunctive relief
11717 and enforcement of this part, including, without limitation, imposition of the penalty provided in
11718 Section 19-6-1006.

11719 (4) As authorized by the board, the executive secretary may:

11720 (a) review and approve or disapprove plans, specifications, or other data related to
11721 mercury switch removal;

11722 (b) enforce a rule by issuing a notice, an order, or both, which may be subsequently
11723 amended or revoked by the board; and

11724 (c) initiate an administrative action to compel compliance with this part and any rules
11725 adopted under this part.

11726 (5) The executive secretary shall establish a fee to cover the costs of a plan's review by
11727 following the procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303.

11728 Section 253. Section **19-7-103** is amended to read:

11729 **19-7-103. Definitions.**

11730 As used in this chapter:

11731 (1) "Administrative proceeding" means an adjudicatory proceeding conducted by the
11732 department or other government entity with authority to enforce any environmental law,
11733 including any notice of violation proceeding, any department proceeding listed in Section

11734 19-1-305, or any proceeding conducted pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter
11735 4, Administrative Procedures Act.

11736 (2) "Environmental audit report" means any document, information, report, finding,
11737 communication, note, drawing, graph, chart, photograph, survey, suggestion, or opinion,
11738 whether in preliminary, draft, or final form, prepared as the result of or in response to an
11739 environmental self-evaluation.

11740 (3) "Environmental law" means any requirement contained in this title, or in rules made
11741 under this title, or in any rules, orders, permits, licenses, or closure plans issued or approved by
11742 the department, or in any other provision or ordinance addressing protection of the
11743 environment.

11744 (4) "Environmental self-evaluation" means a self-initiated assessment, audit, or review,
11745 not otherwise expressly required by an environmental law, that is performed to determine
11746 whether a person is in compliance with environmental laws. A person may perform an
11747 environmental self-evaluation through the use of employees or the use of outside consultants.

11748 Section 254. Section **19-7-104** is amended to read:

11749 **19-7-104. Unlawful disclosure -- Environmental audit report.**

11750 (1) Information that is divulged, disseminated, or otherwise disclosed in violation of
11751 Utah Rules of Evidence, Rule 508, may not be admitted as evidence in an administrative or
11752 judicial proceeding.

11753 (2) If any person, including a department employee or a presiding hearing officer,
11754 divulges or disseminates any part of the information contained in an environmental audit report
11755 and that report is privileged under Utah Rules of Evidence, Rule 508, the privilege is not waived
11756 except as provided under Utah Rules of Evidence, Rule 508(d)(1).

11757 (3) An environmental audit report obtained pursuant to an in camera review is a
11758 protected record for purposes of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
11759 Records Access and Management Act, and a department employee or attorney representing the
11760 department may not disclose the report except in accordance with the provisions of [~~Title 63,~~
11761 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

11762 Section 255. Section **19-8-112** is amended to read:

11763 **19-8-112. Denial of certificate of completion -- Appeal.**

11764 (1) If the executive director determines the applicant has not successfully completed a
11765 voluntary cleanup in accordance with an agreement entered into under this chapter, the
11766 executive director shall:

11767 (a) notify the applicant and the current owner of the property that is the subject of the
11768 agreement of the denial of a certificate of completion; and

11769 (b) provide to the applicant a list in writing of the reasons for the denial.

11770 (2) The applicant may appeal the determination of the executive director as provided in
11771 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

11772 Section 256. Section **19-8-117** is amended to read:

11773 **19-8-117. Program report and budget allocations -- Fee schedule.**

11774 (1) (a) For applications submitted on or after May 5, 1997 through June 30, 1998, the
11775 application fee under this chapter is \$2,000.

11776 (b) Regarding applications submitted on and after July 1, 1998, the executive director
11777 shall annually calculate the costs to administer the voluntary cleanup program under this chapter
11778 and shall establish the fees for the program under Section [~~63-38-3.2~~] 63J-1-303.

11779 (2) All fees under Subsection (1) shall be deposited in the account created under
11780 Section 19-8-103.

11781 Section 257. Section **19-8-120** is amended to read:

11782 **19-8-120. Creation of Brownfields Fund -- Purposes -- Loan and grant eligibility**
11783 **-- Loan restrictions -- Rulemaking.**

11784 (1) As used in this section, "brownfield" has the same meaning as in 42 U.S.C. Sec.
11785 9601(39).

11786 (2) There is created an enterprise fund known as the Brownfields Fund.

11787 (3) The fund is created to enable the state to use federal funding as available to provide
11788 capital for a revolving loan fund and to provide funds for grants to carry out cleanup activities
11789 at brownfield sites.

11790 (4) The sources of fund monies are:
11791 (a) federal grant monies;
11792 (b) principal and interest received from the repayment of loans made under this section;
11793 and
11794 (c) all investment income derived from fund monies.
11795 (5) The executive director may make loans and grants in accordance with this section
11796 from the fund to applicants who meet the criteria under the terms of the federal grant monies in
11797 the fund.
11798 (6) The executive director shall consider loan and grant applications under Subsection
11799 (5) to determine whether the application meets the objectives established by the federal grant.
11800 (7) Loans made under this section shall:
11801 (a) be for no greater amount than allowed by the federal grant;
11802 (b) have a fixed annual interest rate as allowed by the federal grant;
11803 (c) have a term as allowed by the federal grant;
11804 (d) be made on the condition the loan applicant obtains adequate security for the loan as
11805 established by administrative rules made under Subsection (9); and
11806 (e) comply with administrative rules made under Subsection (9).
11807 (8) Grants made under this section shall:
11808 (a) be for no greater amount than allowed by the federal grant; and
11809 (b) comply with administrative rules made under Subsection (9).
11810 (9) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
11811 Administrative Rulemaking Act, the executive director shall make rules establishing:
11812 (a) form, content, and procedure for loan and grant applications;
11813 (b) criteria and procedures for prioritizing loan and grant applications;
11814 (c) requirements and procedures for securing loans and grants;
11815 (d) procedures for making the loans;
11816 (e) procedures for administering and ensuring repayment of loans, including late
11817 payment penalties; and

- 11818 (f) procedures for recovering on defaulted loans.
- 11819 (10) The decisions of the executive director in loaning money from the fund, making
- 11820 grants, and otherwise administering the fund are not subject to [~~Title 63, Chapter 46b~~] Title
- 11821 63G, Chapter 4, Administrative Procedures Act.
- 11822 (11) Funding for the cost of administration of the fund shall be consistent with the terms
- 11823 of the federal grant.
- 11824 (12) The executive director may enter into agreements with public entities or private
- 11825 funding organizations to perform any task associated with administration of the fund.
- 11826 Section 258. Section **19-9-105** is amended to read:
- 11827 **19-9-105. Powers of authority.**
- 11828 The authority is a body corporate and politic that may:
- 11829 (1) sue and be sued in its own name;
- 11830 (2) have a seal and alter the seal at will;
- 11831 (3) borrow money and issue obligations, including refunding obligations, and provide
- 11832 for the rights of holders of those obligations;
- 11833 (4) establish hazardous waste treatment, disposal, or storage surcharge schedules for
- 11834 facilities operated by, or under authority of, the authority, and require all private facility
- 11835 operators who contract with the authority to collect fees for all hazardous waste received for
- 11836 treatment, disposal, or storage by those private facilities;
- 11837 (5) promulgate rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 11838 Administrative Rulemaking Act, governing the exercise of its powers and fulfillment of its
- 11839 purposes;
- 11840 (6) enter into contracts and leases and execute all instruments necessary, convenient, or
- 11841 desirable;
- 11842 (7) acquire, purchase, hold, lease, use, or dispose of any property or any interest in
- 11843 property that is necessary, convenient, or desirable to carry out the purposes of this chapter, and
- 11844 sell, lease, transfer, and dispose of any property or interest in property at any time required in
- 11845 the exercise of its power, including, but not limited to, the sale, transfer, or disposal of any

11846 materials, substances, or sources or forms of energy derived from any activity engaged in by the
11847 authority;

11848 (8) contract with experts, advisers, consultants, and agents for needed services;

11849 (9) appoint officers and employees required for the performance of its duties, and fix
11850 and determine their qualifications and duties;

11851 (10) make, or contract for, plans, surveys, and studies necessary, convenient, or
11852 desirable to effectuate its purposes and powers and prepare any recommendations with respect
11853 to those plans, surveys, or studies;

11854 (11) receive and accept aid or contributions from any source, including the United
11855 States or the state, in the form of money, property, labor, or other things of value to be held,
11856 used, and applied to carry out the purposes of this chapter, subject to the conditions imposed
11857 upon that aid or contributions consistent with this chapter;

11858 (12) enter into agreements with any department, agency, or instrumentality of the
11859 United States or this state, or any financial institution, or contractor for the purpose of leasing
11860 and operating any facility;

11861 (13) consent to the modification of any obligation with the holder of that obligation, to
11862 the extent permitted by the obligation, relating to rates of interest or to the time and payment of
11863 any installment of principal or interest, or to the modification of any other contract, mortgage,
11864 mortgage loan, mortgage loan commitment, or agreement of any kind to which it is a party;

11865 (14) pledge revenues from any hazardous waste treatment, disposal, and storage facility
11866 to secure payment of any obligations relating to that facility, including interest on, and
11867 redemption of, those obligations;

11868 (15) execute or cause to be executed, mortgages, trust deeds, indentures, pledge
11869 agreements, assignments, security agreements, and financing statements that encumber property
11870 acquired, constructed, reconstructed, renovated, or repaired with the proceeds from the sale of
11871 such obligations;

11872 (16) exercise the power of eminent domain;

11873 (17) do all other things necessary to comply with the requirements of 42 U.S.C.

11874 Sections 6901-6986, the Resource Conservation and Recovery Act of 1976, and this part;
11875 (18) contract for the construction, operation, and maintenance of hazardous waste
11876 treatment, storage, and disposal facilities, including plants, works, instrumentalities, or parts
11877 thereof, for the collection, conveyance, treatment, exchange, storage, and disposal of hazardous
11878 waste, subject to approval by the board; and

11879 (19) exercise any other powers or duties necessary or appropriate to carry out and
11880 effectuate this chapter.

11881 Section 259. Section **19-10-108** is amended to read:

11882 **19-10-108. Appeals of institutional control decisions.**

11883 Any determination by the executive director under this chapter may be appealed as
11884 provided in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

11885 Section 260. Section **19-11-101**, which is renumbered from Section 63-41-1 is
11886 renumbered and amended to read:

11887 **CHAPTER 11. WESTERN INTERSTATE NUCLEAR COMPACT**

11888 **Part 1. General Provisions**

11889 [~~63-41-1~~]. **19-11-101. Title.**

11890 This [~~act shall be known and may be cited~~] chapter is known as the "Western Interstate
11891 Nuclear Compact."

11892 Section 261. Section **19-11-102**, which is renumbered from Section 63-41-2 is
11893 renumbered and amended to read:

11894 [~~63-41-2~~]. **19-11-102. Definitions.**

11895 As used in this act:

11896 (1) The words "the compact" or "this compact" mean the Western Interstate Nuclear
11897 Compact.

11898 (2) The words "the board" mean the Western Interstate Nuclear Board.

11899 Section 262. Section **19-11-201**, which is renumbered from Section 63-41-3 is
11900 renumbered and amended to read:

11901 **Part 2. Compact**

11902 ~~[63-41-3]~~. 19-11-201. Text of compact.

11903 The Western Interstate Nuclear Compact is hereby enacted into law in the state of Utah
11904 and entered into with all other states legally joining therein, in the form substantially as follows:

11905 ARTICLE I. POLICY AND PURPOSE

11906 The party states recognize that the proper employment of scientific and technological
11907 discoveries and advances in nuclear and related fields and direct and collateral application and
11908 adaptation of processes and techniques developed in connection therewith, properly correlated
11909 with the other resources of the region, can assist substantially in the industrial progress of the
11910 West and the further development of the economy of the region. They also recognize that
11911 optimum benefit from nuclear and related scientific or technological resources, facilities and
11912 skills requires systematic encouragement, guidance, assistance, and promotion from the party
11913 states on a co-operative basis. It is the policy of the party states to undertake such co-operation
11914 on a continuing basis. It is the purpose of this compact to provide the instruments and
11915 framework for such a co-operative effort in nuclear and related fields, to enhance the economy
11916 of the West and contribute to the individual and community well-being and the region's people.

11917 ARTICLE II. THE BOARD

11918 (a) There is hereby created an agency of the party states to be known as the Western
11919 Interstate Nuclear Board. The board shall be composed of one member from each party state
11920 designated or appointed in accordance with the law of the state which ~~he~~ the member
11921 represents and serving and subject to removal in accordance with such law. Any member of the
11922 board may provide for the discharge of ~~his~~ the member's duties and the performance of ~~his~~
11923 the member's functions thereon (either for the duration of ~~his~~ the member's membership or for
11924 any lesser period of time) by a deputy or assistant, if the laws of ~~his~~ the member's state make
11925 specific provisions therefor. The federal government may be represented without vote if
11926 provision is made by federal law for such representation.

11927 (b) The board members of the party states shall each be entitled to one vote on the
11928 board. No action of the board shall be binding unless taken at a meeting at which a majority of
11929 all members representing the party states are present and unless a majority of the total number

11930 of votes on the board are cast in favor thereof.

11931 (c) The board shall have a seal.

11932 (d) The board shall elect annually, from among its members, a chairman, a
11933 vice-chairman, and treasurer. The board shall appoint and fix the compensation of an executive
11934 director who shall serve at its pleasure and who shall also act as secretary, and who, together
11935 with the treasurer, and such other personnel as the board may direct, shall be bonded in such
11936 amounts as the board may require.

11937 (e) The executive director, with the approval of the board, shall appoint and remove or
11938 discharge such personnel as may be necessary for the performance of the board's functions
11939 irrespective of the civil service, personnel or other merit system laws of any of the party states.

11940 (f) The board may establish and maintain, independently or in conjunction with any one
11941 or more of the party states, or its institutions or subdivisions, a suitable retirement system for its
11942 full-time employees. Employees of the board shall be eligible for social security coverage in
11943 respect of old age and survivors insurance provided that the board takes such steps as may be
11944 necessary pursuant to federal law to participate in such program of insurance as a governmental
11945 agency or unit. The board may establish and maintain or participate in such additional programs
11946 of employee benefits as may be appropriate.

11947 (g) The board may borrow, accept, or contract for the services of personnel from any
11948 state or the United States or any subdivision or agency thereof, from any interstate agency, or
11949 from any institution, person, firm or corporation.

11950 (h) The board may accept for any of its purposes and functions under this compact any
11951 and all donations, and grants of money, equipment, supplies, materials and services (conditional
11952 or otherwise) from any state or the United States or any subdivision or agency thereof, or
11953 interstate agency, or from any institution, person, firm, or corporation, and may receive, utilize,
11954 and dispose of the same. The nature, amount and conditions, if any, attendant upon any
11955 donation or grant accepted pursuant to this paragraph or upon any borrowing pursuant to
11956 paragraph (g) of this Article, together with the identity of the donor, grantor or lender, shall be
11957 detailed in the annual report of the board.

11958 (i) The board may establish and maintain such facilities as may be necessary for the
11959 transacting of its business. The board may acquire, hold, and convey real and personal property
11960 and any interest therein.

11961 (j) The board shall adopt bylaws, rules, and regulations for the conduct of its business,
11962 and shall have the power to amend and rescind these bylaws, rules, and regulations. The board
11963 shall publish its bylaws, rules, and regulations in convenient form and shall file a copy thereof,
11964 and shall also file a copy of any amendment thereto, with the appropriate agency or officer in
11965 each of the party states.

11966 (k) The board annually shall make to the governor of each party state, a report covering
11967 the activities of the board for the preceding year, and embodying such recommendations as may
11968 have been adopted by the board, which report shall be transmitted to the legislature of said
11969 state. The board may issue such additional reports as it may deem desirable.

11970 **ARTICLE III. FINANCES**

11971 (a) The board shall submit to the governor or designated officer or officers of each
11972 party state a budget of its estimated expenditures for such period as may be required by the laws
11973 of that jurisdiction for presentation to the legislature thereof.

11974 (b) Each of the board's budgets of estimated expenditures shall contain specific
11975 recommendations of the amount or amounts to be appropriated by each of the party states.
11976 Each of the board's requests for appropriations pursuant to a budget of estimated expenditures
11977 shall be apportioned equally among the party states. Subject to appropriation by their respective
11978 legislatures, the board shall be provided with such funds by each of the party states as are
11979 necessary to provide the means of establishing and maintaining facilities, a staff of personnel,
11980 and such activities as may be necessary to fulfill the powers and duties imposed upon and
11981 entrusted to the board.

11982 (c) The board may meet any of its obligations in whole or in part with funds available to
11983 it under Article II(h) of this compact, provided that the board takes specific action setting aside
11984 such funds prior to the incurring of any obligation to be met in whole or in part in this manner.
11985 Except where the board makes use of funds available to it under Article II(h) hereof, the board

11986 shall not incur any obligation prior to the allotment of funds by the party jurisdictions adequate
11987 to meet the same.

11988 (d) Any expenses and any other costs for each member of the board in attending board
11989 meetings shall be met by the board.

11990 (e) The board shall keep accurate accounts of all receipts and disbursements. The
11991 receipts and disbursements of the board shall be subject to the audit and accounting procedures
11992 established under its bylaws. However, all receipts and disbursements of funds handled by the
11993 board shall be audited yearly by a certified or licensed public accountant and the report of the
11994 audit shall be included in and become a part of the annual report of the board.

11995 (f) The accounts of the board shall be open at any reasonable time for inspection to
11996 persons authorized by the board, and duly designated representatives of governments
11997 contributing to the board's support.

11998 **ARTICLE IV. ADVISORY COMMITTEES**

11999 The board may establish such advisory and technical committees as it may deem
12000 necessary, membership on which may include but not be limited to private citizens, expert and
12001 lay personnel, representatives of industry, labor, commerce, agriculture, civic associations,
12002 medicine, education, voluntary health agencies, and officials of local, state and federal
12003 government, and may co-operate with and use the services of any such committees and the
12004 organizations which they represent in furthering any of its activities under this compact.

12005 **ARTICLE V. POWERS**

12006 The board shall have power to:

12007 (a) Encourage and promote co-operation among the party states in the development
12008 and utilization of nuclear and related technologies and their application to industry and other
12009 fields.

12010 (b) Ascertain and analyze on a continuing basis the position of the West with respect to
12011 the employment in industry of nuclear and related scientific findings and technologies.

12012 (c) Encourage the development and use of scientific advances and discoveries in nuclear
12013 facilities, energy, materials, products, by-products, and all other appropriate adaptations of

12014 scientific and technological advances and discoveries.

12015 (d) Collect, correlate, and disseminate information relating to the peaceful uses of
12016 nuclear energy, materials, and products, and other products and processes resulting from the
12017 application of related science and technology.

12018 (e) Encourage the development and use of nuclear energy, facilities, installations, and
12019 products as part of a balanced economy.

12020 (f) Conduct, or co-operate in conducting, programs of training for state and local
12021 personnel engaged in any aspects of:

12022 1. Nuclear industry, medicine, or education, or the promotion or regulation thereof.

12023 2. Applying nuclear scientific advances or discoveries, and any industrial, commercial or
12024 other processes resulting therefrom.

12025 3. The formulation or administration of measures designed to promote safety in any
12026 matter related to the development, use or disposal of nuclear energy, materials, products,
12027 by-products, installations, or wastes, or to safety in the production, use and disposal of any
12028 other substances peculiarly related thereto.

12029 (g) Organize and conduct, or assist and co-operate in organizing and conducting,
12030 demonstrations or research in any of the scientific, technological or industrial fields to which
12031 this compact relates.

12032 (h) Undertake such nonregulatory functions with respect to non-nuclear sources of
12033 radiation as may promote the economic development and general welfare of the West.

12034 (i) Study industrial, health, safety, and other standards, laws, codes, rules, regulations,
12035 and administrative practices in or related to nuclear fields.

12036 (j) Recommend such changes in, or amendments or additions to the laws, codes, rules,
12037 regulations, administrative procedures and practices or local laws or ordinances of the party
12038 states or their subdivisions in nuclear and related fields, as in its judgment may be appropriate.
12039 Any such recommendations shall be made through the appropriate state agency, with due
12040 consideration of the desirability of uniformity but shall also give appropriate weight to any
12041 special circumstances which may justify variations to meet local conditions.

12042 (k) Consider and make recommendations designed to facilitate the transportation of
12043 nuclear equipment, materials, products, by-products, wastes, and any other nuclear or related
12044 substances, in such manner and under such conditions as will make their availability or disposal
12045 practicable on an economic and efficient basis.

12046 (l) Consider and make recommendations with respect to the assumption of and
12047 protection against liability actually or potentially incurred in any phase of operations in nuclear
12048 and related fields.

12049 (m) Advise and consult with the federal government concerning the common position of
12050 the party states or assist party states with regard to individual problems where appropriate in
12051 respect to nuclear and related fields.

12052 (n) Cooperate with the Atomic Energy Commission, the National Aeronautics and
12053 Space Administration, the Office of Science and Technology, or any agencies successor thereto,
12054 and other officer or agency of the United States, and any other governmental unit or agency or
12055 officer thereof, and with any private persons or agencies in any of the fields of its interest.

12056 (o) Act as licensee, contractor or subcontractor of the United States Government or
12057 any party state with respect to the conduct of any research activity requiring such license or
12058 contract and operate such research facility or undertake any program pursuant thereto, provided
12059 that this power shall be exercised only in connection with the implementation of one or more
12060 other powers conferred upon the board by this compact.

12061 (p) Prepare, publish and distribute (with or without charge) such reports, bulletins,
12062 newsletters or other materials as it deems appropriate.

12063 (q) Ascertain from time to time such methods, practices, circumstances, and conditions
12064 as may bring about the prevention and control of nuclear incidents in the area comprising the
12065 party states, to co-ordinate the nuclear incident prevention and control plans and the work
12066 relating thereto of the appropriate agencies of the party states and to facilitate the rendering of
12067 aid by the party states to each other in coping with nuclear incidents.

12068 The board may formulate and, in accordance with need from time to time, revise a
12069 regional plan or regional plans for coping with nuclear incidents within the territory of the party

12070 states as a whole or within any subregion or subregions of the geographic area covered by this
12071 compact.

12072 Any nuclear incident plan in force pursuant to this paragraph shall designate the official
12073 or agency in each party state covered by the plan who shall co-ordinate requests for aid
12074 pursuant to Article VI of this compact and the furnishing of aid in response thereto.

12075 Unless the party states concerned expressly otherwise agree, the board shall not
12076 administer the summoning and dispatching of aid, but this function shall be undertaken directly
12077 by the designated agencies and officers of the party states.

12078 However, the plan or plans of the board in force pursuant to this paragraph shall provide
12079 for reports to the board concerning the occurrence of nuclear incidents and the requests for aid
12080 on account thereof, together with summaries of the actual working and effectiveness of mutual
12081 aid in particular instances.

12082 From time to time, the board shall analyze the information gathered from reports of aid
12083 pursuant to Article VI and such other instances of mutual aid as may have come to its attention,
12084 so that experience in the rendering of such aid may be available.

12085 (r) Prepare, maintain, and implement a regional plan or regional plans for carrying out
12086 the duties, powers, or functions conferred upon the board by this compact.

12087 (s) Undertake responsibilities imposed or necessarily involved with regional
12088 participation pursuant to such co-operative programs of the federal government as are useful in
12089 connection with the fields covered by this compact.

12090 **ARTICLE VI. MUTUAL AID**

12091 (a) Whenever a party state, or any state or local governmental authorities therein,
12092 request aid from any other party state pursuant to this compact in coping with a nuclear
12093 incident, it shall be the duty of the requested state to render all possible aid to the requesting
12094 state which is consonant with the maintenance of protection of its own people.

12095 (b) Whenever the officers or employees of any party state are rendering outside aid
12096 pursuant to the request of another party state under this compact, the officers or employees of
12097 such state shall, under the direction of the authorities of the state to which they are rendering

12098 aid, have the same powers, duties, rights, privileges and immunities as comparable officers and
12099 employees of the state to which they are rendering aid.

12100 (c) No party state or its officers or employees rendering outside aid pursuant to this
12101 compact shall be liable on account of any act or omission on their part while so engaged, or on
12102 account of the maintenance or use of any equipment or supplies in connection therewith.

12103 (d) All liability that may arise either under the laws of the requesting state or under the
12104 laws of the aiding state or under the laws of a third state on account of or in connection with a
12105 request for aid, shall be assumed and borne by the requesting state.

12106 (e) Any party state rendering outside aid pursuant to this compact shall be reimbursed
12107 by the party state receiving such aid for any loss or damage to, or expense incurred in the
12108 operation of any equipment answering a request for aid, and for the cost of all materials,
12109 transportation, wages, salaries and maintenance of officers, employees and equipment incurred
12110 in connection with such requests: provided that nothing herein contained shall prevent any
12111 assisting party state from assuming such loss, damage, expense or other cost or from loaning
12112 such equipment or from donating such services to the receiving party state without charge or
12113 cost.

12114 (f) Each party state shall provide for the payment of compensation and death benefits to
12115 injured officers and employees and the representatives of deceased officers and employees in
12116 case officers or employees sustain injuries or death while rendering outside aid pursuant to this
12117 compact, in the same manner and on the same terms as if the injury or death were sustained
12118 within the state by or in which the officer or employee was regularly employed.

12119 **ARTICLE VII. SUPPLEMENTARY AGREEMENTS**

12120 (a) To the extent that the board has not undertaken an activity or project which would
12121 be within its power under the provisions of Article V of this compact, any two or more of the
12122 party states (acting by their duly constituted administrative officials) may enter into
12123 supplementary agreements for the undertaking and continuance of such an activity or project.
12124 Any such agreement shall specify the purpose or purposes; its duration and the procedure for
12125 termination thereof or withdrawal therefrom; the method of financing and allocating the costs of

12126 the activity or project; and such other matters as may be necessary or appropriate.

12127 No such supplementary agreement entered into pursuant to this article shall become
12128 effective prior to its submission to and approval by the board. The board shall give such
12129 approval unless it finds that the supplementary agreement or activity or project contemplated
12130 thereby is inconsistent with the provisions of this compact or a program or activity conducted
12131 by or participated in by the board.

12132 (b) Unless all of the party states participate in a supplementary agreement, any cost or
12133 costs thereof shall be borne separately by the states party thereto. However, the board may
12134 administer or otherwise assist in the operation of any supplementary agreement.

12135 (c) No party to a supplementary agreement entered into pursuant to this article shall be
12136 relieved thereby of any obligation or duty assumed by said party state under or pursuant to this
12137 compact, except that timely and proper performance of such obligation or duty by means of the
12138 supplementary agreement may be offered as performance pursuant to the compact.

12139 (d) The provisions to this Article shall apply to supplementary agreements and activities
12140 thereunder, but shall not be construed to repeal or impair any authority which officers or
12141 agencies of party states may have pursuant to other laws to undertake cooperative arrangements
12142 or projects.

12143 **ARTICLE VIII. OTHER LAWS AND RELATIONS**

12144 Nothing in this compact shall be construed to:

12145 (a) Permit or require any person or other entity to avoid or refuse compliance with any
12146 law, rule, regulation, order or ordinance of a party state or subdivision thereof now or hereafter
12147 made, enacted or in force.

12148 (b) Limit, diminish, or otherwise impair jurisdiction exercised by the Atomic Energy
12149 Commission, any agency successor thereto, or any other federal department, agency or officer
12150 pursuant to and in conformity with any valid and operative act of Congress; nor limit, diminish,
12151 affect, or otherwise impair, jurisdiction exercised by any officer or agency of a party state,
12152 except to the extent that the provisions of this compact may provide therefor.

12153 (c) Alter the relations between and respective internal responsibilities of the government

12154 of a party state and its subdivisions.

12155 (d) Permit or authorize the board to own or operate any facility, reactor, or installation
12156 for industrial or commercial purposes.

12157 **ARTICLE IX. ELIGIBLE PARTIES,**

12158 **ENTRY INTO FORCE AND WITHDRAWAL**

12159 (a) Any or all of the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho,
12160 Montana, Nevada, New Mexico, Oregon, Utah, Washington, and Wyoming shall be eligible to
12161 become party to this compact.

12162 (b) As to any eligible party state, this compact shall become effective when its
12163 legislature shall have enacted the same into law: provided, that it shall not become initially
12164 effective until enacted into law by five states.

12165 (c) Any party state may withdraw from this compact by enacting a statute repealing the
12166 same, but no such withdrawal shall take effect until two years after the governor of the
12167 withdrawing state has given notice in writing of the withdrawal to the governors of all other
12168 party states. No withdrawal shall affect any liability already incurred by or chargeable to a party
12169 state prior to the time of such withdrawal.

12170 (d) Guam and American Samoa, or either of them may participate in the compact to
12171 such extent as may be mutually agreed by the board and the duly constituted authorities of
12172 Guam or American Samoa, as the case may be. However, such participation shall not include
12173 the furnishing or receipt of mutual aid pursuant to Article VI, unless that Article has been
12174 enacted or otherwise adopted so as to have the full force and effect of law in the jurisdiction
12175 affected. Neither Guam nor American Samoa shall be entitled to voting participation on the
12176 board, unless it has become a full party to the compact.

12177 **ARTICLE X. SEVERABILITY AND CONSTRUCTION**

12178 The provisions of this compact and of any supplementary agreement entered into
12179 hereunder shall be severable and if any phrase, clause, sentence or provision of this compact or
12180 such supplementary agreement is declared to be contrary to the constitution of any participating
12181 state or of the United States or the applicability thereof to any government, agency, person, or

12182 circumstance is held invalid, the validity of the remainder of this compact or such supplementary
12183 agreement and the applicability thereof to any government, agency, person or circumstance shall
12184 not be affected thereby. If this compact or any supplementary agreement entered into hereunder
12185 shall be held contrary to the constitution of any state participating therein, the compact or such
12186 supplementary agreement shall remain in full force and effect as to the remaining states and in
12187 full force and effect as to the state affected as to all severable matters. The provisions of this
12188 compact and of any supplementary agreement entered into pursuant thereto shall be liberally
12189 construed to effectuate the purposes thereof.

12190 Section 263. Section **19-11-301**, which is renumbered from Section 63-41-4 is
12191 renumbered and amended to read:

12192 **Part 3. Utah Board Members**

12193 **~~[63-41-4].~~ 19-11-301. Utah member of board -- Designation.**

12194 The member of the board representing the state of Utah shall be designated by the
12195 governor of the state of Utah.

12196 Section 264. Section **19-11-302**, which is renumbered from Section 63-41-5 is
12197 renumbered and amended to read:

12198 **~~[63-41-5].~~ 19-11-302. Alternate member.**

12199 The alternate required pursuant to Article II(a) of the compact shall be designated by the
12200 board member representing this state and shall serve at [his] the board member's pleasure.

12201 Section 265. Section **19-11-401**, which is renumbered from Section 63-41-6 is
12202 renumbered and amended to read:

12203 **Part 4. Board Bylaws**

12204 **~~[63-41-6].~~ 19-11-401. Bylaws of board to be filed.**

12205 Pursuant to Article II(j) of the compact, the board shall file copies of its bylaws and any
12206 amendments thereto with the Division of Archives.

12207 Section 266. Section **20A-1-204** is amended to read:

12208 **20A-1-204. Date of special election -- Legal effect.**

12209 (1) (a) The governor, Legislature, or the legislative body of a local political subdivision

12210 calling a statewide special election or local special election under Section 20A-1-203 shall
12211 schedule the special election to be held on:

- 12212 (i) the fourth Tuesday in June; or
- 12213 (ii) the first Tuesday after the first Monday in November.

12214 (b) Except as provided in Subsection (1)(c), the governor, Legislature, or the legislative
12215 body of a local political subdivision calling a statewide special election or local special election
12216 under Section 20A-1-203 may not schedule a special election to be held on any other date.

12217 (c) (i) Notwithstanding the requirements of Subsection (1)(b), the legislative body of a
12218 local political subdivision may call a local special election on a date other than those specified in
12219 this section if the legislative body:

12220 (A) determines and declares that there is a disaster, as defined in Section [~~63-5-2~~]
12221 63K-3-102, requiring that a special election be held on a date other than the ones authorized in
12222 statute;

12223 (B) identifies specifically the nature of the disaster, as defined in Section [~~63-5-2~~]
12224 63K-3-102, and the reasons for holding the special election on that other date; and

12225 (C) votes unanimously to hold the special election on that other date.

12226 (ii) The legislative body of a local political subdivision may not call a local special
12227 election for the date established in Title 20A, Chapter 9, Part 8, Western States Presidential
12228 Primary, for Utah's Western States Presidential Primary.

12229 (d) Nothing in this section prohibits:

12230 (i) the governor or Legislature from submitting a matter to the voters at the regular
12231 general election if authorized by law; or

12232 (ii) a local government from submitting a matter to the voters at the regular municipal
12233 election if authorized by law.

12234 (2) (a) Two or more entities shall comply with Subsection (2)(b) if those entities hold a
12235 special election within a county on the same day as:

- 12236 (i) another special election;
- 12237 (ii) a regular general election; or

- 12238 (iii) a municipal general election.
- 12239 (b) Entities described in Subsection (2)(a) shall, to the extent practicable, coordinate:
- 12240 (i) polling places;
- 12241 (ii) ballots;
- 12242 (iii) election officials; and
- 12243 (iv) other administrative and procedural matters connected with the election.

12244 Section 267. Section **20A-2-104** is amended to read:

12245 **20A-2-104. Voter registration form -- Registered voter lists -- Fees for copies.**

12246 (1) Every person applying to be registered shall complete a registration form printed in
12247 substantially the following form:

12248 -----

12249 -

12250 UTAH ELECTION REGISTRATION FORM

12251 Are you a citizen of the United States of America? Yes No

12252 Will you be 18 years old on or before election day? Yes No

12253 If you checked "no" to either of the above two questions, do not complete this form.

12254 Name of Voter

12255 _____

12256 First Middle Last

12257 Driver License or Identification Card Number _____

12258 State of issuance of Driver License or Identification Card

12259 Date of Birth _____

12260 Street Address of Principal Place of Residence

12261 _____

12262 City County State Zip Code

12263 Telephone Number (optional) _____

12264 Last four digits of Social Security Number _____

12265 Last former address at which I was registered to vote (if

12266 known)_____

12267 _____

12268 City County State Zip Code

12269

12270 Political Party

12271

12272 (a listing of each registered political party, as defined in Section 20A-8-101 and maintained by
12273 the lieutenant governor under Section 67-1a-2, with each party's name preceded by a checkbox)

12274 Unaffiliated (no political party preference) Other (Please specify)_____

12275 I do swear (or affirm), subject to penalty of law for false statements, that the information
12276 contained in this form is true, and that I am a citizen of the United States and a resident of the
12277 state of Utah, residing at the above address. I will be at least 18 years old and will have resided
12278 in Utah for 30 days immediately before the next election. I am not a convicted felon currently
12279 incarcerated for commission of a felony.

12280 Signed and sworn

12281 _____

12282 Voter's Signature

12283 _____(month/day/year).

12284 CITIZENSHIP AFFIDAVIT

12285 Name:

12286 Name at birth, if different:

12287 Place of birth:

12288 Date of birth:

12289 Date and place of naturalization (if applicable):

12290 I hereby swear and affirm, under penalties for voting fraud set forth below, that I am a
12291 citizen and that to the best of my knowledge and belief the information above is true and
12292 correct.

12293 _____

12294 Signature of Applicant

12295 In accordance with Section 20A-2-401, the penalty for willfully causing, procuring, or
12296 allowing yourself to be registered to vote if you know you are not entitled to register to vote is
12297 up to one year in jail and a fine of up to \$2,500.

12298 NOTICE: IN ORDER TO BE ALLOWED TO VOTE IN A VOTING PRECINCT FOR THE
12299 FIRST TIME OR TO VOTE DURING THE EARLY VOTING PERIOD BEFORE THE
12300 DATE OF THE ELECTION, YOU MUST PRESENT VALID VOTER IDENTIFICATION
12301 TO THE POLL WORKER BEFORE VOTING AS FOLLOWS:

12302 (1) A VALID FORM OF PHOTO IDENTIFICATION THAT SHOWS YOUR NAME,
12303 PHOTOGRAPH, AND CURRENT ADDRESS; OR

12304 (2) TWO DIFFERENT FORMS OF IDENTIFICATION THAT SHOW YOUR NAME AND
12305 CURRENT ADDRESS.

12306 FOR OFFICIAL USE ONLY

12307 Type of I.D. _____

12308 Voting Precinct _____

12309 Voting I.D. Number _____

12310 -----

12311 ---

12312 (2) The county clerk shall retain a copy in a permanent countywide alphabetical file,
12313 which may be electronic or some other recognized system.

12314 (3) (a) Each county clerk shall retain lists of currently registered voters.

12315 (b) The lieutenant governor shall maintain a list of registered voters in electronic form.

12316 (c) If there are any discrepancies between the two lists, the county clerk's list is the
12317 official list.

12318 (d) The lieutenant governor and the county clerks may charge the fees established under
12319 the authority of Subsection [~~63-2-203~~] 63G-2-203(10) to individuals who wish to obtain a copy
12320 of the list of registered voters.

12321 (4) When political parties not listed on the voter registration form qualify as registered

12322 political parties under Title 20A, Chapter 8, Political Party Formation and Procedures, the
12323 lieutenant governor shall inform the county clerks about the name of the new political party and
12324 direct the county clerks to ensure that the voter registration form is modified to include that
12325 political party.

12326 (5) Upon receipt of a voter registration form from an applicant, the county clerk or the
12327 clerk's designee shall:

12328 (a) review each voter registration form for completeness and accuracy; and

12329 (b) if the county clerk believes, based upon a review of the form, that a person may be
12330 seeking to register to vote who is not legally entitled to register to vote, refer the form to the
12331 county attorney for investigation and possible prosecution.

12332 Section 268. Section **20A-3-304.1** is amended to read:

12333 **20A-3-304.1. Election officer to provide voting history information and status.**

12334 (1) As used in this section:

12335 (a) "Qualified absentee ballot application" means an absentee ballot application filed
12336 under Section 20A-3-304 from a voter who the election officer determines is eligible to receive
12337 an absentee ballot.

12338 (b) "Voting history record" means the information about the existence and status of
12339 absentee ballot requests required by this section.

12340 (2) (a) Each election officer shall maintain, in the election officer's office, a voting
12341 history record of those voters that have cast a vote by:

12342 (i) absentee ballot; and

12343 (ii) early voting.

12344 (b) The voting history record is a public record under [~~Title 63, Chapter 2~~] Title 63G,
12345 Chapter 2, Government Records Access and Management Act.

12346 (3) The election officer shall ensure that the voting history record for each voting
12347 precinct contains:

12348 (a) for absentee voting:

12349 (i) the name and address of each person who has filed a qualified absentee ballot

12350 application;

12351 (ii) the date that the application was received; and

12352 (iii) the current status of each qualified absentee ballot application including specifically:

12353 (A) the date that the absentee ballot was mailed to the voter; and

12354 (B) the date that the voted absentee ballot was received by the election officer; and

12355 (b) for early voting:

12356 (i) the name and address of each person who has voted during the early voting period;

12357 and

12358 (ii) the date the person's vote was cast.

12359 (4) (a) Notwithstanding the time limits for response to a request for records under

12360 Section [~~63-2-204~~] 63G-2-204 or the time limits for a request for records established in any

12361 ordinance, the election officer shall ensure that the information required by this section is

12362 recorded and made available to the public no later than one business day after its receipt in the

12363 election officer's office.

12364 (b) Notwithstanding the fee requirements of Section [~~63-2-203~~] 63G-2-203 or the fee

12365 requirements established in any ordinance, the election officer shall make copies of the voting

12366 history record available to the public for the actual cost of production or copying.

12367 Section 269. Section **20A-3-408.5** is amended to read:

12368 **20A-3-408.5. Electronic registration and voting by military and overseas citizen**

12369 **voters in a hostile fire zone -- Procedures for accepting and processing a federal postcard**

12370 **application form -- Returned ballot.**

12371 (1) A military voter, an overseas citizen voter, or other voter covered under the federal

12372 Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA) shall be allowed to transmit

12373 their federal postcard application form electronically to the county clerk in their county of

12374 residence if the voter is currently deployed in:

12375 (a) a hostile fire zone; or

12376 (b) other area where the mail service is unreliable and not sufficient to accommodate

12377 timely mail service.

12378 (2) A voter covered under Subsection (1), shall file the federal postcard application
12379 form no later than 20 days before the day of the election in accordance with Subsection
12380 20A-3-304(3)(a)(ii).

12381 (3) Upon receiving a federal postcard application form under this section a county clerk
12382 shall review the federal postcard application form to verify:

12383 (a) compliance with this section; and

12384 (b) that the form has been properly completed and signed.

12385 (4) Upon a determination of compliance under Subsection (3), a county clerk shall:

12386 (a) register the voter, unless the voter is already registered;

12387 (b) process the absentee ballot request; and

12388 (c) electronically transmit a ballot to the voter who filed the federal postcard application
12389 form.

12390 (5) A voter who receives a ballot under this section may transmit the ballot
12391 electronically to the county clerk in their county of residence if the voter:

12392 (a) agrees to waive the right to a secret ballot in accordance with this section; and

12393 (b) affirms in writing that the voter is currently deployed in:

12394 (i) a hostile fire zone; or

12395 (ii) other area where the mail service is unreliable and not sufficient to accommodate
12396 timely mail service.

12397 (6) The electronically transmitted ballot shall be accompanied by the following
12398 statements: "I understand that by electronically transmitting my voted ballot I am voluntarily
12399 waiving my right to a secret ballot. Signature of voter _____ Date _____"; and

12400 "I affirm that I am currently deployed in a hostile fire zone" or

12401 "I affirm that I am currently deployed in an area where mail service is unreliable and not
12402 sufficient to accommodate timely mail service."

12403 (7) Notwithstanding the provisions of Subsections (5) and (6), the completed ballot
12404 transmitted under this section is considered a private record under [~~Title 63, Chapter 2~~] Title
12405 63G, Chapter 2, Government Records Access and Management Act.

12406 (8) A ballot transmitted under Subsection (5) shall be:

12407 (a) transmitted no later than the date that is one day before the election day in
12408 accordance with Section 20A-3-406; and

12409 (b) received by the county clerk before the date of the official canvass in accordance
12410 with Subsection 20A-3-306(2)(b).

12411 (9) Upon the receipt of an electronically transmitted ballot under this section, a county
12412 clerk shall:

12413 (a) verify the voter's signature from the federal postcard application form and ensure
12414 that it matches the voter's signature on the return ballot;

12415 (b) duplicate the electronically transmitted ballot onto a regular ballot used by the
12416 county for resident voters; and

12417 (c) maintain the electronically transmitted ballot for 22 months in accordance with
12418 Subsection 20A-4-202(2).

12419 Section 270. Section **20A-9-206** is amended to read:

12420 **20A-9-206. Fair campaign practices -- Voluntary pledge -- Pledge is a public**
12421 **record -- Retention requirements.**

12422 (1) Each person seeking to become a candidate for any elective office that is to be filled
12423 at the next election shall be provided with a copy of the pledge of fair campaign practices.

12424 (2) The pledge shall be in the following form:

12425 "PLEDGE OF FAIR CAMPAIGN PRACTICES

12426 There are basic principles of decency, honesty, and fair play which every candidate for
12427 public office in the State of Utah has a moral obligation to observe and uphold, in order that,
12428 after vigorously contested but fairly conducted campaigns, our citizens may exercise their right
12429 to a free election, and that the will of the people may be fully and clearly expressed on the
12430 issues.

12431 THEREFORE:

12432 I SHALL conduct my campaign openly and publicly, discussing the issues as I see them,
12433 presenting my record and policies with sincerity and frankness, and criticizing, without fear or

12434 favor, the record and policies of my opponents that I believe merit criticism.

12435 I SHALL NOT use nor shall I permit the use of scurrilous attacks on any candidate or
12436 the candidate's immediate family. I shall not participate in or nor shall I permit the use of
12437 defamation, libel, or slander against any candidate or the candidate's immediate family. I shall
12438 not participate in nor shall I permit the use of any other criticism of any candidate or the
12439 candidate's immediate family that I do not believe to be truthful, provable, and relevant to my
12440 campaign.

12441 I SHALL NOT use nor shall I permit the use of any practice that tends to corrupt or
12442 undermine our American system of free elections, or that hinders or prevents the free expression
12443 of the will of the voters, including practices intended to hinder or prevent any eligible person
12444 from registering to vote or voting.

12445 I SHALL NOT coerce election help or campaign contributions for myself or for any
12446 other candidate from my employees or volunteers.

12447 I SHALL immediately and publicly repudiate support deriving from any individual or
12448 group which resorts, on behalf of my candidacy or in opposition to that of an opponent, to
12449 methods in violation of the letter or spirit of this pledge. I shall accept responsibility to take
12450 firm action against any subordinate who violates any provision of this pledge or the laws
12451 governing elections.

12452 I SHALL defend and uphold the right of every qualified American voter to full and
12453 equal participation in the electoral process.

12454 I, the undersigned, candidate for election to public office in the State of Utah, hereby
12455 voluntarily endorse, subscribe to, and solemnly pledge myself to conduct my campaign in
12456 accordance with the above principles and practices."

12457 Name: _____

12458 Signature: _____ Date: _____

12459 (3) The filing officer shall print, or cause to be printed, blank forms of the pledge to be
12460 distributed to persons filing a declaration of candidacy.

12461 (4) A pledge that is submitted for filing by a candidate is a public record under [Title

12462 ~~63, Chapter 2]~~ Title 63G, Chapter 2, Government Records Access and Management Act.

12463 (5) The filing officer shall:

12464 (a) accept all signed pledges that are submitted for filing; and

12465 (b) retain each filed pledge for public inspection for 30 calendar days after the election.

12466 (6) A candidate may not be required to subscribe to, endorse, or sign the pledge of fair
12467 campaign practices.

12468 Section 271. Section **20A-12-104** is amended to read:

12469 **20A-12-104. Procedures governing meetings of judicial nominating commissions.**

12470 (1) The Judicial Council shall:

12471 (a) enact rules establishing procedures governing the meetings of the judicial
12472 nominating commissions; and

12473 (b) ensure that those procedures include:

12474 (i) a minimum recruitment period of 30 days and a procedure to extend that period for
12475 an additional 30 days if fewer than nine applications are received for a judicial vacancy;

12476 (ii) standards for maintaining the confidentiality of the applications and related
12477 documents;

12478 (iii) standards governing the release of applicant names before nomination;

12479 (iv) standards for destroying the records of the names of applicants, applications, and
12480 related documents upon completion of the nominating process;

12481 (v) an opportunity for public comment concerning the nominating process,
12482 qualifications for judicial office, and individual applicants;

12483 (vi) evaluation criteria for the selection of judicial nominees;

12484 (vii) procedures for taking summary minutes at nominating commission meetings;

12485 (viii) procedures for simultaneously forwarding the names of nominees to the governor,
12486 the president of the Senate, and the Office of Legislative Research and General Counsel; and

12487 (ix) standards governing a nominating commissioner's disqualification and inability to
12488 serve.

12489 (2) (a) (i) Except as provided in this Subsection (2)(a)(ii), if a judicial nominating

12490 commission receives 15 or more applications to fill a judicial vacancy, the nominating
12491 commission shall submit at least five names to the governor.

12492 (ii) Notwithstanding Subsection (2)(a)(i), if five applicants do not receive the required
12493 number of votes as specified in Subsection (2)(c) from the nominating commission, the
12494 commission shall submit only the names of applicants that received the required number of
12495 votes, but must submit the names of at least three applicants.

12496 (b) In determining whether or not to submit an applicant's name to the governor, a
12497 commission may not decline to consider an applicant merely because:

12498 (i) the nominating commission had declined to submit that candidate's name to the
12499 governor to fill a previous vacancy;

12500 (ii) a previous nominating commission had declined to submit that candidate's name to
12501 the governor; or

12502 (iii) that nominating commission or a previous nominating commission had submitted
12503 the applicant's name to the governor and the governor selected someone else to fill the vacancy.

12504 (c) The vote required to submit an applicant's name to the governor is as follows:

12505 (i) if all seven members of the nominating commission are present and considering
12506 applicants, a vote in favor of the applicant by four commissioners submits the candidate's name
12507 to the governor;

12508 (ii) if only six members of the nominating commission are present and considering
12509 applicants because one member is unable to attend, has recused himself or is otherwise
12510 disqualified, a vote in favor of the applicant by four commissioners submits the candidate's name
12511 to the governor;

12512 (iii) if only five members of the nominating commission are present and considering
12513 applicants because two members are unable to attend, have recused themselves, or are
12514 otherwise disqualified, a vote in favor of the applicant by three commissioners submits the
12515 candidate's name to the governor; and

12516 (iv) if only four members of the nominating commission are present and considering
12517 applicants because three members are unable to attend, have recused themselves, or are

12518 otherwise disqualified, a vote in favor of the applicant by three commissioners submits the
12519 candidate's name to the governor.

12520 (3) A judicial nominating commission may not nominate a justice or judge who was not
12521 retained by the voters for the office for which the justice or judge was defeated until after the
12522 expiration of that term of office.

12523 (4) Judicial nominating commissions are exempt from the requirements of Title 52,
12524 Chapter 4, Open and Public Meetings Act, and [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
12525 Utah Administrative Rulemaking Act.

12526 Section 272. Section **23-14-2.1** is amended to read:

12527 **23-14-2.1. Procedures -- Adjudicative proceedings.**

12528 The Division of Wildlife Resources shall comply with the procedures and requirements
12529 of [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its
12530 adjudicative proceedings.

12531 Section 273. Section **23-14-18** is amended to read:

12532 **23-14-18. Establishment of seasons, locations, limits, and regulations by Wildlife**
12533 **Board.**

12534 (1) To provide an adequate and flexible system of protection, propagation,
12535 introduction, increase, control, harvest, management, and conservation of protected wildlife in
12536 this state and to provide for the use and development of protected wildlife for public recreation
12537 and food supply while maintaining a sustainable population of protected wildlife, the Wildlife
12538 Board shall determine the circumstances, time, location, means, and the amounts, and numbers
12539 of protected wildlife which may be taken.

12540 (2) The Wildlife Board shall, except as otherwise specified in this code:

12541 (a) fix seasons and shorten, extend, or close seasons on any species of protected wildlife
12542 in any locality, or in the entire state, if the board finds that the action is necessary to effectuate
12543 proper wildlife management and control;

12544 (b) close or open areas to fishing, trapping, or hunting;

12545 (c) establish refuges and preserves;

- 12546 (d) regulate and prescribe the means by which protected wildlife may be taken;
- 12547 (e) regulate the transportation and storage of protected wildlife, or their parts, within
12548 the boundaries of the state and the shipment or transportation out of the state;
- 12549 (f) establish or change bag limits and possession limits;
- 12550 (g) prescribe safety measures and establish other regulations as may be considered
12551 necessary in the interest of wildlife conservation and the safety and welfare of hunters, trappers,
12552 fishermen, landowners, and the public;
- 12553 (h) (i) prescribe when licenses, permits, tags, and certificates of registration shall be
12554 required and procedures for their issuance and use; and
- 12555 (ii) establish forms and fees for licenses, permits, tags, and certificates of registration;
12556 and
- 12557 (i) prescribe rules and regulations as it may consider necessary to control the use and
12558 harvest of protected wildlife by private associations, clubs, partnerships, or corporations,
12559 provided the rules and regulations do not preclude the landowner from personally controlling
12560 trespass upon the owner's properties nor from charging a fee to trespass for purposes of hunting
12561 or fishing.
- 12562 (3) The Wildlife Board may allow a season on protected wildlife to commence on any
12563 day of the week except Sunday.
- 12564 (4) The Wildlife Board shall establish fees for licenses, permits, tags, and certificates of
12565 registration in accordance with Section [~~63-38-3.2~~] 63J-1-303.
- 12566 Section 274. Section **23-14-21** is amended to read:
- 12567 **23-14-21. Transplants of big game, turkeys, wolves, or sensitive species.**
- 12568 (1) The division may transplant big game, turkeys, wolves, or sensitive species only in
12569 accordance with:
- 12570 (a) a list of sites for the transplant of a particular species that is prepared and adopted in
12571 accordance with Subsections (2) through (5);
- 12572 (b) a species management plan, such as a deer or elk management plan adopted under
12573 Section 23-16-7 or a recovery plan for a threatened or endangered species, provided that:

12574 (i) the plan identifies sites for the transplant of the species or the lands or waters the
12575 species are expected to occupy; and

12576 (ii) the public has had an opportunity to comment and make recommendations on the
12577 plan; or

12578 (c) a legal agreement between the state and a tribal government that identifies potential
12579 transplants; and

12580 (d) the Endangered Species Act of 1973, 16 U.S.C. Sec. 1531 et seq.

12581 (2) The division shall:

12582 (a) consult with the landowner in determining the suitability of a site for the transplant
12583 of a species;

12584 (b) prepare a list of proposed sites for the transplant of species;

12585 (c) provide notification of proposed sites for the transplant of species to:

12586 (i) local government officials having jurisdiction over areas that may be affected by a
12587 transplant; and

12588 (ii) the Resource Development Coordinating Committee created in Section
12589 [~~63-38d-501~~] 63J-4-501.

12590 (3) After receiving comments from local government officials and the Resource
12591 Development Coordinating Committee, the division shall submit the list of proposed transplant
12592 sites, or a revised list, to regional advisory councils for regions that may be affected by the
12593 transplants of species.

12594 (4) Each regional advisory council reviewing a list of proposed sites for the transplant
12595 of species may submit recommendations to the Wildlife Board.

12596 (5) The Wildlife Board shall approve, modify, or reject each proposal for the transplant
12597 of a species.

12598 (6) Each list of proposed transplant sites approved by the Wildlife Board shall have a
12599 termination date after which a transplant may not occur.

12600 Section 275. Section **23-16-3.2** is amended to read:

12601 **23-16-3.2. Mitigation review panel.**

12602 (1) A mitigation review panel may be convened to review the depredation mitigation
12603 plans.

12604 (2) Membership of the mitigation review panel shall consist of:

12605 (a) the division director or the director's designee;

12606 (b) (i) the commissioner of the Department of Agriculture and Food or the
12607 commissioner's designee; or

12608 (ii) a representative of agricultural interests appointed by the commissioner of the
12609 Department of Agriculture and Food; and

12610 (c) a representative of Utah State University Extension Service appointed by the Vice
12611 President and Dean for University Extension.

12612 (3) (a) The division director shall convene a mitigation review panel if:

12613 (i) a landowner or lessee appeals a depredation mitigation plan under Subsection
12614 23-16-3.1(2)(b)(ii); or

12615 (ii) the division director requests review of a depredation mitigation plan.

12616 (b) Within five business days of an appeal under Subsection 23-16-3.1(2)(b)(ii) or a
12617 division request for review under Subsection 23-16-3.1(3)(b), the mitigation review panel shall
12618 review the depredation mitigation plan and approve or modify the plan.

12619 (4) Judicial review of a mitigation review panel action shall be governed by [~~Title 63,~~
12620 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

12621 Section 276. Section **23-16-4** is amended to read:

12622 **23-16-4. Compensation for damage to crops, fences, or irrigation equipment --**
12623 **Limitations -- Appeals.**

12624 (1) The division may provide compensation to claimants for damage caused by big
12625 game to:

12626 (a) cultivated crops from or on cleared and planted land;

12627 (b) fences on private land; or

12628 (c) irrigation equipment on private land.

12629 (2) To be eligible to receive compensation as provided in this section, the claimant:

- 12630 (a) must notify the division of the damage within 72 hours after the damage is
12631 discovered; and
- 12632 (b) allow division personnel reasonable access to the property to verify and alleviate the
12633 depredation problem.
- 12634 (3) (a) The appraisal of the damage shall be made by the claimant and the division as
12635 soon after notification as possible.
- 12636 (b) In determining damage payment, the division and claimant shall consider:
- 12637 (i) the extent of damage experienced; and
- 12638 (ii) any revenue the landowner derives from:
- 12639 (A) participation in a cooperative wildlife management unit;
- 12640 (B) use of landowner association permits;
- 12641 (C) use of mitigation permits; and
- 12642 (D) charging for hunter access.
- 12643 (c) In determining how to assess and compensate for damages to cultivated crops, the
12644 division's determination shall be based on the:
- 12645 (i) full replacement value in the local market of the cultivated crops that actually have
12646 been or will be damaged or consumed by big game animals; and
- 12647 (ii) cost of delivery of a replacement crop to the location of the damaged crop or other
12648 location that is not farther from the source of the replacement crop.
- 12649 (d) If the claimant and the division are unable to agree on a fair and equitable damage
12650 payment, they shall designate a third party, consisting of one or more persons familiar with the
12651 crops, fences, or irrigation equipment and the type of game animals doing the damage, to
12652 appraise the damage.
- 12653 (4) (a) Notwithstanding Section [~~63-38-3.2~~] 63J-1-303, the total amount of
12654 compensation that may be provided by the division pursuant to this section and the total cost of
12655 fencing materials provided by the division to prevent crop damage may not exceed the
12656 legislative appropriation for fencing material and compensation for damaged crops, fences, and
12657 irrigation equipment.

12658 (b) (i) Any claim of \$1,000 or less may be paid after appraisal of the damage as
12659 provided in Subsection (3), unless the claim brings the total amount of claims submitted by the
12660 claimant in the fiscal year to an amount in excess of \$1,000.

12661 (ii) Any claim for damage to irrigation equipment may be paid after appraisal of the
12662 damage as provided in Subsection (3).

12663 (c) (i) Any claim in excess of \$1,000, or claim that brings the total amount of claims
12664 submitted by the claimant in the fiscal year to an amount in excess of \$1,000, shall be treated as
12665 follows:

12666 (A) \$1,000 may be paid pursuant to the conditions of this section; and

12667 (B) the amount in excess of \$1,000 may not be paid until the total amount of the
12668 approved claims of all the claimants and expenses for fencing materials for the fiscal year are
12669 determined.

12670 (ii) If the total exceeds the amount appropriated by the Legislature pursuant to
12671 Subsection (4)(a), claims in excess of \$1,000, or any claim that brings the total amount of a
12672 claimant's claims in a fiscal year to an amount in excess of \$1,000, shall be prorated.

12673 (5) The division may deny or limit compensation if the claimant:

12674 (a) has failed to exercise reasonable care and diligence to avoid the loss or minimize the
12675 damage; or

12676 (b) has unreasonably restricted hunting on land under the claimant's control or passage
12677 through the land to access public lands for the purpose of hunting, after receiving written
12678 notification from the division of the necessity of allowing such hunting or access to control or
12679 mitigate damage by big game.

12680 (6) (a) The Wildlife Board shall make rules specifying procedures for the appeal of
12681 division actions under this section.

12682 (b) Upon the petition of an aggrieved party to a final division action, the Wildlife Board
12683 may review the action on the record and issue an order modifying or rescinding the division
12684 action.

12685 (c) A qualified hearing examiner may be appointed for purposes of taking evidence and

12686 making recommendations for a board order. The board shall consider the recommendations of
12687 the examiner in making decisions.

12688 (d) Board review of final agency action and judicial review of final board action shall be
12689 governed by [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

12690 Section 277. Section **23-19-9** is amended to read:

12691 **23-19-9. Suspension of license or permit privileges -- Suspension of certificates of**
12692 **registration.**

12693 (1) As used in this section, "license or permit privileges" means the privilege of applying
12694 for, purchasing, and exercising the benefits conferred by a license or permit issued by the
12695 division.

12696 (2) A hearing officer, appointed by the division, may suspend a person's license or
12697 permit privileges if:

12698 (a) in a court of law, the person:

12699 (i) is convicted of:

12700 (A) violating this title or a rule of the Wildlife Board;

12701 (B) killing or injuring domestic livestock while engaged in an activity regulated under
12702 this title; or

12703 (C) violating Section 76-10-508 while engaged in an activity regulated under this title;

12704 (ii) enters into a plea in abeyance agreement, in which the person pleads guilty or no
12705 contest to an offense listed in Subsection (2)(a)(i), and the plea is held in abeyance; or

12706 (iii) is charged with committing an offense listed in Subsection (2)(a)(i), and the person
12707 enters into a diversion agreement which suspends the prosecution of the offense; and

12708 (b) the hearing officer determines the person committed the offense intentionally,
12709 knowingly, or recklessly, as defined in Section 76-2-103.

12710 (3) (a) The Wildlife Board shall make rules establishing guidelines that a hearing officer
12711 shall consider in determining:

12712 (i) the type of license or permit privileges to suspend; and

12713 (ii) the duration of the suspension.

12714 (b) The Wildlife Board shall ensure that the guidelines established under Subsection
12715 (3)(a) are consistent with Subsections (4), (5), and (6).

12716 (4) Except as provided in Subsections (5) and (6), a hearing officer may suspend a
12717 person's license or permit privileges according to Subsection (2) for a period of time not to
12718 exceed:

12719 (a) seven years for:

12720 (i) a felony conviction;

12721 (ii) a plea of guilty or no contest to an offense punishable as a felony, which plea is held
12722 in abeyance pursuant to a plea in abeyance agreement; or

12723 (iii) being charged with an offense punishable as a felony, the prosecution of which is
12724 suspended pursuant to a diversion agreement;

12725 (b) five years for:

12726 (i) a class A misdemeanor conviction;

12727 (ii) a plea of guilty or no contest to an offense punishable as a class A misdemeanor,
12728 which plea is held in abeyance pursuant to a plea in abeyance agreement; or

12729 (iii) being charged with an offense punishable as a class A misdemeanor, the
12730 prosecution of which is suspended pursuant to a diversion agreement;

12731 (c) three years for:

12732 (i) a class B misdemeanor conviction;

12733 (ii) a plea of guilty or no contest to an offense punishable as a class B misdemeanor
12734 when the plea is held in abeyance according to a plea in abeyance agreement; or

12735 (iii) being charged with an offense punishable as a class B misdemeanor, the prosecution
12736 of which is suspended pursuant to a diversion agreement; and

12737 (d) one year for:

12738 (i) a class C misdemeanor conviction;

12739 (ii) a plea of guilty or no contest to an offense punishable as a class C misdemeanor,
12740 when the plea is held in abeyance according to a plea in abeyance agreement; or

12741 (iii) being charged with an offense punishable as a class C misdemeanor, the prosecution

12742 of which is suspended according to a diversion agreement.

12743 (5) The hearing officer may double a suspension period established in Subsection (4) for
12744 offenses:

12745 (a) committed in violation of an existing suspension or revocation order issued by the
12746 courts, division, or Wildlife Board; or

12747 (b) involving the unlawful taking of a trophy animal, as defined in Section 23-13-2.

12748 (6) (a) A hearing officer may suspend, according to Subsection (2), a person's license or
12749 permit privileges for a particular license or permit only once for each single criminal episode, as
12750 defined in Section 76-1-401.

12751 (b) If a hearing officer addresses two or more single criminal episodes in a hearing, the
12752 suspension periods of any license or permit privileges of the same type suspended, according to
12753 Subsection (2), may run consecutively.

12754 (c) If a hearing officer suspends, according to Subsection (2), license or permit
12755 privileges of the type that have been previously suspended by a court, a hearing officer, or the
12756 Wildlife Board and the suspension period has not expired, the suspension periods may run
12757 consecutively.

12758 (7) (a) A hearing officer, appointed by the division, may suspend a person's privilege of
12759 applying for, purchasing, and exercising the benefits conferred by a certificate of registration if:

12760 (i) the hearing officer determines the person intentionally, knowingly, or recklessly, as
12761 defined in Section 76-2-103, violated:

12762 (A) this title;

12763 (B) a rule or order of the Wildlife Board;

12764 (C) the terms of a certificate of registration; or

12765 (D) the terms of a certificate of registration application or agreement; or

12766 (ii) the person, in a court of law:

12767 (A) is convicted of an offense that the hearing officer determines bears a reasonable
12768 relationship to the person's ability to safely and responsibly perform the activities authorized by
12769 the certificate of registration;

12770 (B) pleads guilty or no contest to an offense that the hearing officer determines bears a
12771 reasonable relationship to the person's ability to safely and responsibly perform the activities
12772 authorized by the certificate of registration, and the plea is held in abeyance in accordance with
12773 a plea in abeyance agreement; or

12774 (C) is charged with an offense that the hearing officer determines bears a reasonable
12775 relationship to the person's ability to safely and responsibly perform the activities authorized by
12776 the certificate of registration, and prosecution of the offense is suspended in accordance with a
12777 diversion agreement.

12778 (b) All certificates of registration for the harvesting of brine shrimp eggs, as defined in
12779 Section 59-23-3, shall be suspended by a hearing officer, if the hearing officer determines the
12780 holder of the certificates of registration has violated Section 59-23-5.

12781 (8) (a) The director shall appoint a qualified person as a hearing officer to perform the
12782 adjudicative functions provided in this section.

12783 (b) The director may not appoint a division employee who investigates or enforces
12784 wildlife violations.

12785 (9) (a) The courts may suspend, in criminal sentencing, a person's privilege to apply for,
12786 purchase, or exercise the benefits conferred by a license, permit, or certificate of registration.

12787 (b) The courts shall promptly notify the division of any suspension orders or
12788 recommendations entered.

12789 (c) The division, upon receiving notification of suspension from the courts, shall
12790 prohibit the person from applying for, purchasing, or exercising the benefits conferred by a
12791 license, permit, or certification of registration for the duration and of the type specified in the
12792 court order.

12793 (d) The hearing officer shall consider any recommendation made by a sentencing court
12794 concerning suspension before issuing a suspension order.

12795 (10) (a) A person may not apply for, purchase, possess, or attempt to exercise the
12796 benefits conferred by any permit, license, or certificate of registration specified in an order of
12797 suspension while that order is in effect.

12798 (b) Any license possessed or obtained in violation of the order shall be considered
12799 invalid.

12800 (c) A person who violates Subsection (10)(a) is guilty of a class B misdemeanor.

12801 (11) Before suspension under this section, a person must be:

12802 (a) given written notice of any action the division intends to take; and

12803 (b) provided with an opportunity for a hearing.

12804 (12) (a) A person may file an appeal of a hearing officer's decision with the Wildlife
12805 Board.

12806 (b) The Wildlife Board shall review the hearing officer's findings and conclusions and
12807 any written documentation submitted at the hearing.

12808 (c) The Wildlife Board may:

12809 (i) take no action;

12810 (ii) vacate or remand the decision; or

12811 (iii) amend the period or type of suspension.

12812 (13) The division shall suspend and reinstate all hunting, fishing, trapping, and falconry
12813 privileges consistent with Title 23, Chapter 25, Wildlife Violator Compact.

12814 (14) The Wildlife Board may make rules to implement this section in accordance with
12815 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

12816 Section 278. Section **23-19-38.2** is amended to read:

12817 **23-19-38.2. Refunds for armed forces or public health or safety organization**
12818 **members -- Criteria.**

12819 (1) A member of the United States Armed Forces or public health or public safety
12820 organization who is mobilized or deployed on order in the interest of national defense or
12821 emergency and is precluded from using a purchased license, certificate, tag, or permit, may, as
12822 provided in Subsection (2):

12823 (a) receive a refund from the division; and

12824 (b) if the person has drawn a permit, have all opportunities to draw that permit in a
12825 future draw reinstated.

- 12826 (2) To qualify, the person or a legal representative must:
- 12827 (a) notify the division within a reasonable amount of time that the person is applying for
- 12828 a refund;
- 12829 (b) surrender the license, certificate, tag, or permit to the division; and
- 12830 (c) furnish satisfactory proof to the division that the person:
- 12831 (i) is a member of:
- 12832 (A) the United States Armed Forces;
- 12833 (B) a public health organization; or
- 12834 (C) a public safety organization; and
- 12835 (ii) was precluded from using the license, certificate, tag, or permit as a result of being
- 12836 called to active duty.
- 12837 (3) The Wildlife Board may adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
- 12838 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this section
- 12839 including allowing retroactive refund to September 11, 2001.
- 12840 Section 279. Section **23-21-2.3** is amended to read:
- 12841 **23-21-2.3. Review and adoption of management plans.**
- 12842 (1) The division shall submit the draft management plan to the Resource Development
- 12843 Coordinating Committee created in Section [~~63-38d-501~~] 63J-4-501 and the Habitat Council
- 12844 created by the division for their review and recommendations.
- 12845 (2) The division shall submit the draft management plan and any recommendations
- 12846 received from the Resource Development Coordinating Committee and the Habitat Council to:
- 12847 (a) the regional advisory council for the wildlife region in which the lands covered by
- 12848 the management plan are located; and
- 12849 (b) the regional advisory council for any wildlife region that may be affected by the
- 12850 management plan.
- 12851 (3) Each regional advisory council reviewing the draft management plan may make
- 12852 recommendations to the division director.
- 12853 (4) The division director has authority to adopt the management plan, adopt the plan

12854 with amendments, or reject the plan.

12855 (5) At the request of the division director or any member of the Wildlife Board, the
12856 Wildlife Board may review a management plan to determine whether the plan is consistent with
12857 board policies.

12858 (6) The division director may amend a management plan in accordance with
12859 recommendations made by the Wildlife Board.

12860 Section 280. Section **23-24-1** is amended to read:

12861 **23-24-1. Procedure to obtain compensation for livestock damage done by bear,**
12862 **mountain lion, or eagle.**

12863 (1) As used in this section:

12864 (a) "Damage" means injury or loss to livestock.

12865 (b) "Division" means the Division of Wildlife Resources.

12866 (c) "Livestock" means cattle, sheep, goats, or turkeys.

12867 (2) (a) When livestock are damaged by a bear, mountain lion, or an eagle, the owner
12868 may receive compensation for the fair market value of the damage.

12869 (b) To obtain this compensation, the owner of the damaged livestock shall notify the
12870 division of the damage as soon as possible, but no later than four days after the damage is
12871 discovered.

12872 (c) The owner must notify the division each time any damage is discovered.

12873 (3) The livestock owner shall file a proof of loss form, provided by the division, no later
12874 than 30 days after the original notification of damage was given to the division by the owner.

12875 (4) (a) (i) The division, with the assistance of the Department of Agriculture and Food
12876 shall:

12877 (A) within 30 days after the owner files the proof of loss form, either accept or deny the
12878 claim for damages; and

12879 (B) subject to Subsections (4)(a)(ii) through (4)(a)(iv), pay all accepted claims to the
12880 extent money appropriated by the Legislature is available for this purpose.

12881 (ii) Money appropriated from the Wildlife Resources Account may be used to provide

12882 compensation for only up to 50% of the fair market value of any damaged livestock.

12883 (iii) Money appropriated from the Wildlife Resources Account may not be used to
12884 provide compensation for livestock damaged by an eagle.

12885 (iv) The division may not pay any eagle damage claim until the division has paid all
12886 accepted mountain lion and bear damage claims for the fiscal year.

12887 (b) The division may not pay mountain lion, bear, or eagle damage claims to a livestock
12888 owner unless the owner has filed a completed livestock form and the appropriate fee as outlined
12889 in Section 4-23-7 for the immediately preceding and current year.

12890 (c) (i) Unless the division denies a claim for the reason identified in Subsection (4)(b),
12891 the owner may appeal the decision to a panel consisting of one person selected by the owner,
12892 one person selected by the division, and a third person selected by the first two panel members.

12893 (ii) The panel shall decide whether the division should pay all of the claim, a portion of
12894 the claim, or none of the claim.

12895 (5) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
12896 Chapter 3, Utah Administrative Rulemaking Act, the Wildlife Board may make and enforce
12897 rules to administer and enforce this section.

12898 Section 281. Section **24-1-19** is amended to read:

12899 **24-1-19. Crime Reduction Assistance Program.**

12900 (1) There is created the Crime Reduction Assistance Program.

12901 (2) The program shall fund crime prevention and law enforcement activities that have
12902 the purpose of:

12903 (a) deterring crime by depriving criminals of the profits and proceeds of their illegal
12904 activities;

12905 (b) weakening criminal enterprises by removing the instrumentalities of crime;

12906 (c) reducing crimes involving substance abuse by supporting the creation,
12907 administration, or operation of drug court programs throughout the state;

12908 (d) encouraging cooperation between local, state, and multijurisdictional law
12909 enforcement agencies;

12910 (e) allowing the costs and expenses of law enforcement to be defrayed by the forfeited
12911 proceeds of crime; and

12912 (f) increasing the equitability and accountability of the use of forfeited property used to
12913 assist law enforcement in reducing and preventing crime.

12914 (3) (a) When property is forfeited under this chapter and transferred to the fund, the
12915 Commission on Criminal and Juvenile Justice shall make awards of monies from the fund to
12916 state, local, or multijurisdictional law enforcement agencies or political subdivisions of the state
12917 in compliance with this section and to further the program purposes under Subsection (2).

12918 (b) In granting the awards, the Commission on Criminal and Juvenile Justice shall
12919 ensure that the amount of each award takes into consideration:

12920 (i) the demonstrated needs of the agency;

12921 (ii) the demonstrated ability of the agency to appropriately use the award;

12922 (iii) the degree to which the agency's need is offset through the agency's participation in
12923 federal equitable sharing or through other federal and state grant programs; and

12924 (iv) the agency's cooperation with other state and local agencies and task forces.

12925 (4) Agencies or political subdivisions shall apply for program awards by completing and
12926 submitting forms specified by the Commission on Criminal and Juvenile Justice.

12927 (5) Applying agencies or political subdivisions shall demonstrate compliance with all
12928 reporting and policy requirements applicable under this chapter and under [~~Title 63, Chapter~~
12929 ~~25a~~] Title 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a
12930 potential award recipient.

12931 (6) Recipient law enforcement agencies may only use program award monies after
12932 approval or appropriation by the agency's legislative body, and the award monies are
12933 nonlapsing.

12934 (7) A recipient law enforcement agency or political subdivision shall use program
12935 awards only for law enforcement or controlled substance law enforcement purposes as
12936 described in Subsection (8), and only as these purposes are specified by the agency or political
12937 subdivision in its application for the award.

12938 (8) Permissible law enforcement purposes for which award monies may be used include:
12939 (a) controlled substance interdiction and enforcement activities;
12940 (b) drug court programs;
12941 (c) activities calculated to enhance future investigations;
12942 (d) law enforcement training that includes:
12943 (i) implementation of the Fourth Amendment of the federal constitution and Utah
12944 Constitution Article I, Section 7, and addresses the protection of the individual's rights of due
12945 process;
12946 (ii) protection of the rights of innocent property holders; and
12947 (iii) the Tenth Amendment of the federal constitution regarding states' sovereignty and
12948 the states' reserved rights;
12949 (e) law enforcement or detention facilities;
12950 (f) law enforcement operations or equipment which are not routine costs or operational
12951 expenses;
12952 (g) drug, gang, or crime prevention education programs which are sponsored in whole
12953 or in part by the law enforcement agency or its legislative body; and
12954 (h) matching funds for other state or federal law enforcement grants.
12955 (9) Law enforcement purposes for which award monies may not be granted or used
12956 include:
12957 (a) payment of salaries, retirement benefits, or bonuses to any person;
12958 (b) payment of enforcement expenses not related to law enforcement;
12959 (c) uses not specified in the agency's award application;
12960 (d) uses not approved or appropriated by the agency's legislative body;
12961 (e) payments, transfers, or pass-through funding to entities other than law enforcement
12962 agencies; or
12963 (f) uses, payments, or expenses that are not within the scope of the agency's functions.
12964 (10) For each fiscal year, any state, local, or multijurisdictional agency or political
12965 subdivision that received a program award shall prepare, and file with the Utah Commission on

12966 Criminal and Juvenile Justice and the state auditor, a report in a form specified by the Utah
12967 Commission on Criminal and Juvenile Justice. The report shall include the following regarding
12968 each award:

- 12969 (a) the agency's name;
- 12970 (b) the amount of the award;
- 12971 (c) the date of the award;
- 12972 (d) how the award has been used; and
- 12973 (e) a statement signed by both the agency's or political subdivision's executive officer or
12974 designee and by the agency's legal counsel, that:
 - 12975 (i) the agency or political subdivision has complied with all inventory, policy, and
12976 reporting requirements of this chapter;
 - 12977 (ii) all program awards were used for crime reduction or law enforcement purposes as
12978 specified in the application; and
 - 12979 (iii) and only upon approval or appropriation by the agency's or political subdivision's
12980 legislative body.

12981 (11) The Utah Commission on Criminal and Juvenile Justice shall report in writing to
12982 the legislative Law Enforcement and Criminal Justice Interim Committee annually regarding the
12983 forfeited property transferred to the fund, awards made by the program, uses of program
12984 awards, and any equitable share of property forfeited by the federal government as reported by
12985 agencies pursuant to Subsection 24-1-15(3).

12986 Section 282. Section **26-1-4.1** is amended to read:

12987 **26-1-4.1. Department procedures -- Adjudicative proceedings.**

12988 The Department of Health shall comply with the procedures and requirements of [~~Title~~
12989 ~~63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
12990 proceedings.

12991 Section 283. Section **26-1-5** is amended to read:

12992 **26-1-5. Rules of department.**

12993 (1) Except in areas regulated by statutory committees created by this title, the

12994 department shall have the power to adopt, amend, or rescind rules necessary to carry out the
12995 provisions of this title.

12996 (2) Rules shall have the force and effect of law and may deal with matters which
12997 materially affect the security of health or the preservation and improvement of public health in
12998 the state, and any matters as to which jurisdiction is conferred upon the department by this title.

12999 (3) Every rule adopted by the department pursuant to this section, or a committee
13000 established under Section 26-1-7 or 26-1-7.5, shall be subject to [~~Title 63, Chapter 46a~~] Title
13001 63G, Chapter 3, Utah Administrative Rulemaking Act and shall become effective at the time and
13002 in the manner provided in that act.

13003 (4) If, at the next general session of the legislature following the filing of a rule with the
13004 legislative research director, the legislature passes a bill disapproving such rule, the rule shall be
13005 null and void.

13006 (5) The department or a committee created under Section 26-1-7 or 26-1-7.5, shall not
13007 adopt a rule identical to a rule disapproved under Subsection (4) of this section, before the
13008 beginning of the next general session of the legislature following the general session at which
13009 the rule was disapproved.

13010 Section 284. Section **26-1-6** is amended to read:

13011 **26-1-6. Fee schedule adopted by department.**

13012 (1) The department may adopt a schedule of fees that may be assessed for services
13013 rendered by the department, provided that the fees are:

- 13014 (a) reasonable and fair; and
- 13015 (b) submitted to the Legislature as part of the department's annual appropriations
13016 request.

13017 (2) When the department submits a fee schedule to the Legislature, the Legislature, in
13018 accordance with Section [~~63-38-3.2~~] 63J-1-303, may:

- 13019 (a) approve the fee;
- 13020 (b) increase or decrease and approve the fee; or
- 13021 (c) reject any fee submitted to it.

13022 (3) Fees approved by the Legislature pursuant to this section shall be paid into the state
13023 treasury in accordance with Section [~~63-38-9~~] 63J-1-404.

13024 Section 285. Section **26-1-7.1** is amended to read:

13025 **26-1-7.1. Committee procedures -- Adjudicative proceedings.**

13026 All committees created by Section 26-1-7 shall comply with the procedures and
13027 requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in
13028 their adjudicative proceedings.

13029 Section 286. Section **26-1-17.5** is amended to read:

13030 **26-1-17.5. Confidential records.**

13031 (1) A record classified as confidential under this title shall remain confidential, and be
13032 released according to the provisions of this title, notwithstanding Section [~~63-2-909~~]
13033 63G-2-310.

13034 (2) In addition to those persons granted access to records described in Subsection
13035 [~~63-2-302~~] 63G-2-302(1)(b), immunization records may be shared among schools, school
13036 districts, and local and state health departments and the state Department of Human Services as
13037 necessary to assure compliance with Section 53A-11-301 and to prevent, investigate, and
13038 control the causes of epidemic, infectious, communicable, and other diseases affecting the public
13039 health.

13040 Section 287. Section **26-1-21** is amended to read:

13041 **26-1-21. Disposal of property by department.**

13042 (1) The department may dispose of any personal property owned by it or any of the
13043 entities created under Section 26-1-13, in the manner provided in [~~Title 63, Chapter 17~~] Title
13044 63A, Chapter 9, Part 8, Surplus Property Service.

13045 (2) The department may dispose of any real property owned by it or any of the entities
13046 created under Section 26-1-13, in the manner provided in Title 65A, Chapter 4.

13047 Section 288. Section **26-2-22** is amended to read:

13048 **26-2-22. Inspection of vital records.**

13049 (1) (a) The vital records shall be open to inspection, but only in compliance with the

13050 provisions of this chapter, department rules, and Section 78-30-18.

13051 (b) It is unlawful for any state or local officer or employee to disclose data contained in
13052 vital records contrary to this chapter or department rule.

13053 (c) A custodian of vital records may permit inspection of a vital record or issue a
13054 certified copy of a record or a part of a record when the custodian is satisfied that the applicant
13055 has demonstrated a direct, tangible, and legitimate interest.

13056 (2) A direct, tangible, and legitimate interest in a vital record is present only if:

13057 (a) the request is from the subject, a member of the subject's immediate family, the
13058 guardian of the subject, or a designated legal representative;

13059 (b) the request involves a personal or property right of the subject of the record;

13060 (c) the request is for official purposes of a state, local, or federal governmental agency;

13061 (d) the request is for a statistical or medical research program and prior consent has
13062 been obtained from the state registrar; or

13063 (e) the request is a certified copy of an order of a court of record specifying the record
13064 to be examined or copied.

13065 (3) For purposes of Subsection (2):

13066 (a) "immediate family member" means a spouse, child, parent, sibling, grandparent, or
13067 grandchild;

13068 (b) a designated legal representative means an attorney, physician, funeral service
13069 director, genealogist, or other agent of the subject or the subject's immediate family who has
13070 been delegated the authority to access vital records;

13071 (c) except as provided in Title 78, Chapter 30, Adoption, a parent, or the immediate
13072 family member of a parent, who does not have legal or physical custody of or visitation or
13073 parent-time rights for a child because of the termination of parental rights pursuant to Title 78,
13074 Chapter 3a, Juvenile Court Act of 1996, or by virtue of consenting to or relinquishing a child
13075 for adoption pursuant to Title 78, Chapter 30, Adoption, may not be considered as having a
13076 direct, tangible, and legitimate interest; and

13077 (d) a commercial firm or agency requesting names, addresses, or similar information

13078 may not be considered as having a direct, tangible, and legitimate interest.

13079 (4) Upon payment of a fee established in accordance with Section [~~63-38-3.2~~
13080 63J-1-303], the following records shall be available to the public:

13081 (a) except as provided in Subsection 26-2-10(4)(b), a birth record, excluding
13082 confidential information collected for medical and health use, if 100 years or more have passed
13083 since the date of birth;

13084 (b) a death record if 50 years or more have passed since the date of death; and

13085 (c) a vital record not subject to Subsection (4)(a) or (b) if 75 years or more have passed
13086 since the date of the event upon which the record is based.

13087 Section 289. Section **26-6b-1** is amended to read:

13088 **26-6b-1. Applicability of chapter -- Administrative procedures.**

13089 (1) This chapter applies to involuntary examination, treatment, isolation, and quarantine
13090 actions applied to individuals or groups of individuals by the department or a local health
13091 department.

13092 (2) The provisions of this chapter supersede the provisions of [~~Title 63, Chapter 46b~~]
13093 Title 63G, Chapter 4, Administrative Procedures Act.

13094 (3) The Department of Health may adopt rules in accordance with [~~Title 63, Chapter~~
13095 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer the
13096 provisions of this chapter.

13097 Section 290. Section **26-8a-104** is amended to read:

13098 **26-8a-104. Committee powers.**

13099 The committee shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
13100 Chapter 3, Utah Administrative Rulemaking Act, that:

13101 (1) establish certification and reciprocity requirements under Section 26-8a-302;

13102 (2) establish designation requirements under Section 26-8a-303;

13103 (3) promote the development of a statewide emergency medical services system under
13104 Section 26-8a-203;

13105 (4) establish insurance requirements for ambulance providers;

- 13106 (5) provide guidelines for requiring patient data under Section 26-8a-203;
- 13107 (6) establish criteria for awarding grants under Section 26-8a-207;
- 13108 (7) establish requirements for the coordination of emergency medical services and the
- 13109 medical supervision of emergency medical service providers under Section 26-8a-306; and
- 13110 (8) are necessary to carry out the responsibilities of the committee as specified in other
- 13111 sections of this chapter.

13112 Section 291. Section **26-8a-105** is amended to read:

13113 **26-8a-105. Department powers.**

13114 The department shall:

- 13115 (1) coordinate the emergency medical services within the state;
- 13116 (2) administer this chapter and the rules established pursuant to it;
- 13117 (3) establish a voluntary task force representing a diversity of emergency medical
- 13118 service providers to advise the department and the committee on rules; and
- 13119 (4) adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 13120 Administrative Rulemaking Act, to:
 - 13121 (a) license ambulance providers and paramedic providers;
 - 13122 (b) permit ambulances and emergency response vehicles;
 - 13123 (c) establish application, submission, and procedural requirements for licenses,
 - 13124 designations, certificates, and permits; and
 - 13125 (d) establish and implement the programs, plans, and responsibilities as specified in
 - 13126 other sections of this chapter.

13127 Section 292. Section **26-8a-207** is amended to read:

13128 **26-8a-207. Emergency medical services grant program.**

- 13129 (1) (a) The department shall receive as dedicated credits the amount established in
- 13130 Section [~~63-63a-3~~] 51-9-403. That amount shall be transferred to the department by the
- 13131 Division of Finance from funds generated by the surcharge imposed under [~~Title 63, Chapter~~
- 13132 ~~63a~~] Title 51, Chapter 9, Part 4, Crime Victims Reparations Trust, Public Safety Support
- 13133 Funds, Substance Abuse Prevention Account, and Services for Victims of Domestic Violence

13134 Account.

13135 (b) Funds transferred to the department under this section shall be used for
13136 improvement of statewide delivery of emergency medical services and administrative costs as
13137 described in Subsection (2)(a). Appropriations to the department for the purposes enumerated
13138 in this section shall be made from those dedicated credits.

13139 (c) All funding for the program created by this section shall be nonlapsing.

13140 (2) (a) The department may use the funds transferred to it under Subsection (1):

13141 (i) to provide staff support; and

13142 (ii) for other expenses incurred in:

13143 (A) administration of grant funds; and

13144 (B) other department administrative costs under this chapter.

13145 (b) After funding staff support, administrative expenses, and trauma system
13146 development, the department and the committee shall make emergency medical services grants
13147 from the remaining funds received as dedicated credits under Subsection (1). A recipient of a
13148 grant under this Subsection (2)(b) must actively provide emergency medical services within the
13149 state.

13150 (i) The department shall distribute 42-1/2% as per capita block grants for use specifically
13151 related to the provision of emergency medical services to nonprofit prehospital emergency
13152 medical services providers that are either licensed or designated and to emergency medical
13153 services that are the primary emergency medical services for a service area. The department
13154 shall determine the grant amounts by prorating available funds on a per capita basis by county as
13155 described in department rule.

13156 (ii) The committee shall award 42-1/2% of the remaining funds as competitive grants for
13157 use specifically related to the provision of emergency medical services based upon rules
13158 established by the committee.

13159 (iii) The committee shall use 15% of the remaining funds to fund high school emergency
13160 medical training programs.

13161 Section 293. Section **26-8a-310** is amended to read:

13162 **26-8a-310. Criminal background check.**

13163 (1) At the time of application for, or renewal of, a certificate, the department shall
13164 obtain, at the applicant's expense, information from a criminal history record or warrant of
13165 arrest information maintained by the Department of Public Safety pursuant to Title 53, Chapter
13166 10, Part 2, Bureau of Criminal Identification, to determine whether the individual has been
13167 convicted of a crime that bears upon ~~[his]~~ the individual's fitness to be certified or to have
13168 responsibility for the safety and well-being of children, the elderly, or persons with disabilities.

13169 (2) (a) An applicant who has not had residency in the state for the last five years shall
13170 submit fingerprints and other identifying information.

13171 (b) The department shall submit fingerprints obtained under Subsection (2)(a) to the
13172 Department of Public Safety to be forwarded to the Federal Bureau of Investigation for a
13173 nationwide criminal history record check to determine whether the individual has been
13174 convicted of a crime that bears upon ~~[his]~~ the individual's fitness to be certified or to have
13175 responsibility for the safety and well-being of children, the elderly, or persons with disabilities.

13176 (3) The department shall have access to juvenile court records to determine whether the
13177 applicant has been adjudicated in juvenile court of committing an act which if committed by an
13178 adult would be a felony or misdemeanor and that bears upon the applicant's fitness to be
13179 certified or to have responsibility for the safety and well-being of children, the elderly, or
13180 persons with disabilities if:

13181 (a) the applicant is under the age of 28; or

13182 (b) the applicant is over the age of 28 and has been convicted, has pleaded no contest,
13183 or is currently subject to a plea in abeyance or diversion agreement for a felony or misdemeanor.

13184 (4) Information obtained pursuant to Subsections (1) through (3) may be used to:

13185 (a) withhold certification or renewal;

13186 (b) commence or substantiate disciplinary action under Section 26-8a-503;

13187 (c) enforce the provisions of this chapter; and

13188 (d) notify the individual's employer as necessary to protect the public.

13189 (5) The department shall adopt rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter

13190 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances
13191 under which an applicant who has been convicted of a criminal offense may receive a
13192 certification under this chapter.

13193 Section 294. Section **26-8a-404** is amended to read:

13194 **26-8a-404. Ground ambulance and paramedic licenses -- Application and**
13195 **department review.**

13196 (1) Except as provided in Section 26-8a-413, an applicant for a ground ambulance or
13197 paramedic license shall apply to the department for a license only by:

- 13198 (a) submitting a completed application;
- 13199 (b) providing information in the format required by the department; and
- 13200 (c) paying the required fees, including the cost of the hearing officer.

13201 (2) The department shall make rules establishing minimum qualifications and
13202 requirements for:

- 13203 (a) personnel;
- 13204 (b) capital reserves;
- 13205 (c) equipment;
- 13206 (d) a business plan;
- 13207 (e) operational procedures;
- 13208 (f) medical direction agreements;
- 13209 (g) management and control; and
- 13210 (h) other matters that may be relevant to an applicant's ability to provide ground
13211 ambulance or paramedic service.

13212 (3) An application for a license to provide ground ambulance service or paramedic
13213 service shall be for all ground ambulance services or paramedic services arising within the
13214 geographic service area, except that an applicant may apply for a license for less than all ground
13215 ambulance services or all paramedic services arising within an exclusive geographic area if it can
13216 demonstrate how the remainder of that area will be served.

13217 (4) (a) A ground ambulance service licensee may apply to the department for a license

13218 to provide a higher level of service as defined by department rule if:

13219 (i) the application for the license is limited to non-911 ambulance or paramedic services;

13220 and

13221 (ii) the application includes:

13222 (A) a copy of the new treatment protocols for the higher level of service approved by
13223 the off-line medical director;

13224 (B) an assessment of field performance by the applicant's off-line director; and

13225 (C) an updated plan of operation demonstrating the ability of the applicant to provide
13226 the higher level of service.

13227 (b) If the department determines that the applicant has demonstrated the ability to
13228 provide the higher level of service in accordance with Subsection (4)(a), the department shall
13229 issue a revised license reflecting the higher level of service and the requirements of Section
13230 26-8a-408 do not apply.

13231 (5) Upon receiving a completed application and the required fees, the department shall
13232 review the application and determine whether the application meets the minimum qualifications
13233 and requirements for licensure.

13234 (6) The department may deny an application if it finds that it contains any materially
13235 false or misleading information, is incomplete, or if the application demonstrates that the
13236 applicant fails to meet the minimum qualifications and requirements for licensure under
13237 Subsection (2).

13238 (7) If the department denies an application, it shall notify the applicant in writing setting
13239 forth the grounds for the denial. A denial may be appealed under [~~Title 63, Chapter 46b~~] Title
13240 63G, Chapter 4, Administrative Procedures Act.

13241 Section 295. Section **26-8a-405.3** is amended to read:

13242 **26-8a-405.3. Use of competitive sealed proposals -- Procedure -- Appeal rights.**

13243 (1) (a) Competitive sealed proposals for paramedic or 911 ambulance services under
13244 Section 26-8a-405.2 shall be solicited through a request for proposal and the provisions of this
13245 section.

13246 (b) The governing body of the political subdivision shall approve the request for
13247 proposal prior to the notice of the request for proposals under Subsection (1)(c).

13248 (c) Notice of the request for proposals must be published at least once a week for three
13249 consecutive weeks in a newspaper of general circulation published in the county, or if there is
13250 no such newspaper, then notice must be posted for at least 20 days in at least five public places
13251 in the county.

13252 (2) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
13253 offerors during the process of negotiations.

13254 (b) (i) Subsequent to the published notice, and prior to selecting an applicant, the
13255 political subdivision must hold a presubmission conference with interested applicants for the
13256 purpose of assuring full understanding of, and responsiveness to, solicitation requirements.

13257 (ii) A political subdivision shall allow at least 90 days from the presubmission
13258 conference for the proposers to submit proposals.

13259 (c) Subsequent to the presubmission conference, the political subdivision may issue
13260 addenda to the request for proposals. An addenda to a request for proposal must be finalized
13261 and posted by the political subdivision at least 45 days prior to the date on which the proposal
13262 must be submitted.

13263 (d) Offerors to the request for proposals shall be accorded fair and equal treatment with
13264 respect to any opportunity for discussion and revisions of proposals, and revisions may be
13265 permitted after submission and before a contract is awarded for the purpose of obtaining best
13266 and final offers.

13267 (e) In conducting discussions, there shall be no disclosures of any information derived
13268 from proposals submitted by competing offerors.

13269 (3) (a) (i) A political subdivision may select an applicant approved by the department
13270 under Section 26-8a-404 to provide 911 ambulance or paramedic services by contract to the
13271 most responsible offeror as defined in Subsection [~~63-56-105~~] 63G-6-103(24).

13272 (ii) An award under Subsection (3)(a)(i) shall be made to the responsible offeror whose
13273 proposal is determined in writing to be the most advantageous to the political subdivision,

13274 taking into consideration price and the evaluation factors set forth in the request for proposal.

13275 (b) The applicants who are approved under Section 26-8a-405 and who are selected
13276 under this section may be the political subdivision issuing the request for competitive sealed
13277 proposals, or any other public entity or entities, any private person or entity, or any combination
13278 thereof.

13279 (c) A political subdivision may reject all of the competitive proposals.

13280 (4) In seeking competitive sealed proposals and awarding contracts under this section, a
13281 political subdivision:

13282 (a) shall apply the public convenience and necessity factors listed in Subsections
13283 26-8a-408(2) through (6);

13284 (b) shall require the applicant responding to the proposal to disclose how the applicant
13285 will meet performance standards in the request for proposal;

13286 (c) may not require or restrict an applicant to a certain method of meeting the
13287 performance standards, including:

13288 (i) requiring ambulance medical personnel to also be a firefighter; or

13289 (ii) mandating that offerors use fire stations or dispatch services of the political
13290 subdivision;

13291 (d) (i) shall require an applicant to submit the proposal based on full cost accounting in
13292 accordance with generally accepted accounting principals; and

13293 (ii) if the applicant is a governmental entity, in addition to the requirements of
13294 Subsection (4)(e)(i), in accordance with generally accepted government auditing standards and
13295 in compliance with the State of Utah Legal Compliance Audit Guide; and

13296 (e) shall set forth in the request for proposal:

13297 (i) the method for determining full cost accounting in accordance with generally
13298 accepted accounting principles, and require an applicant to submit the proposal based on such
13299 full cost accounting principles;

13300 (ii) guidelines established to further competition and provider accountability; and

13301 (iii) a list of the factors that will be considered by the political subdivision in the award

13302 of the contract, including by percentage, the relative weight of the factors established under this
13303 Subsection (4)(e), which may include such things as:

- 13304 (A) response times;
- 13305 (B) staging locations;
- 13306 (C) experience;
- 13307 (D) quality of care; and
- 13308 (E) cost, consistent with the cost accounting method in Subsection (4)(e)(i).

13309 (5) (a) Notwithstanding the provisions of Subsection [~~63-56-102~~] 63G-6-104(3), the
13310 provisions of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Part 8, Legal and Contractual
13311 Remedies, apply to the procurement process required by this section, except as provided in
13312 Subsection (5)(c).

13313 (b) The Procurement Appeals Board created in Section [~~63-56-807~~] 63G-6-807 shall
13314 have jurisdiction to review and determine an appeal of an offeror under this section in the same
13315 manner as provided in Section [~~63-56-810~~] 63G-6-810.

13316 (c) (i) An offeror may appeal the solicitation or award as provided by the political
13317 subdivision's procedures. After all political subdivision appeal rights are exhausted, the offeror
13318 may appeal under the provisions of Subsections (5)(a) and (b).

13319 (ii) The factual determination required by Subsection [~~63-56-813~~] 63G-6-813(1) shall
13320 be based on whether the solicitation or award was made in accordance with the procedures set
13321 forth in this section and Section 26-8a-405.2.

13322 (d) The determination of an issue of fact by the appeals board shall be final and
13323 conclusive unless arbitrary and capricious or clearly erroneous as provided in Section
13324 [~~63-56-813~~] 63G-6-813.

13325 Section 296. Section **26-8a-407** is amended to read:

13326 **26-8a-407. Ground ambulance and paramedic licenses -- Proceedings.**

13327 (1) The presiding officer shall:

13328 (a) commence an informal adjudicative proceeding within 120 days of receiving a
13329 completed application;

13330 (b) meet with the applicant and objecting interested parties and provide no less than 120
13331 days for a negotiated resolution, consistent with the criteria in Section 26-8a-408;

13332 (c) set aside a separate time during the proceedings to accept public comment on the
13333 application; and

13334 (d) present a written decision to the executive director if a resolution has been reached
13335 that satisfies the criteria in Section 26-8a-408.

13336 (2) At any time during an informal adjudicative proceeding under Subsection (1), any
13337 party may request conversion of the informal adjudicative proceeding to a formal adjudicative
13338 proceeding in accordance with Section [~~63-46b-4~~] 63G-4-202.

13339 (3) Upon conversion to a formal adjudicative proceeding, a hearing officer shall be
13340 assigned to the application as provided in Section 26-8a-409. The hearing office shall:

13341 (a) set aside a separate time during the proceedings to accept public comment on the
13342 application;

13343 (b) apply the criteria established in Section 26-8a-408; and

13344 (c) present a recommended decision to the executive director in writing.

13345 (4) The executive director may, as set forth in a final written order, accept, modify,
13346 reject, or remand the decision of a presiding or hearing officer after:

13347 (a) reviewing the record;

13348 (b) giving due deference to the officer's decision; and

13349 (c) determining whether the criteria in Section 26-8a-408 have been satisfied.

13350 Section 297. Section **26-8a-414** is amended to read:

13351 **26-8a-414. Annexations.**

13352 (1) A municipality shall comply with the provisions of this section if the municipality is
13353 licensed under this chapter and desires to provide service to an area that is:

13354 (a) included in a petition for annexation under Title 10, Chapter 2, Part 4, Annexation;
13355 and

13356 (b) currently serviced by another provider licensed under this chapter.

13357 (2) (a) (i) At least 45 days prior to approving a petition for annexation, the municipality

13358 shall certify to the department that by the time of the approval of the annexation the
13359 municipality can meet or exceed the current level of service provided by the existing licensee for
13360 the annexed area by meeting the requirements of Subsections (2)(b)(ii)(A) through (D); and

13361 (ii) no later than three business days after the municipality files a petition for annexation
13362 in accordance with Section 10-2-403, provide written notice of the petition for annexation to:

13363 (A) the existing licensee providing service to the area included in the petition of
13364 annexation; and

13365 (B) the department.

13366 (b) (i) After receiving a certification under Subsection (2)(a), but prior to the
13367 municipality approving a petition for annexation, the department may audit the municipality only
13368 to verify the requirements of Subsections (2)(b)(ii)(A) through (D).

13369 (ii) If the department elects to conduct an audit, the department shall make a finding
13370 that the municipality can meet or exceed the current level of service provided by the existing
13371 licensee for the annexed area if the department finds that the municipality has or will have by the
13372 time of the approval of the annexation:

13373 (A) adequate trained personnel to deliver basic and advanced life support services;

13374 (B) adequate apparatus and equipment to deliver emergency medical services;

13375 (C) adequate funding for personnel and equipment; and

13376 (D) appropriate medical controls, such as a medical director and base hospital.

13377 (iii) The department shall submit the results of the audit in writing to the municipal
13378 legislative body.

13379 (3) (a) If the department audit finds that the municipality meets the requirements of
13380 Subsection (2)(b)(ii), the department shall issue an amended license to the municipality and all
13381 other affected licensees to reflect the municipality's new boundaries after the department
13382 receives notice of the approval of the petition for annexation from the municipality in
13383 accordance with Section 10-2-425.

13384 (b) (i) Notwithstanding the provisions of Subsection [~~63-46-1~~] 63G-4-102(2)(k), if the
13385 department audit finds that the municipality fails to meet the requirements of Subsection

13386 (2)(b)(ii), the municipality may request an adjudicative proceeding under the provisions of [Title
 13387 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act. The municipality may
 13388 approve the petition for annexation while an adjudicative proceeding requested under this
 13389 Subsection (3)(b)(i) is pending.

13390 (ii) The department shall conduct an adjudicative proceeding when requested under
 13391 Subsection (3)(b)(i).

13392 (iii) Notwithstanding the provisions of Sections 26-8a-404 through 26-8a-409, in any
 13393 adjudicative proceeding held under the provisions of Subsection (3)(b)(i), the department bears
 13394 the burden of establishing that the municipality cannot, by the time of the approval of the
 13395 annexation, meet the requirements of Subsection (2)(b)(ii).

13396 (c) If, at the time of the approval of the annexation, an adjudicative proceeding is
 13397 pending under the provisions of Subsection (3)(b)(i), the department shall issue amended
 13398 licenses if the municipality prevails in the adjudicative proceeding.

13399 Section 298. Section **26-8a-503** is amended to read:

13400 **26-8a-503. Discipline of emergency medical services personnel.**

13401 (1) The department may refuse to issue a certificate or renewal, or revoke, suspend,
 13402 restrict, or place on probation an individual's certificate if:

13403 (a) the individual does not meet the qualifications for certification under Section
 13404 26-8a-302;

13405 (b) the individual has engaged in conduct, as defined by committee rule, that:

13406 (i) is unprofessional;

13407 (ii) is adverse to the public health, safety, morals, or welfare; or

13408 (iii) would adversely affect public trust in the emergency medical service system;

13409 (c) the individual has violated Section 26-8a-502 or other provision of this chapter;

13410 (d) a court of competent jurisdiction has determined the individual to be mentally
 13411 incompetent for any reason; or

13412 (e) the individual is unable to provide emergency medical services with reasonable skill
 13413 and safety because of illness, drunkenness, use of drugs, narcotics, chemicals, or any other type

13414 of material, or as a result of any other mental or physical condition, when the individual's
13415 condition demonstrates a clear and unjustifiable threat or potential threat to oneself, coworkers,
13416 or the public health, safety, or welfare that cannot be reasonably mitigated.

13417 (2) (a) An action to revoke, suspend, restrict, or place a certificate on probation shall be
13418 done in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
13419 Procedures Act.

13420 (b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist
13421 order under Section 26-8a-507 to immediately suspend an individual's certificate pending an
13422 administrative proceeding to be held within 30 days if there is evidence to show that the
13423 individual poses a clear, immediate, and unjustifiable threat or potential threat to the public
13424 health, safety, or welfare.

13425 (3) An individual whose certificate has been suspended, revoked, or restricted may
13426 apply for reinstatement of the certificate at reasonable intervals and upon compliance with any
13427 conditions imposed upon the certificate by statute, committee rule, or the terms of the
13428 suspension, revocation, or restriction.

13429 (4) In addition to taking disciplinary action under Subsection (1), the department may
13430 impose sanctions in accordance with Section 26-23-6.

13431 Section 299. Section **26-8a-504** is amended to read:

13432 **26-8a-504. Discipline of designated and licensed providers.**

13433 (1) The department may refuse to issue a license or designation or a renewal, or revoke,
13434 suspend, restrict, or place on probation, an emergency medical service provider's license or
13435 designation if the provider has:

13436 (a) failed to abide by terms of the license or designation;

13437 (b) violated statute or rule;

13438 (c) failed to provide services at the level or in the exclusive geographic service area
13439 required by the license or designation;

13440 (d) failed to submit a renewal application in a timely fashion as required by department
13441 rule;

13442 (e) failed to follow operational standards established by the committee; or
13443 (f) committed an act in the performance of a professional duty that endangered the
13444 public or constituted gross negligence.

13445 (2) (a) An action to revoke, suspend, restrict, or place a license or designation on
13446 probation shall be done in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
13447 Administrative Procedures Act.

13448 (b) Notwithstanding Subsection (2)(a), the department may issue a cease and desist
13449 order under Section 26-8a-507 to immediately suspend a license or designation pending an
13450 administrative proceeding to be held within 30 days if there is evidence to show that the
13451 provider or facility poses a clear, immediate, and unjustifiable threat or potential threat to the
13452 public health, safety, or welfare.

13453 (3) In addition to taking disciplinary action under Subsection (1), the department may
13454 impose sanctions in accordance with Section 26-23-6.

13455 Section 300. Section **26-15a-102** is amended to read:

13456 **26-15a-102. Definitions.**

13457 (1) "Back country food service establishment" means a federal or state licensed back
13458 country guiding or outfitting business that:

13459 (a) provides food services; and

13460 (b) meets department recognized federal or state food service safety regulations for
13461 food handlers.

13462 (2) "Certified food safety manager" means a manager of a food service establishment
13463 who:

13464 (a) passes successfully a department-approved examination;

13465 (b) successfully completes, every three years, renewal requirements established by
13466 department rule consistent with original certification requirements; and

13467 (c) submits to the appropriate local health department the documentation required by
13468 Section 26-15a-106.

13469 (3) "Food service establishment" means any place or area within a business or

13470 organization where potentially hazardous foods are prepared and intended for individual portion
13471 service and consumption by the general public, whether the consumption is on or off the
13472 premises, and whether or not a fee is charged for the food.

13473 (4) "Local health department" means a local health department as defined in Subsection
13474 26A-1-102(5).

13475 (5) "Potentially hazardous foods" shall be defined by the department by administrative
13476 rule adopted in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
13477 Administrative Rulemaking Act.

13478 Section 301. Section **26-15a-104** is amended to read:

13479 **26-15a-104. Food service establishment requirements -- Enforcement -- Right of**
13480 **appeal.**

13481 (1) Each food service establishment in the state shall be managed by at least one
13482 full-time certified food safety manager at each establishment site, who need not be present at the
13483 establishment site during all its hours of operation.

13484 (2) Within 60 days of the termination of a certified food safety manager's employment
13485 that results in the food service establishment no longer being in compliance with Subsection (1),
13486 the food service establishment shall:

13487 (a) employ a new certified food safety manager; or

13488 (b) designate another employee to become the establishment's certified food safety
13489 manager who shall commence a department-approved food safety manager training course.

13490 (3) Compliance with the 60-day time period provided in Subsection (2) may be
13491 extended by the local health department for reasonable cause, as determined by the department
13492 by rule.

13493 (4) (a) The local health department may determine whether a food service establishment
13494 is in compliance with this section by visiting the establishment during regular business hours and
13495 requesting information and documentation about the employment of a certified food safety
13496 manager.

13497 (b) If a violation of this section is identified, the local health department shall propose

13498 remedial action to bring the food service establishment into compliance.

13499 (c) A food service establishment receiving notice of a violation and proposed remedial
13500 action from a local health department may appeal the notice of violation and proposed remedial
13501 action pursuant to procedures established by the local health department, which shall be
13502 essentially consistent with the provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
13503 Administrative Procedures Act. Notwithstanding the provisions of Section [~~63-46b-15~~]
13504 63G-4-402, an appeal of a local health department decision to a district court shall be conducted
13505 as an original, independent proceeding, and not as a review of the proceedings conducted by the
13506 local health department. The district court shall give no deference to the findings or conclusions
13507 of the local health department.

13508 Section 302. Section **26-15a-105** is amended to read:

13509 **26-15a-105. Exemptions to food service establishment requirements.**

13510 (1) The following are not subject to the provisions of Section 26-15a-104:

13511 (a) special events sponsored by municipal or nonprofit civic organizations, including
13512 food booths at school sporting events and little league athletic events and church functions;

13513 (b) temporary event food services approved by a local health department;

13514 (c) vendors and other food service establishments that serve only commercially
13515 prepackaged foods and beverages as defined by the department by rule;

13516 (d) private homes not used as a commercial food service establishment;

13517 (e) health care facilities licensed under Chapter 21, Health Care Facility Licensing and
13518 Inspection Act;

13519 (f) bed and breakfast establishments at which the only meal served is a continental
13520 breakfast as defined by the department by rule;

13521 (g) residential child care providers;

13522 (h) child care providers and programs licensed under Chapter 39, Utah Child Care
13523 Licensing Act;

13524 (i) back country food service establishments; and

13525 (j) a lowest risk or permitted food establishment category determined by a risk

13526 assessment evaluation established by the department by administrative rule adopted in
13527 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
13528 Act.

13529 (2) Nothing in this section may be construed as exempting a food service establishment
13530 described in Subsection (1) from any other applicable food safety laws of this state.

13531 Section 303. Section **26-18-3** is amended to read:

13532 **26-18-3. Administration of Medicaid program by department -- Disciplinary**
13533 **measures and sanctions -- Funds collected.**

13534 (1) The department shall be the single state agency responsible for the administration of
13535 the Medicaid program in connection with the United States Department of Health and Human
13536 Services pursuant to Title XIX of the Social Security Act.

13537 (2) (a) The department shall implement the Medicaid program through administrative
13538 rules in conformity with this chapter, [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
13539 Administrative Rulemaking Act, the requirements of Title XIX, and applicable federal
13540 regulations.

13541 (b) (i) The rules adopted under Subsection (2)(a) shall include, in addition to other rules
13542 necessary to implement the program, the standards used by the department for determining
13543 eligibility for Medicaid services, the services and benefits to be covered by the Medicaid
13544 program, and reimbursement methodologies for providers under the Medicaid program.

13545 (ii) If the department implements a change in the Medicaid State Plan, initiates a new
13546 Medicaid waiver, initiates an amendment to an existing Medicaid waiver, or initiates a rate
13547 change requiring public notice under state or federal law, the department shall, prior to adopting
13548 the change, report to either the Legislative Executive Appropriations Committee or the
13549 Legislative Health and Human Services Appropriations Subcommittee and include in the report:

13550 (A) the proposed change in services or reimbursement;

13551 (B) the effect of an increase or decrease in services or benefits on individuals and
13552 families;

13553 (C) the degree to which any proposed cut may result in cost-shifting to more expensive

13554 services in health or human service programs; and

13555 (D) the effect of any proposed increase of benefits or reimbursement on current and
13556 future appropriations from the Legislature to the department.

13557 (iii) Any rules adopted by the department under this Subsection (2) are subject to
13558 review and reauthorization by the Legislature in accordance with Section [~~63-46a-11.5~~]
13559 63G-3-502.

13560 (3) The department may, in its discretion, contract with the Department of Human
13561 Services or other qualified agencies for services in connection with the administration of the
13562 Medicaid program, including but not limited to the determination of the eligibility of individuals
13563 for the program, recovery of overpayments, and enforcement of fraud and abuse laws,
13564 consistent with Section 26-20-13, to the extent permitted by law and quality control services.

13565 (4) The department shall provide, by rule, disciplinary measures and sanctions for
13566 Medicaid providers who fail to comply with the rules and procedures of the program, provided
13567 that sanctions imposed administratively may not extend beyond:

13568 (a) termination from the program;

13569 (b) recovery of claim reimbursements incorrectly paid; and

13570 (c) those specified in Section 1919 of Title XIX of the federal Social Security Act.

13571 (5) Funds collected as a result of a sanction imposed under Section 1919 of Title XIX
13572 of the federal Social Security Act shall be deposited in the General Fund as nonlapsing
13573 dedicated credits to be used by the division in accordance with the requirements of that section.

13574 (6) (a) In determining whether an applicant or recipient is eligible for a service or
13575 benefit under this part or Chapter 40, Utah Children's Health Insurance Act, the department
13576 shall, if Subsection (6)(b) is satisfied, exclude from consideration one passenger vehicle
13577 designated by the applicant or recipient.

13578 (b) Before Subsection (6)(a) may be applied:

13579 (i) the federal government must:

13580 (A) determine that Subsection (6)(a) may be implemented within the state's existing
13581 public assistance-related waivers as of January 1, 1999;

13582 (B) extend a waiver to the state permitting the implementation of Subsection (6)(a); or
13583 (C) determine that the state's waivers that permit dual eligibility determinations for cash
13584 assistance and Medicaid are no longer valid; and

13585 (ii) the department must determine that Subsection (6)(a) can be implemented within
13586 existing funding.

13587 (7) (a) For purposes of this Subsection (7):

13588 (i) "aged, blind, or disabled" shall be defined by administrative rule; and

13589 (ii) "spend down" means an amount of income in excess of the allowable income
13590 standard that must be paid in cash to the department or incurred through the medical services
13591 not paid by Medicaid.

13592 (b) In determining whether an applicant or recipient who is aged, blind, or disabled is
13593 eligible for a service or benefit under this chapter, the department shall use 100% of the federal
13594 poverty level as:

13595 (i) the allowable income standard for eligibility for services or benefits; and

13596 (ii) the allowable income standard for eligibility as a result of spend down.

13597 Section 304. Section **26-18-103** is amended to read:

13598 **26-18-103. DUR Board -- Responsibilities.**

13599 The board shall:

13600 (1) develop rules necessary to carry out its responsibilities as defined in this part;

13601 (2) oversee the implementation of a Medicaid retrospective and prospective DUR
13602 program in accordance with this part, including responsibility for approving provisions of
13603 contractual agreements between the Medicaid program and any other entity that will process
13604 and review Medicaid drug claims and profiles for the DUR program in accordance with this
13605 part;

13606 (3) develop and apply predetermined criteria and standards to be used in retrospective
13607 and prospective DUR, ensuring that the criteria and standards are based on the compendia, and
13608 that they are developed with professional input, in a consensus fashion, with provisions for
13609 timely revision and assessment as necessary. The DUR standards developed by the board shall

13610 reflect the local practices of physicians in order to monitor:

13611 (a) therapeutic appropriateness;

13612 (b) overutilization or underutilization;

13613 (c) therapeutic duplication;

13614 (d) drug-disease contraindications;

13615 (e) drug-drug interactions;

13616 (f) incorrect drug dosage or duration of drug treatment; and

13617 (g) clinical abuse and misuse;

13618 (4) develop, select, apply, and assess interventions and remedial strategies for

13619 physicians, pharmacists, and recipients that are educational and not punitive in nature, in order

13620 to improve the quality of care;

13621 (5) disseminate information to physicians and pharmacists to ensure that they are aware

13622 of the board's duties and powers;

13623 (6) provide written, oral, or electronic reminders of patient-specific or drug-specific

13624 information, designed to ensure recipient, physician, and pharmacist confidentiality, and suggest

13625 changes in prescribing or dispensing practices designed to improve the quality of care;

13626 (7) utilize face-to-face discussions between experts in drug therapy and the prescriber

13627 or pharmacist who has been targeted for educational intervention;

13628 (8) conduct intensified reviews or monitoring of selected prescribers or pharmacists;

13629 (9) create an educational program using data provided through DUR to provide active

13630 and ongoing educational outreach programs to improve prescribing and dispensing practices,

13631 either directly or by contract with other governmental or private entities;

13632 (10) provide a timely evaluation of intervention to determine if those interventions have

13633 improved the quality of care;

13634 (11) publish an annual report, subject to public comment prior to its issuance, and

13635 submit that report to the United States Department of Health and Human Services by December

13636 1 of each year. That report shall also be submitted to legislative leadership, the executive

13637 director, the president of the Utah Pharmaceutical Association, and the president of the Utah

- 13638 Medical Association by December 1 of each year. The report shall include:
- 13639 (a) an overview of the activities of the board and the DUR program;
- 13640 (b) a description of interventions used and their effectiveness, specifying whether the
13641 intervention was a result of underutilization or overutilization of drugs, without disclosing the
13642 identities of individual physicians, pharmacists, or recipients;
- 13643 (c) the costs of administering the DUR program;
- 13644 (d) any fiscal savings resulting from the DUR program;
- 13645 (e) an overview of the fiscal impact of the DUR program to other areas of the Medicaid
13646 program such as hospitalization or long-term care costs;
- 13647 (f) a quantifiable assessment of whether DUR has improved the recipient's quality of
13648 care;
- 13649 (g) a review of the total number of prescriptions, by drug therapeutic class;
- 13650 (h) an assessment of the impact of educational programs or interventions on prescribing
13651 or dispensing practices; and
- 13652 (i) recommendations for DUR program improvement;
- 13653 (12) develop a working agreement with related boards or agencies, including the State
13654 Board of Pharmacy, Physicians' Licensing Board, and SURS staff within the division, in order to
13655 clarify areas of responsibility for each, where those areas may overlap;
- 13656 (13) establish a grievance process for physicians and pharmacists under this part, in
13657 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;
- 13658 (14) publish and disseminate educational information to physicians and pharmacists
13659 concerning the board and the DUR program, including information regarding:
- 13660 (a) identification and reduction of the frequency of patterns of fraud, abuse, gross
13661 overuse, inappropriate, or medically unnecessary care among physicians, pharmacists, and
13662 recipients;
- 13663 (b) potential or actual severe or adverse reactions to drugs;
- 13664 (c) therapeutic appropriateness;
- 13665 (d) overutilization or underutilization;

- 13666 (e) appropriate use of generics;
- 13667 (f) therapeutic duplication;
- 13668 (g) drug-disease contraindications;
- 13669 (h) drug-drug interactions;
- 13670 (i) incorrect drug dosage and duration of drug treatment;
- 13671 (j) drug allergy interactions; and
- 13672 (k) clinical abuse and misuse;
- 13673 (15) develop and publish, with the input of the State Board of Pharmacy, guidelines and
- 13674 standards to be used by pharmacists in counseling Medicaid recipients in accordance with this
- 13675 part. The guidelines shall ensure that the recipient may refuse counseling and that the refusal is
- 13676 to be documented by the pharmacist. Items to be discussed as part of that counseling include:
- 13677 (a) the name and description of the medication;
- 13678 (b) administration, form, and duration of therapy;
- 13679 (c) special directions and precautions for use;
- 13680 (d) common severe side effects or interactions, and therapeutic interactions, and how to
- 13681 avoid those occurrences;
- 13682 (e) techniques for self-monitoring drug therapy;
- 13683 (f) proper storage;
- 13684 (g) prescription refill information; and
- 13685 (h) action to be taken in the event of a missed dose; and
- 13686 (16) establish procedures in cooperation with the State Board of Pharmacy for
- 13687 pharmacists to record information to be collected under this part. The recorded information
- 13688 shall include:
- 13689 (a) the name, address, age, and gender of the recipient;
- 13690 (b) individual history of the recipient where significant, including disease state, known
- 13691 allergies and drug reactions, and a comprehensive list of medications and relevant devices;
- 13692 (c) the pharmacist's comments on the individual's drug therapy;
- 13693 (d) name of prescriber; and

13694 (e) name of drug, dose, duration of therapy, and directions for use.

13695 Section 305. Section **26-18-104** is amended to read:

13696 **26-18-104. Confidentiality of records.**

13697 (1) Information obtained under this part shall be treated as confidential or controlled
13698 information under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
13699 Management Act.

13700 (2) The board shall establish procedures insuring that the information described in
13701 Subsection 26-18-103(16) is held confidential by the pharmacist, being provided to the
13702 physician only upon request.

13703 (3) The board shall adopt and implement procedures designed to ensure the
13704 confidentiality of all information collected, stored, retrieved, assessed, or analyzed by the board,
13705 staff to the board, or contractors to the DUR program, that identifies individual physicians,
13706 pharmacists, or recipients. The board may have access to identifying information for purposes
13707 of carrying out intervention activities, but that identifying information may not be released to
13708 anyone other than a member of the board. The board may release cumulative nonidentifying
13709 information for research purposes.

13710 Section 306. Section **26-18-304** is amended to read:

13711 **26-18-304. Process and criteria for awarding grants.**

13712 The department shall establish rules in accordance with [~~Title 63, Chapter 46a~~] Title
13713 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form, process,
13714 and criteria it will use in awarding grants under this chapter. In awarding grants, the department
13715 shall consider the extent to which the applicant:

13716 (1) demonstrates that the area or a population group to be served under the application
13717 has a shortage of primary health care and that the services will be located so that they will
13718 provide assistance to the greatest number of persons residing in such area or included in such
13719 population group;

13720 (2) utilizes other sources of funding, including private funding, to provide primary
13721 health care;

13722 (3) demonstrates the ability and expertise to serve traditionally medically underserved
13723 populations including persons of limited English-speaking ability, single heads of households,
13724 the elderly, persons with low incomes, and persons with chronic diseases;

13725 (4) demonstrates that it will assume financial risk for a specified number of medically
13726 underserved persons within its catchment area for a predetermined level of care on a prepaid
13727 capitation basis; and

13728 (5) meets other criteria determined by the department.

13729 Section 307. Section **26-18-504** is amended to read:

13730 **26-18-504. Appeals of division decision -- Rulemaking authority -- Application of**
13731 **act.**

13732 (1) A decision by the director under this part to deny Medicaid certification for a
13733 nursing care facility program or to deny additional bed capacity for an existing certified program
13734 is subject to review under the procedures and requirements of [~~Title 63, Chapter 46b~~] Title
13735 63G, Chapter 4, Administrative Procedures Act.

13736 (2) The department shall make rules to administer and enforce this part in accordance
13737 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

13738 (3) A nursing care facility may receive Medicaid certification under the rules in effect
13739 prior to July 1, 2004 if the nursing care facility, prior to May 4, 2004:

13740 (a) paid applicable fees to the department; and

13741 (b) submits construction plans to the department; or

13742 (c) is in a current phase of construction approved by the department.

13743 (4) In the event the department is at risk for a federal disallowance with regard to a
13744 Medicaid recipient being served in a nursing care facility program that is not Medicaid certified,
13745 the department may grant temporary Medicaid certification to that facility for up to 24 months.
13746 The department may place conditions on the certification, such as not allowing additional
13747 admissions of Medicaid recipients to the program.

13748 Section 308. Section **26-18a-4** is amended to read:

13749 **26-18a-4. Creation of Kurt Oscarson Children's Organ Transplant Trust**

13750 **Account.**

13751 (1) There is created a restricted account within the General Fund pursuant to Section
13752 51-5-4 known as the Kurt Oscarson Children's Organ Transplant Trust Account. Private
13753 contributions received under this section and Section 59-10-550 shall be deposited into the trust
13754 account to be used only for the programs and purposes described in Section 26-18a-3.

13755 (2) Money shall be appropriated from the trust account to the committee in accordance
13756 with [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act.

13757 (3) In addition to funds received under Section 59-10-550, the committee may accept
13758 transfers, grants, gifts, bequests, or any money made available from any source to implement
13759 this chapter.

13760 Section 309. Section **26-21-5** is amended to read:

13761 **26-21-5. Duties of committee.**

13762 The committee shall:

13763 (1) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
13764 Administrative Rulemaking Act:

13765 (a) for the licensing of health-care facilities; and

13766 (b) requiring the submission of architectural plans and specifications for any proposed
13767 new health-care facility or renovation to the department for review;

13768 (2) approve the information for applications for licensure pursuant to Section 26-21-9;

13769 (3) advise the department as requested concerning the interpretation and enforcement
13770 of the rules established under this chapter; and

13771 (4) advise, consult, cooperate with, and provide technical assistance to other agencies
13772 of the state and federal government, and other states and affected groups or persons in carrying
13773 out the purposes of this chapter.

13774 Section 310. Section **26-21-9.5** is amended to read:

13775 **26-21-9.5. Criminal background check and Licensing Information System check.**

13776 (1) For purposes of this section:

13777 (a) "Covered health care facility" means:

- 13778 (i) home health care agencies;
- 13779 (ii) hospices;
- 13780 (iii) nursing care facilities;
- 13781 (iv) assisted-living facilities;
- 13782 (v) small health care facilities; and
- 13783 (vi) end stage renal disease facilities.
- 13784 (b) "Covered person" includes:
- 13785 (i) the following people who provide direct patient care:
- 13786 (A) employees;
- 13787 (B) volunteers; and
- 13788 (C) people under contract with the facility; and
- 13789 (ii) for residential settings, any individual residing in the home where the assisted living
- 13790 or small health care program is to be licensed who:
- 13791 (A) is 18 years of age or older; or
- 13792 (B) is a child between the age of 12 and 17 years of age; however, the identifying
- 13793 information required for a child between the age of 12 and 17 does not include fingerprints.
- 13794 (2) In addition to the licensing requirements of Sections 26-21-8 and 26-21-9, a
- 13795 covered health care facility at the time of initial application for a license and license renewal
- 13796 shall:
- 13797 (a) submit the name and other identifying information of each covered person at the
- 13798 covered facility who:
- 13799 (i) provides direct care to a patient; and
- 13800 (ii) has been the subject of a criminal background check within the preceding three-year
- 13801 period by a public or private entity recognized by the department; and
- 13802 (b) submit the name and other identifying information, which may include fingerprints,
- 13803 of each covered person at the covered facility who has not been the subject of a criminal
- 13804 background check in accordance with Subsection (1)(a)(ii).
- 13805 (3) (a) The department shall forward the information received under Subsection (2)(b)

13806 to the Criminal Investigations and Technical Services Division of the Department of Public
13807 Safety for processing to determine whether the covered individual has been convicted of any
13808 crime.

13809 (b) Except for individuals described in Subsection (1)(b)(ii)(B), if an individual has not
13810 had residency in Utah for the last five years, the individual shall submit fingerprints for an FBI
13811 national criminal history record check. The fingerprints shall be submitted to the FBI through
13812 the Criminal Investigations and Technical Services Division. The individual or licensee is
13813 responsible for the cost of the fingerprinting and national criminal history check.

13814 (4) The department may determine whether:

13815 (a) an individual whose name and other identifying information has been submitted
13816 pursuant to Subsection (2) and who provides direct care to children is listed in the Licensing
13817 Information System described in Section 62A-4a-1006 or has a substantiated finding by a court
13818 of a severe type of child abuse or neglect under Section 78-3a-320, if identification as a possible
13819 perpetrator of child abuse or neglect is relevant to the employment activities of that individual;

13820 (b) an individual whose name and other identifying information has been submitted
13821 pursuant to Subsection (2) and who provides direct care to disabled or elder adults, or who is
13822 residing in a residential home that is a facility licensed to provide direct care to disabled or elder
13823 adults has a substantiated finding of abuse, neglect, or exploitation of a disabled or elder adult
13824 by accessing in accordance with Subsection (5) the database created in Section 62A-3-311.1 if
13825 identification as a possible perpetrator of disabled or elder adult abuse, neglect, or exploitation
13826 is relevant to the employment activities or residence of that person; or

13827 (c) an individual whose name or other identifying information has been submitted
13828 pursuant to Subsection (2) has been adjudicated in a juvenile court of committing an act which
13829 if committed by an adult would be a felony or a misdemeanor if:

13830 (i) the individual is under the age of 28 years; or

13831 (ii) the individual is over the age of 28 and has been convicted, has pleaded no contest,
13832 or is currently subject to a plea in abeyance or diversion agreement for any felony or
13833 misdemeanor.

13834 (5) (a) The department shall:
13835 (i) designate two persons within the department to access:
13836 (A) the Licensing Information System described in Section 62A-4a-1006;
13837 (B) court records under Subsection 78-3a-320(6);
13838 (C) the database described in Subsection (4)(b); and
13839 (D) juvenile court records as permitted by Subsection (4)(c); and
13840 (ii) adopt measures to:
13841 (A) protect the security of the Licensing Information System, the court records, and the
13842 database; and
13843 (B) strictly limit access to the Licensing Information System, the court records, and the
13844 database to those designated under Subsection (5)(a)(i).
13845 (b) Those designated under Subsection (5)(a)(i) shall receive training from the
13846 Department of Human Services with respect to:
13847 (i) accessing the Licensing Information System, the court records, and the database;
13848 (ii) maintaining strict security; and
13849 (iii) the criminal provisions in Section 62A-4a-412 for the improper release of
13850 information.
13851 (c) Those designated under Subsection (5)(a)(i):
13852 (i) are the only ones in the department with the authority to access the Licensing
13853 Information System, the court records, and database; and
13854 (ii) may only access the Licensing Information System, the court records, and the
13855 database for the purpose of licensing and in accordance with the provisions of Subsection (4).
13856 (6) Within ten days of initially hiring a covered individual, a covered health care facility
13857 shall submit the covered individual's information to the department in accordance with
13858 Subsection (2).
13859 (7) The department shall adopt rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter
13860 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances
13861 under which a person who has been convicted of a criminal offense, or a person described in

13862 Subsection (4), may provide direct care to a patient in a covered health care facility, taking into
13863 account the nature of the criminal conviction or substantiated finding and its relation to patient
13864 care.

13865 (8) The department may, in accordance with Section 26-1-6, assess reasonable fees for
13866 a criminal background check processed pursuant to this section.

13867 (9) The department may inform the covered health care facility of information
13868 discovered under Subsection (4) with respect to a covered individual.

13869 (10) A covered health care facility is not civilly liable for submitting information to the
13870 department as required by this section.

13871 Section 311. Section **26-21-23** is amended to read:

13872 **26-21-23. Licensing of non-Medicaid nursing care facility beds.**

13873 (1) Notwithstanding the provisions of Section 26-21-2, for purposes of this section
13874 "nursing care facility" and "small health care facility":

13875 (a) mean the following facilities licensed by the department under this chapter:

13876 (i) skilled nursing homes;

13877 (ii) intermediate care facilities; or

13878 (iii) small health care facilities with four to sixteen beds functioning as a skilled nursing
13879 home; and

13880 (b) does not mean:

13881 (i) an intermediate care facility for the mentally retarded;

13882 (ii) a critical access hospital that meets the criteria of 42 U.S.C. 1395i-4(c)(2) (1998);

13883 (iii) a small health care facility which is hospital based; or

13884 (iv) a small health care facility other than a skilled nursing home with 16 beds or less.

13885 (2) Except as provided in Subsection (5), a new nursing care facility shall be approved
13886 for a health facility license only if the applicant proves to the division that:

13887 (a) the facility will be Medicaid certified under the provisions of Section 26-18-503;

13888 (b) the facility will have at least 120 beds; or

13889 (c) (i) the facility's projected Medicare inpatient revenues do not exceed 49% of the

13890 facility's revenues;
13891 (ii) the facility has identified projected non-Medicare inpatient revenue sources; and
13892 (iii) the non-Medicare inpatient revenue sources identified in this Subsection (2)(c)(iii)
13893 will constitute at least 51% of the revenues as demonstrated through an independently certified
13894 feasibility study submitted and paid for by the facility and provided to the division.

13895 (3) The division may not approve the addition of licensed beds in an existing nursing
13896 care facility unless the nursing care facility satisfies the criteria established in Subsection (2).

13897 (4) The department may make rules to administer and enforce this part in accordance
13898 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

13899 (5) The provisions of Subsection (2) do not apply to a nursing care facility that has:

- 13900 (a) filed an application with the department and paid all applicable fees to the
13901 department on or before February 28, 2007; and
13902 (b) submitted to the department the working drawings, as defined by the department by
13903 administrative rule, on or before July 1, 2008.

13904 Section 312. Section **26-21a-203** is amended to read:

13905 **26-21a-203. Department rulemaking authority.**

13906 The department shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
13907 Utah Administrative Rulemaking Act:

13908 (1) establishing quality assurance standards for all facilities performing screening or
13909 diagnostic mammography and developing mammogram x-ray films, including procedures for
13910 clinical follow-up of abnormal mammograms; and

13911 (2) providing for:

13912 (a) collection and periodic reporting of mammography examinations and clinical
13913 follow-up data to the department;

13914 (b) certification and revocation of certification of mammogram facilities;

13915 (c) inspection of mammogram facilities, including entry of agents of the department into
13916 the facilities for inspections;

13917 (d) setting fees for certification; and

13918 (e) an appeal process regarding department certification decisions.

13919 Section 313. Section **26-21a-205** is amended to read:

13920 **26-21a-205. Department duties.**

13921 The department shall:

13922 (1) enforce rules established under this part;

13923 (2) authorize qualified department agents to conduct inspections of mammogram
13924 facilities under department rules;

13925 (3) collect and credit fees for certification under Section [~~63-38-3.2~~] 63J-1-303; and

13926 (4) provide necessary administrative and staff support to the committee.

13927 Section 314. Section **26-23-2** is amended to read:

13928 **26-23-2. Administrative review of actions of department or director.**

13929 Any person aggrieved by any action or inaction of the department or its executive
13930 director may request an adjudicative proceeding by following the procedures and requirements
13931 of [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act.

13932 Section 315. Section **26-23b-110** is amended to read:

13933 **26-23b-110. Information sharing with public safety authorities.**

13934 (1) For purposes of this section, "public safety authority" means a local, state, or federal
13935 law enforcement authority including the Division of Homeland Security, emergency medical
13936 services personnel, and firefighters.

13937 (2) Notwithstanding the provisions of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
13938 Government Records Access and Management Act:

13939 (a) whenever a public safety authority suspects a case of a reportable illness or
13940 condition under the provisions of this chapter, it shall immediately notify the department;

13941 (b) whenever the department learns of a case of a reportable illness or condition under
13942 this chapter that it reasonably believes has the potential to be caused by one of the factors listed
13943 in Subsection 26-23b-103(1), it shall immediately notify the appropriate public safety authority;
13944 and

13945 (c) sharing of information reportable under the provisions of this chapter between

13946 persons authorized by this chapter shall be limited to information necessary for the treatment,
13947 control, investigation, and prevention of a public health emergency.

13948 (3) Except to the extent inconsistent with this chapter, Sections 26-6-27 and 26-6-28
13949 apply to this chapter.

13950 Section 316. Section **26-25-2** is amended to read:

13951 **26-25-2. Restrictions on use of data.**

13952 (1) The information described in Subsection 26-25-1(1) that is provided to the entities
13953 described in Subsection 26-25-1(2) shall:

13954 (a) be used and disclosed by the entities described in Subsection 26-25-1(2) in
13955 accordance with this chapter; and

13956 (b) is not subject to [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
13957 Access and Management Act.

13958 (2) The Division of Substance Abuse and Mental Health within the Department of
13959 Human Services, scientific and health care research organizations affiliated with institutions of
13960 higher education, the Utah Medical Association or any of its allied medical societies, peer
13961 review committees, professional review organizations, professional societies and associations,
13962 or any health facility's in-house staff committee may only use or publish the information or
13963 material received or gathered under Section 26-25-1 for the purpose of study and advancing
13964 medical research or medical education in the interest of reducing the incidence of disease,
13965 morbidity, or mortality, except that a summary of studies conducted in accordance with Section
13966 26-25-1 may be released by those groups for general publication.

13967 Section 317. Section **26-33a-104** is amended to read:

13968 **26-33a-104. Purpose, powers, and duties of the committee.**

13969 (1) The purpose of the committee is to direct a statewide effort to collect, analyze, and
13970 distribute health care data to facilitate the promotion and accessibility of quality and
13971 cost-effective health care and also to facilitate interaction among those with concern for health
13972 care issues.

13973 (2) The committee shall:

13974 (a) develop and adopt by rule, following public hearing and comment, a health data plan
13975 that shall among its elements:

13976 (i) identify the key health care issues, questions, and problems amenable to resolution or
13977 improvement through better data, more extensive or careful analysis, or improved dissemination
13978 of health data;

13979 (ii) document existing health data activities in the state to collect, organize, or make
13980 available types of data pertinent to the needs identified in Subsection (2)(a)(i);

13981 (iii) describe and prioritize the actions suitable for the committee to take in response to
13982 the needs identified in Subsection (2)(a)(i) in order to obtain or to facilitate the obtaining of
13983 needed data, and to encourage improvements in existing data collection, interpretation, and
13984 reporting activities, and indicate how those actions relate to the activities identified under
13985 Subsection (2)(a)(ii);

13986 (iv) detail the types of data needed for the committee's work, the intended data
13987 suppliers, and the form in which such data are to be supplied, noting the consideration given to
13988 the potential alternative sources and forms of such data and to the estimated cost to the
13989 individual suppliers as well as to the department of acquiring these data in the proposed manner;
13990 the plan shall reasonably demonstrate that the committee has attempted to maximize
13991 cost-effectiveness in the data acquisition approaches selected;

13992 (v) describe the types and methods of validation to be performed to assure data validity
13993 and reliability;

13994 (vi) explain the intended uses of and expected benefits to be derived from the data
13995 specified in Subsection (2)(a)(iv), including the contemplated tabulation formats and analysis
13996 methods; the benefits described must demonstrably relate to one or more of the following:
13997 promoting quality health care, managing health care costs, or improving access to health care
13998 services;

13999 (vii) describe the expected processes for interpretation and analysis of the data flowing
14000 to the committee; noting specifically the types of expertise and participation to be sought in
14001 those processes; and

14002 (viii) describe the types of reports to be made available by the committee and the
14003 intended audiences and uses;

14004 (b) have the authority to collect, validate, analyze, and present health data in
14005 accordance with the plan while protecting individual privacy through the use of a control
14006 number as the health data identifier;

14007 (c) evaluate existing identification coding methods and, if necessary, require by rule that
14008 health data suppliers use a uniform system for identification of patients, health care facilities,
14009 and health care providers on health data they submit under this chapter;

14010 (d) report biennially to the governor and the Legislature on how the committee is
14011 meeting its responsibilities under this chapter; and

14012 (e) advise, consult, contract, and cooperate with any corporation, association, or other
14013 entity for the collection, analysis, processing, or reporting of health data identified by control
14014 number only in accordance with the plan.

14015 (3) The committee may adopt rules to carry out the provisions of this chapter in
14016 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
14017 Act.

14018 (4) Except for data collection, analysis, and validation functions described in this
14019 section, nothing in this chapter shall be construed to authorize or permit the committee to
14020 perform regulatory functions which are delegated by law to other agencies of the state or
14021 federal governments or to perform quality assurance or medical record audit functions that
14022 health care facilities, health care providers, or third party payors are required to conduct to
14023 comply with federal or state law. The committee shall not recommend or determine whether a
14024 health care provider, health care facility, third party payor, or self-funded employer is in
14025 compliance with federal or state laws including but not limited to federal or state licensure,
14026 insurance, reimbursement, tax, malpractice, or quality assurance statutes or common law.

14027 (5) Nothing in this chapter shall be construed to require a data supplier to supply health
14028 data identifying a patient by name or describing detail on a patient beyond that needed to
14029 achieve the approved purposes included in the plan.

14030 (6) No request for health data shall be made of health care providers and other data
14031 suppliers until a plan for the use of such health data has been adopted.

14032 (7) If a proposed request for health data imposes unreasonable costs on a data supplier,
14033 due consideration shall be given by the committee to altering the request. If the request is not
14034 altered, the committee shall pay the costs incurred by the data supplier associated with satisfying
14035 the request that are demonstrated by the data supplier to be unreasonable.

14036 (8) After a plan is adopted as provided in Section 26-33a-106.1, the committee may
14037 require any data supplier to submit fee schedules, maximum allowable costs, area prevailing
14038 costs, terms of contracts, discounts, fixed reimbursement arrangements, capitations, or other
14039 specific arrangements for reimbursement to a health care provider.

14040 (9) The committee shall not publish any health data collected under Subsection (8)
14041 which would disclose specific terms of contracts, discounts, or fixed reimbursement
14042 arrangements, or other specific reimbursement arrangements between an individual provider and
14043 a specific payer.

14044 (10) Nothing in Subsection (8) shall prevent the committee from requiring the
14045 submission of health data on the reimbursements actually made to health care providers from
14046 any source of payment, including consumers.

14047 Section 318. Section **26-35a-106** is amended to read:

14048 **26-35a-106. Restricted account -- Creation -- Deposits.**

14049 (1) (a) There is created a restricted account in the General Fund known as the "Nursing
14050 Care Facilities Account" consisting of:

14051 (i) proceeds from the assessment imposed by Section 26-35a-104 which shall be
14052 deposited in the restricted account to be used for the purpose described in Subsection (1)(b);

14053 (ii) money appropriated or otherwise made available by the Legislature; and

14054 (iii) any interest earned on the account.

14055 (b) (i) Money in the account shall only be used:

14056 (A) to the extent authorized by federal law, to obtain federal financial participation in
14057 the Medicaid program; and

14058 (B) in the manner described in Subsection (1)(b)(ii).
14059 (ii) The money appropriated from the restricted account to the department:
14060 (A) shall be used only to increase the rates paid prior to the effective date of this act to
14061 nursing care facilities for providing services pursuant to the Medicaid program and for
14062 administrative expenses as described in Subsection (1)(b)(ii)(C);
14063 (B) may not be used to replace existing state expenditures paid to nursing care facilities
14064 for providing services pursuant to the Medicaid program; and
14065 (C) may be used for administrative expenses for implementation of this act, if the
14066 administrative expenses for the fiscal year do not exceed 3% of the money deposited into the
14067 restricted account during the fiscal year.

14068 (2) Money shall be appropriated from the restricted account to the department for the
14069 purposes described in Subsection (1)(b) in accordance with [~~Title 63, Chapter 38~~] Title 63J,
14070 Chapter 1, Budgetary Procedures Act.

14071 Section 319. Section **26-38-9** is amended to read:

14072 **26-38-9. Enforcement of chapter.**

14073 (1) The state Department of Health and local health departments shall:
14074 (a) enforce this chapter and shall coordinate their efforts to promote the most effective
14075 enforcement of this chapter; and

14076 (b) impose the penalties under Subsection 26-38-8 in accordance with this section.

14077 (2) When enforcing this chapter, the state Department of Health and the local health
14078 departments shall notify persons of alleged violations of this chapter, conduct hearings, and
14079 impose penalties in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
14080 Administrative Procedures Act.

14081 (3) Civil penalties collected under this section by:

14082 (a) a local health department shall be paid to the treasurer of the county in which the
14083 violation was committed; and

14084 (b) the state Department of Health shall be deposited in the General Fund.

14085 Section 320. Section **26-39-108** is amended to read:

14086 **26-39-108. License violations -- Penalties.**

14087 (1) The department may deny or revoke a license and otherwise invoke disciplinary
14088 penalties if it finds:

14089 (a) evidence of committing or of aiding, abetting, or permitting the commission of any
14090 illegal act on the premises of the child care facility;

14091 (b) a failure to meet the qualifications for licensure; or

14092 (c) conduct adverse to the public health, morals, welfare, and safety of children under
14093 its care.

14094 (2) The department may also place a department representative as a monitor in a
14095 facility, and may assess the cost of that monitoring to the facility, until the licensee has remedied
14096 the deficiencies that brought about the department action.

14097 (3) The department may impose civil monetary penalties in accordance with [~~Title 63,~~
14098 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, if there has been a failure to
14099 comply with the provisions of this chapter, or rules promulgated pursuant to this chapter, as
14100 follows:

14101 (a) if significant problems exist that are likely to lead to the harm of a child, the
14102 department may impose a civil penalty of \$50 to \$1,000 per day; and

14103 (b) if significant problems exist that result in actual harm to a child, the department may
14104 impose a civil penalty of \$1,050 to \$5,000 per day.

14105 Section 321. Section **26-39-109** is amended to read:

14106 **26-39-109. Investigations -- Records.**

14107 (1) The department may conduct investigations necessary to enforce the provisions of
14108 this chapter.

14109 (2) For purposes of this section:

14110 (a) "Anonymous complainant" means a complainant for whom the department does not
14111 have the minimum personal identifying information necessary, including the complainant's full
14112 name, to attempt to communicate with the complainant after a complaint has been made.

14113 (b) "Confidential complainant" means a complainant for whom the department has the

14114 minimum personal identifying information necessary, including the complainant's full name, to
14115 attempt to communicate with the complainant after a complaint has been made, but who elects
14116 under Subsection (3)(c) not to be identified to the subject of the complaint.

14117 (c) "Subject of the complaint" means the licensee or certificate holder about whom the
14118 complainant is informing the department.

14119 (3) (a) If the department receives a complaint about a child care program or residential
14120 child care, the department shall:

14121 (i) solicit information from the complainant to determine whether the complaint
14122 suggests actions or conditions which could pose a serious risk to the safety or well-being of a
14123 child;

14124 (ii) as necessary:

14125 (A) encourage the complainant to disclose the minimum personal identifying
14126 information necessary, including the complainant's full name, for the department to attempt to
14127 subsequently communicate with the complainant;

14128 (B) inform the complainant that the department may not investigate an anonymous
14129 complaint;

14130 (C) inform the complainant that the identity of a confidential complainant may be
14131 withheld from the subject of a complaint only as provided in Subsection (3)(c)(ii); and

14132 (D) inform the complainant that the department may be limited in its use of information
14133 provided by a confidential complainant, as provided in Subsection (3)(c)(ii)(B); and

14134 (iii) inform the complainant that a person is guilty of a class B misdemeanor under
14135 Section 76-8-506 if the person gives false information to the department with a purpose of
14136 inducing a change in that person's or another person's licensing or certification status.

14137 (b) If the complainant elects to be an anonymous complainant, or if the complaint
14138 concerns events which occurred more than six weeks before the complainant contacted the
14139 department:

14140 (i) shall refer the information in the complaint to the Division of Child and Family
14141 Services within the Department of Human Services, law enforcement, or any other appropriate

14142 agency, if the complaint suggests actions or conditions which could pose a serious risk to the
14143 safety or well-being of a child;

14144 (ii) may not investigate or substantiate the complaint; and

14145 (iii) may, during a regularly scheduled annual survey, inform the licensee or certificate
14146 holder who is the subject of the complaint of allegations or concerns raised by:

14147 (A) the anonymous complainant; or

14148 (B) the complainant who reported events more than six weeks after the events
14149 occurred.

14150 (c) (i) If the complainant elects to be a confidential complainant, the department shall
14151 determine whether the complainant wishes to remain confidential:

14152 (A) only until the investigation of the complaint has been completed; or

14153 (B) indefinitely.

14154 (ii) (A) If the complainant elects to remain confidential only until the investigation of
14155 the complaint has been completed, the department shall disclose the name of the complainant to
14156 the subject of the complaint at the completion of the investigation, but no sooner.

14157 (B) If the complainant elects to remain confidential indefinitely, the department:

14158 (I) notwithstanding Subsection [~~63-2-201~~] 63G-2-201(5)(b), may not disclose the name
14159 of the complainant, including to the subject of the complaint; and

14160 (II) may not use information provided by the complainant to substantiate an alleged
14161 violation of state law or department rule unless the department independently corroborates the
14162 information.

14163 (4) (a) Prior to conducting an investigation of a child care program or residential child
14164 care in response to a complaint, a department investigator shall review the complaint with the
14165 investigator's supervisor.

14166 (b) The investigator may proceed with the investigation only if:

14167 (i) the supervisor determines the complaint is credible;

14168 (ii) the complaint is not from an anonymous complainant; and

14169 (iii) prior to the investigation, the investigator informs the subject of the complaint of:

14170 (A) except as provided in Subsection (3)(c), the name of the complainant; and
14171 (B) except as provided in Subsection (4)(c), the substance of the complaint.
14172 (c) An investigator is not required to inform the subject of a complaint of the substance
14173 of the complaint prior to an investigation if doing so would jeopardize the investigation.
14174 However, the investigator shall inform the subject of the complaint of the substance of the
14175 complaint as soon as doing so will no longer jeopardize the investigation.

14176 (5) If the department is unable to substantiate a complaint, any record related to the
14177 complaint or the investigation of the complaint:

14178 (a) shall be classified under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
14179 Records Access and Management Act, as:

14180 (i) a private or controlled record if appropriate under Section [~~63-2-302~~] 63G-2-302 or
14181 [~~63-2-303~~] 63G-2-304; or

14182 (ii) a protected record under Section [~~63-2-304~~] 63G-2-305; and

14183 (b) if disclosed in accordance with Subsection [~~63-2-201~~] 63G-2-201(5)(b), may not
14184 identify an individual child care program, licensee, certificate holder, or complainant.

14185 (6) Any record of the department related to a complaint by an anonymous complainant
14186 is a protected record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
14187 Access and Management Act, and, notwithstanding Subsection [~~63-2-201~~] 63G-2-201(5)(b),
14188 may not be disclosed in a manner that identifies an individual child care program, licensee,
14189 certificate holder, or complainant.

14190 Section 322. Section **26-40-103** is amended to read:

14191 **26-40-103. Creation and administration of the Utah Children's Health Insurance**
14192 **Program.**

14193 (1) There is created the Utah Children's Health Insurance Program to be administered
14194 by the department in accordance with the provisions of:

14195 (a) this chapter; and

14196 (b) the State Children's Health Insurance Program, 42 U.S.C. Sec. 1397aa et seq.

14197 (2) The department shall:

14198 (a) prepare and submit the state's children's health insurance plan before May 1, 1998,
14199 and any amendments to the federal Department of Health and Human Services in accordance
14200 with 42 U.S.C. Sec. 1397ff; and

14201 (b) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
14202 Administrative Rulemaking Act regarding:

14203 (i) eligibility requirements consistent with Subsection 26-18-3(6);

14204 (ii) program benefits;

14205 (iii) the level of coverage for each program benefit;

14206 (iv) cost-sharing requirements for enrollees, which may not:

14207 (A) exceed the guidelines set forth in 42 U.S.C. Sec. 1397ee; or

14208 (B) impose deductible, copayment, or coinsurance requirements on an enrollee for
14209 well-child, well-baby, and immunizations; and

14210 (v) the administration of the program.

14211 Section 323. Section **26-40-110** is amended to read:

14212 **26-40-110. Managed care -- Contracting for services.**

14213 (1) Services provided to enrollees under the program shall be delivered in a managed
14214 care system if services are available within 30 paved road miles of where the enrollee lives or
14215 resides. Otherwise, the program may provide services to enrollees through fee for service plans.

14216 (2) Before awarding a contract to a managed care system or fee for service plan to
14217 provide services under Subsection (1) or determining that no bid or proposal received in
14218 response to such a request is acceptable, the executive director shall report that information to
14219 and seek recommendations from the Health Advisory Council created in Section 26-1-7.5.

14220 (3) If after seeking the recommendation of the Health Advisory Council under
14221 Subsection (2), the executive director determines that no bid or proposal received in response to
14222 such a request is acceptable or if no bid or proposal has been received in response to such a
14223 request, the department may contract with the Group Insurance Division within the Utah State
14224 Retirement Office to provide services under Subsection (1).

14225 (4) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, shall apply to

14226 this section.

14227 Section 324. Section **26-41-104** is amended to read:

14228 **26-41-104. Training in use of epinephrine auto-injector.**

14229 (1) Each primary and secondary school in the state, both public and private, may
14230 designate one or more school personnel who volunteers to receive initial and annual refresher
14231 training from the school nurse or other qualified person designated by the school district
14232 physician, the medical director of the local health department, or the local emergency medical
14233 services director regarding the storage and emergency use of an epinephrine auto-injector.

14234 (2) A person who provides training under Subsection (1) or (6) shall include in the
14235 training:

14236 (a) techniques for recognizing symptoms of anaphylaxis;

14237 (b) standards and procedures for the storage and emergency use of epinephrine
14238 auto-injectors;

14239 (c) emergency follow-up procedures, including calling the emergency 911 number and
14240 contacting, if possible, the student's parent and physician; and

14241 (d) written materials covering the information required under this Subsection (2).

14242 (3) A designated person shall retain for reference the written materials prepared in
14243 accordance with Subsection (2)(d).

14244 (4) A public school shall permit a student to possess an epinephrine auto-injector or
14245 possess and self-administer an epinephrine auto-injector if:

14246 (a) the student's parent or guardian signs a statement:

14247 (i) authorizing the student to possess or possess and self-administer an epinephrine
14248 auto-injector; and

14249 (ii) acknowledging that the student is responsible for, and capable of, possessing or
14250 possessing and self-administering an epinephrine auto-injector; and

14251 (b) the student's health care provider provides a written statement that states that it is
14252 medically appropriate for the student to possess or possess and self-administer an epinephrine
14253 auto-injector and the student should be in possession of the epinephrine auto-injector at all

14254 times.

14255 (5) The Utah Department of Health, in cooperation with the state superintendent of
14256 public instruction, shall design forms to be used by public schools for the parental and health
14257 care providers statements described in Subsection (6).

14258 (6) (a) The department:

14259 (i) shall approve educational programs conducted by other persons, to train people
14260 under Subsection (6)(b) of this section, regarding the use and storage of emergency epinephrine
14261 auto-injectors; and

14262 (ii) may, as funding is available, conduct educational programs to train people regarding
14263 the use of and storage of emergency epinephrine auto-injectors.

14264 (b) A person designated to receive training to administer an epinephrine auto-injector
14265 under the provisions of this Subsection (6) must demonstrate a need for the training to the
14266 department, which may be based upon occupational, volunteer, or family circumstances, and
14267 shall include:

14268 (i) camp counselors;

14269 (ii) scout leaders;

14270 (iii) forest rangers;

14271 (iv) tour guides; and

14272 (v) other persons who have or reasonably expect to have responsibility for at least one
14273 other person as a result of the person's occupational or volunteer status.

14274 (7) The department shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
14275 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

14276 (a) establish and approve training programs in accordance with this section; and

14277 (b) establish a procedure for determining the need for training under Subsection
14278 (6)(b)(v).

14279 Section 325. Section **26-42-104** is amended to read:

14280 **26-42-104. Enforcement by state and local health departments.**

14281 The state Department of Health and the local health departments shall enforce this

14282 chapter under the procedures of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
14283 Procedures Act, as an informal adjudicative proceeding, including:

- 14284 (1) notifying licensees of alleged violations of Section 26-42-103;
- 14285 (2) conducting hearings;
- 14286 (3) determining violations of this chapter; and
- 14287 (4) imposing civil monetary administrative penalties.

14288 Section 326. Section **26-43-103** is amended to read:

14289 **26-43-103. Disclosure of information.**

14290 Information obtained by the department under this chapter is a public record and may be
14291 disclosed in accordance with Section [~~63-2-201~~] 63G-2-201 and disseminated generally by the
14292 department.

14293 Section 327. Section **26-46-102** is amended to read:

14294 **26-46-102. Creation of program -- Duties of department.**

14295 (1) There is created within the department the Utah Health Care Workforce Financial
14296 Assistance Program to provide professional education scholarships and loan repayment
14297 assistance to health care professionals who locate or continue to practice in underserved areas.

14298 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
14299 Administrative Rulemaking Act, the department shall make rules governing the administration
14300 of the program, including rules that address:

- 14301 (a) application procedures;
- 14302 (b) eligibility criteria;
- 14303 (c) selection criteria;
- 14304 (d) service conditions, which at a minimum shall include professional service in an
14305 underserved area for a minimum period of time by any person receiving a scholarship or loan
14306 repayment assistance;
- 14307 (e) penalties for failure to comply with service conditions or other terms of a
14308 scholarship or loan repayment contract;
- 14309 (f) criteria for modifying or waiving service conditions or penalties in case of extreme

14310 hardship or other good cause; and

14311 (g) administration of contracts entered into before the effective date of this act, between
14312 the department and scholarship or loan repayment recipients under Title 26, Chapter 9, Part 2,
14313 Physicians and Physician Assistants Grant and Scholarship Program, Title 26, Chapter 9d,
14314 Nurse Education Financial Assistance, or Title 26, Chapter 9e, Special Population Health Care
14315 Provider Financial Assistance and Retention Act.

14316 (3) The department shall seek and consider the recommendations of the Utah Health
14317 Care Workforce Financial Assistance Program Advisory Committee created under Section
14318 26-46-103 as it develops and modifies rules to administer the program.

14319 (4) Funding for the program shall be a line item within the appropriations act, shall be
14320 nonlapsing unless designated otherwise, and may be used to cover administrative costs of the
14321 program, including reimbursement expenses of the Utah Health Care Workforce Financial
14322 Assistance Program Advisory Committee created under Section 26-46-103.

14323 (5) Loan repayments and payments resulting from breach of contract are dedicated
14324 credits to the program.

14325 (6) The department shall prepare an annual report on the revenues, expenditures, and
14326 outcomes of the program.

14327 Section 328. Section **26-47-103** is amended to read:

14328 **26-47-103. Department to award grants for assistance to persons with bleeding**
14329 **disorders.**

14330 (1) For purposes of this section:

14331 (a) "Hemophilia services" means a program for medical care, including the costs of
14332 blood transfusions, and the use of blood derivatives and blood clotting factors.

14333 (b) "Person with a bleeding disorder" means a person:

14334 (i) who is medically diagnosed with hemophilia or a bleeding disorder;

14335 (ii) who is not eligible for Medicaid or the Children's Health Insurance Program; and

14336 (iii) who has either:

14337 (A) insurance coverage that excludes coverage for hemophilia services;

- 14338 (B) exceeded [his] the person's insurance plan's annual maximum benefits;
- 14339 (C) exceeded [his] the person's annual or lifetime maximum benefits payable under Title
- 14340 31A, Chapter 29, Comprehensive Health Insurance Pool Act; or
- 14341 (D) insurance coverage available under either private health insurance, Title 31A,
- 14342 Chapter 29, Comprehensive Health Insurance Pool Act, Utah mini COBRA coverage under
- 14343 Section 31A-22-722, or federal COBRA coverage, but the premiums for that coverage are
- 14344 greater than a percentage of the person's annual adjusted gross income as established by the
- 14345 department by administrative rule.
- 14346 (2) (a) Within appropriations specified by the Legislature for this purpose, the
- 14347 department shall make grants to public and nonprofit entities who assist persons with bleeding
- 14348 disorders with the cost of obtaining hemophilia services or the cost of insurance premiums for
- 14349 coverage of hemophilia services.
- 14350 (b) Applicants for grants under this section:
- 14351 (i) must be submitted to the department in writing; and
- 14352 (ii) must comply with Subsection (3).
- 14353 (3) Applications for grants under this section shall include:
- 14354 (a) a statement of specific, measurable objectives, and the methods to be used to assess
- 14355 the achievement of those objectives;
- 14356 (b) a description of the personnel responsible for carrying out the activities of the grant
- 14357 along with a statement justifying the use of any grant funds for the personnel;
- 14358 (c) letters and other forms of evidence showing that efforts have been made to secure
- 14359 financial and professional assistance and support for the services to be provided under the grant;
- 14360 (d) a list of services to be provided by the applicant;
- 14361 (e) the schedule of fees to be charged by the applicant; and
- 14362 (f) other provisions as determined by the department.
- 14363 (4) The department may accept grants, gifts, and donations of money or property for
- 14364 use by the grant program.
- 14365 (5) (a) The department shall establish rules in accordance with [~~Title 63, Chapter 46a~~]

14366 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the application form,
14367 process, and criteria it will use in awarding grants under this section.

14368 (b) The department shall report to the Health and Human Services Interim Committee
14369 and to the Legislative Executive Appropriations Committee by November 1, 2006, and every
14370 year thereafter on the implementation of the grant program.

14371 Section 329. Section **26-48-102** is amended to read:

14372 **26-48-102. Cat and Dog Community Spay and Neuter Program Restricted**
14373 **Account -- Interest -- Use of contributions and interest.**

14374 (1) There is created within the General Fund the Cat and Dog Community Spay and
14375 Neuter Program Restricted Account.

14376 (2) The account shall be funded by contributions deposited into the Cat and Dog
14377 Community Spay and Neuter Program Restricted Account in accordance with Section
14378 59-10-550.2.

14379 (3) (a) The Cat and Dog Community Spay and Neuter Program Restricted Account
14380 shall earn interest.

14381 (b) Interest earned on the Cat and Dog Community Spay and Neuter Program
14382 Restricted Account shall be deposited into the Cat and Dog Community Spay and Neuter
14383 Program Restricted Account.

14384 (4) The department shall distribute contributions and interest deposited into the Cat and
14385 Dog Community Spay and Neuter Program Restricted Account to one or more organizations
14386 that:

14387 (a) are exempt from federal income taxation under Section 501(c)(3), Internal Revenue
14388 Code;

14389 (b) operate a mobile spay and neuter clinic for cats and dogs;

14390 (c) provide annual spay and neuter services at the mobile spay and neuter clinic
14391 described in Subsection (4)(b):

14392 (i) to one or more communities in at least 20 counties in the state; and

14393 (ii) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

14394 and

14395 (d) (i) spay and neuter cats and dogs owned by persons having low incomes; and

14396 (ii) have established written guidelines for determining what constitutes a person having
14397 a low income in accordance with any rules made by the department as authorized by Subsection
14398 (5)(c).

14399 (5) (a) An organization described in Subsection (4) may apply to the department to
14400 receive a distribution in accordance with Subsection (4).

14401 (b) An organization that receives a distribution from the department in accordance with
14402 Subsection (4):

14403 (i) shall expend the distribution only to spay or neuter dogs and cats:

14404 (A) owned by persons having low incomes;

14405 (B) by veterinarians who are licensed by Title 58, Chapter 28, Veterinary Practice Act;

14406 (C) through a statewide voucher program; and

14407 (D) at a location that:

14408 (I) is not a mobile spay and neuter clinic; and

14409 (II) does not receive any funding from a governmental entity; and

14410 (ii) may not expend the distribution for any administrative cost relating to an
14411 expenditure authorized by Subsection (5)(b)(i).

14412 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
14413 Administrative Rulemaking Act, the department may make rules:

14414 (i) providing procedures and requirements for an organization to apply to the
14415 department to receive a distribution in accordance with Subsection (4); and

14416 (ii) to define what constitutes a person having a low income.

14417 Section 330. Section **26A-1-108.7** is amended to read:

14418 **26A-1-108.7. Procurement -- Use of recycled goods.**

14419 The procurement officer or other person responsible for purchasing supplies for each
14420 local health department shall:

14421 (1) maintain for reference a copy of the current listing of recycled items available on

14422 state contract as issued by the chief procurement officer under Section [~~63-56-204~~] 63G-6-204;
14423 and

14424 (2) give recycled items consideration when inviting bids and purchasing supplies, in
14425 compliance with Section 11-37-101.

14426 Section 331. Section **30-2-11** is amended to read:

14427 **30-2-11. Action for consortium due to personal injury.**

14428 (1) For purposes of this section:

14429 (a) "injury" or "injured" means a significant permanent injury to a person that
14430 substantially changes that person's lifestyle and includes the following:

14431 (i) a partial or complete paralysis of one or more of the extremities;

14432 (ii) significant disfigurement; or

14433 (iii) incapability of the person of performing the types of jobs the person performed
14434 before the injury; and

14435 (b) "spouse" means the legal relationship:

14436 (i) established between a man and a woman as recognized by the laws of this state; and

14437 (ii) existing at the time of the person's injury.

14438 (2) The spouse of a person injured by a third party on or after May 4, 1997, may
14439 maintain an action against the third party to recover for loss of consortium.

14440 (3) A claim for loss of consortium begins on the date of injury to the spouse. The
14441 statute of limitations applicable to the injured person shall also apply to the spouse's claim of
14442 loss of consortium.

14443 (4) A claim for the spouse's loss of consortium shall be:

14444 (a) made at the time the claim of the injured person is made and joinder of actions shall
14445 be compulsory; and

14446 (b) subject to the same defenses, limitations, immunities, and provisions applicable to
14447 the claims of the injured person.

14448 (5) The spouse's action for loss of consortium:

14449 (a) shall be derivative from the cause of action existing in behalf of the injured person;

14450 and

14451 (b) may not exist in cases where the injured person would not have a cause of action.

14452 (6) Fault of the spouse of the injured person, as well as fault of the injured person, shall
14453 be compared with the fault of all other parties, pursuant to Sections 78-27-37 through
14454 78-27-43, for purposes of reducing or barring any recovery by the spouse for loss of
14455 consortium.

14456 (7) Damages awarded for loss of consortium, when combined with any award to the
14457 injured person for general damages, may not exceed any applicable statutory limit on
14458 noneconomic damages, including Section 78-14-7.1.

14459 (8) Damages awarded for loss of consortium which a governmental entity is required to
14460 pay, when combined with any award to the injured person which a governmental entity is
14461 required to pay, may not exceed the liability limit for one person in any one occurrence under
14462 [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

14463 Section 332. Section **30-3-11.3** is amended to read:

14464 **30-3-11.3. Mandatory educational course for divorcing parents -- Purpose --**
14465 **Curriculum -- Exceptions.**

14466 (1) There is established a mandatory course for divorcing parents as a pilot program in
14467 the third and fourth judicial districts to be administered by the Administrative Office of the
14468 Courts from July 1, 1992, to June 30, 1994. On July 1, 1994, an approved course shall be
14469 implemented in all judicial districts. The mandatory course is designed to educate and sensitize
14470 divorcing parties to their children's needs both during and after the divorce process.

14471 (2) The Judicial Council shall adopt rules to implement and administer this program.

14472 (3) As a prerequisite to receiving a divorce decree, both parties are required to attend a
14473 mandatory course on their children's needs after filing a complaint for divorce and receiving a
14474 docket number, unless waived under Section 30-3-4. If that requirement is waived, the court
14475 may permit the divorce action to proceed.

14476 (4) The court may require unmarried parents to attend this educational course when
14477 those parents are involved in a visitation or custody proceeding before the court.

14478 (5) The mandatory course shall instruct both parties about divorce and its impacts on:

14479 (a) their child or children;

14480 (b) their family relationship;

14481 (c) their financial responsibilities for their child or children; and

14482 (d) that domestic violence has a harmful effect on children and family relationships.

14483 (6) The Administrative Office of the Courts shall administer the course pursuant to

14484 [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, through private or public

14485 contracts and organize the program in each of Utah's judicial districts. The contracts shall

14486 provide for the recoupment of administrative expenses through the costs charged to individual

14487 parties, pursuant to Subsection (8).

14488 (7) A certificate of completion constitutes evidence to the court of course completion

14489 by the parties.

14490 (8) (a) Each party shall pay the costs of the course to the independent contractor

14491 providing the course at the time and place of the course. A fee of \$8 shall be collected, as part

14492 of the course fee paid by each participant, and deposited in the Children's Legal Defense

14493 Account, described in Section [~~63-63a-8~~] 51-9-408.

14494 (b) Each party who is unable to pay the costs of the course may attend the course

14495 without payment upon a prima facie showing of impecuniosity as evidenced by an affidavit of

14496 impecuniosity filed in the district court. In those situations, the independent contractor shall be

14497 reimbursed for its costs from the appropriation to the Administrative Office of the Courts for

14498 "Mandatory Educational Course for Divorcing Parents Program." Before a decree of divorce

14499 may be entered, the court shall make a final review and determination of impecuniosity and may

14500 order the payment of the costs if so determined.

14501 (9) Appropriations from the General Fund to the Administrative Office of the Courts

14502 for the "Mandatory Educational Course for Divorcing Parents Program" shall be used to pay the

14503 costs of an indigent parent who makes a showing as provided in Subsection (8)(b).

14504 (10) The Administrative Office of the Courts shall adopt a program to evaluate the

14505 effectiveness of the mandatory educational course. Progress reports shall be provided annually

14506 to the Judiciary Interim Committee.

14507 Section 333. Section **30-3-11.4** is amended to read:

14508 **30-3-11.4. Mandatory orientation course for divorcing parties -- Purpose --**

14509 **Curriculum -- Exceptions.**

14510 (1) There is established a mandatory divorce orientation course for all parties with
14511 minor children who file a petition for temporary separation or for a divorce. A couple with no
14512 minor children are not required, but may choose to attend the course. The purpose of the
14513 course shall be to educate parties about the divorce process and reasonable alternatives.

14514 (2) A petitioner shall attend a divorce orientation course no more than 60 days after
14515 filing a petition for divorce.

14516 (3) The respondent shall attend the divorce orientation course no more than 30 days
14517 after being served with a petition for divorce.

14518 (4) The clerk of the court shall provide notice to a petitioner of the requirement for the
14519 course, and information regarding the course shall be included with the petition or motion, when
14520 served on the respondent.

14521 (5) The divorce orientation course shall be neutral, unbiased, at least one hour in
14522 duration, and include:

14523 (a) options available as alternatives to divorce;

14524 (b) resources available from courts and administrative agencies for resolving custody
14525 and support issues without filing for divorce;

14526 (c) resources available to improve or strengthen the marriage;

14527 (d) a discussion of the positive and negative consequences of divorce;

14528 (e) a discussion of the process of divorce;

14529 (f) options available for proceeding with a divorce, including:

14530 (i) mediation;

14531 (ii) collaborative law; and

14532 (iii) litigation; and

14533 (g) a discussion of post-divorce resources.

14534 (6) The course may be provided in conjunction with the mandatory course for divorcing
14535 parents required by Section 30-3-11.3.

14536 (7) The Administrative Office of the Courts shall administer the course pursuant to
14537 [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, through private or public
14538 contracts.

14539 (8) Each participant shall pay the costs of the course, which may not exceed \$20, to the
14540 independent contractor providing the course at the time and place of the course.

14541 (a) A fee of \$5 shall be collected, as part of the course fee paid by each participant, and
14542 deposited in the Children's Legal Defense Account described in Section [~~63-63a-8~~] 51-9-408.

14543 (b) A participant who is unable to pay the costs of the course may attend without
14544 payment and request an Affidavit of Impecuniosity from the provider to be filed with the
14545 petition or motion. The provider shall be reimbursed for its costs by the Administrative Office
14546 of the Courts. A petitioner who is later determined not to meet the qualifications for
14547 impecuniosity may be ordered to pay the costs of the course.

14548 (9) Appropriations from the General Fund to the Administrative Office of the Courts
14549 for the divorce orientation course shall be used to pay the costs of an indigent petitioner who is
14550 determined to be impecunious as provided in Subsection (8)(b).

14551 (10) The Online Court Assistance Program shall include instructions with the forms for
14552 divorce which inform the petitioner of the requirement of this section.

14553 (11) Both parties shall attend a divorce orientation course before a divorce decree may
14554 be entered, unless waived by the court. A certificate of completion constitutes evidence to the
14555 court of course completion by the parties.

14556 (12) It shall be an affirmative defense in all divorce actions that the divorce orientation
14557 requirement was not complied with, and the action may not continue until a party has complied.

14558 (13) The Administrative Office of the Courts shall adopt a program to evaluate the
14559 effectiveness of the mandatory educational course. Progress reports shall be provided annually
14560 to the Judiciary Interim Committee.

14561 Section 334. Section **30-3-38** is amended to read:

14562 **30-3-38. Pilot Program for Expedited Parent-time Enforcement.**

14563 (1) There is established an Expedited Parent-time Enforcement Pilot Program in the
14564 third judicial district to be administered by the Administrative Office of the Courts from July 1,
14565 2003, to July 1, 2007.

14566 (2) As used in this section:

14567 (a) "Mediator" means a person who:

14568 (i) is qualified to mediate parent-time disputes under criteria established by the
14569 Administrative Office of the Courts; and

14570 (ii) agrees to follow billing guidelines established by the Administrative Office of the
14571 Courts and this section.

14572 (b) "Services to facilitate parent-time" or "services" means services designed to assist
14573 families in resolving parent-time problems through:

14574 (i) counseling;

14575 (ii) supervised parent-time;

14576 (iii) neutral drop-off and pick-up;

14577 (iv) educational classes; and

14578 (v) other related activities.

14579 (3) (a) Under this pilot program, if a parent files a motion in the third district court
14580 alleging that court-ordered parent-time rights are being violated, the clerk of the court, after
14581 assigning the case to a judge, shall refer the case to the administrator of this pilot program for
14582 assignment to a mediator.

14583 (b) Upon receipt of a case, the mediator shall:

14584 (i) meet with the parents to address parent-time issues within 15 days of the motion
14585 being filed;

14586 (ii) assess the situation;

14587 (iii) facilitate an agreement on parent-time between the parents; and

14588 (iv) determine whether a referral to a service provider under Subsection (3)(c) is
14589 warranted.

14590 (c) While a case is in mediation, a mediator may refer the parents to a service provider
14591 designated by the Department of Human Services for services to facilitate parent-time if:

14592 (i) the services may be of significant benefit to the parents; or

14593 (ii) (A) a mediated agreement between the parents is unlikely; and

14594 (B) the services may facilitate an agreement.

14595 (d) At any time during mediation, a mediator shall terminate mediation and transfer the
14596 case to the administrator of the pilot program for referral to the judge or court commissioner to
14597 whom the case was assigned under Subsection (3)(a) if:

14598 (i) a written agreement between the parents is reached; or

14599 (ii) the parents are unable to reach an agreement through mediation and:

14600 (A) the parents have received services to facilitate parent-time;

14601 (B) both parents object to receiving services to facilitate parent-time; or

14602 (C) the parents are unlikely to benefit from receiving services to facilitate parent-time.

14603 (e) Upon receiving a case from the administrator of the pilot program, a judge or court
14604 commissioner may:

14605 (i) review the agreement of the parents and, if acceptable, sign it as an order;

14606 (ii) order the parents to receive services to facilitate parent-time;

14607 (iii) proceed with the case; or

14608 (iv) take other appropriate action.

14609 (4) (a) If a parent makes a particularized allegation of physical or sexual abuse of a child
14610 who is the subject of a parent-time order against the other parent or a member of the other
14611 parent's household to a mediator or service provider, the mediator or service provider shall
14612 immediately report that information to:

14613 (i) the judge assigned to the case who may immediately issue orders and take other
14614 appropriate action to resolve the allegation and protect the child; and

14615 (ii) the Division of Child and Family Services within the Department of Human Services
14616 in the manner required by Title 62A, Chapter 4a, Part 4, Child Abuse or Neglect Reporting
14617 Requirements.

14618 (b) If an allegation under Subsection (4)(a) is made against a parent with parent-time
14619 rights or a member of that parent's household, parent-time by that parent shall, pursuant to an
14620 order of the court, be supervised until:

- 14621 (i) the allegation has been resolved; or
- 14622 (ii) a court orders otherwise.

14623 (c) Notwithstanding an allegation under Subsection (4)(a), a mediator may continue to
14624 mediate parent-time problems and a service provider may continue to provide services to
14625 facilitate parent-time unless otherwise ordered by a court.

14626 (5) (a) The Department of Human Services may contract with one or more entities in
14627 accordance with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, to
14628 provide:

- 14629 (i) services to facilitate parent-time;
- 14630 (ii) case management services; and
- 14631 (iii) administrative services.

14632 (b) An entity who contracts with the Department of Human Services under Subsection
14633 (5)(a) shall:

- 14634 (i) be qualified to provide one or more of the services listed in Subsection (5)(a); and
- 14635 (ii) agree to follow billing guidelines established by the Department of Human Services
14636 and this section.

14637 (6) (a) Except as provided in Subsection (6)(b), the cost of mediation shall be:

- 14638 (i) reduced to a sum certain;
- 14639 (ii) divided equally between the parents; and
- 14640 (iii) charged against each parent taking into account the ability of that parent to pay
14641 under billing guidelines adopted in accordance with this section.

14642 (b) A judge may order a parent to pay an amount in excess of that provided for in
14643 Subsection (6)(a) if the parent:

- 14644 (i) failed to participate in good faith in mediation or services to facilitate parent-time; or
- 14645 (ii) made an unfounded assertion or claim of physical or sexual abuse of a child.

14646 (c) (i) The cost of mediation and services to facilitate parent-time may be charged to
14647 parents at periodic intervals.

14648 (ii) Mediation and services to facilitate parent-time may only be terminated on the
14649 ground of nonpayment if both parents are delinquent.

14650 (7) If a parent fails to cooperate in good faith in mediation or services to facilitate
14651 parent-time, a court may order, in subsequent proceedings, a temporary change in custody or
14652 parent-time.

14653 (8) (a) The Judicial Council may make rules to implement and administer the provisions
14654 of this pilot program related to mediation.

14655 (b) The Department of Human Services may make rules to implement and administer
14656 the provisions of this pilot program related to services to facilitate parent-time.

14657 (9) (a) The Administrative Office of the Courts shall adopt outcome measures to
14658 evaluate the effectiveness of the mediation component of this pilot program. Progress reports
14659 shall be provided to the Judiciary Interim Committee as requested by the committee. At least
14660 once during this pilot program, the Administrative Office of the Courts shall present to the
14661 committee the results of a survey that measures the effectiveness of the program in terms of
14662 increased compliance with parent-time orders and the responses of interested persons.

14663 (b) The Department of Human Services shall adopt outcome measures to evaluate the
14664 effectiveness of the services component of this pilot program. Progress reports shall be
14665 provided to the Judiciary Interim Committee as requested by the committee.

14666 (c) The Administrative Office of the Courts and the Department of Human Services
14667 may adopt joint outcome measures and file joint reports to satisfy the requirements of
14668 Subsections (8)(a) and (b).

14669 (10) (a) The Department of Human Services shall, by following the procedures and
14670 requirements of [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5, Federal Funds Procedures, apply
14671 for federal funds as available.

14672 (b) This pilot program shall be funded through funds received under Subsection (10)(a).
14673 Section 335. Section **31A-1-103** is amended to read:

14674 **31A-1-103. Scope and applicability of title.**
14675 (1) This title does not apply to:
14676 (a) a retainer contract made by an attorney-at-law:
14677 (i) with an individual client; and
14678 (ii) under which fees are based on estimates of the nature and amount of services to be
14679 provided to the specific client;
14680 (b) a contract similar to a contract described in Subsection (1)(a) made with a group of
14681 clients involved in the same or closely related legal matters;
14682 (c) an arrangement for providing benefits that do not exceed a limited amount of
14683 consultations, advice on simple legal matters, either alone or in combination with referral
14684 services, or the promise of fee discounts for handling other legal matters;
14685 (d) limited legal assistance on an informal basis involving neither an express contractual
14686 obligation nor reasonable expectations, in the context of an employment, membership,
14687 educational, or similar relationship;
14688 (e) legal assistance by employee organizations to their members in matters relating to
14689 employment; or
14690 (f) death, accident, health, or disability benefits provided to a person by an organization
14691 or its affiliate if:
14692 (i) the organization is tax exempt under Section 501(c)(3) of the Internal Revenue Code
14693 and has had its principal place of business in Utah for at least five years;
14694 (ii) the person is not an employee of the organization; and
14695 (iii) (A) substantially all the person's time in the organization is spent providing
14696 voluntary services:
14697 (I) in furtherance of the organization's purposes;
14698 (II) for a designated period of time; and
14699 (III) for which no compensation, other than expenses, is paid; or
14700 (B) the time since the service under Subsection (1)(f)(iii)(A) was completed is no more
14701 than 18 months.

- 14702 (2) (a) This title restricts otherwise legitimate business activity.
- 14703 (b) What this title does not prohibit is permitted unless contrary to other provisions of
- 14704 Utah law.
- 14705 (3) Except as otherwise expressly provided, this title does not apply to:
- 14706 (a) those activities of an insurer where state jurisdiction is preempted by Section 514 of
- 14707 the federal Employee Retirement Income Security Act of 1974, as amended;
- 14708 (b) ocean marine insurance;
- 14709 (c) death, accident, health, or disability benefits provided by an organization if the
- 14710 organization:
- 14711 (i) has as its principal purpose to achieve charitable, educational, social, or religious
- 14712 objectives rather than to provide death, accident, health, or disability benefits;
- 14713 (ii) does not incur a legal obligation to pay a specified amount; and
- 14714 (iii) does not create reasonable expectations of receiving a specified amount on the part
- 14715 of an insured person;
- 14716 (d) other business specified in rules adopted by the commissioner on a finding that:
- 14717 (i) the transaction of the business in this state does not require regulation for the
- 14718 protection of the interests of the residents of this state; or
- 14719 (ii) it would be impracticable to require compliance with this title;
- 14720 (e) except as provided in Subsection (4), a transaction independently procured through
- 14721 negotiations under Section 31A-15-104;
- 14722 (f) self-insurance;
- 14723 (g) reinsurance;
- 14724 (h) subject to Subsection (5), employee and labor union group or blanket insurance
- 14725 covering risks in this state if:
- 14726 (i) the policyholder exists primarily for purposes other than to procure insurance;
- 14727 (ii) the policyholder:
- 14728 (A) is not a resident of this state;
- 14729 (B) is not a domestic corporation; or

14730 (C) does not have its principal office in this state;
14731 (iii) no more than 25% of the certificate holders or insureds are residents of this state;
14732 (iv) on request of the commissioner, the insurer files with the department a copy of the
14733 policy and a copy of each form or certificate; and
14734 (v) (A) the insurer agrees to pay premium taxes on the Utah portion of its business, as if
14735 it were authorized to do business in this state; and
14736 (B) the insurer provides the commissioner with the security the commissioner considers
14737 necessary for the payment of premium taxes under Title 59, Chapter 9, Taxation of Admitted
14738 Insurers;
14739 (i) to the extent provided in Subsection (6):
14740 (i) a manufacturer's or seller's warranty; and
14741 (ii) a manufacturer's or seller's service contract; or
14742 (j) except to the extent provided in Subsection (7), a public agency insurance mutual.
14743 (4) A transaction described in Subsection (3)(e) is subject to taxation under Section
14744 31A-3-301.
14745 (5) (a) After a hearing, the commissioner may order an insurer of certain group or
14746 blanket contracts to transfer the Utah portion of the business otherwise exempted under
14747 Subsection (3)(h) to an authorized insurer if the contracts have been written by an unauthorized
14748 insurer.
14749 (b) If the commissioner finds that the conditions required for the exemption of a group
14750 or blanket insurer are not satisfied or that adequate protection to residents of this state is not
14751 provided, the commissioner may require:
14752 (i) the insurer to be authorized to do business in this state; or
14753 (ii) that any of the insurer's transactions be subject to this title.
14754 (6) (a) As used in Subsection (3)(i) and this Subsection (6):
14755 (i) "manufacturer's or seller's service contract" means a service contract:
14756 (A) made available by:
14757 (I) a manufacturer of a product;

14758 (II) a seller of a product; or
14759 (III) an affiliate of a manufacturer or seller of a product;
14760 (B) made available:
14761 (I) on one or more specific products; or
14762 (II) on products that are components of a system; and
14763 (C) under which the person described in Subsection (6)(a)(i)(A) is liable for services to
14764 be provided under the service contract including, if the manufacturer's or seller's service
14765 contract designates, providing parts and labor;
14766 (ii) "manufacturer's or seller's warranty" means the guaranty of:
14767 (A) (I) the manufacturer of a product;
14768 (II) a seller of a product; or
14769 (III) an affiliate of a manufacturer or seller of a product;
14770 (B) (I) on one or more specific products; or
14771 (II) on products that are components of a system; and
14772 (C) under which the person described in Subsection (6)(a)(ii)(A) is liable for services to
14773 be provided under the warranty, including, if the manufacturer's or seller's warranty designates,
14774 providing parts and labor; and
14775 (iii) "service contract" is as defined in Section 31A-6a-101.
14776 (b) A manufacturer's or seller's warranty may be designated as:
14777 (i) a warranty;
14778 (ii) a guaranty; or
14779 (iii) a term similar to a term described in Subsection (6)(b)(i) or (ii).
14780 (c) This title does not apply to:
14781 (i) a manufacturer's or seller's warranty;
14782 (ii) a manufacturer's or seller's service contract paid for with consideration that is in
14783 addition to the consideration paid for the product itself; and
14784 (iii) a service contract that is not a manufacturer's or seller's warranty or manufacturer's
14785 or seller's service contract if:

- 14786 (A) the service contract is paid for with consideration that is in addition to the
14787 consideration paid for the product itself;
- 14788 (B) the service contract is for the repair or maintenance of goods;
- 14789 (C) the cost of the product is equal to an amount determined in accordance with
14790 Subsection (6)(e); and
- 14791 (D) the product is not a motor vehicle.
- 14792 (d) This title does not apply to a manufacturer's or seller's warranty or service contract
14793 paid for with consideration that is in addition to the consideration paid for the product itself
14794 regardless of whether the manufacturer's or seller's warranty or service contract is sold:
- 14795 (i) at the time of the purchase of the product; or
14796 (ii) at a time other than the time of the purchase of the product.
- 14797 (e) (i) For fiscal year 2001-02, the amount described in Subsection (6)(c)(iii)(C) shall be
14798 equal to \$3,700 or less.
- 14799 (ii) For each fiscal year after fiscal year 2001-02, the commissioner shall annually
14800 determine whether the amount described in Subsection (6)(c)(iii)(C) should be adjusted in
14801 accordance with changes in the Consumer Price Index published by the United States Bureau of
14802 Labor Statistics selected by the commissioner by rule, between:
- 14803 (A) the Consumer Price Index for the February immediately preceding the adjustment;
14804 and
- 14805 (B) the Consumer Price Index for February 2001.
- 14806 (iii) If under Subsection (6)(e)(ii) the commissioner determines that an adjustment
14807 should be made, the commissioner shall make the adjustment by rule.
- 14808 (7) (a) For purposes of this Subsection (7), "public agency insurance mutual" means an
14809 entity formed by two or more political subdivisions or public agencies of the state:
- 14810 (i) under Title 11, Chapter 13, Interlocal Cooperation Act; and
14811 (ii) for the purpose of providing for the political subdivisions or public agencies:
- 14812 (A) subject to Subsection (7)(b), insurance coverage; or
14813 (B) risk management.

14814 (b) Notwithstanding Subsection (7)(a)(ii)(A), a public agency insurance mutual may not
14815 provide health insurance unless the public agency insurance mutual provides the health
14816 insurance using:

14817 (i) a third party administrator licensed under Chapter 25, Third Party Administrators;

14818 (ii) an admitted insurer; or

14819 (iii) a program authorized by Title 49, Chapter 20, Public Employees' Benefit and

14820 Insurance Program Act.

14821 (c) Except for this Subsection (7), a public agency insurance mutual is exempt from this
14822 title.

14823 (d) A public agency insurance mutual is considered to be a governmental entity and
14824 political subdivision of the state with all of the rights, privileges, and immunities of a
14825 governmental entity or political subdivision of the state including all the rights and benefits of
14826 [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

14827 Section 336. Section **31A-1-301** is amended to read:

14828 **31A-1-301. Definitions.**

14829 As used in this title, unless otherwise specified:

14830 (1) (a) "Accident and health insurance" means insurance to provide protection against
14831 economic losses resulting from:

14832 (i) a medical condition including:

14833 (A) medical care expenses; or

14834 (B) the risk of disability;

14835 (ii) accident; or

14836 (iii) sickness.

14837 (b) "Accident and health insurance":

14838 (i) includes a contract with disability contingencies including:

14839 (A) an income replacement contract;

14840 (B) a health care contract;

14841 (C) an expense reimbursement contract;

- 14842 (D) a credit accident and health contract;
- 14843 (E) a continuing care contract; and
- 14844 (F) a long-term care contract; and
- 14845 (ii) may provide:
- 14846 (A) hospital coverage;
- 14847 (B) surgical coverage;
- 14848 (C) medical coverage; or
- 14849 (D) loss of income coverage.
- 14850 (c) "Accident and health insurance" does not include workers' compensation insurance.
- 14851 (2) "Actuary" is as defined by the commissioner by rule, made in accordance with [Title
- 14852 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 14853 (3) "Administrator" is defined in Subsection (157).
- 14854 (4) "Adult" means a natural person who has attained the age of at least 18 years.
- 14855 (5) "Affiliate" means any person who controls, is controlled by, or is under common
- 14856 control with, another person. A corporation is an affiliate of another corporation, regardless of
- 14857 ownership, if substantially the same group of natural persons manages the corporations.
- 14858 (6) "Agency" means:
- 14859 (a) a person other than an individual, including a sole proprietorship by which a natural
- 14860 person does business under an assumed name; and
- 14861 (b) an insurance organization licensed or required to be licensed under Section
- 14862 31A-23a-301.
- 14863 (7) "Alien insurer" means an insurer domiciled outside the United States.
- 14864 (8) "Amendment" means an endorsement to an insurance policy or certificate.
- 14865 (9) "Annuity" means an agreement to make periodical payments for a period certain or
- 14866 over the lifetime of one or more natural persons if the making or continuance of all or some of
- 14867 the series of the payments, or the amount of the payment, is dependent upon the continuance of
- 14868 human life.
- 14869 (10) "Application" means a document:

14870 (a) (i) completed by an applicant to provide information about the risk to be insured;
14871 and

14872 (ii) that contains information that is used by the insurer to evaluate risk and decide
14873 whether to:

14874 (A) insure the risk under:

14875 (I) the coverages as originally offered; or

14876 (II) a modification of the coverage as originally offered; or

14877 (B) decline to insure the risk; or

14878 (b) used by the insurer to gather information from the applicant before issuance of an
14879 annuity contract.

14880 (11) "Articles" or "articles of incorporation" means the original articles, special laws,
14881 charters, amendments, restated articles, articles of merger or consolidation, trust instruments,
14882 and other constitutive documents for trusts and other entities that are not corporations, and
14883 amendments to any of these.

14884 (12) "Bail bond insurance" means a guarantee that a person will attend court when
14885 required, up to and including surrender of the person in execution of any sentence imposed
14886 under Subsection 77-20-7(1), as a condition to the release of that person from confinement.

14887 (13) "Binder" is defined in Section 31A-21-102.

14888 (14) "Blanket insurance policy" means a group policy covering classes of persons
14889 without individual underwriting, where the persons insured are determined by definition of the
14890 class with or without designating the persons covered.

14891 (15) "Board," "board of trustees," or "board of directors" means the group of persons
14892 with responsibility over, or management of, a corporation, however designated.

14893 (16) "Business entity" means a corporation, association, partnership, limited liability
14894 company, limited liability partnership, or other legal entity.

14895 (17) "Business of insurance" is defined in Subsection (84).

14896 (18) "Business plan" means the information required to be supplied to the commissioner
14897 under Subsections 31A-5-204(2)(i) and (j), including the information required when these

14898 subsections are applicable by reference under:

14899 (a) Section 31A-7-201;

14900 (b) Section 31A-8-205; or

14901 (c) Subsection 31A-9-205(2).

14902 (19) "Bylaws" means the rules adopted for the regulation or management of a
14903 corporation's affairs, however designated and includes comparable rules for trusts and other
14904 entities that are not corporations.

14905 (20) "Captive insurance company" means:

14906 (a) an insurance company:

14907 (i) owned by another organization; and

14908 (ii) whose exclusive purpose is to insure risks of the parent organization and affiliated
14909 companies; or

14910 (b) in the case of groups and associations, an insurance organization:

14911 (i) owned by the insureds; and

14912 (ii) whose exclusive purpose is to insure risks of:

14913 (A) member organizations;

14914 (B) group members; and

14915 (C) affiliates of:

14916 (I) member organizations; or

14917 (II) group members.

14918 (21) "Casualty insurance" means liability insurance as defined in Subsection (96).

14919 (22) "Certificate" means evidence of insurance given to:

14920 (a) an insured under a group insurance policy; or

14921 (b) a third party.

14922 (23) "Certificate of authority" is included within the term "license."

14923 (24) "Claim," unless the context otherwise requires, means a request or demand on an
14924 insurer for payment of benefits according to the terms of an insurance policy.

14925 (25) "Claims-made coverage" means an insurance contract or provision limiting

14926 coverage under a policy insuring against legal liability to claims that are first made against the
14927 insured while the policy is in force.

14928 (26) (a) "Commissioner" or "commissioner of insurance" means Utah's insurance
14929 commissioner.

14930 (b) When appropriate, the terms listed in Subsection (26)(a) apply to the equivalent
14931 supervisory official of another jurisdiction.

14932 (27) (a) "Continuing care insurance" means insurance that:

14933 (i) provides board and lodging;

14934 (ii) provides one or more of the following services:

14935 (A) personal services;

14936 (B) nursing services;

14937 (C) medical services; or

14938 (D) other health-related services; and

14939 (iii) provides the coverage described in Subsection (27)(a)(i) under an agreement
14940 effective:

14941 (A) for the life of the insured; or

14942 (B) for a period in excess of one year.

14943 (b) Insurance is continuing care insurance regardless of whether or not the board and
14944 lodging are provided at the same location as the services described in Subsection (27)(a)(ii).

14945 (28) (a) "Control," "controlling," "controlled," or "under common control" means the
14946 direct or indirect possession of the power to direct or cause the direction of the management
14947 and policies of a person. This control may be:

14948 (i) by contract;

14949 (ii) by common management;

14950 (iii) through the ownership of voting securities; or

14951 (iv) by a means other than those described in Subsections (28)(a)(i) through (iii).

14952 (b) There is no presumption that an individual holding an official position with another
14953 person controls that person solely by reason of the position.

14954 (c) A person having a contract or arrangement giving control is considered to have
14955 control despite the illegality or invalidity of the contract or arrangement.

14956 (d) There is a rebuttable presumption of control in a person who directly or indirectly
14957 owns, controls, holds with the power to vote, or holds proxies to vote 10% or more of the
14958 voting securities of another person.

14959 (29) "Controlled insurer" means a licensed insurer that is either directly or indirectly
14960 controlled by a producer.

14961 (30) "Controlling person" means any person that directly or indirectly has the power to
14962 direct or cause to be directed, the management, control, or activities of a reinsurance
14963 intermediary.

14964 (31) "Controlling producer" means a producer who directly or indirectly controls an
14965 insurer.

14966 (32) (a) "Corporation" means an insurance corporation, except when referring to:

14967 (i) a corporation doing business:

14968 (A) as:

14969 (I) an insurance producer;

14970 (II) a limited line producer;

14971 (III) a consultant;

14972 (IV) a managing general agent;

14973 (V) a reinsurance intermediary;

14974 (VI) a third party administrator; or

14975 (VII) an adjuster; and

14976 (B) under:

14977 (I) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
14978 Reinsurance Intermediaries;

14979 (II) Chapter 25, Third Party Administrators; or

14980 (III) Chapter 26, Insurance Adjusters; or

14981 (ii) a noninsurer that is part of a holding company system under Chapter 16, Insurance

- 14982 Holding Companies.
- 14983 (b) "Stock corporation" means a stock insurance corporation.
- 14984 (c) "Mutual" or "mutual corporation" means a mutual insurance corporation.
- 14985 (33) "Creditable coverage" has the same meaning as provided in federal regulations
14986 adopted pursuant to the Health Insurance Portability and Accountability Act of 1996, Pub. L.
14987 104-191, 110 Stat. 1936.
- 14988 (34) "Credit accident and health insurance" means insurance on a debtor to provide
14989 indemnity for payments coming due on a specific loan or other credit transaction while the
14990 debtor is disabled.
- 14991 (35) (a) "Credit insurance" means insurance offered in connection with an extension of
14992 credit that is limited to partially or wholly extinguishing that credit obligation.
- 14993 (b) "Credit insurance" includes:
- 14994 (i) credit accident and health insurance;
- 14995 (ii) credit life insurance;
- 14996 (iii) credit property insurance;
- 14997 (iv) credit unemployment insurance;
- 14998 (v) guaranteed automobile protection insurance;
- 14999 (vi) involuntary unemployment insurance;
- 15000 (vii) mortgage accident and health insurance;
- 15001 (viii) mortgage guaranty insurance; and
- 15002 (ix) mortgage life insurance.
- 15003 (36) "Credit life insurance" means insurance on the life of a debtor in connection with
15004 an extension of credit that pays a person if the debtor dies.
- 15005 (37) "Credit property insurance" means insurance:
- 15006 (a) offered in connection with an extension of credit; and
- 15007 (b) that protects the property until the debt is paid.
- 15008 (38) "Credit unemployment insurance" means insurance:
- 15009 (a) offered in connection with an extension of credit; and

15010 (b) that provides indemnity if the debtor is unemployed for payments coming due on a:

15011 (i) specific loan; or

15012 (ii) credit transaction.

15013 (39) "Creditor" means a person, including an insured, having any claim, whether:

15014 (a) matured;

15015 (b) unmatured;

15016 (c) liquidated;

15017 (d) unliquidated;

15018 (e) secured;

15019 (f) unsecured;

15020 (g) absolute;

15021 (h) fixed; or

15022 (i) contingent.

15023 (40) (a) "Customer service representative" means a person that provides insurance

15024 services and insurance product information:

15025 (i) for the customer service representative's:

15026 (A) producer; or

15027 (B) consultant employer; and

15028 (ii) to the customer service representative's employer's:

15029 (A) customer;

15030 (B) client; or

15031 (C) organization.

15032 (b) A customer service representative may only operate within the scope of authority of

15033 the customer service representative's producer or consultant employer.

15034 (41) "Deadline" means the final date or time:

15035 (a) imposed by:

15036 (i) statute;

15037 (ii) rule; or

- 15038 (iii) order; and
- 15039 (b) by which a required filing or payment must be received by the department.
- 15040 (42) "Deemer clause" means a provision under this title under which upon the
- 15041 occurrence of a condition precedent, the commissioner is deemed to have taken a specific
- 15042 action. If the statute so provides, the condition precedent may be the commissioner's failure to
- 15043 take a specific action.
- 15044 (43) "Degree of relationship" means the number of steps between two persons
- 15045 determined by counting the generations separating one person from a common ancestor and
- 15046 then counting the generations to the other person.
- 15047 (44) "Department" means the Insurance Department.
- 15048 (45) "Director" means a member of the board of directors of a corporation.
- 15049 (46) "Disability" means a physiological or psychological condition that partially or
- 15050 totally limits an individual's ability to:
- 15051 (a) perform the duties of:
- 15052 (i) that individual's occupation; or
- 15053 (ii) any occupation for which the individual is reasonably suited by education, training,
- 15054 or experience; or
- 15055 (b) perform two or more of the following basic activities of daily living:
- 15056 (i) eating;
- 15057 (ii) toileting;
- 15058 (iii) transferring;
- 15059 (iv) bathing; or
- 15060 (v) dressing.
- 15061 (47) "Disability income insurance" is defined in Subsection (75).
- 15062 (48) "Domestic insurer" means an insurer organized under the laws of this state.
- 15063 (49) "Domiciliary state" means the state in which an insurer:
- 15064 (a) is incorporated;
- 15065 (b) is organized; or

- 15066 (c) in the case of an alien insurer, enters into the United States.
- 15067 (50) (a) "Eligible employee" means:
- 15068 (i) an employee who:
- 15069 (A) works on a full-time basis; and
- 15070 (B) has a normal work week of 30 or more hours; or
- 15071 (ii) a person described in Subsection (50)(b).
- 15072 (b) "Eligible employee" includes, if the individual is included under a health benefit plan
- 15073 of a small employer:
- 15074 (i) a sole proprietor;
- 15075 (ii) a partner in a partnership; or
- 15076 (iii) an independent contractor.
- 15077 (c) "Eligible employee" does not include, unless eligible under Subsection (50)(b):
- 15078 (i) an individual who works on a temporary or substitute basis for a small employer;
- 15079 (ii) an employer's spouse; or
- 15080 (iii) a dependent of an employer.
- 15081 (51) "Employee" means any individual employed by an employer.
- 15082 (52) "Employee benefits" means one or more benefits or services provided to:
- 15083 (a) employees; or
- 15084 (b) dependents of employees.
- 15085 (53) (a) "Employee welfare fund" means a fund:
- 15086 (i) established or maintained, whether directly or through trustees, by:
- 15087 (A) one or more employers;
- 15088 (B) one or more labor organizations; or
- 15089 (C) a combination of employers and labor organizations; and
- 15090 (ii) that provides employee benefits paid or contracted to be paid, other than income
- 15091 from investments of the fund, by or on behalf of an employer doing business in this state or for
- 15092 the benefit of any person employed in this state.
- 15093 (b) "Employee welfare fund" includes a plan funded or subsidized by user fees or tax

15094 revenues.

15095 (54) "Endorsement" means a written agreement attached to a policy or certificate to
15096 modify one or more of the provisions of the policy or certificate.

15097 (55) "Enrollment date," with respect to a health benefit plan, means the first day of
15098 coverage or, if there is a waiting period, the first day of the waiting period.

15099 (56) (a) "Escrow" means:

15100 (i) a real estate settlement or real estate closing conducted by a third party pursuant to
15101 the requirements of a written agreement between the parties in a real estate transaction; or

15102 (ii) a settlement or closing involving:

15103 (A) a mobile home;

15104 (B) a grazing right;

15105 (C) a water right; or

15106 (D) other personal property authorized by the commissioner.

15107 (b) "Escrow" includes the act of conducting a:

15108 (i) real estate settlement; or

15109 (ii) real estate closing.

15110 (57) "Escrow agent" means:

15111 (a) an insurance producer with:

15112 (i) a title insurance line of authority; and

15113 (ii) an escrow subline of authority; or

15114 (b) a person defined as an escrow agent in Section 7-22-101.

15115 (58) "Excludes" is not exhaustive and does not mean that other things are not also
15116 excluded. The items listed are representative examples for use in interpretation of this title.

15117 (59) "Expense reimbursement insurance" means insurance:

15118 (a) written to provide payments for expenses relating to hospital confinements resulting
15119 from illness or injury; and

15120 (b) written:

15121 (i) as a daily limit for a specific number of days in a hospital; and

- 15122 (ii) to have a one or two day waiting period following a hospitalization.
- 15123 (60) "Fidelity insurance" means insurance guaranteeing the fidelity of persons holding
- 15124 positions of public or private trust.
- 15125 (61) (a) "Filed" means that a filing is:
- 15126 (i) submitted to the department as required by and in accordance with any applicable
- 15127 statute, rule, or filing order;
- 15128 (ii) received by the department within the time period provided in the applicable statute,
- 15129 rule, or filing order; and
- 15130 (iii) accompanied by the appropriate fee in accordance with:
- 15131 (A) Section 31A-3-103; or
- 15132 (B) rule.
- 15133 (b) "Filed" does not include a filing that is rejected by the department because it is not
- 15134 submitted in accordance with Subsection (61)(a).
- 15135 (62) "Filing," when used as a noun, means an item required to be filed with the
- 15136 department including:
- 15137 (a) a policy;
- 15138 (b) a rate;
- 15139 (c) a form;
- 15140 (d) a document;
- 15141 (e) a plan;
- 15142 (f) a manual;
- 15143 (g) an application;
- 15144 (h) a report;
- 15145 (i) a certificate;
- 15146 (j) an endorsement;
- 15147 (k) an actuarial certification;
- 15148 (l) a licensee annual statement;
- 15149 (m) a licensee renewal application; or

- 15150 (n) an advertisement.
- 15151 (63) "First party insurance" means an insurance policy or contract in which the insurer
15152 agrees to pay claims submitted to it by the insured for the insured's losses.
- 15153 (64) "Foreign insurer" means an insurer domiciled outside of this state, including an
15154 alien insurer.
- 15155 (65) (a) "Form" means one of the following prepared for general use:
- 15156 (i) a policy;
- 15157 (ii) a certificate;
- 15158 (iii) an application; or
- 15159 (iv) an outline of coverage.
- 15160 (b) "Form" does not include a document specially prepared for use in an individual case.
- 15161 (66) "Franchise insurance" means individual insurance policies provided through a mass
15162 marketing arrangement involving a defined class of persons related in some way other than
15163 through the purchase of insurance.
- 15164 (67) "General lines of authority" include:
- 15165 (a) the general lines of insurance in Subsection (68);
- 15166 (b) title insurance under one of the following sublines of authority:
- 15167 (i) search, including authority to act as a title marketing representative;
- 15168 (ii) escrow, including authority to act as a title marketing representative;
- 15169 (iii) search and escrow, including authority to act as a title marketing representative;
- 15170 and
- 15171 (iv) title marketing representative only;
- 15172 (c) surplus lines;
- 15173 (d) workers' compensation; and
- 15174 (e) any other line of insurance that the commissioner considers necessary to recognize
15175 in the public interest.
- 15176 (68) "General lines of insurance" include:
- 15177 (a) accident and health;

- 15178 (b) casualty;
- 15179 (c) life;
- 15180 (d) personal lines;
- 15181 (e) property; and
- 15182 (f) variable contracts, including variable life and annuity.
- 15183 (69) "Group health plan" means an employee welfare benefit plan to the extent that the
- 15184 plan provides medical care:
- 15185 (a) (i) to employees; or
- 15186 (ii) to a dependent of an employee; and
- 15187 (b) (i) directly;
- 15188 (ii) through insurance reimbursement; or
- 15189 (iii) through any other method.
- 15190 (70) (a) "Group insurance policy" means a policy covering a group of persons that is
- 15191 issued:
- 15192 (i) to a policyholder on behalf of the group; and
- 15193 (ii) for the benefit of group members who are selected under procedures defined in:
- 15194 (A) the policy; or
- 15195 (B) agreements which are collateral to the policy.
- 15196 (b) A group insurance policy may include members of the policyholder's family or
- 15197 dependents.
- 15198 (71) "Guaranteed automobile protection insurance" means insurance offered in
- 15199 connection with an extension of credit that pays the difference in amount between the insurance
- 15200 settlement and the balance of the loan if the insured automobile is a total loss.
- 15201 (72) (a) Except as provided in Subsection (72)(b), "health benefit plan" means a policy
- 15202 or certificate that:
- 15203 (i) provides health care insurance;
- 15204 (ii) provides major medical expense insurance; or
- 15205 (iii) is offered as a substitute for hospital or medical expense insurance such as:

- 15206 (A) a hospital confinement indemnity; or
- 15207 (B) a limited benefit plan.
- 15208 (b) "Health benefit plan" does not include a policy or certificate that:
- 15209 (i) provides benefits solely for:
- 15210 (A) accident;
- 15211 (B) dental;
- 15212 (C) income replacement;
- 15213 (D) long-term care;
- 15214 (E) a Medicare supplement;
- 15215 (F) a specified disease;
- 15216 (G) vision; or
- 15217 (H) a short-term limited duration; or
- 15218 (ii) is offered and marketed as supplemental health insurance.
- 15219 (73) "Health care" means any of the following intended for use in the diagnosis,
- 15220 treatment, mitigation, or prevention of a human ailment or impairment:
- 15221 (a) professional services;
- 15222 (b) personal services;
- 15223 (c) facilities;
- 15224 (d) equipment;
- 15225 (e) devices;
- 15226 (f) supplies; or
- 15227 (g) medicine.
- 15228 (74) (a) "Health care insurance" or "health insurance" means insurance providing:
- 15229 (i) health care benefits; or
- 15230 (ii) payment of incurred health care expenses.
- 15231 (b) "Health care insurance" or "health insurance" does not include accident and health
- 15232 insurance providing benefits for:
- 15233 (i) replacement of income;

- 15234 (ii) short-term accident;
- 15235 (iii) fixed indemnity;
- 15236 (iv) credit accident and health;
- 15237 (v) supplements to liability;
- 15238 (vi) workers' compensation;
- 15239 (vii) automobile medical payment;
- 15240 (viii) no-fault automobile;
- 15241 (ix) equivalent self-insurance; or
- 15242 (x) any type of accident and health insurance coverage that is a part of or attached to
- 15243 another type of policy.
- 15244 (75) "Income replacement insurance" or "disability income insurance" means insurance
- 15245 written to provide payments to replace income lost from accident or sickness.
- 15246 (76) "Indemnity" means the payment of an amount to offset all or part of an insured
- 15247 loss.
- 15248 (77) "Independent adjuster" means an insurance adjuster required to be licensed under
- 15249 Section 31A-26-201 who engages in insurance adjusting as a representative of insurers.
- 15250 (78) "Independently procured insurance" means insurance procured under Section
- 15251 31A-15-104.
- 15252 (79) "Individual" means a natural person.
- 15253 (80) "Inland marine insurance" includes insurance covering:
- 15254 (a) property in transit on or over land;
- 15255 (b) property in transit over water by means other than boat or ship;
- 15256 (c) bailee liability;
- 15257 (d) fixed transportation property such as bridges, electric transmission systems, radio
- 15258 and television transmission towers and tunnels; and
- 15259 (e) personal and commercial property floaters.
- 15260 (81) "Insolvency" means that:
- 15261 (a) an insurer is unable to pay its debts or meet its obligations as they mature;

- 15262 (b) an insurer's total adjusted capital is less than the insurer's mandatory control level
15263 RBC under Subsection 31A-17-601(8)(c); or
- 15264 (c) an insurer is determined to be hazardous under this title.
- 15265 (82) (a) "Insurance" means:
- 15266 (i) an arrangement, contract, or plan for the transfer of a risk or risks from one or more
15267 persons to one or more other persons; or
- 15268 (ii) an arrangement, contract, or plan for the distribution of a risk or risks among a
15269 group of persons that includes the person seeking to distribute that person's risk.
- 15270 (b) "Insurance" includes:
- 15271 (i) risk distributing arrangements providing for compensation or replacement for
15272 damages or loss through the provision of services or benefits in kind;
- 15273 (ii) contracts of guaranty or suretyship entered into by the guarantor or surety as a
15274 business and not as merely incidental to a business transaction; and
- 15275 (iii) plans in which the risk does not rest upon the person who makes the arrangements,
15276 but with a class of persons who have agreed to share it.
- 15277 (83) "Insurance adjuster" means a person who directs the investigation, negotiation, or
15278 settlement of a claim under an insurance policy other than life insurance or an annuity, on behalf
15279 of an insurer, policyholder, or a claimant under an insurance policy.
- 15280 (84) "Insurance business" or "business of insurance" includes:
- 15281 (a) providing health care insurance, as defined in Subsection (74), by organizations that
15282 are or should be licensed under this title;
- 15283 (b) providing benefits to employees in the event of contingencies not within the control
15284 of the employees, in which the employees are entitled to the benefits as a right, which benefits
15285 may be provided either:
- 15286 (i) by single employers or by multiple employer groups; or
- 15287 (ii) through trusts, associations, or other entities;
- 15288 (c) providing annuities, including those issued in return for gifts, except those provided
15289 by persons specified in Subsections 31A-22-1305(2) and (3);

- 15290 (d) providing the characteristic services of motor clubs as outlined in Subsection (112);
- 15291 (e) providing other persons with insurance as defined in Subsection (82);
- 15292 (f) making as insurer, guarantor, or surety, or proposing to make as insurer, guarantor,
- 15293 or surety, any contract or policy of title insurance;
- 15294 (g) transacting or proposing to transact any phase of title insurance, including:
- 15295 (i) solicitation;
- 15296 (ii) negotiation preliminary to execution;
- 15297 (iii) execution of a contract of title insurance;
- 15298 (iv) insuring; and
- 15299 (v) transacting matters subsequent to the execution of the contract and arising out of
- 15300 the contract, including reinsurance; and
- 15301 (h) doing, or proposing to do, any business in substance equivalent to Subsections
- 15302 (84)(a) through (g) in a manner designed to evade the provisions of this title.
- 15303 (85) "Insurance consultant" or "consultant" means a person who:
- 15304 (a) advises other persons about insurance needs and coverages;
- 15305 (b) is compensated by the person advised on a basis not directly related to the insurance
- 15306 placed; and
- 15307 (c) except as provided in Section 31A-23a-501, is not compensated directly or
- 15308 indirectly by an insurer or producer for advice given.
- 15309 (86) "Insurance holding company system" means a group of two or more affiliated
- 15310 persons, at least one of whom is an insurer.
- 15311 (87) (a) "Insurance producer" or "producer" means a person licensed or required to be
- 15312 licensed under the laws of this state to sell, solicit, or negotiate insurance.
- 15313 (b) With regards to the selling, soliciting, or negotiating of an insurance product to an
- 15314 insurance customer or an insured:
- 15315 (i) "producer for the insurer" means a producer who is compensated directly or
- 15316 indirectly by an insurer for selling, soliciting, or negotiating any product of that insurer; and
- 15317 (ii) "producer for the insured" means a producer who:

- 15318 (A) is compensated directly and only by an insurance customer or an insured; and
- 15319 (B) receives no compensation directly or indirectly from an insurer for selling, soliciting,
- 15320 or negotiating any product of that insurer to an insurance customer or insured.
- 15321 (88) (a) "Insured" means a person to whom or for whose benefit an insurer makes a
- 15322 promise in an insurance policy and includes:
- 15323 (i) policyholders;
- 15324 (ii) subscribers;
- 15325 (iii) members; and
- 15326 (iv) beneficiaries.
- 15327 (b) The definition in Subsection (88)(a):
- 15328 (i) applies only to this title; and
- 15329 (ii) does not define the meaning of this word as used in insurance policies or certificates.
- 15330 (89) (a) (i) "Insurer" means any person doing an insurance business as a principal
- 15331 including:
- 15332 (A) fraternal benefit societies;
- 15333 (B) issuers of gift annuities other than those specified in Subsections 31A-22-1305(2)
- 15334 and (3);
- 15335 (C) motor clubs;
- 15336 (D) employee welfare plans; and
- 15337 (E) any person purporting or intending to do an insurance business as a principal on that
- 15338 person's own account.
- 15339 (ii) "Insurer" does not include a governmental entity to the extent it is engaged in the
- 15340 activities described in Section 31A-12-107.
- 15341 (b) "Admitted insurer" is defined in Subsection (161)(b).
- 15342 (c) "Alien insurer" is defined in Subsection (7).
- 15343 (d) "Authorized insurer" is defined in Subsection (161)(b).
- 15344 (e) "Domestic insurer" is defined in Subsection (48).
- 15345 (f) "Foreign insurer" is defined in Subsection (64).

- 15346 (g) "Nonadmitted insurer" is defined in Subsection (161)(a).
- 15347 (h) "Unauthorized insurer" is defined in Subsection (161)(a).
- 15348 (90) "Interinsurance exchange" is defined in Subsection (141).
- 15349 (91) "Involuntary unemployment insurance" means insurance:
- 15350 (a) offered in connection with an extension of credit;
- 15351 (b) that provides indemnity if the debtor is involuntarily unemployed for payments
- 15352 coming due on a:
- 15353 (i) specific loan; or
- 15354 (ii) credit transaction.
- 15355 (92) "Large employer," in connection with a health benefit plan, means an employer
- 15356 who, with respect to a calendar year and to a plan year:
- 15357 (a) employed an average of at least 51 eligible employees on each business day during
- 15358 the preceding calendar year; and
- 15359 (b) employs at least two employees on the first day of the plan year.
- 15360 (93) "Late enrollee," with respect to an employer health benefit plan, means an
- 15361 individual whose enrollment is a late enrollment.
- 15362 (94) "Late enrollment," with respect to an employer health benefit plan, means
- 15363 enrollment of an individual other than:
- 15364 (a) on the earliest date on which coverage can become effective for the individual under
- 15365 the terms of the plan; or
- 15366 (b) through special enrollment.
- 15367 (95) (a) Except for a retainer contract or legal assistance described in Section
- 15368 31A-1-103, "legal expense insurance" means insurance written to indemnify or pay for specified
- 15369 legal expenses.
- 15370 (b) "Legal expense insurance" includes arrangements that create reasonable
- 15371 expectations of enforceable rights.
- 15372 (c) "Legal expense insurance" does not include the provision of, or reimbursement for,
- 15373 legal services incidental to other insurance coverages.

15374 (96) (a) "Liability insurance" means insurance against liability:
15375 (i) for death, injury, or disability of any human being, or for damage to property,
15376 exclusive of the coverages under:
15377 (A) Subsection (106) for medical malpractice insurance;
15378 (B) Subsection (133) for professional liability insurance; and
15379 (C) Subsection (166) for workers' compensation insurance;
15380 (ii) for medical, hospital, surgical, and funeral benefits to persons other than the insured
15381 who are injured, irrespective of legal liability of the insured, when issued with or supplemental
15382 to insurance against legal liability for the death, injury, or disability of human beings, exclusive
15383 of the coverages under:
15384 (A) Subsection (106) for medical malpractice insurance;
15385 (B) Subsection (133) for professional liability insurance; and
15386 (C) Subsection (166) for workers' compensation insurance;
15387 (iii) for loss or damage to property resulting from accidents to or explosions of boilers,
15388 pipes, pressure containers, machinery, or apparatus;
15389 (iv) for loss or damage to any property caused by the breakage or leakage of sprinklers,
15390 water pipes and containers, or by water entering through leaks or openings in buildings; or
15391 (v) for other loss or damage properly the subject of insurance not within any other kind
15392 or kinds of insurance as defined in this chapter, if such insurance is not contrary to law or public
15393 policy.
15394 (b) "Liability insurance" includes:
15395 (i) vehicle liability insurance as defined in Subsection (163);
15396 (ii) residential dwelling liability insurance as defined in Subsection (144); and
15397 (iii) making inspection of, and issuing certificates of inspection upon, elevators, boilers,
15398 machinery, and apparatus of any kind when done in connection with insurance on them.
15399 (97) (a) "License" means the authorization issued by the commissioner to engage in
15400 some activity that is part of or related to the insurance business.
15401 (b) "License" includes certificates of authority issued to insurers.

15402 (98) (a) "Life insurance" means insurance on human lives and insurances pertaining to
15403 or connected with human life.

15404 (b) The business of life insurance includes:

15405 (i) granting death benefits;

15406 (ii) granting annuity benefits;

15407 (iii) granting endowment benefits;

15408 (iv) granting additional benefits in the event of death by accident;

15409 (v) granting additional benefits to safeguard the policy against lapse; and

15410 (vi) providing optional methods of settlement of proceeds.

15411 (99) "Limited license" means a license that:

15412 (a) is issued for a specific product of insurance; and

15413 (b) limits an individual or agency to transact only for that product or insurance.

15414 (100) "Limited line credit insurance" includes the following forms of insurance:

15415 (a) credit life;

15416 (b) credit accident and health;

15417 (c) credit property;

15418 (d) credit unemployment;

15419 (e) involuntary unemployment;

15420 (f) mortgage life;

15421 (g) mortgage guaranty;

15422 (h) mortgage accident and health;

15423 (i) guaranteed automobile protection; and

15424 (j) any other form of insurance offered in connection with an extension of credit that:

15425 (i) is limited to partially or wholly extinguishing the credit obligation; and

15426 (ii) the commissioner determines by rule should be designated as a form of limited line
15427 credit insurance.

15428 (101) "Limited line credit insurance producer" means a person who sells, solicits, or
15429 negotiates one or more forms of limited line credit insurance coverage to individuals through a

- 15430 master, corporate, group, or individual policy.
- 15431 (102) "Limited line insurance" includes:
- 15432 (a) bail bond;
- 15433 (b) limited line credit insurance;
- 15434 (c) legal expense insurance;
- 15435 (d) motor club insurance;
- 15436 (e) rental car-related insurance;
- 15437 (f) travel insurance; and
- 15438 (g) any other form of limited insurance that the commissioner determines by rule should
- 15439 be designated a form of limited line insurance.
- 15440 (103) "Limited lines authority" includes:
- 15441 (a) the lines of insurance listed in Subsection (102); and
- 15442 (b) a customer service representative.
- 15443 (104) "Limited lines producer" means a person who sells, solicits, or negotiates limited
- 15444 lines insurance.
- 15445 (105) (a) "Long-term care insurance" means an insurance policy or rider advertised,
- 15446 marketed, offered, or designated to provide coverage:
- 15447 (i) in a setting other than an acute care unit of a hospital;
- 15448 (ii) for not less than 12 consecutive months for each covered person on the basis of:
- 15449 (A) expenses incurred;
- 15450 (B) indemnity;
- 15451 (C) prepayment; or
- 15452 (D) another method;
- 15453 (iii) for one or more necessary or medically necessary services that are:
- 15454 (A) diagnostic;
- 15455 (B) preventative;
- 15456 (C) therapeutic;
- 15457 (D) rehabilitative;

- 15458 (E) maintenance; or
- 15459 (F) personal care; and
- 15460 (iv) that may be issued by:
- 15461 (A) an insurer;
- 15462 (B) a fraternal benefit society;
- 15463 (C) (I) a nonprofit health hospital; and
- 15464 (II) a medical service corporation;
- 15465 (D) a prepaid health plan;
- 15466 (E) a health maintenance organization; or
- 15467 (F) an entity similar to the entities described in Subsections (105)(a)(iv)(A) through (E)
- 15468 to the extent that the entity is otherwise authorized to issue life or health care insurance.
- 15469 (b) "Long-term care insurance" includes:
- 15470 (i) any of the following that provide directly or supplement long-term care insurance:
- 15471 (A) a group or individual annuity or rider; or
- 15472 (B) a life insurance policy or rider;
- 15473 (ii) a policy or rider that provides for payment of benefits based on:
- 15474 (A) cognitive impairment; or
- 15475 (B) functional capacity; or
- 15476 (iii) a qualified long-term care insurance contract.
- 15477 (c) "Long-term care insurance" does not include:
- 15478 (i) a policy that is offered primarily to provide basic Medicare supplement coverage;
- 15479 (ii) basic hospital expense coverage;
- 15480 (iii) basic medical/surgical expense coverage;
- 15481 (iv) hospital confinement indemnity coverage;
- 15482 (v) major medical expense coverage;
- 15483 (vi) income replacement or related asset-protection coverage;
- 15484 (vii) accident only coverage;
- 15485 (viii) coverage for a specified:

- 15486 (A) disease; or
- 15487 (B) accident;
- 15488 (ix) limited benefit health coverage; or
- 15489 (x) a life insurance policy that accelerates the death benefit to provide the option of a
- 15490 lump sum payment:
- 15491 (A) if the following are not conditioned on the receipt of long-term care:
- 15492 (I) benefits; or
- 15493 (II) eligibility; and
- 15494 (B) the coverage is for one or more the following qualifying events:
- 15495 (I) terminal illness;
- 15496 (II) medical conditions requiring extraordinary medical intervention; or
- 15497 (III) permanent institutional confinement.
- 15498 (106) "Medical malpractice insurance" means insurance against legal liability incident to
- 15499 the practice and provision of medical services other than the practice and provision of dental
- 15500 services.
- 15501 (107) "Member" means a person having membership rights in an insurance corporation.
- 15502 (108) "Minimum capital" or "minimum required capital" means the capital that must be
- 15503 constantly maintained by a stock insurance corporation as required by statute.
- 15504 (109) "Mortgage accident and health insurance" means insurance offered in connection
- 15505 with an extension of credit that provides indemnity for payments coming due on a mortgage
- 15506 while the debtor is disabled.
- 15507 (110) "Mortgage guaranty insurance" means surety insurance under which mortgagees
- 15508 and other creditors are indemnified against losses caused by the default of debtors.
- 15509 (111) "Mortgage life insurance" means insurance on the life of a debtor in connection
- 15510 with an extension of credit that pays if the debtor dies.
- 15511 (112) "Motor club" means a person:
- 15512 (a) licensed under:
- 15513 (i) Chapter 5, Domestic Stock and Mutual Insurance Corporations;

- 15514 (ii) Chapter 11, Motor Clubs; or
- 15515 (iii) Chapter 14, Foreign Insurers; and
- 15516 (b) that promises for an advance consideration to provide for a stated period of time:
- 15517 (i) legal services under Subsection 31A-11-102(1)(b);
- 15518 (ii) bail services under Subsection 31A-11-102(1)(c); or
- 15519 (iii) (A) trip reimbursement;
- 15520 (B) towing services;
- 15521 (C) emergency road services;
- 15522 (D) stolen automobile services;
- 15523 (E) a combination of the services listed in Subsections (112)(b)(iii)(A) through (D); or
- 15524 (F) any other services given in Subsections 31A-11-102(1)(b) through (f).
- 15525 (113) "Mutual" means a mutual insurance corporation.
- 15526 (114) "Network plan" means health care insurance:
- 15527 (a) that is issued by an insurer; and
- 15528 (b) under which the financing and delivery of medical care is provided, in whole or in
- 15529 part, through a defined set of providers under contract with the insurer, including the financing
- 15530 and delivery of items paid for as medical care.
- 15531 (115) "Nonparticipating" means a plan of insurance under which the insured is not
- 15532 entitled to receive dividends representing shares of the surplus of the insurer.
- 15533 (116) "Ocean marine insurance" means insurance against loss of or damage to:
- 15534 (a) ships or hulls of ships;
- 15535 (b) goods, freight, cargoes, merchandise, effects, disbursements, profits, moneys,
- 15536 securities, choses in action, evidences of debt, valuable papers, bottomry, respondentia interests,
- 15537 or other cargoes in or awaiting transit over the oceans or inland waterways;
- 15538 (c) earnings such as freight, passage money, commissions, or profits derived from
- 15539 transporting goods or people upon or across the oceans or inland waterways; or
- 15540 (d) a vessel owner or operator as a result of liability to employees, passengers, bailors,
- 15541 owners of other vessels, owners of fixed objects, customs or other authorities, or other persons

15542 in connection with maritime activity.

15543 (117) "Order" means an order of the commissioner.

15544 (118) "Outline of coverage" means a summary that explains an accident and health
15545 insurance policy.

15546 (119) "Participating" means a plan of insurance under which the insured is entitled to
15547 receive dividends representing shares of the surplus of the insurer.

15548 (120) "Participation," as used in a health benefit plan, means a requirement relating to
15549 the minimum percentage of eligible employees that must be enrolled in relation to the total
15550 number of eligible employees of an employer reduced by each eligible employee who voluntarily
15551 declines coverage under the plan because the employee has other group health care insurance
15552 coverage.

15553 (121) "Person" includes an individual, partnership, corporation, incorporated or
15554 unincorporated association, joint stock company, trust, limited liability company, reciprocal,
15555 syndicate, or any similar entity or combination of entities acting in concert.

15556 (122) "Personal lines insurance" means property and casualty insurance coverage sold
15557 for primarily noncommercial purposes to:

15558 (a) individuals; and

15559 (b) families.

15560 (123) "Plan sponsor" is as defined in 29 U.S.C. Sec. 1002(16)(B).

15561 (124) "Plan year" means:

15562 (a) the year that is designated as the plan year in:

15563 (i) the plan document of a group health plan; or

15564 (ii) a summary plan description of a group health plan;

15565 (b) if the plan document or summary plan description does not designate a plan year or
15566 there is no plan document or summary plan description:

15567 (i) the year used to determine deductibles or limits;

15568 (ii) the policy year, if the plan does not impose deductibles or limits on a yearly basis; or

15569 (iii) the employer's taxable year if:

15570 (A) the plan does not impose deductibles or limits on a yearly basis; and
15571 (B) (I) the plan is not insured; or
15572 (II) the insurance policy is not renewed on an annual basis; or
15573 (c) in a case not described in Subsection (124)(a) or (b), the calendar year.
15574 (125) (a) "Policy" means any document, including attached endorsements and riders,
15575 purporting to be an enforceable contract, which memorializes in writing some or all of the terms
15576 of an insurance contract.
15577 (b) "Policy" includes a service contract issued by:
15578 (i) a motor club under Chapter 11, Motor Clubs;
15579 (ii) a service contract provided under Chapter 6a, Service Contracts; and
15580 (iii) a corporation licensed under:
15581 (A) Chapter 7, Nonprofit Health Service Insurance Corporations; or
15582 (B) Chapter 8, Health Maintenance Organizations and Limited Health Plans.
15583 (c) "Policy" does not include:
15584 (i) a certificate under a group insurance contract; or
15585 (ii) a document that does not purport to have legal effect.
15586 (126) "Policyholder" means the person who controls a policy, binder, or oral contract
15587 by ownership, premium payment, or otherwise.
15588 (127) "Policy illustration" means a presentation or depiction that includes
15589 nonguaranteed elements of a policy of life insurance over a period of years.
15590 (128) "Policy summary" means a synopsis describing the elements of a life insurance
15591 policy.
15592 (129) "Preexisting condition," with respect to a health benefit plan:
15593 (a) means a condition that was present before the effective date of coverage, whether or
15594 not any medical advice, diagnosis, care, or treatment was recommended or received before that
15595 day; and
15596 (b) does not include a condition indicated by genetic information unless an actual
15597 diagnosis of the condition by a physician has been made.

- 15598 (130) (a) "Premium" means the monetary consideration for an insurance policy.
- 15599 (b) "Premium" includes, however designated:
- 15600 (i) assessments;
- 15601 (ii) membership fees;
- 15602 (iii) required contributions; or
- 15603 (iv) monetary consideration.
- 15604 (c) (i) Consideration paid to third party administrators for their services is not
- 15605 "premium."
- 15606 (ii) Amounts paid by third party administrators to insurers for insurance on the risks
- 15607 administered by the third party administrators are "premium."
- 15608 (131) "Principal officers" of a corporation means the officers designated under
- 15609 Subsection 31A-5-203(3).
- 15610 (132) "Proceedings" includes actions and special statutory proceedings.
- 15611 (133) "Professional liability insurance" means insurance against legal liability incident to
- 15612 the practice of a profession and provision of any professional services.
- 15613 (134) (a) Except as provided in Subsection (134)(b), "property insurance" means
- 15614 insurance against loss or damage to real or personal property of every kind and any interest in
- 15615 that property:
- 15616 (i) from all hazards or causes; and
- 15617 (ii) against loss consequential upon the loss or damage including vehicle comprehensive
- 15618 and vehicle physical damage coverages.
- 15619 (b) "Property insurance" does not include:
- 15620 (i) inland marine insurance as defined in Subsection (80); and
- 15621 (ii) ocean marine insurance as defined under Subsection (116).
- 15622 (135) "Qualified long-term care insurance contract" or "federally tax qualified long-term
- 15623 care insurance contract" means:
- 15624 (a) an individual or group insurance contract that meets the requirements of Section
- 15625 7702B(b), Internal Revenue Code; or

- 15626 (b) the portion of a life insurance contract that provides long-term care insurance:
- 15627 (i) (A) by rider; or
- 15628 (B) as a part of the contract; and
- 15629 (ii) that satisfies the requirements of Sections 7702B(b) and (e), Internal Revenue Code.
- 15630 (136) "Qualified United States financial institution" means an institution that:
- 15631 (a) is:
- 15632 (i) organized under the laws of the United States or any state; or
- 15633 (ii) in the case of a United States office of a foreign banking organization, licensed
- 15634 under the laws of the United States or any state;
- 15635 (b) is regulated, supervised, and examined by United States federal or state authorities
- 15636 having regulatory authority over banks and trust companies; and
- 15637 (c) meets the standards of financial condition and standing that are considered necessary
- 15638 and appropriate to regulate the quality of financial institutions whose letters of credit will be
- 15639 acceptable to the commissioner as determined by:
- 15640 (i) the commissioner by rule; or
- 15641 (ii) the Securities Valuation Office of the National Association of Insurance
- 15642 Commissioners.
- 15643 (137) (a) "Rate" means:
- 15644 (i) the cost of a given unit of insurance; or
- 15645 (ii) for property-casualty insurance, that cost of insurance per exposure unit either
- 15646 expressed as:
- 15647 (A) a single number; or
- 15648 (B) a pure premium rate, adjusted before any application of individual risk variations
- 15649 based on loss or expense considerations to account for the treatment of:
- 15650 (I) expenses;
- 15651 (II) profit; and
- 15652 (III) individual insurer variation in loss experience.
- 15653 (b) "Rate" does not include a minimum premium.

15654 (138) (a) Except as provided in Subsection (138)(b), "rate service organization" means
15655 any person who assists insurers in rate making or filing by:

- 15656 (i) collecting, compiling, and furnishing loss or expense statistics;
- 15657 (ii) recommending, making, or filing rates or supplementary rate information; or
- 15658 (iii) advising about rate questions, except as an attorney giving legal advice.

15659 (b) "Rate service organization" does not mean:

- 15660 (i) an employee of an insurer;
- 15661 (ii) a single insurer or group of insurers under common control;
- 15662 (iii) a joint underwriting group; or
- 15663 (iv) a natural person serving as an actuarial or legal consultant.

15664 (139) "Rating manual" means any of the following used to determine initial and renewal
15665 policy premiums:

- 15666 (a) a manual of rates;
- 15667 (b) classifications;
- 15668 (c) rate-related underwriting rules; and
- 15669 (d) rating formulas that describe steps, policies, and procedures for determining initial
15670 and renewal policy premiums.

15671 (140) "Received by the department" means:

15672 (a) except as provided in Subsection (140)(b), the date delivered to and stamped
15673 received by the department, whether delivered:

- 15674 (i) in person; or
- 15675 (ii) electronically; and
- 15676 (b) if delivered to the department by a delivery service, the delivery service's postmark
15677 date or pick-up date unless otherwise stated in:

- 15678 (i) statute;
- 15679 (ii) rule; or
- 15680 (iii) a specific filing order.

15681 (141) "Reciprocal" or "interinsurance exchange" means any unincorporated association

15682 of persons:

15683 (a) operating through an attorney-in-fact common to all of them; and

15684 (b) exchanging insurance contracts with one another that provide insurance coverage on
15685 each other.

15686 (142) "Reinsurance" means an insurance transaction where an insurer, for
15687 consideration, transfers any portion of the risk it has assumed to another insurer. In referring to
15688 reinsurance transactions, this title sometimes refers to:

15689 (a) the insurer transferring the risk as the "ceding insurer"; and

15690 (b) the insurer assuming the risk as the:

15691 (i) "assuming insurer"; or

15692 (ii) "assuming reinsurer."

15693 (143) "Reinsurer" means any person licensed in this state as an insurer with the
15694 authority to assume reinsurance.

15695 (144) "Residential dwelling liability insurance" means insurance against liability resulting
15696 from or incident to the ownership, maintenance, or use of a residential dwelling that is a
15697 detached single family residence or multifamily residence up to four units.

15698 (145) "Retrocession" means reinsurance with another insurer of a liability assumed
15699 under a reinsurance contract. A reinsurer "retrocedes" when it reinsures with another insurer
15700 part of a liability assumed under a reinsurance contract.

15701 (146) "Rider" means an endorsement to:

15702 (a) an insurance policy; or

15703 (b) an insurance certificate.

15704 (147) (a) "Security" means any:

15705 (i) note;

15706 (ii) stock;

15707 (iii) bond;

15708 (iv) debenture;

15709 (v) evidence of indebtedness;

- 15710 (vi) certificate of interest or participation in any profit-sharing agreement;
- 15711 (vii) collateral-trust certificate;
- 15712 (viii) preorganization certificate or subscription;
- 15713 (ix) transferable share;
- 15714 (x) investment contract;
- 15715 (xi) voting trust certificate;
- 15716 (xii) certificate of deposit for a security;
- 15717 (xiii) certificate of interest of participation in an oil, gas, or mining title or lease or in
- 15718 payments out of production under such a title or lease;
- 15719 (xiv) commodity contract or commodity option;
- 15720 (xv) certificate of interest or participation in, temporary or interim certificate for, receipt
- 15721 for, guarantee of, or warrant or right to subscribe to or purchase any of the items listed in
- 15722 Subsections (147)(a)(i) through (xiv); or
- 15723 (xvi) other interest or instrument commonly known as a security.
- 15724 (b) "Security" does not include:
- 15725 (i) any of the following under which an insurance company promises to pay money in a
- 15726 specific lump sum or periodically for life or some other specified period:
- 15727 (A) insurance;
- 15728 (B) endowment policy; or
- 15729 (C) annuity contract; or
- 15730 (ii) a burial certificate or burial contract.
- 15731 (148) "Self-insurance" means any arrangement under which a person provides for
- 15732 spreading its own risks by a systematic plan.
- 15733 (a) Except as provided in this Subsection (148), "self-insurance" does not include an
- 15734 arrangement under which a number of persons spread their risks among themselves.
- 15735 (b) "Self-insurance" includes:
- 15736 (i) an arrangement by which a governmental entity undertakes to indemnify its
- 15737 employees for liability arising out of the employees' employment; and

15738 (ii) an arrangement by which a person with a managed program of self-insurance and
15739 risk management undertakes to indemnify its affiliates, subsidiaries, directors, officers, or
15740 employees for liability or risk which is related to the relationship or employment.

15741 (c) "Self-insurance" does not include any arrangement with independent contractors.

15742 (149) "Sell" means to exchange a contract of insurance:

15743 (a) by any means;

15744 (b) for money or its equivalent; and

15745 (c) on behalf of an insurance company.

15746 (150) "Short-term care insurance" means any insurance policy or rider advertised,
15747 marketed, offered, or designed to provide coverage that is similar to long-term care insurance
15748 but that provides coverage for less than 12 consecutive months for each covered person.

15749 (151) "Significant break in coverage" means a period of 63 consecutive days during
15750 each of which an individual does not have any creditable coverage.

15751 (152) "Small employer," in connection with a health benefit plan, means an employer
15752 who, with respect to a calendar year and to a plan year:

15753 (a) employed an average of at least two employees but not more than 50 eligible
15754 employees on each business day during the preceding calendar year; and

15755 (b) employs at least two employees on the first day of the plan year.

15756 (153) "Special enrollment period," in connection with a health benefit plan, has the
15757 same meaning as provided in federal regulations adopted pursuant to the Health Insurance
15758 Portability and Accountability Act of 1996, Pub. L. No. 104-191, 110 Stat. 1936.

15759 (154) (a) "Subsidiary" of a person means an affiliate controlled by that person either
15760 directly or indirectly through one or more affiliates or intermediaries.

15761 (b) "Wholly owned subsidiary" of a person is a subsidiary of which all of the voting
15762 shares are owned by that person either alone or with its affiliates, except for the minimum
15763 number of shares the law of the subsidiary's domicile requires to be owned by directors or
15764 others.

15765 (155) Subject to Subsection (82)(b), "surety insurance" includes:

15766 (a) a guarantee against loss or damage resulting from failure of principals to pay or
15767 perform their obligations to a creditor or other obligee;

15768 (b) bail bond insurance; and

15769 (c) fidelity insurance.

15770 (156) (a) "Surplus" means the excess of assets over the sum of paid-in capital and
15771 liabilities.

15772 (b) (i) "Permanent surplus" means the surplus of a mutual insurer that has been
15773 designated by the insurer as permanent.

15774 (ii) Sections 31A-5-211, 31A-7-201, 31A-8-209, 31A-9-209, and 31A-14-209 require
15775 that mutuals doing business in this state maintain specified minimum levels of permanent
15776 surplus.

15777 (iii) Except for assessable mutuals, the minimum permanent surplus requirement is
15778 essentially the same as the minimum required capital requirement that applies to stock insurers.

15779 (c) "Excess surplus" means:

15780 (i) for life or accident and health insurers, health organizations, and property and
15781 casualty insurers as defined in Section 31A-17-601, the lesser of:

15782 (A) that amount of an insurer's or health organization's total adjusted capital, as defined
15783 in Subsection (159), that exceeds the product of:

15784 (I) 2.5; and

15785 (II) the sum of the insurer's or health organization's minimum capital or permanent
15786 surplus required under Section 31A-5-211, 31A-9-209, or 31A-14-205; or

15787 (B) that amount of an insurer's or health organization's total adjusted capital, as defined
15788 in Subsection (159), that exceeds the product of:

15789 (I) 3.0; and

15790 (II) the authorized control level RBC as defined in Subsection 31A-17-601(8)(a); and

15791 (ii) for monoline mortgage guaranty insurers, financial guaranty insurers, and title
15792 insurers, that amount of an insurer's paid-in-capital and surplus that exceeds the product of:

15793 (A) 1.5; and

15794 (B) the insurer's total adjusted capital required by Subsection 31A-17-609(1).
15795 (157) "Third party administrator" or "administrator" means any person who collects
15796 charges or premiums from, or who, for consideration, adjusts or settles claims of residents of
15797 the state in connection with insurance coverage, annuities, or service insurance coverage,
15798 except:
15799 (a) a union on behalf of its members;
15800 (b) a person administering any:
15801 (i) pension plan subject to the federal Employee Retirement Income Security Act of
15802 1974;
15803 (ii) governmental plan as defined in Section 414(d), Internal Revenue Code; or
15804 (iii) nonelecting church plan as described in Section 410(d), Internal Revenue Code;
15805 (c) an employer on behalf of the employer's employees or the employees of one or more
15806 of the subsidiary or affiliated corporations of the employer;
15807 (d) an insurer licensed under Chapter 5, 7, 8, 9, or 14, but only for a line of insurance
15808 for which the insurer holds a license in this state; or
15809 (e) a person:
15810 (i) licensed or exempt from licensing under:
15811 (A) Chapter 23a, Insurance Marketing - Licensing Producers, Consultants, and
15812 Reinsurance Intermediaries; or
15813 (B) Chapter 26, Insurance Adjusters; and
15814 (ii) whose activities are limited to those authorized under the license the person holds or
15815 for which the person is exempt.
15816 (158) "Title insurance" means the insuring, guaranteeing, or indemnifying of owners of
15817 real or personal property or the holders of liens or encumbrances on that property, or others
15818 interested in the property against loss or damage suffered by reason of liens or encumbrances
15819 upon, defects in, or the unmarketability of the title to the property, or invalidity or
15820 unenforceability of any liens or encumbrances on the property.
15821 (159) "Total adjusted capital" means the sum of an insurer's or health organization's

15822 statutory capital and surplus as determined in accordance with:

15823 (a) the statutory accounting applicable to the annual financial statements required to be
15824 filed under Section 31A-4-113; and

15825 (b) any other items provided by the RBC instructions, as RBC instructions is defined in
15826 Section 31A-17-601.

15827 (160) (a) "Trustee" means "director" when referring to the board of directors of a
15828 corporation.

15829 (b) "Trustee," when used in reference to an employee welfare fund, means an individual,
15830 firm, association, organization, joint stock company, or corporation, whether acting individually
15831 or jointly and whether designated by that name or any other, that is charged with or has the
15832 overall management of an employee welfare fund.

15833 (161) (a) "Unauthorized insurer," "unadmitted insurer," or "nonadmitted insurer" means
15834 an insurer:

15835 (i) not holding a valid certificate of authority to do an insurance business in this state; or

15836 (ii) transacting business not authorized by a valid certificate.

15837 (b) "Admitted insurer" or "authorized insurer" means an insurer:

15838 (i) holding a valid certificate of authority to do an insurance business in this state; and

15839 (ii) transacting business as authorized by a valid certificate.

15840 (162) "Underwrite" means the authority to accept or reject risk on behalf of the insurer.

15841 (163) "Vehicle liability insurance" means insurance against liability resulting from or
15842 incident to ownership, maintenance, or use of any land vehicle or aircraft, exclusive of vehicle
15843 comprehensive and vehicle physical damage coverages under Subsection (134).

15844 (164) "Voting security" means a security with voting rights, and includes any security
15845 convertible into a security with a voting right associated with the security.

15846 (165) "Waiting period" for a health benefit plan means the period that must pass before
15847 coverage for an individual, who is otherwise eligible to enroll under the terms of the health
15848 benefit plan, can become effective.

15849 (166) "Workers' compensation insurance" means:

- 15850 (a) insurance for indemnification of employers against liability for compensation based
15851 on:
- 15852 (i) compensable accidental injuries; and
15853 (ii) occupational disease disability;
- 15854 (b) employer's liability insurance incidental to workers' compensation insurance and
15855 written in connection with workers' compensation insurance; and
- 15856 (c) insurance assuring to the persons entitled to workers' compensation benefits the
15857 compensation provided by law.

15858 Section 337. Section **31A-2-201** is amended to read:

15859 **31A-2-201. General duties and powers.**

- 15860 (1) The commissioner shall administer and enforce this title.
- 15861 (2) The commissioner has all powers specifically granted, and all further powers that
15862 are reasonable and necessary to enable the commissioner to perform the duties imposed by this
15863 title.
- 15864 (3) (a) The commissioner may make rules to implement the provisions of this title
15865 according to the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
15866 Utah Administrative Rulemaking Act.
- 15867 (b) In addition to the notice requirements of Section [~~63-46a-4~~] 63G-3-301, the
15868 commissioner shall provide notice under Section 31A-2-303 of hearings concerning insurance
15869 department rules.
- 15870 (4) (a) The commissioner shall issue prohibitory, mandatory, and other orders as
15871 necessary to secure compliance with this title. An order by the commissioner is not effective
15872 unless the order:
- 15873 (i) is in writing; and
15874 (ii) is signed by the commissioner or under the commissioner's authority.
- 15875 (b) On request of any person who would be affected by an order under Subsection
15876 (4)(a), the commissioner may issue a declaratory order to clarify the person's rights or duties.
- 15877 (5) (a) The commissioner may hold informal adjudicative proceedings and public

15878 meetings, for the purpose of:

- 15879 (i) investigation;
- 15880 (ii) ascertainment of public sentiment; or
- 15881 (iii) informing the public.

15882 (b) An effective rule or order may not result from informal hearings and meetings unless
15883 the requirement of a hearing under this section is satisfied.

15884 (6) The commissioner shall inquire into violations of this title and may conduct any
15885 examinations and investigations of insurance matters, in addition to examinations and
15886 investigations expressly authorized, that the commissioner considers proper to determine:

- 15887 (a) whether or not any person has violated any provision of this title; or
- 15888 (b) to secure information useful in the lawful administration of this title.

15889 (7) (a) Each year, the commissioner shall:

- 15890 (i) conduct an evaluation of the state's health insurance market;
- 15891 (ii) report the findings of the evaluation to the Health and Human Services Interim
15892 Committee before October 1; and

15893 (iii) publish the findings of the evaluation on the department website.

15894 (b) The evaluation required by Subsection (7)(a) shall:

15895 (i) analyze the effectiveness of the insurance regulations and statutes in promoting a
15896 healthy, competitive health insurance market that meets the needs of Utahns by assessing such
15897 things as:

- 15898 (A) the availability and marketing of individual and group products;
- 15899 (B) rate charges;
- 15900 (C) coverage and demographic changes;
- 15901 (D) benefit trends;
- 15902 (E) market share changes; and
- 15903 (F) accessibility;

15904 (ii) assess complaint ratios and trends within the health insurance market, which
15905 assessment shall integrate complaint data from the Office of Consumer Health Assistance within

15906 the department;

15907 (iii) contain recommendations for action to improve the overall effectiveness of the
15908 health insurance market, administrative rules, and statutes; and

15909 (iv) include claims loss ratio data for each insurance company doing business in the
15910 state.

15911 (c) When preparing the evaluation required by this Subsection (7), the commissioner
15912 may seek the input of insurers, employers, insured persons, providers, and others with an
15913 interest in the health insurance market.

15914 Section 338. Section **31A-2-201.1** is amended to read:

15915 **31A-2-201.1. General filing requirements.**

15916 Except as otherwise provided in this title, the commissioner may set by rule made in
15917 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
15918 Act, specific requirements for filing any of the following required by this title:

15919 (1) a form;

15920 (2) a rate; or

15921 (3) a report.

15922 Section 339. Section **31A-2-203** is amended to read:

15923 **31A-2-203. Examinations and alternatives.**

15924 (1) (a) Whenever the commissioner considers it necessary in order to inform the
15925 commissioner about any matter related to the enforcement of this title, the commissioner may
15926 examine the affairs and condition of:

15927 (i) a licensee under this title;

15928 (ii) an applicant for a license under this title;

15929 (iii) a person or organization of persons doing or in process of organizing to do an
15930 insurance business in this state; or

15931 (iv) a person who is not, but should be, licensed under this title.

15932 (b) When reasonably necessary for an examination under Subsection (1)(a), the
15933 commissioner may examine:

- 15934 (i) so far as they relate to the examinee, the accounts, records, documents, or evidences
15935 of transactions of:
- 15936 (A) the insurer or other licensee;
- 15937 (B) any officer or other person who has executive authority over or is in charge of any
15938 segment of the examinee's affairs; or
- 15939 (C) any affiliate of the examinee; or
- 15940 (ii) any third party model or product used by the examinee.
- 15941 (c) (i) On demand, each examinee under Subsection (1)(a) shall make available to the
15942 commissioner for examination:
- 15943 (A) any of the examinee's own accounts, records, files, documents, or evidences of
15944 transactions; and
- 15945 (B) to the extent reasonably necessary for an examination, the accounts, records, files,
15946 documents, or evidences of transactions of any persons under Subsection (1)(b).
- 15947 (ii) Except as provided in Subsection (1)(c)(iii), failure to make the documents
15948 described in Subsection (1)(c)(i) available is concealment of records under Subsection
15949 31A-27a-207(1)(e).
- 15950 (iii) If the examinee is unable to obtain accounts, records, files, documents, or evidences
15951 of transactions from persons under Subsection (1)(b), that failure is not concealment of records
15952 if the examinee immediately terminates the relationship with the other person.
- 15953 (d) (i) Neither the commissioner nor an examiner may remove any account, record, file,
15954 document, evidence of transaction, or other property of the examinee from the examinee's
15955 offices unless:
- 15956 (A) the examinee consents in writing; or
- 15957 (B) a court grants permission.
- 15958 (ii) The commissioner may make and remove copies or abstracts of the following
15959 described in Subsection (1)(d)(i):
- 15960 (A) an account;
- 15961 (B) a record;

15962 (C) a file;
15963 (D) a document;
15964 (E) evidence of transaction; or
15965 (F) other property.

15966 (2) (a) Subject to the other provisions of this section, the commissioner shall examine as
15967 needed and as otherwise provided by law:

15968 (i) every insurer, both domestic and nondomestic;
15969 (ii) every licensed rate service organization; and
15970 (iii) any other licensee.

15971 (b) The commissioner shall examine insurers, both domestic and nondomestic, no less
15972 frequently than once every five years, but the commissioner may use in lieu examinations under
15973 Subsection (4) to satisfy this requirement.

15974 (c) The commissioner shall revoke the certificate of authority of an insurer or the
15975 license of a rate service organization that has not been examined, or submitted an acceptable in
15976 lieu report under Subsection (4), within the past five years.

15977 (d) (i) Any 25 persons who are policyholders, shareholders, or creditors of a domestic
15978 insurer may by verified petition demand a hearing under Section 31A-2-301 to determine
15979 whether the commissioner should conduct an unscheduled examination of the insurer.

15980 (ii) Persons demanding the hearing under this Subsection (2)(d) shall be given an
15981 opportunity in the hearing to present evidence that an examination of the insurer is necessary.

15982 (iii) If the evidence justifies an examination, the commissioner shall order an
15983 examination.

15984 (e) (i) When the board of directors of a domestic insurer requests that the commissioner
15985 examine the insurer, the commissioner shall examine the insurer as soon as reasonably possible.

15986 (ii) If the examination requested under this Subsection (2)(e) is conducted within two
15987 years after completion of a comprehensive examination by the commissioner, costs of the
15988 requested examination may not be deducted from premium taxes under Section 59-9-102 unless
15989 the commissioner's order specifically provides for the deduction.

- 15990 (f) Bail bond surety companies as defined in Section 31A-35-102 are exempted from:
- 15991 (i) the five-year examination requirement in Subsection (2)(b);
- 15992 (ii) the revocation under Subsection (2)(c); and
- 15993 (iii) Subsections (2)(d) and (2)(e).
- 15994 (3) (a) The commissioner may order an independent audit or examination by technical
- 15995 experts, including certified public accountants and actuaries:
- 15996 (i) in lieu of all or part of an examination under Subsection (1) or (2); or
- 15997 (ii) in addition to an examination under Subsection (1) or (2).
- 15998 (b) Any audit or evaluation under this Subsection (3) is subject to Subsection (5),
- 15999 Section 31A-2-204, and Subsection 31A-2-205(4).
- 16000 (4) (a) In lieu of all or any part of an examination under this section, the commissioner
- 16001 may accept the report of an examination made by:
- 16002 (i) the insurance department of another state; or
- 16003 (ii) another government agency in:
- 16004 (A) this state;
- 16005 (B) the federal government; or
- 16006 (C) another state.
- 16007 (b) An examination by the commissioner under Subsection (1) or (2) or accepted by the
- 16008 commissioner under this Subsection (4) may use:
- 16009 (i) an audit already made by a certified public accountant; or
- 16010 (ii) an actuarial evaluation made by an actuary approved by the commissioner.
- 16011 (5) (a) An examination may be comprehensive or limited with respect to the examinee's
- 16012 affairs and condition. The commissioner shall determine the nature and scope of each
- 16013 examination, taking into account all relevant factors, including:
- 16014 (i) the length of time the examinee has been licensed in this state;
- 16015 (ii) the nature of the business being examined;
- 16016 (iii) the nature of the accounting or other records available;
- 16017 (iv) reports from:

16018 (A) independent auditors; and
16019 (B) self-certification entities; and
16020 (v) the nature of examinations performed elsewhere.
16021 (b) The examination of an alien insurer shall be limited to insurance transactions and
16022 assets in the United States, unless the commissioner orders otherwise after finding that
16023 extraordinary circumstances necessitate a broader examination.
16024 (6) To effectively administer this section, the commissioner:
16025 (a) shall:
16026 (i) maintain effective financial condition and market regulation surveillance systems
16027 including:
16028 (A) financial and market analysis; and
16029 (B) review of insurance regulatory information system reports;
16030 (ii) employ a priority scheduling method that focuses on insurers and other licensees
16031 most in need of examination; and
16032 (iii) use examination management techniques similar to those outlined in the Financial
16033 Condition Examination Handbook of the National Association of Insurance Commissioners; and
16034 (b) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
16035 Administrative Rulemaking Act, may make rules pertaining to the financial condition and
16036 market regulation surveillance systems.
16037 Section 340. Section **31A-2-203.5** is amended to read:
16038 **31A-2-203.5. Procedures -- Adjudicative proceedings.**
16039 The commissioner of insurance shall comply with the procedures and requirements of
16040 [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
16041 proceedings.
16042 Section 341. Section **31A-2-204** is amended to read:
16043 **31A-2-204. Conducting examinations.**
16044 (1) (a) For each examination under Section 31A-2-203, the commissioner shall issue an
16045 order:

- 16046 (i) stating the scope of the examination; and
16047 (ii) designating the examiner in charge.
- 16048 (b) The commissioner need not give advance notice of an examination to an examinee.
16049 (c) The examiner in charge shall give the examinee a copy of the order issued under this
16050 Subsection (1).
- 16051 (d) (i) The commissioner may alter the scope or nature of an examination at any time
16052 without advance notice to the examinee.
- 16053 (ii) If the commissioner amends an order described in this Subsection (1), the
16054 commissioner shall provide a copy of any amended order to the examinee.
- 16055 (e) Statements in the commissioner's examination order concerning examination scope
16056 are for the examiner's guidance only.
- 16057 (f) Examining relevant matters not mentioned in an order issued under this Subsection
16058 (1) is not a violation of this title.
- 16059 (2) The commissioner shall, whenever practicable, cooperate with the insurance
16060 regulators of other states by conducting joint examinations of:
- 16061 (a) multistate insurers doing business in this state; or
16062 (b) other multistate licensees doing business in this state.
- 16063 (3) An examiner authorized by the commissioner shall, when necessary to the purposes
16064 of the examination, have access at all reasonable hours to the premises and to any books,
16065 records, files, securities, documents, or property of:
- 16066 (a) the examinee; and
16067 (b) any of the following if the premises, books, records, files, securities, documents, or
16068 property relate to the affairs of the examinee:
- 16069 (i) an officer of the examinee;
16070 (ii) any other person who:
16071 (A) has executive authority over the examinee; or
16072 (B) is in charge of any segment of the examinee's affairs; or
16073 (iii) any affiliate of the examinee under Subsection 31A-2-203(1)(b).

16074 (4) (a) The officers, employees, and agents of the examinee and of persons under
16075 Subsection 31A-2-203(1)(b) shall comply with every reasonable request of the examiners for
16076 assistance in any matter relating to the examination.

16077 (b) A person may not obstruct or interfere with the examination except by legal process.

16078 (5) If the commissioner finds the accounts or records to be inadequate for proper
16079 examination of the condition and affairs of the examinee or improperly kept or posted, the
16080 commissioner may employ experts to rewrite, post, or balance the accounts or records at the
16081 expense of the examinee.

16082 (6) (a) The examiner in charge of an examination shall make a report of the examination
16083 no later than 60 days after the completion of the examination that shall include:

16084 (i) the information and analysis ordered under Subsection (1); and

16085 (ii) the examiner's recommendations.

16086 (b) At the option of the examiner in charge, preparation of the report may include
16087 conferences with the examinee or representatives of the examinee.

16088 (c) The report is confidential until the report becomes a public document under
16089 Subsection (7), except the commissioner may use information from the report as a basis for
16090 action under Chapter 27a, Insurer Receivership Act.

16091 (7) (a) The commissioner shall serve a copy of the examination report described in
16092 Subsection (6) upon the examinee.

16093 (b) Within 20 days after service, the examinee shall:

16094 (i) accept the examination report as written; or

16095 (ii) request agency action to modify the examination report.

16096 (c) The report is considered accepted under this Subsection (7) if the examinee does not
16097 file a request for agency action to modify the report within 20 days after service of the report.

16098 (d) If the examination report is accepted:

16099 (i) the examination report immediately becomes a public document; and

16100 (ii) the commissioner shall distribute the examination report to all jurisdictions in which
16101 the examinee is authorized to do business.

16102 (e) (i) Any adjudicative proceeding held as a result of the examinee's request for agency
16103 action shall, upon the examinee's demand, be closed to the public, except that the commissioner
16104 need not exclude any participating examiner from this closed hearing.

16105 (ii) Within 20 days after the hearing held under this Subsection (7)(e), the commissioner
16106 shall:

16107 (A) adopt the examination report with any necessary modifications; and

16108 (B) serve a copy of the adopted report upon the examinee.

16109 (iii) Unless the examinee seeks judicial relief, the adopted examination report:

16110 (A) shall become a public document ten days after service; and

16111 (B) may be distributed as described in this section.

16112 (f) Notwithstanding [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative
16113 Procedures Act, to the extent that this section is in conflict with [~~Title 63, Chapter 46b~~] Title
16114 63G, Chapter 4, Administrative Procedures Act, this section governs:

16115 (i) a request for agency action under this section; or

16116 (ii) adjudicative proceeding under this section.

16117 (8) The examinee shall promptly furnish copies of the adopted examination report
16118 described in Subsection (7) to each member of the examinee's board.

16119 (9) After an examination report becomes a public document under Subsection (7), the
16120 commissioner may furnish, without cost or at a reasonable price set under Section 31A-3-103, a
16121 copy of the examination report to interested persons, including:

16122 (a) a member of the board of the examinee; or

16123 (b) one or more newspapers in this state.

16124 (10) (a) In a proceeding by or against the examinee, or any officer or agent of the
16125 examinee, the examination report as adopted by the commissioner is admissible as evidence of
16126 the facts stated in the report.

16127 (b) In any proceeding commenced under Chapter 27a, Insurer Receivership Act, the
16128 examination report, whether adopted by the commissioner or not, is admissible as evidence of
16129 the facts stated in the examination report.

16130 Section 342. Section **31A-2-207** is amended to read:

16131 **31A-2-207. Commissioner's records and reports -- Protection from disclosure of**
16132 **certain records.**

16133 (1) The commissioner shall maintain all department records that are:

16134 (a) required by law;

16135 (b) necessary for the effective operation of the department; or

16136 (c) necessary to maintain a full record of department activities.

16137 (2) The records of the department may be preserved, managed, stored, and made
16138 available for review consistent with:

16139 (a) another Utah statute;

16140 (b) the rules made under Section [~~63-2-904~~] 63A-12-104;

16141 (c) the decisions of the State Records Committee made under [~~Title 63, Chapter 2~~]
16142 Title 63G, Chapter 2, Government Records Access and Management Act; or

16143 (d) the needs of the public.

16144 (3) A department record may not be destroyed, damaged, or disposed of without:

16145 (a) authorization of the commissioner; and

16146 (b) compliance with all other applicable laws.

16147 (4) The commissioner shall maintain a permanent record of the commissioner's
16148 proceedings and important activities, including:

16149 (a) a concise statement of the condition of each insurer examined by the commissioner;
16150 and

16151 (b) a record of all certificates of authority and licenses issued by the commissioner.

16152 (5) (a) Prior to October 1 of each year, the commissioner shall prepare an annual report
16153 to the governor which shall include, for the preceding calendar year, the information concerning
16154 the department and the insurance industry which the commissioner believes will be useful to the
16155 governor and the public.

16156 (b) The report required by this Subsection (5) shall include the information required
16157 under Chapter 27a, Insurer Receivership Act, and Subsections 31A-2-106(2), 31A-2-205(3),

16158 and 31A-2-208(3).

16159 (c) The commissioner shall make the report required by this Subsection (5) available to
16160 the public and industry in electronic format.

16161 (6) All department records and reports are open to public inspection unless specifically
16162 provided otherwise by statute or by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
16163 Records Access and Management Act.

16164 (7) On request, the commissioner shall provide to any person certified or uncertified
16165 copies of any record in the department that is open to public inspection.

16166 (8) Notwithstanding Subsection (6) and [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
16167 Government Records Access and Management Act, the commissioner shall protect from
16168 disclosure any record, as defined in Section [~~63-2-103~~] 63G-2-103, or other document received
16169 from an insurance regulator of another jurisdiction:

16170 (a) at least to the same extent the record or document is protected from disclosure
16171 under the laws applicable to the insurance regulator providing the record or document; or

16172 (b) under the same terms and conditions of confidentiality as the National Association
16173 of Insurance Commissioners requires as a condition of participating in any of the National
16174 Association of Insurance Commissioners' programs.

16175 Section 343. Section **31A-2-209** is amended to read:

16176 **31A-2-209. Access to state records.**

16177 Subject to [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
16178 Management Act, the commissioner shall have access to the records of any agency of the state
16179 government or of any political subdivision of the state which [~~he~~] the commissioner may consult
16180 in discharging [~~his~~] the commissioner's duties.

16181 Section 344. Section **31A-2-217** is amended to read:

16182 **31A-2-217. Coordination with other states.**

16183 (1) (a) Subject to Subsection (1)(b), the commissioner, by rule, may adopt one or more
16184 agreements with another governmental regulatory agency, within and outside of this state, or
16185 with the National Association of Insurance Commissioners to address:

16186 (i) licensing of insurance companies;
16187 (ii) licensing of agents;
16188 (iii) regulation of premium rates and policy forms; and
16189 (iv) regulation of insurer insolvency and insurance receiverships.

16190 (b) An agreement described in Subsection (1)(a), may authorize the commissioner to
16191 modify a requirement of this title if the commissioner determines that the requirements under the
16192 agreement provide protections similar to or greater than the requirements under this title.

16193 (2) (a) The commissioner may negotiate an interstate compact that addresses issuing
16194 certificates of authority, if the commissioner determines that:

16195 (i) each state participating in the compact has requirements for issuing certificates of
16196 authority that provide protections similar to or greater than the requirements of this title; or
16197 (ii) the interstate compact contains requirements for issuing certificates of authority that
16198 provide protections similar to or greater than the requirements of this title.

16199 (b) If an interstate compact described in Subsection (2)(a) is adopted by the Legislature,
16200 the commissioner may issue certificates of authority to insurers in accordance with the terms of
16201 the interstate compact.

16202 (3) If any provision of this title conflicts with a provision of the annual statement
16203 instructions or the National Association of Insurance Commissioners Accounting Practices and
16204 Procedures Manual, the commissioner may, by rule, resolve the conflict in favor of the annual
16205 statement instructions or the National Association of Insurance Commissioners Accounting
16206 Practices and Procedures Manual.

16207 (4) The commissioner may, by rule, accept the information prescribed by the National
16208 Association of Insurance Commissioners instead of the documents required to be filed with an
16209 application for a certificate of authority under:

16210 (a) Section 31A-4-103, 31A-5-204, 31A-8-205, or 31A-14-201; or
16211 (b) rules made by the commissioner.

16212 (5) Before November 30, 2001, the commissioner shall report to the Business and
16213 Labor Interim Committee regarding the status of:

- 16214 (a) any agreements entered into under Subsection (1);
- 16215 (b) any interstate compact entered into under Subsection (2); and
- 16216 (c) any rule made under Subsections (3) and (4).
- 16217 (6) This section shall be repealed in accordance with Section [~~63-55-231~~] 63I-1-231.

16218 Section 345. Section **31A-2-302** is amended to read:

16219 **31A-2-302. Commissioner's disapproval.**

16220 (1) When the law requires the commissioner's approval for a certain action without a
16221 deemer clause, that approval must be express. The commissioner's disapproval of an action is
16222 assumed if the commissioner does not act within 60 days after receiving the application for
16223 approval or give notice of [~~his~~] the commissioner's reasonable extension of that time period with
16224 [~~his~~] the commissioner's reasons for the extension. Assumed disapproval under this subsection
16225 entitles the aggrieved person to request agency action under Section [~~63-46b-3~~] 63G-4-201.

16226 (2) When the law provides that a certain action is not effective if disapproved by the
16227 commissioner within a certain period, the affirmative approval by the commissioner may make
16228 the action effective at a designated earlier date, but not earlier than the date of the
16229 commissioner's affirmative approval.

16230 (3) Subsections (1) and (2) do not apply to the extent that the law specifically provides
16231 otherwise.

16232 Section 346. Section **31A-2-306.5** is amended to read:

16233 **31A-2-306.5. Stay of commissioner's decision pending administrative review or**
16234 **judicial appeal.**

16235 (1) An order of the commissioner or a designee of the commissioner is not stayed by a
16236 petition for:

- 16237 (a) administrative review;
- 16238 (b) rehearing; or
- 16239 (c) judicial review.

16240 (2) A person seeking to stay an order of the commissioner or a designee of the
16241 commissioner shall seek a stay in accordance with:

16242 (a) rules made by the commissioner in accordance with [~~Title 63, Chapter 46a~~] Title
16243 63G, Chapter 3, Utah Administrative Rulemaking Act, pending a petition for:

16244 (i) administrative review; or

16245 (ii) rehearing; or

16246 (b) Section [~~63-46b-18~~] 63G-4-405, pending judicial review.

16247 Section 347. Section **31A-2-404** is amended to read:

16248 **31A-2-404. Duties of the commissioner and Title and Escrow Commission.**

16249 (1) Notwithstanding the other provisions of this chapter, to the extent provided in this
16250 part, the commissioner shall administer and enforce the provisions in this title related to:

16251 (a) title insurance; and

16252 (b) escrow conducted by a title licensee or title insurer.

16253 (2) The commission shall:

16254 (a) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

16255 Administrative Rulemaking Act, and subject to Subsection (3), make rules for the administration
16256 of the provisions in this title related to title insurance including rules related to:

16257 (i) rating standards and rating methods for title agencies and producers as provided in
16258 Section 31A-19a-209;

16259 (ii) the licensing for a title licensee including the licensing requirements of Sections
16260 31A-23a-203 and 31A-23a-204;

16261 (iii) continuing education requirements of Section 31A-23a-202;

16262 (iv) examination procedures, after consultation with the department and the
16263 department's test administrator when required by Section 31A-23a-204; and

16264 (v) standards of conduct for a title licensee;

16265 (b) concur in the issuance and renewal of licenses in accordance with Section
16266 31A-23a-105 or 31A-26-203;

16267 (c) in accordance with Section 31A-3-103, establish, with the concurrence of the
16268 department, all fees imposed by this title on a title licensee;

16269 (d) in accordance with Section 31A-23a-415 determine, after consulting with the

16270 commissioner, the assessment on a title insurer as defined in Section 31A-23a-415;

16271 (e) conduct all administrative hearings not delegated by the commission to an

16272 administrative law judge related to the:

16273 (i) licensing of any applicant;

16274 (ii) conduct of any title licensee; or

16275 (iii) approval of continuing education programs required by Section 31A-23a-202;

16276 (f) with the concurrence of the commissioner, approve assets that can be included in a

16277 reserve fund required by Section 31A-23a-204;

16278 (g) with the concurrence of the commissioner, approve continuing education programs

16279 required by Section 31A-23a-202;

16280 (h) with the concurrence of the commissioner, impose penalties:

16281 (i) under this title related to:

16282 (A) title insurance; or

16283 (B) escrow conducted by a title licensee;

16284 (ii) after investigation by the department in accordance with Part 3, Procedures and

16285 Enforcement; and

16286 (iii) that are enforced by the commissioner;

16287 (i) advise the commissioner on the administration and enforcement of any matters

16288 affecting the title insurance industry;

16289 (j) advise the commissioner on matters affecting the department's budget related to title

16290 insurance; and

16291 (k) perform other duties as provided in this title.

16292 (3) The commission may make a rule under this title only if at the time the commission

16293 files its proposed rule and rule analysis with the Division of Administrative Rules in accordance

16294 with Section [~~63-46a-4~~] 63G-3-301, the commission provides the Real Estate Commission that

16295 same information.

16296 (4) (a) The commissioner shall annually report the information described in Subsection

16297 (4)(b) in writing to:

- 16298 (i) the commission; and
- 16299 (ii) the Business and Labor Interim Committee.
- 16300 (b) The information required to be reported under this Subsection (4):
- 16301 (i) may not identify a person; and
- 16302 (ii) shall include:
- 16303 (A) the number of complaints the department receives with regard to transactions
- 16304 involving title insurance or a title licensee during the calendar year immediately proceeding the
- 16305 report;
- 16306 (B) the type of complaints described in Subsection (4)(b)(ii)(A); and
- 16307 (C) for each complaint described in Subsection (4)(b)(ii)(A):
- 16308 (I) any action taken by the department with regard to the complaint; and
- 16309 (II) the time-period beginning the day on which a complaint is made and ending the day
- 16310 on which the department determines it will take no further action with regard to the complaint.

16311 Section 348. Section **31A-3-101** is amended to read:

16312 **31A-3-101. General finance provisions.**

16313 (1) The department's expenses shall be paid from the General Fund. Department

16314 expenditures shall conform to the Legislature's appropriation adopted under [~~Title 63, Chapter~~

16315 ~~38~~] Title 63J, Chapter 1, Budgetary Procedures Act.

16316 (2) Except as provided in Section 31A-2-206, or as otherwise specifically provided in

16317 this title, all monies collected by the commissioner shall be deposited without deduction in the

16318 General Fund.

16319 Section 349. Section **31A-3-103** is amended to read:

16320 **31A-3-103. Fees.**

16321 (1) For purposes of this section:

16322 (a) "Regulatory fee" is as defined in Section [~~63-38-3.2~~] 63J-1-303.

16323 (b) "Services" means functions that are reasonable and necessary to enable the

16324 commissioner to perform the duties imposed by this title including:

16325 (i) issuing and renewing licenses and certificates of authority;

- 16326 (ii) filing policy forms;
- 16327 (iii) reporting agent appointments and terminations; and
- 16328 (iv) filing annual statements.
- 16329 (c) Fees related to the renewal of licenses may be imposed no more frequently than
- 16330 once each year.
- 16331 (2) (a) A regulatory fee charged by the department shall be set in accordance with
- 16332 Section [~~63-38-3.2~~] 63J-1-303.
- 16333 (b) Fees shall be set and collected for services provided by the department.
- 16334 (3) (a) For a fee authorized by this chapter that is not a regulatory fee, the department
- 16335 may adopt a schedule of fees provided that each fee in the schedule of fees is:
- 16336 (i) reasonable and fair; and
- 16337 (ii) submitted to the Legislature as part of the department's annual appropriations
- 16338 request.
- 16339 (b) If a fee schedule described in Subsection (3)(a) is submitted as part of the
- 16340 department's annual appropriations request, the Legislature may, in a manner substantially
- 16341 similar to Section [~~63-38-3.2~~] 63J-1-303:
- 16342 (i) approve any fee in the fee schedule;
- 16343 (ii) (A) increase or decrease any fee in the fee schedule; and
- 16344 (B) approve any fee in the fee schedule as changed by the Legislature; or
- 16345 (iii) reject any fee in the fee schedule.
- 16346 (c) (i) Except as provided in Subsection (3)(c)(ii), a fee approved by the Legislature
- 16347 pursuant to this Subsection (3) shall be deposited into the General Fund for appropriation by the
- 16348 Legislature.
- 16349 (ii) A fee approved by the Legislature pursuant to this Subsection (3) that relates to the
- 16350 use of electronic or other similar technology to provide the services of the department shall be
- 16351 deposited into the General Fund as a dedicated credit to be used by the department to provide
- 16352 services through use of electronic commerce or other similar technology.
- 16353 (4) The commissioner shall separately publish the schedule of fees approved by the

16354 Legislature and make it available upon request for \$1 per copy. This fee schedule shall also be
16355 included in any compilation of rules promulgated by the commissioner.

16356 (5) The commissioner shall, by rule, establish the deadlines for payment of any fee
16357 established by the department in accordance with this section.

16358 Section 350. Section **31A-3-304** is amended to read:

16359 **31A-3-304. Annual fees -- Other taxes or fees prohibited.**

16360 (1) (a) A captive insurance company shall pay an annual fee imposed under this section
16361 to obtain or renew a certificate of authority.

16362 (b) The commissioner shall:

16363 (i) determine the annual fee pursuant to Sections 31A-3-103 and [~~63-38-3.2~~]
16364 63J-1-303; and

16365 (ii) consider whether the annual fee is competitive with fees imposed by other states on
16366 captive insurance companies.

16367 (2) A captive insurance company that fails to pay the fee required by this section is
16368 subject to the relevant sanctions of this title.

16369 (3) (a) Except as provided in Subsection (3)(b) and notwithstanding Title 59, Chapter
16370 9, Taxation of Admitted Insurers, the fee provided for in this section constitutes the sole tax or
16371 fee under the laws of this state that may be otherwise levied or assessed on a captive insurance
16372 company, and no other occupation tax or other tax or fee may be levied or collected from a
16373 captive insurance company by the state or a county, city, or municipality within this state.

16374 (b) Notwithstanding Subsection (3)(a), a captive insurance company is subject to real
16375 and personal property taxes.

16376 (4) A captive insurance company shall pay the fee imposed by this section to the
16377 department by March 31 of each year.

16378 (5) (a) The funds received pursuant to Subsection (2) shall be deposited into the
16379 General Fund as a dedicated credit to be used by the department to:

16380 (i) administer and enforce Chapter 37, Captive Insurance Companies Act; and

16381 (ii) promote the captive insurance industry in Utah.

16382 (b) At the end of each fiscal year, funds received by the department in excess of
16383 \$250,000 shall be treated as free revenue in the General Fund.
16384 Section 351. Section **31A-4-103** is amended to read:
16385 **31A-4-103. Certificate of authority.**
16386 (1) Each certificate of authority issued by the commissioner shall specify:
16387 (a) the name of the insurer;
16388 (b) the kinds of insurance the insurer is authorized to transact in Utah; and
16389 (c) any other information the commissioner requires.
16390 (2) A certificate of authority issued under this chapter remains in force until:
16391 (a) the certificate is not renewed; or
16392 (b) under Subsection (3), the certificate of authority is:
16393 (i) revoked; or
16394 (ii) suspended.
16395 (3) (a) After an adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G,
16396 Chapter 4, Administrative Procedures Act, if the commissioner makes a finding described in
16397 Subsection (3)(b), the commissioner may:
16398 (i) revoke a certificate of authority;
16399 (ii) suspend a certificate of authority for a period not to exceed 12 months; or
16400 (iii) limit a certificate of authority.
16401 (b) The commissioner may take any action described in Subsection (3)(a) if the
16402 commissioner finds the insurer has:
16403 (i) failed to pay when due any fee due under Section 31A-3-103;
16404 (ii) violated or failed to comply with:
16405 (A) this title;
16406 (B) a rule made under Subsection 31A-2-201(3); or
16407 (C) an order issued under Subsection 31A-2-201(4); or
16408 (iii) engaged in methods and practices in the conduct of business that endanger the
16409 legitimate interests of customers and the public.

16410 (c) An order suspending a certificate of authority shall specify:
16411 (i) the conditions and terms imposed on the insurer during the suspension; and
16412 (ii) the conditions and procedures for reinstatement from suspension.
16413 (d) The commissioner may place limitations on a certificate of authority at the time the
16414 certificate of authority is issued based on information contained in the application for the
16415 certificate of authority.
16416 (e) An order limiting a certificate of authority that is issued under Subsection (3)(a) or
16417 (3)(d) shall specify:
16418 (i) the period of the limitation;
16419 (ii) the conditions of the limitation; and
16420 (iii) the procedures for removing the limitation.
16421 (4) Subject to the requirements of this section and in accordance with [~~Title 63, Chapter~~
16422 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may by rule
16423 prescribe procedures to renew or reinstate a certificate of authority.
16424 (5) An insurer under this chapter whose certificate of authority is suspended or
16425 revoked, but that continues to act as an authorized insurer, is subject to the penalties for acting
16426 as an insurer without a certificate of authority.
16427 (6) Any insurer holding a certificate of authority in this state shall immediately report to
16428 the commissioner a suspension or revocation of that insurer's certificate of authority in any:
16429 (a) state;
16430 (b) the District of Columbia; or
16431 (c) a territory of the United States.
16432 (7) (a) An order revoking a certificate of authority under Subsection (3) may specify a
16433 time within which the former authorized insurer may not apply for a new certificate of authority,
16434 except that the time may not exceed five years from the date on which the certificate of
16435 authority is revoked.
16436 (b) If no time is specified in an order revoking a certificate of authority under
16437 Subsection (3), the former authorized insurer may not apply for a new certificate of authority

16438 for five years from the date on which the certificate of authority is revoked without express
16439 approval by the commissioner.

16440 (8) (a) Subject to Subsection (8)(b), the insurer shall pay all fees under Section
16441 31A-3-103 that would have been payable if the certificate of authority had not been suspended
16442 or revoked, unless the commissioner, in accordance with rule, waives the payment of the fees by
16443 no later than the day on which:

16444 (i) a suspension under Subsection (3) of an insurer's certificate of authority ends; or
16445 (ii) a new certificate of authority is issued to an insurer whose certificate of authority is
16446 revoked under Subsection (3).

16447 (b) If a new certificate of authority is issued more than three years after the day on
16448 which a similar certificate of authority was revoked, this Subsection (8) applies only to the fees
16449 that would have accrued during the three years immediately following the revocation.

16450 Section 352. Section **31A-5-204** is amended to read:

16451 **31A-5-204. Organization permit -- Certificate of incorporation.**

16452 (1) Subject to Section 31A-5-213, a person, including a stock insurance corporation,
16453 insurance holding company, stock corporation to finance an insurer or insurance production for
16454 an insurer, corporation to provide management or administrative services for any of the entities
16455 named above, or mutual insurer, may not solicit subscriptions for its securities, or in the case of
16456 a mutual insurance corporation, solicit applications for qualifying insurance policies or
16457 subscriptions for mutual bonds or contribution notes, until the commissioner has issued an
16458 organization permit.

16459 (2) The application for an organization permit shall give the name of the insurer to be
16460 formed and shall be signed and acknowledged by or on behalf of each incorporator. The
16461 application shall include or have attached:

16462 (a) the names, and for the preceding ten years all addresses, and all occupations of the
16463 incorporators and the proposed directors and officers;

16464 (b) for all persons planned by the incorporators to own 10% or more of the capital
16465 stock of the corporation, their annual financial statements and reports for the three most recent

16466 years, and if the planned shareholders are corporations, their articles and bylaws, and a list of
16467 the names, addresses, and occupations of all their directors and principal officers;

16468 (c) the proposed articles, which shall be signed and acknowledged by or on behalf of
16469 each incorporator, and the proposed bylaws;

16470 (d) all agreements relating to the corporation to which any incorporator, proposed
16471 director, or officer is a party;

16472 (e) the amount and sources of the funds available for organization expenses and the
16473 proposed arrangements for reimbursement and compensation of incorporators or other persons;

16474 (f) the plan for solicitation of applications for qualifying insurance policies and for the
16475 corporation's securities;

16476 (g) the forms to be used for stock subscriptions, certificates for shares, applications for
16477 qualifying insurance policies, subscriptions for mutual bonds and contribution notes, and the
16478 forms for bonds and notes;

16479 (h) the capital and initial paid in surplus in the case of a stock insurer, or the minimum
16480 permanent surplus and the additional surplus in the case of a mutual insurer;

16481 (i) the plan for conducting the insurance business, including:

16482 (i) the geographical area in which business is intended to be done in the first two years;

16483 (ii) the types of insurance intended to be written in the first two years;

16484 (iii) the proposed marketing methods;

16485 (iv) when requested by the commissioner, the proposed method for establishing
16486 premium rates; and

16487 (v) the proposed aggregate compensation of the five highest compensated officers,
16488 directors, and employees;

16489 (j) a projection certified by a member of the American Academy of Actuaries of the
16490 anticipated operating results of the corporation at the end of each of the first two years of
16491 operation, based on reasonable assumptions of loss experience, premium and other income,
16492 operating expenses, and acquisition costs; and

16493 (k) any other relevant document or information the commissioner reasonably requires.

- 16494 (3) The commissioner shall issue an organization permit if:
- 16495 (a) all the requirements of law have been met, including the payment of fees;
- 16496 (b) all the incorporators, persons listed in Subsection (2)(b), and the proposed directors
- 16497 and officers of the corporation being formed, are trustworthy and collectively have the
- 16498 competence and experience to engage in the particular insurance business proposed;
- 16499 (c) the business plan is consistent with the interests of the corporation's potential
- 16500 insureds and the public; and
- 16501 (d) the bond required by Section 31A-5-205 is filed.
- 16502 (4) If the commissioner denies the application for a permit, the commissioner shall state
- 16503 the reasons for the denial.
- 16504 (5) (a) The organization permit shall:
- 16505 (i) specify the minimum capital or minimum permanent surplus required under Section
- 16506 31A-5-211; and
- 16507 (ii) describe the securities or policies to be solicited under the permit.
- 16508 (b) The organization permit may contain any other information the commissioner
- 16509 considers necessary.
- 16510 (6) The director of the Division of Corporations and Commercial Code shall accept the
- 16511 filing of the corporation's articles of incorporation upon notice from the insurance commissioner
- 16512 that all the applicable requirements of law have been met, including the payment of fees.
- 16513 (7) (a) When the director of the Division of Corporations and Commercial Code
- 16514 accepts the articles of incorporation:
- 16515 (i) the legal existence of the corporation begins;
- 16516 (ii) the articles and bylaws become effective; and
- 16517 (iii) the proposed directors and officers take office.
- 16518 (b) The certificate is conclusive evidence of compliance with this section, except in a
- 16519 proceeding by the state against the corporation.
- 16520 (8) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
- 16521 Access and Management Act, the permit applicant may request that any part of the information

16522 supplied under Subsection (2) be kept confidential. The information shall then be kept
16523 confidential unless the commissioner expressly finds, after a hearing, that the interest of the
16524 corporation or the public requires that the information be open to the public.

16525 Section 353. Section **31A-6a-110** is amended to read:

16526 **31A-6a-110. Rulemaking.**

16527 (1) Pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
16528 Rulemaking Act, the commissioner may make rules necessary to assist in the enforcement of
16529 this chapter.

16530 (2) The commissioner may by rule or order, after a hearing, exempt certain service
16531 contract providers or service contract providers for a specific class of service contracts that are
16532 not otherwise exempt under Subsection 31A-1-103(3) from any provision of this title. The
16533 commissioner may order substitute requirements on a finding that a particular provision of this
16534 title is not necessary for the protection of the public or that the substitute requirement is
16535 reasonably certain to provide equivalent protection to the public.

16536 Section 354. Section **31A-8a-203** is amended to read:

16537 **31A-8a-203. Information filed with the department.**

16538 (1) Prior to operating a health discount program, a person must submit the following to
16539 the commissioner:

16540 (a) a copy of contract forms used by the health discount program for:

16541 (i) health care providers or health care provider networks participating in the health
16542 discount program, including the discounts for medical services provided to enrollees;

16543 (ii) marketing;

16544 (iii) administration of the health discount program;

16545 (iv) enrollment;

16546 (v) investment management for the health discount programs; and

16547 (vi) subcontracts for any services;

16548 (b) the program's proposed marketing plan; and

16549 (c) dispute resolution procedures for program holders.

16550 (2) The company must file prior to use:
16551 (a) the form of contracts used by the health discount program operator;
16552 (b) the marketing plan; and
16553 (c) dispute resolution procedures.
16554 (3) The commissioner may adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
16555 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this section.

16556 Section 355. Section **31A-8a-210** is amended to read:

16557 **31A-8a-210. Rulemaking authority.**

16558 The commissioner has authority to adopt administrative rules in accordance with [~~Title~~
16559 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

- 16560 (1) to enforce this chapter; and
16561 (2) as necessary to protect the public interest.

16562 Section 356. Section **31A-12-107** is amended to read:

16563 **31A-12-107. Governmental immunity.**

16564 Notwithstanding any other provision of this title, a governmental entity is not an insurer
16565 for purposes of this title and is not engaged in the business of insurance to the extent that it is:

- 16566 (1) covering its own liabilities under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7,
16567 Governmental Immunity Act of Utah; or
16568 (2) engaging in other related risk management activities related to the normal course of
16569 its activities.

16570 Section 357. Section **31A-14-217** is amended to read:

16571 **31A-14-217. Revocation of certificate of authority.**

16572 Whenever there would be grounds for delinquency proceedings under Chapter 27a,
16573 Insurer Receivership Act, against a foreign insurer, if the foreign insurer were a domestic
16574 insurer, the commissioner may, after any proceeding authorized by [~~Title 63, Chapter 46b~~] Title
16575 63G, Chapter 4, Administrative Procedures Act, revoke, suspend, or limit the foreign insurer's
16576 certificate of authority. This action does not affect insurance which has already been issued.
16577 The insurer remains subject to regulation until released under Section 31A-14-216.

16578 Section 358. Section **31A-17-503** is amended to read:

16579 **31A-17-503. Actuarial opinion of reserves.**

16580 (1) This section becomes operative on December 31, 1993.

16581 (2) General: Every life insurance company doing business in this state shall annually
16582 submit the opinion of a qualified actuary as to whether the reserves and related actuarial items
16583 held in support of the policies and contracts specified by the commissioner by rule are computed
16584 appropriately, are based on assumptions which satisfy contractual provisions, are consistent
16585 with prior reported amounts, and comply with applicable laws of this state. The commissioner
16586 by rule shall define the specifics of this opinion and add any other items considered to be
16587 necessary to its scope.

16588 (3) Actuarial analysis of reserves and assets supporting reserves:

16589 (a) Every life insurance company, except as exempted by or pursuant to rule, shall also
16590 annually include in the opinion required by Subsection (2), an opinion of the same qualified
16591 actuary as to whether the reserves and related actuarial items held in support of the policies and
16592 contracts specified by the commissioner by rule, when considered in light of the assets held by
16593 the company with respect to the reserves and related actuarial items, including but not limited to
16594 the investment earnings on the assets and the considerations anticipated to be received and
16595 retained under the policies and contracts, make adequate provision for the company's
16596 obligations under the policies and contracts, including but not limited to the benefits under the
16597 expenses associated with the policies and contracts.

16598 (b) The commissioner may provide by rule for a transition period for establishing any
16599 higher reserves which the qualified actuary may consider necessary in order to render the
16600 opinion required by this section.

16601 (4) Requirement for opinion under Subsection (3): Each opinion required by Subsection
16602 (3) shall be governed by the following provisions:

16603 (a) A memorandum, in form and substance acceptable to the commissioner as specified
16604 by rule, shall be prepared to support each actuarial opinion.

16605 (b) If the insurance company fails to provide a supporting memorandum at the request

16606 of the commissioner within a period specified by rule or the commissioner determines that the
16607 supporting memorandum provided by the insurance company fails to meet the standards
16608 prescribed by the rule or is otherwise unacceptable to the commissioner, the commissioner may
16609 engage a qualified actuary at the expense of the company to review the opinion and the basis for
16610 the opinion and prepare such supporting memorandum as is required by the commissioner.

16611 (5) Requirement for all opinions: Every opinion shall be governed by the following
16612 provisions:

16613 (a) The opinion shall be submitted with the annual statement reflecting the valuation of
16614 the reserve liabilities for each year ending on or after December 31, 1993.

16615 (b) The opinion shall apply to all business in force including individual and group health
16616 insurance plans, in form and substance acceptable to the commissioner as specified by rule.

16617 (c) The opinion shall be based on standards adopted from time to time by the Actuarial
16618 Standards Board and on such additional standards as the commissioner may by rule prescribe.

16619 (d) In the case of an opinion required to be submitted by a foreign or alien company, the
16620 commissioner may accept the opinion filed by that company with the insurance supervisory
16621 official of another state if the commissioner determines that the opinion reasonably meets the
16622 requirements applicable to a company domiciled in this state.

16623 (e) For the purposes of this section, "qualified actuary" means a member in good
16624 standing of the American Academy of Actuaries who meets the requirements set forth by
16625 department rule.

16626 (f) Except in cases of fraud or willful misconduct, the qualified actuary is not liable for
16627 damages to any person, other than the insurance company and the commissioner, for any act,
16628 error, omission, decision, or conduct with respect to the actuary's opinion.

16629 (g) Disciplinary action by the commissioner against the company or the qualified
16630 actuary shall be defined in rules by the commissioner.

16631 (h) Any memorandum in support of the opinion, and any other material provided by the
16632 company to the commissioner in connection therewith, are considered protected records under
16633 Section [~~63-2-304~~] 63G-2-305 and may not be made public and are not subject to subpoena

16634 under Subsection [~~63-2-202~~] 63G-2-202(7), other than for the purpose of defending an action
16635 seeking damages from any person by reason of any action required by this section or rules
16636 promulgated under this section. However, the memorandum or other material may otherwise be
16637 released by the commissioner (i) with the written consent of the company or (ii) to the
16638 American Academy of Actuaries upon request stating that the memorandum or other material is
16639 required for the purpose of professional disciplinary proceedings and setting forth procedures
16640 satisfactory to the commissioner for preserving the confidentiality of the memorandum or other
16641 material. Once any portion of the confidential memorandum is cited in its marketing or is cited
16642 before any governmental agency other than the department or is released to the news media, all
16643 portions of the memorandum are no longer confidential.

16644 Section 359. Section **31A-19a-211 (Superseded 07/01/08)** is amended to read:

16645 **31A-19a-211 (Superseded 07/01/08). Premium rate reduction for seniors -- Motor**
16646 **vehicle accident prevention course -- Curriculum -- Certificate -- Exception.**

16647 (1) (a) Each rate, rating schedule, and rating manual for the liability, personal injury
16648 protection, and collision coverages of private passenger motor vehicle insurance policies
16649 submitted to or filed with the commissioner shall provide for an appropriate reduction in
16650 premium charges for those coverages if the principal operator of the covered vehicle:

16651 (i) is a named insured who is 55 years of age or older; and

16652 (ii) has successfully completed a motor vehicle accident prevention course as outlined in
16653 Subsection (2).

16654 (b) Any premium reduction provided by an insurer under this section is presumed to be
16655 appropriate unless credible data demonstrates otherwise.

16656 (2) (a) The curriculum for a motor vehicle accident prevention course under this section
16657 shall include:

16658 (i) how impairment of visual and audio perception affects driving performance and how
16659 to compensate for that impairment;

16660 (ii) the effects of fatigue, medications, and alcohol on driving performance, when
16661 experienced alone or in combination, and precautionary measures to prevent or offset ill effects;

16662 (iii) updates on rules of the road and equipment, including safety belts and safe, efficient
16663 driving techniques under present day road and traffic conditions;

16664 (iv) how to plan travel time and select routes for safety and efficiency; and

16665 (v) how to make crucial decisions in dangerous, hazardous, and unforeseen situations.

16666 (b) (i) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
16667 Administrative Rulemaking Act, the Department of Public Safety may make rules to establish
16668 and clarify standards pertaining to the curriculum and teaching methods of a course under this
16669 section.

16670 (ii) These rules may include provisions allowing the department to conduct on-site visits
16671 to ensure compliance with agency rules and this chapter.

16672 (iii) These rules shall be specific as to time and manner of visits and provide for
16673 methods to prohibit or remedy forcible visits.

16674 (3) (a) The premium reduction required by this section shall be effective for a named
16675 insured for a three-year period after successful completion of the course outlined in Subsection
16676 (2).

16677 (b) The insurer may require, as a condition of maintaining the premium reduction, that
16678 the named insured not be convicted or plead guilty or nolo contendere to a moving traffic
16679 violation for which points may be assessed against the named insured's driver license except for
16680 a violation under Subsection 53-3-221(11).

16681 (4) Each person who successfully completes the course outlined in Subsection (2) shall
16682 be issued a certificate by the organization offering the course. The certificate qualifies the
16683 person for the premium reduction required by this section.

16684 (5) This section does not apply if the approved course outlined in Subsection (2) is
16685 attended as a penalty imposed by a court or other governmental entity for a moving traffic
16686 violation.

16687 Section 360. Section **31A-19a-211 (Effective 07/01/08)** is amended to read:

16688 **31A-19a-211 (Effective 07/01/08). Premium rate reduction for seniors -- Motor**
16689 **vehicle accident prevention course -- Curriculum -- Certificate -- Exception.**

16690 (1) (a) Each rate, rating schedule, and rating manual for the liability, personal injury
16691 protection, and collision coverages of private passenger motor vehicle insurance policies
16692 submitted to or filed with the commissioner shall provide for an appropriate reduction in
16693 premium charges for those coverages if the principal operator of the covered vehicle:
16694 (i) is a named insured who is 55 years of age or older; and
16695 (ii) has successfully completed a motor vehicle accident prevention course as outlined in
16696 Subsection (2).
16697 (b) Any premium reduction provided by an insurer under this section is presumed to be
16698 appropriate unless credible data demonstrates otherwise.
16699 (2) (a) The curriculum for a motor vehicle accident prevention course under this section
16700 shall include:
16701 (i) how impairment of visual and audio perception affects driving performance and how
16702 to compensate for that impairment;
16703 (ii) the effects of fatigue, medications, and alcohol on driving performance, when
16704 experienced alone or in combination, and precautionary measures to prevent or offset ill effects;
16705 (iii) updates on rules of the road and equipment, including safety belts and safe, efficient
16706 driving techniques under present day road and traffic conditions;
16707 (iv) how to plan travel time and select routes for safety and efficiency; and
16708 (v) how to make crucial decisions in dangerous, hazardous, and unforeseen situations.
16709 (b) (i) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
16710 Administrative Rulemaking Act, the Department of Public Safety may make rules to establish
16711 and clarify standards pertaining to the curriculum and teaching methods of a course under this
16712 section.
16713 (ii) These rules may include provisions allowing the department to conduct on-site visits
16714 to ensure compliance with agency rules and this chapter.
16715 (iii) These rules shall be specific as to time and manner of visits and provide for
16716 methods to prohibit or remedy forcible visits.
16717 (3) (a) The premium reduction required by this section shall be effective for a named

16718 insured for a three-year period after successful completion of the course outlined in Subsection
16719 (2).

16720 (b) The insurer may require, as a condition of maintaining the premium reduction, that
16721 the named insured not be convicted or plead guilty or nolo contendere to a moving traffic
16722 violation for which points may be assessed against the named insured's driver license except for
16723 a violation under Subsection 53-3-221(12).

16724 (4) Each person who successfully completes the course outlined in Subsection (2) shall
16725 be issued a certificate by the organization offering the course. The certificate qualifies the
16726 person for the premium reduction required by this section.

16727 (5) This section does not apply if the approved course outlined in Subsection (2) is
16728 attended as a penalty imposed by a court or other governmental entity for a moving traffic
16729 violation.

16730 Section 361. Section **31A-19a-304** is amended to read:

16731 **31A-19a-304. Probation.**

16732 (1) (a) In any circumstances that would justify a suspension under Section
16733 31A-19a-303, instead of a suspension, the commissioner may, after a hearing, put the licensee
16734 on probation for a specified period not to exceed 12 months from the date of probation.

16735 (b) The probation order shall state the conditions for retention of the license, which
16736 shall be reasonable.

16737 (2) Violation of the probation constitutes grounds for revocation pursuant to a
16738 proceeding authorized under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
16739 Procedures Act.

16740 Section 362. Section **31A-21-109** is amended to read:

16741 **31A-21-109. Debt cancellation agreements and debt suspension agreements.**

16742 (1) As used in this section:

16743 (a) "Debt cancellation agreement" means a contract between a lender and a borrower
16744 where the lender, for a separately stated consideration, agrees to waive all or part of the debt in
16745 the event of a fortuitous event such as death, disability, or the destruction of the lender's

16746 collateral.

16747 (b) "Debt suspension agreement" means a contract between a lender and a borrower

16748 where the lender, for a separately stated consideration, agrees to suspend scheduled installment

16749 payments for an agreed period of time in the event of a:

16750 (i) fortuitous event such as involuntary unemployment or accident; or

16751 (ii) fortuitous condition such as sickness.

16752 (c) "Institution" means:

16753 (i) a bank as defined in Section 7-1-103;

16754 (ii) a credit union as defined in Section 7-1-103;

16755 (iii) an industrial bank as defined in Section 7-1-103; or

16756 (iv) a savings and loan association as defined in Section 7-1-103.

16757 (d) "Regulate the issuance" includes regulation of the following with respect to a debt

16758 cancellation agreement or a debt suspension agreement:

16759 (i) terms;

16760 (ii) conditions;

16761 (iii) rates;

16762 (iv) forms; and

16763 (v) claims.

16764 (e) "Subsidiary" is as defined in Section 7-1-103.

16765 (2) Except as provided in Subsection (6), the commissioner has sole jurisdiction over

16766 the regulation of a debt cancellation agreement or debt suspension agreement.

16767 (3) Subject to this section, the commissioner may by rule, made in accordance with

16768 ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

16769 (a) authorize an insurer to issue:

16770 (i) a debt cancellation agreement; or

16771 (ii) a debt suspension agreement; and

16772 (b) regulate the issuance of:

16773 (i) a debt cancellation agreement; or

16774 (ii) a debt suspension agreement.

16775 (4) Except as provided in Subsection (6), a debt cancellation agreement or a debt
16776 suspension agreement may be issued only by an insurer authorized to issue a debt cancellation
16777 agreement or debt suspension agreement under this section.

16778 (5) (a) The rules promulgated by the commissioner under this section shall regulate the
16779 issuance of a debt cancellation agreement or debt suspension agreement according to the
16780 functional insurance equivalent of each type of debt cancellation agreement or debt suspension
16781 agreement.

16782 (b) Except as provided in Subsection (5)(c), in accordance with [~~Title 63, Chapter 46a~~]
16783 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commissioner may by rule
16784 determine the functional insurance equivalent of each type of debt cancellation agreement or
16785 debt suspension agreement.

16786 (c) Notwithstanding Subsection (5)(b), the functional insurance equivalent of a debt
16787 cancellation agreement that provides for the cancellation of indebtedness at death is credit life
16788 insurance.

16789 (6) Notwithstanding the other provisions of this section, the issuance of a debt
16790 cancellation agreement or a debt suspension agreement by an institution or a subsidiary of an
16791 institution is:

16792 (a) not subject to this section; and

16793 (b) subject to the jurisdiction of the primary regulator of:

16794 (i) the institution; or

16795 (ii) the subsidiary of an institution.

16796 Section 363. Section **31A-22-315** is amended to read:

16797 **31A-22-315. Motor vehicle insurance reporting -- Penalty.**

16798 (1) (a) As used in this section, "commercial motor vehicle insurance coverage" means
16799 an insurance policy that:

16800 (i) includes motor vehicle liability coverage, uninsured motorist coverage, underinsured
16801 motorist coverage, or personal injury coverage; and

16802 (ii) is defined by the department.

16803 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
16804 Administrative Rulemaking Act, the department shall make rules defining commercial motor
16805 vehicle insurance coverage.

16806 (2) (a) Except as provided in Subsections (2)(b) and (c), each insurer that issues a
16807 policy that includes motor vehicle liability coverage, uninsured motorist coverage, underinsured
16808 motorist coverage, or personal injury coverage under this part shall before the seventh and
16809 twenty-first day of each calendar month provide to the Department of Public Safety's designated
16810 agent selected in accordance with Title 41, Chapter 12a, Part 8, Uninsured Motorist
16811 Identification Database Program, a record of each motor vehicle insurance policy in effect for
16812 vehicles registered or garaged in Utah as of the previous submission that was issued by the
16813 insurer.

16814 (b) Each insurer that issues commercial motor vehicle insurance coverage shall before
16815 the seventh day of each calendar month provide to the Department of Public Safety's designated
16816 agent selected in accordance with Title 41, Chapter 12a, Part 8, Uninsured Motorist
16817 Identification Database Program, a record of each commercial motor vehicle insurance policy in
16818 effect for vehicles registered or garaged in Utah as of the previous month that was issued by the
16819 insurer.

16820 (c) An insurer that issues a policy that includes motor vehicle liability coverage,
16821 uninsured motorist coverage, underinsured motorist coverage, or personal injury coverage
16822 under this part is not required to provide a record of a motor vehicle insurance policy in effect
16823 for a vehicle to the Department of Public Safety's designated agent under Subsection (2)(a) or
16824 (b) if the policy covers a vehicle that is registered under Section 41-1a-221, 41-1a-222, or
16825 41-1a-301.

16826 (d) This Subsection (2) does not preclude more frequent reporting.

16827 (3) (a) A record provided by an insurer under Subsection (2)(a) shall include:

16828 (i) the name, date of birth, and driver license number, if the insured provides a driver
16829 license number to the insurer, of each insured owner or operator, and the address of the named

16830 insured;

16831 (ii) the make, year, and vehicle identification number of each insured vehicle; and

16832 (iii) the policy number, effective date, and expiration date of each policy.

16833 (b) A record provided by an insurer under Subsection (2)(b) shall include:

16834 (i) the named insured;

16835 (ii) the policy number, effective date, and expiration date of each policy; and

16836 (iii) the following information, if available:

16837 (A) the name, date of birth, and driver license number of each insured owner or

16838 operator, and the address of the named insured; and

16839 (B) the make, year, and vehicle identification number of each insured vehicle.

16840 (4) Each insurer shall provide this information by an electronic means or by another

16841 form the Department of Public Safety's designated agent agrees to accept.

16842 (5) (a) The commissioner may, following procedures set forth in [~~Title 63, Chapter 46b]~~

16843 Title 63G, Chapter 4, Administrative Procedures Act, assess a fine against an insurer of up to

16844 \$250 for each day the insurer fails to comply with this section.

16845 (b) If an insurer shows that the failure to comply with this section was inadvertent,

16846 accidental, or the result of excusable neglect, the commissioner shall excuse the fine.

16847 Section 364. Section **31A-22-320** is amended to read:

16848 **31A-22-320. Use of credit information.**

16849 (1) For purposes of this section:

16850 (a) "Credit information" means:

16851 (i) a consumer report;

16852 (ii) a credit score;

16853 (iii) any information obtained by the insurer from a consumer report;

16854 (iv) any part of a consumer report; or

16855 (v) any part of a credit score.

16856 (b) (i) Except as provided in Subsection (1)(b)(ii), "consumer report" is as defined in 15

16857 U.S.C. 1681a.

- 16858 (ii) "Consumer report" does not include:
- 16859 (A) a motor vehicle record obtained from a state or an agency of a state; or
- 16860 (B) any information regarding an applicant's or insured's insurance claim history.
- 16861 (c) (i) "Credit score" means a numerical value or a categorization that is:
- 16862 (A) derived from information in a consumer report;
- 16863 (B) derived from a statistical tool or modeling system; and
- 16864 (C) developed to predict the likelihood of:
- 16865 (I) future insurance claims behavior; or
- 16866 (II) credit behavior.
- 16867 (ii) "Credit score" includes:
- 16868 (A) a risk predictor; or
- 16869 (B) a risk score.
- 16870 (iii) A numerical value or a categorization described in Subsection (1)(c)(i) is a credit
- 16871 score if it is developed to predict the behavior described in Subsection (1)(c)(i)(C) regardless of
- 16872 whether it is developed to predict other factors in addition to predicting the behavior described
- 16873 in Subsection (1)(c)(i)(C).
- 16874 (d) "Motor vehicle related insurance policy" means:
- 16875 (i) a motor vehicle liability policy;
- 16876 (ii) a policy that contains uninsured motorist coverage;
- 16877 (iii) a policy that contains underinsured motorist coverage;
- 16878 (iv) a policy that contains property damage coverage under this part; or
- 16879 (v) a policy that contains personal injury coverage under this part.
- 16880 (2) An insurer that issues a motor vehicle related insurance policy:
- 16881 (a) except as provided in Subsection (2)(b), may not use credit information for the
- 16882 purpose of determining for the motor vehicle related insurance policy:
- 16883 (i) renewal;
- 16884 (ii) nonrenewal;
- 16885 (iii) termination;

16886 (iv) eligibility;

16887 (v) underwriting; or

16888 (vi) rating; and

16889 (b) notwithstanding Subsection (2)(a), may use credit information for the purpose of:

16890 (i) if risk related factors other than credit information are considered, determining initial

16891 underwriting; or

16892 (ii) providing to an insured:

16893 (A) a reduction in rates paid by the insured for the motor vehicle related insurance

16894 policy; or

16895 (B) any other discount similar to the reduction in rates described in Subsection

16896 (2)(b)(ii)(A).

16897 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

16898 Administrative Rulemaking Act, the commissioner may make rules necessary to enforce this

16899 section.

16900 Section 365. Section **31A-22-403** is amended to read:

16901 **31A-22-403. Incontestability.**

16902 (1) This section does not apply to group policies.

16903 (2) (a) Except as provided in Subsection (3), a life insurance policy is incontestable

16904 after the policy has been in force for a period of two years from the policy's date of issue:

16905 (i) during the lifetime of the insured; or

16906 (ii) for a survivorship life insurance policy, during the lifetime of the surviving insured.

16907 (b) A life insurance policy shall state that the life insurance policy is incontestable after

16908 the time period described in Subsection (2)(a).

16909 (3) (a) A life insurance policy described in Subsection (2) may be contested for

16910 nonpayment of premiums.

16911 (b) A life insurance policy described in Subsection (2) may be contested as to:

16912 (i) provisions relating to accident and health benefits allowed under Section

16913 31A-22-609; and

- 16914 (ii) additional benefits in the event of death by accident.
- 16915 (c) If a life insurance policy described in Subsection (2) allows the insured, after the
- 16916 policy's issuance and for an additional premium, to obtain a death benefit that is larger than
- 16917 when the policy was originally issued, the payment of the additional increment of benefit is
- 16918 contestable:
- 16919 (i) until two years after the incremental increase of benefits; and
- 16920 (ii) based only on a ground that may arise in connection with the incremental increase.
- 16921 (4) (a) A reinstated life insurance policy may be contested:
- 16922 (i) for two years following reinstatement on the same basis as at original issuance; and
- 16923 (ii) only as to matters arising in connection with the reinstatement.
- 16924 (b) Any grounds for contest available at original issuance continue to be available for
- 16925 contest until the policy has been in force for a total of two years:
- 16926 (i) during the lifetime of the insured; and
- 16927 (ii) for a survivorship life insurance policy, during the lifetime of the surviving insured.
- 16928 (5) (a) The limitations on incontestability under this section:
- 16929 (i) preclude only a contest of the validity of the policy; and
- 16930 (ii) do not preclude the good faith assertion at any time of defenses based upon
- 16931 provisions in the policy that exclude or qualify coverage, whether or not those qualifications or
- 16932 exclusions are specifically excepted in the policy's incontestability clause.
- 16933 (b) A provision on which the contestable period would normally run may not be
- 16934 reformulated as a coverage exclusion or restriction to take advantage of this Subsection (5).
- 16935 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 16936 Administrative Rulemaking Act, the commissioner may make rules to implement this section.
- 16937 Section 366. Section **31A-22-409** is amended to read:
- 16938 **31A-22-409. Standard Nonforfeiture Law for Individual Deferred Annuities.**
- 16939 (1) This section is known as the "Standard Nonforfeiture Law for Individual Deferred
- 16940 Annuities."
- 16941 (2) This section does not apply to:

- 16942 (a) any reinsurance;
- 16943 (b) a group annuity purchased under a retirement plan or plan of deferred
- 16944 compensation:
- 16945 (i) established or maintained by:
- 16946 (A) an employer, including a partnership or sole proprietorship;
- 16947 (B) an employee organization; or
- 16948 (C) both an employer and an employee organization; and
- 16949 (ii) other than a plan providing individual retirement accounts or individual retirement
- 16950 annuities under Section 408, Internal Revenue Code;
- 16951 (c) a premium deposit fund;
- 16952 (d) a variable annuity;
- 16953 (e) an investment annuity;
- 16954 (f) an immediate annuity;
- 16955 (g) a deferred annuity contract after annuity payments have commenced;
- 16956 (h) a reversionary annuity; or
- 16957 (i) any contract that shall be delivered outside this state through an agent or other
- 16958 representative of the company issuing the contract.
- 16959 (3) (a) If a policy is issued after this section takes effect as set forth in Subsection (15),
- 16960 a contract of annuity, except as stated in Subsection (2), may not be delivered or issued for
- 16961 delivery in this state unless the contract of annuity contains in substance:
- 16962 (i) the provisions described in Subsection (3)(b); or
- 16963 (ii) provisions corresponding to the provisions described in Subsection (3)(b) that in the
- 16964 opinion of the commissioner are at least as favorable to the contractholder, governing cessation
- 16965 of payment of consideration under the contract.
- 16966 (b) Subsection (3)(a)(i) requires the following provisions:
- 16967 (i) the company shall grant a paid-up annuity benefit on a plan stipulated in the contract
- 16968 of such a value as specified in Subsections (7), (8), (9), (10), and (12):
- 16969 (A) upon cessation of payment of consideration under a contract; or

16970 (B) upon a written request of the contract owner;

16971 (ii) if a contract provides for a lump-sum settlement at maturity, or at any other time,

16972 upon surrender of the contract at or before the commencement of any annuity payments, the

16973 company shall pay in lieu of any paid-up annuity benefit a cash surrender benefit of such amount

16974 as is specified in Subsections (7), (8), (10), and (12);

16975 (iii) a statement of the mortality table, if any, and interest rates used in calculating any

16976 of the following that are guaranteed under the contract:

16977 (A) minimum paid-up annuity benefits;

16978 (B) cash surrender benefits; or

16979 (C) death benefits;

16980 (iv) sufficient information to determine the amounts of the benefits described in

16981 Subsection (3)(b)(iii);

16982 (v) a statement that any paid-up annuity, cash surrender, or death benefits that may be

16983 available under the contract are not less than the minimum benefits required by any statute of

16984 the state in which the contract is delivered; and

16985 (vi) an explanation of the manner in which the benefits described in Subsection (3)(b)(v)

16986 are altered by the existence of any:

16987 (A) additional amounts credited by the company to the contract;

16988 (B) indebtedness to the company on the contract; or

16989 (C) prior withdrawals from or partial surrender of the contract.

16990 (c) Notwithstanding the requirements of this Subsection (3), any deferred annuity

16991 contract may provide that if no consideration has been received under a contract for a period of

16992 two full years and the portion of the paid-up annuity benefit at maturity on the plan stipulated in

16993 the contract arising from consideration paid before the period would be less than \$20 monthly:

16994 (i) the company may at the company's option terminate the contract by payment in cash

16995 of the then present value of such portion of the paid-up annuity benefit, calculated on the basis

16996 of the mortality table specified in the contract, if any, and the interest rate specified in the

16997 contract for determining the paid-up annuity benefit; and

16998 (ii) the payment described in Subsection (3)(c)(i), relieves the company of any further
16999 obligation under the contract.

17000 (d) A company may reserve the right to defer the payment of cash surrender benefit for
17001 a period not to exceed six months after demand for the payment of the cash surrender benefit
17002 with surrender of the contract.

17003 (4) For a policy issued before June 1, 2006, the minimum values as specified in
17004 Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits
17005 available under an annuity contract shall be based upon minimum nonforfeiture amounts as
17006 established in this Subsection (4).

17007 (a) (i) With respect to contracts providing for flexible considerations, the minimum
17008 nonforfeiture amount at any time at or before the commencement of any annuity payments shall
17009 be equal to an accumulation up to such time, at a rate of interest of 3% per annum of
17010 percentages of the net considerations paid prior to such time:

17011 (A) decreased by the sum of:

17012 (I) any prior withdrawals from or partial surrenders of the contract accumulated at a
17013 rate of interest of 3% per annum; and

17014 (II) the amount of any indebtedness to the company on the contract, including interest
17015 due and accrued; and

17016 (B) increased by any existing additional amounts credited by the company to the
17017 contract.

17018 (ii) For purposes of this Subsection (4)(a), the net consideration for a given contract
17019 year used to define the minimum nonforfeiture amount shall be:

17020 (A) an amount not less than zero; and

17021 (B) equal to the corresponding gross considerations credited to the contract during that
17022 contract year less:

17023 (I) an annual contract charge of \$30; and

17024 (II) a collection charge of \$1.25 per consideration credited to the contract during that
17025 contract year.

17026 (iii) The percentages of net considerations shall be:
17027 (A) 65% of the net consideration for the first contract year; and
17028 (B) 87-1/2% of the net considerations for the second and later contract years.
17029 (iv) Notwithstanding Subsection (4)(a)(iii), the percentage shall be 65% of the portion
17030 of the total net consideration for any renewal contract year that exceeds by not more than two
17031 times the sum of those portions of the net considerations in all prior contract years for which the
17032 percentage was 65%.

17033 (b) (i) Except as provided in Subsections (4)(b)(ii) and (iii), with respect to contracts
17034 providing for fixed scheduled consideration, minimum nonforfeiture amounts shall be:
17035 (A) calculated on the assumption that considerations are paid annually in advance; and
17036 (B) defined as for contracts with flexible considerations that are paid annually.
17037 (ii) The portion of the net consideration for the first contract year to be accumulated
17038 shall be equal to an amount that is the sum of:
17039 (A) 65% of the net consideration for the first contract year; and
17040 (B) 22-1/2% of the excess of the net consideration for the first contract year over the
17041 lesser of the net considerations for:
17042 (I) the second contract year; and
17043 (II) the third contract year.
17044 (iii) The annual contract charge shall be the lesser of \$30 or 10% of the gross annual
17045 consideration.

17046 (c) With respect to contracts providing for a single consideration payment, minimum
17047 nonforfeiture amounts shall be defined as for contracts with flexible considerations except that:
17048 (i) the percentage of net consideration used to determine the minimum nonforfeiture
17049 amount shall be equal to 90%; and
17050 (ii) the net consideration shall be the gross consideration less a contract charge of \$75.
17051 (5) For a policy issued on or after June 1, 2006, the minimum values as specified in
17052 Subsections (7), (8), (9), (10), and (12) of any paid-up annuity, cash surrender, or death benefits
17053 available under an annuity contract shall be based upon minimum nonforfeiture amounts as

17054 established in this Subsection (5).

17055 (a) The minimum nonforfeiture amount at any time at or before the commencement of
17056 any annuity payments shall be equal to an accumulation up to such time, at rates of interest as
17057 indicated in Subsection (5)(b), of 87-1/2% of the gross considerations paid before such time
17058 decreased by the sum of:

17059 (i) any prior withdrawals from or partial surrenders of the contract accumulated at rates
17060 of interest as indicated in Subsection (5)(b);

17061 (ii) an annual contract charge of \$50, accumulated at rates of interest as indicated in
17062 Subsection (5)(b);

17063 (iii) any premium tax paid by the company for the contract, accumulated at rates of
17064 interest as indicated in Subsection (5)(b); and

17065 (iv) the amount of any indebtedness to the company on the contract, including interest
17066 due and accrued.

17067 (b) (i) The interest rate used in determining minimum nonforfeiture amounts shall be an
17068 annual rate of interest determined as the lesser of:

17069 (A) 3% per annum; and

17070 (B) the five-year Constant Maturity Treasury Rate reported by the Federal Reserve,
17071 rounded to the nearest 1/20th of 1%, as of a date or average over a period no longer than 15
17072 months prior to the contract issue date or redetermination date under Subsection (5)(b)(iii):

17073 (I) reduced by 125 basis points; and

17074 (II) where the resulting interest rate is not less than 1%.

17075 (ii) The interest rate shall apply for an initial period and may be redetermined for
17076 additional periods.

17077 (iii) (A) If the interest rate will be reset, the contract shall state:

17078 (I) the initial period;

17079 (II) the redetermination date;

17080 (III) the redetermination basis; and

17081 (IV) the redetermination period.

17082 (B) The basis is the date or average over a specified period that produces the value of
17083 the five-year Constant Maturity Treasury Rate to be used at each redetermination date.

17084 (c) (i) During the period or term that a contract provides substantive participation in an
17085 equity indexed benefit, the reduction described in Subsection (5)(b)(i)(B)(I) may be increased by
17086 up to an additional 100 basis points to reflect the value of the equity index benefit.

17087 (ii) The present value of the additional reduction at the contract issue date and at each
17088 redetermination date may not exceed the market value of the benefit.

17089 (iii) (A) The commissioner may require a demonstration that the present value of the
17090 additional reduction does not exceed the market value of the benefit.

17091 (B) If the demonstration required under Subsection (5)(c)(iii)(A) is not made to the
17092 satisfaction of the commissioner, the commissioner may disallow or limit the additional
17093 reduction.

17094 (6) Notwithstanding Subsection (4), for a policy issued on or after June 1, 2004 and
17095 before June 1, 2006, at the election of a company, on a contract form-by-contract form basis,
17096 the minimum values as specified in Subsections (7), (8), (9), (10), and (12) of any paid-up
17097 annuity, cash surrender, or death benefits available under an annuity contract may be based upon
17098 minimum nonforfeiture amounts as established in Subsection (5).

17099 (7) (a) Any paid-up annuity benefit available under a contract shall be such that the
17100 contract's present value on the date annuity payments are to commence is at least equal to the
17101 minimum nonforfeiture amount on that date.

17102 (b) The present value described in Subsection (7)(a) shall be computed using the
17103 mortality table, if any, and the interest rate specified in the contract for determining the
17104 minimum paid-up annuity benefits guaranteed in the contract.

17105 (8) (a) For contracts that provide cash surrender benefits, the cash surrender benefits
17106 available before maturity may not be less than the present value as of the date of surrender of
17107 that portion of the cash surrender value that would be provided under the contract at maturity
17108 arising from considerations paid before the time of cash surrender:

17109 (i) decreased by the amount appropriate to reflect any prior withdrawals from or partial

17110 surrender of the contract;

17111 (ii) decreased by the amount of any indebtedness to the company on the contract,
17112 including interest due and accrued; and

17113 (iii) increased by any existing additional amounts credited by the company to the
17114 contract.

17115 (b) For purposes of this Subsection (8), the present value being calculated on the basis
17116 of an interest rate not more than 1% higher than the interest rate specified in the contract for
17117 accumulating the net considerations to determine the maturity value.

17118 (c) In no event shall any cash surrender benefit be less than the minimum nonforfeiture
17119 amount at that time.

17120 (d) The death benefit under a contract described in Subsection (8)(a) shall be at least
17121 equal to the cash surrender benefit.

17122 (9) (a) For contracts that do not provide cash surrender benefits, the present value of
17123 any paid-up annuity benefit available as a nonforfeiture option at any time prior to maturity may
17124 not be less than the present value of that portion of the maturity value of the paid-up annuity
17125 benefit provided under the contract arising from considerations paid before the time the contract
17126 is surrendered in exchange for, or changed to, a deferred paid-up annuity increased by any
17127 existing additional amounts credited by the company to the contract.

17128 (b) For purposes of this Subsection (9), the present value being calculated for the
17129 period prior to the maturity date on the basis of the interest rate specified in the contract for
17130 accumulating the net considerations to determine maturity value.

17131 (c) For contracts that do not provide any death benefits before commencement of any
17132 annuity payments, the present values shall be calculated on the basis of the interest rate and the
17133 mortality table specified in the contract for determining the maturity value of the paid-up
17134 annuity benefit.

17135 (d) In no event shall the present value of a paid-up annuity benefit be less than the
17136 minimum nonforfeiture amount at that time.

17137 (10) (a) For the purpose of determining the benefits calculated under Subsections (8)

17138 and (9), the maturity date shall be considered to be the latest date permitted by the contract,
17139 except that it may not be considered to be later than the later of:

- 17140 (i) the anniversary of the contract next following the annuitant's 70th birthday; or
- 17141 (ii) the tenth anniversary of the contract.

17142 (b) For a contract that provides cash surrender benefits, the cash surrender value on or
17143 past the maturity date shall be equal to the amount used to determine the annuity benefit
17144 payments.

17145 (c) A surrender charge may not be imposed on or past maturity.

17146 (11) Any contract that does not provide cash surrender benefits or does not provide
17147 death benefits at least equal to the minimum nonforfeiture amount before the commencement of
17148 any annuity payments shall include a statement in a prominent place in the contract that these
17149 benefits are not provided.

17150 (12) Any paid-up annuity, cash surrender, or death benefits available at any time, other
17151 than on the contract anniversary under any contract with fixed scheduled considerations, shall
17152 be calculated with allowance for the lapse of time and the payment of any scheduled
17153 considerations beyond the beginning of the contract year in which cessation of payment of
17154 considerations under the contract occurs.

17155 (13) (a) For any contract that provides, within the same contract by rider or
17156 supplemental contract provisions, both annuity benefits and life insurance benefits that are in
17157 excess of the greater of cash surrender benefits or a return of the gross considerations with
17158 interest, the minimum nonforfeiture benefits shall:

17159 (i) be equal to the sum of:

17160 (A) the minimum nonforfeiture benefits for the annuity portion; and

17161 (B) the minimum nonforfeiture benefits, if any, for the life insurance portion; and

17162 (ii) computed as if each portion were a separate contract.

17163 (b) (i) Notwithstanding Subsections (7), (8), (9), (10), and (12), additional benefits
17164 payable, as described in Subsection (13)(b)(ii), and consideration for the additional benefits
17165 payable, shall be disregarded in ascertaining, if required by this section:

- 17166 (A) the minimum nonforfeiture amounts;
- 17167 (B) paid-up annuity;
- 17168 (C) cash surrender; and
- 17169 (D) death benefits.
- 17170 (ii) For purposes of this Subsection (13), an additional benefit is a benefit payable:
- 17171 (A) in the event of total and permanent disability;
- 17172 (B) as reversionary annuity or deferred reversionary annuity benefits; or
- 17173 (C) as other policy benefits additional to life insurance, endowment, and annuity
- 17174 benefits.
- 17175 (iii) The inclusion of the additional benefits described in this Subsection (13) may not be
- 17176 required in any paid-up benefits, unless the additional benefits separately would require:
- 17177 (A) minimum nonforfeiture amounts;
- 17178 (B) paid-up annuity;
- 17179 (C) cash surrender; and
- 17180 (D) death benefits.
- 17181 (14) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 17182 Administrative Rulemaking Act, the commissioner may adopt rules necessary to implement this
- 17183 section, including:
- 17184 (a) ensuring that any additional reduction under Subsection (5)(c) is consistent with the
- 17185 requirements imposed by Subsection (5)(c); and
- 17186 (b) providing for adjustments in addition to the adjustments allowed under Subsection
- 17187 (5)(c) to the calculation of minimum nonforfeiture amounts for:
- 17188 (i) contracts that provide substantive participation in an equity index benefit; and
- 17189 (ii) other contracts for which the commissioner determines adjustments are justified.
- 17190 (15) (a) After this section takes effect, any company may file with the commissioner a
- 17191 written notice of its election to comply with this section after a specified date before July 1,
- 17192 1988.
- 17193 (b) This section applies to annuity contracts of a company issued on or after the date

17194 the company specifies in the notice.

17195 (c) If a company makes no election under Subsection (15)(a), the operative date of this
17196 section for such company is July 1, 1988.

17197 Section 367. Section **31A-22-425** is amended to read:

17198 **31A-22-425. Rulemaking authority for standards related to life insurance and**
17199 **annuities.**

17200 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
17201 Rulemaking Act, the commissioner may make rules to establish standards for any of the
17202 following:

17203 (1) if used in connection with the solicitation or sale of life insurance policies and
17204 contracts:

17205 (a) a buyer's guide;

17206 (b) a disclosure;

17207 (c) an illustration;

17208 (d) a policy summary; or

17209 (e) a recommendation; and

17210 (2) in a life insurance policy, annuity contract, or life insurance or annuity certificate:

17211 (a) a definition of a term;

17212 (b) a disclosure;

17213 (c) an exclusion; or

17214 (d) a limitation.

17215 Section 368. Section **31A-22-614.5** is amended to read:

17216 **31A-22-614.5. Uniform claims processing.**

17217 (1) Beginning July 1, 1993, all insurers offering health insurance shall use a uniform
17218 claim form and uniform billing and claim codes.

17219 (2) The uniform claim forms and billing codes shall be adopted and approved by the
17220 commissioner in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17221 Administrative Rulemaking Act. The commissioner shall consult with the director of the

17222 Division of Health Care Financing, the National Uniform Claim Form Task Force, and the
17223 National Uniform Billing Committee when adopting the uniform claims and billing codes.

17224 (3) (a) Beginning July 1, 1995, all insurers shall offer compatible systems of electronic
17225 billing approved by the commissioner in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
17226 Chapter 3, Utah Administrative Rulemaking Act. The systems approved by the commissioner
17227 may include monitoring and disseminating information concerning eligibility and coverage of
17228 individuals.

17229 (b) The commissioner shall regulate any fees charged by insurers to the providers for
17230 uniform claim forms or electronic billing.

17231 Section 369. Section **31A-22-625** is amended to read:

17232 **31A-22-625. Catastrophic coverage of mental health conditions.**

17233 (1) As used in this section:

17234 (a) (i) "Catastrophic mental health coverage" means coverage in a health insurance
17235 policy or health maintenance organization contract that does not impose any lifetime limit,
17236 annual payment limit, episodic limit, inpatient or outpatient service limit, or maximum
17237 out-of-pocket limit that places a greater financial burden on an insured for the evaluation and
17238 treatment of a mental health condition than for the evaluation and treatment of a physical health
17239 condition.

17240 (ii) "Catastrophic mental health coverage" may include a restriction on cost sharing
17241 factors, such as deductibles, copayments, or coinsurance, prior to reaching any maximum
17242 out-of-pocket limit.

17243 (iii) "Catastrophic mental health coverage" may include one maximum out-of-pocket
17244 limit for physical health conditions and another maximum out-of-pocket limit for mental health
17245 conditions, provided that, if separate out-of-pocket limits are established, the out-of-pocket
17246 limit for mental health conditions may not exceed the out-of-pocket limit for physical health
17247 conditions.

17248 (b) (i) "50/50 mental health coverage" means coverage in a health insurance policy or
17249 health maintenance organization contract that pays for at least 50% of covered services for the

17250 diagnosis and treatment of mental health conditions.

17251 (ii) "50/50 mental health coverage" may include a restriction on episodic limits,
17252 inpatient or outpatient service limits, or maximum out-of-pocket limits.

17253 (c) "Large employer" is as defined in Section 31A-1-301.

17254 (d) (i) "Mental health condition" means any condition or disorder involving mental
17255 illness that falls under any of the diagnostic categories listed in the Diagnostic and Statistical
17256 Manual, as periodically revised.

17257 (ii) "Mental health condition" does not include the following when diagnosed as the
17258 primary or substantial reason or need for treatment:

17259 (A) marital or family problem;

17260 (B) social, occupational, religious, or other social maladjustment;

17261 (C) conduct disorder;

17262 (D) chronic adjustment disorder;

17263 (E) psychosexual disorder;

17264 (F) chronic organic brain syndrome;

17265 (G) personality disorder;

17266 (H) specific developmental disorder or learning disability; or

17267 (I) mental retardation.

17268 (e) "Small employer" is as defined in Section 31A-1-301.

17269 (2) (a) At the time of purchase and renewal, an insurer shall offer to each small
17270 employer that it insures or seeks to insure a choice between catastrophic mental health coverage
17271 and 50/50 mental health coverage.

17272 (b) In addition to Subsection (2)(a), an insurer may offer to provide:

17273 (i) catastrophic mental health coverage, 50/50 mental health coverage, or both at levels
17274 that exceed the minimum requirements of this section; or

17275 (ii) coverage that excludes benefits for mental health conditions.

17276 (c) A small employer may, at its option, choose either catastrophic mental health
17277 coverage, 50/50 mental health coverage, or coverage offered under Subsection (2)(b),

17278 regardless of the employer's previous coverage for mental health conditions.

17279 (d) An insurer is exempt from the 30% index rating restriction in Subsection
17280 31A-30-106(1)(b) and, for the first year only that catastrophic mental health coverage is chosen,
17281 the 15% annual adjustment restriction in Subsection 31A-30-106(1)(c)(ii), for any small
17282 employer with 20 or less enrolled employees who chooses coverage that meets or exceeds
17283 catastrophic mental health coverage.

17284 (3) (a) At the time of purchase and renewal, an insurer shall offer catastrophic mental
17285 health coverage to each large employer that it insures or seeks to insure.

17286 (b) In addition to Subsection (3)(a), an insurer may offer to provide catastrophic mental
17287 health coverage at levels that exceed the minimum requirements of this section.

17288 (c) A large employer may, at its option, choose either catastrophic mental health
17289 coverage, coverage that excludes benefits for mental health conditions, or coverage offered
17290 under Subsection (3)(b).

17291 (4) (a) An insurer may provide catastrophic mental health coverage through a managed
17292 care organization or system in a manner consistent with the provisions in Chapter 8, Health
17293 Maintenance Organizations and Limited Health Plans, regardless of whether the policy or
17294 contract uses a managed care organization or system for the treatment of physical health
17295 conditions.

17296 (b) (i) Notwithstanding any other provision of this title, an insurer may:

17297 (A) establish a closed panel of providers for catastrophic mental health coverage; and

17298 (B) refuse to provide any benefit to be paid for services rendered by a nonpanel
17299 provider unless:

17300 (I) the insured is referred to a nonpanel provider with the prior authorization of the
17301 insurer; and

17302 (II) the nonpanel provider agrees to follow the insurer's protocols and treatment
17303 guidelines.

17304 (ii) If an insured receives services from a nonpanel provider in the manner permitted by
17305 Subsection (4)(b)(i)(B), the insurer shall reimburse the insured for not less than 75% of the

17306 average amount paid by the insurer for comparable services of panel providers under a
17307 noncapitated arrangement who are members of the same class of health care providers.

17308 (iii) Nothing in this Subsection (4)(b) may be construed as requiring an insurer to
17309 authorize a referral to a nonpanel provider.

17310 (c) To be eligible for catastrophic mental health coverage, a diagnosis or treatment of a
17311 mental health condition must be rendered:

17312 (i) by a mental health therapist as defined in Section 58-60-102; or

17313 (ii) in a health care facility licensed or otherwise authorized to provide mental health
17314 services pursuant to Title 26, Chapter 21, Health Care Facility Licensing and Inspection Act, or
17315 Title 62A, Chapter 2, Licensure of Programs and Facilities, that provides a program for the
17316 treatment of a mental health condition pursuant to a written plan.

17317 (5) The commissioner may disapprove any policy or contract that provides mental
17318 health coverage in a manner that is inconsistent with the provisions of this section.

17319 (6) The commissioner shall:

17320 (a) adopt rules as necessary to ensure compliance with this section; and

17321 (b) provide general figures on the percentage of contracts and policies that include no
17322 mental health coverage, 50/50 mental health coverage, catastrophic mental health coverage, and
17323 coverage that exceeds the minimum requirements of this section.

17324 (7) The Health and Human Services Interim Committee shall review:

17325 (a) the impact of this section on insurers, employers, providers, and consumers of
17326 mental health services before January 1, 2004; and

17327 (b) make a recommendation as to whether the provisions of this section should be
17328 modified and whether the cost-sharing requirements for mental health conditions should be the
17329 same as for physical health conditions.

17330 (8) (a) An insurer shall offer catastrophic mental health coverage as part of a health
17331 maintenance organization contract that is governed by Chapter 8, Health Maintenance
17332 Organizations and Limited Health Plans, that is in effect on or after January 1, 2001.

17333 (b) An insurer shall offer catastrophic mental health coverage as a part of a health

17334 insurance policy that is not governed by Chapter 8, Health Maintenance Organizations and
17335 Limited Health Plans, that is in effect on or after July 1, 2001.

17336 (c) This section does not apply to the purchase or renewal of an individual insurance
17337 policy or contract.

17338 (d) Notwithstanding Subsection (8)(c), nothing in this section may be construed as
17339 discouraging or otherwise preventing insurers from continuing to provide mental health
17340 coverage in connection with an individual policy or contract.

17341 (9) This section shall be repealed in accordance with Section [~~63-55-231~~] 63I-1-231.

17342 Section 370. Section **31A-22-1308** is amended to read:

17343 **31A-22-1308. Use of loss history by insurers.**

17344 (1) For purposes of this section:

17345 (a) "Adverse eligibility or rate decision" means:

17346 (i) declining insurance coverage;

17347 (ii) terminating insurance coverage;

17348 (iii) not renewing insurance coverage; or

17349 (iv) the charging of a higher rate for insurance coverage.

17350 (b) (i) "Loss reporting agency" means any person who regularly engages, in whole or in
17351 part, in the business of assembling or collecting information for the primary purpose of
17352 providing the information to insurers or insurance producers for insurance transactions including
17353 assembling or collecting loss or claims information.

17354 (ii) Notwithstanding Subsection (1)(b)(i), the following persons are not loss reporting
17355 agents:

17356 (A) a governmental entity;

17357 (B) an insurer;

17358 (C) an insurance producer;

17359 (D) an insurance consultant;

17360 (E) a medical care institution or professional; or

17361 (F) a peer review committee.

17362 (iii) Notwithstanding Subsection (1)(b)(i), the following are not considered a report
17363 from a loss reporting agency:
17364 (A) a report specifically provided for fraud prevention; and
17365 (B) that portion of a report that includes information related to consumer credit
17366 behavior.

17367 (iv) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17368 Administrative Rulemaking Act, the department may define by rule what constitutes:
17369 (A) a report specifically provided for fraud prevention; and
17370 (B) information related to consumer credit behavior.

17371 (c) (i) "Score" means a numerical value, categorization, or classification that is:
17372 (A) derived from a statistical tool, modeling system, or method; and
17373 (B) developed to predict the likelihood of future insurance claims.

17374 (ii) A numerical value, categorization, or classification described in Subsection (1)(c)(i)
17375 is a score if it is developed to predict the likelihood of future insurance claims regardless of
17376 whether it is developed to predict other factors in addition to predicting future insurance claims.

17377 (2) (a) An insurer may not make an adverse eligibility or rate decision related to
17378 personal lines insurance in whole or in part on the basis of:

17379 (i) a report by a loss reporting agency of a loss if the loss did not result in the insured
17380 requesting the payment of a claim;

17381 (ii) a telephone call or other inquiry by an insured of a loss if the loss did not result in
17382 the insured requesting payment of a claim;

17383 (iii) a loss that occurred when real property covered by the personal lines insurance was
17384 owned by a person other than the:

17385 (A) insured; or
17386 (B) person seeking insurance; or

17387 (iv) a score if the score is determined in whole or in part on the basis of information
17388 described in Subsection (2)(a)(i), (ii), or (iii).

17389 (b) Notwithstanding Subsection (2)(a), an insurer may:

17390 (i) use the information described in Subsection (2)(a)(iii) to require a review of the
17391 condition of the premises; and

17392 (ii) make an adverse eligibility or rate decision on the basis of the condition of the
17393 premises.

17394 (3) (a) If an insurer uses a score that is derived from information obtained from a loss
17395 reporting agency or an insured, the insurer shall file with the department a certification that the
17396 method used to derive the score complies with the provisions of Subsection (2)(a)(iv).

17397 (b) the insurer shall file a certification required under Subsection (3)(a) within 30 days
17398 of the day on which the score described in Subsection (3)(a) is first used by the insurer.

17399 (c) The department shall classify a certification filed under this Subsection (3) as a
17400 protected record under Subsection [~~63-2-304~~] 63G-2-305(2) except that the insurer is not
17401 required to file the information specified in Section [~~63-2-308~~] 63G-2-309.

17402 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17403 Administrative Rulemaking Act, the commissioner shall make rules providing for the form and
17404 procedure of filing the certification required by Subsection (3)(a).

17405 Section 371. Section **31A-23a-104** is amended to read:

17406 **31A-23a-104. Application for individual license -- Application for agency license.**

17407 (1) This section applies to an initial or renewal license as a:

17408 (a) producer;

17409 (b) limited line producer;

17410 (c) customer service representative;

17411 (d) consultant;

17412 (e) managing general agent; or

17413 (f) reinsurance intermediary.

17414 (2) (a) Subject to Subsection (2)(b), an initial or renewal individual license shall be:

17415 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

17416 and

17417 (ii) accompanied by a license fee that is not refunded if the application:

17418 (A) is denied; or
17419 (B) if incomplete, is never completed by the applicant.
17420 (b) An application described in this Subsection (2) shall provide:
17421 (i) information about the applicant's identity;
17422 (ii) the applicant's Social Security number;
17423 (iii) the applicant's personal history, experience, education, and business record;
17424 (iv) whether the applicant is 18 years of age or older;
17425 (v) whether the applicant has committed an act that is a ground for denial, suspension,
17426 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and
17427 (vi) any other information the commissioner reasonably requires.
17428 (3) The commissioner may require any documents reasonably necessary to verify the
17429 information contained in an application filed under this section.
17430 (4) An applicant's Social Security number contained in an application filed under this
17431 section is a private record under Section [~~63-2-302~~] 63G-2-302.
17432 (5) (a) Subject to Subsection (5)(b), an application for an initial or renewal agency
17433 license shall be:
17434 (i) made to the commissioner on forms and in a manner the commissioner prescribes;
17435 and
17436 (ii) accompanied by a license fee that is not refunded if the application:
17437 (A) is denied; or
17438 (B) if incomplete, is never completed by the applicant.
17439 (b) An application described in Subsection (5)(a) shall provide:
17440 (i) information about the applicant's identity;
17441 (ii) the applicant's federal employer identification number;
17442 (iii) the designated responsible licensed producer;
17443 (iv) the identity of all owners, partners, officers, and directors;
17444 (v) whether the applicant has committed an act that is a ground for denial, suspension,
17445 or revocation as set forth in Section 31A-23a-105 or 31A-23a-111; and

17446 (vi) any other information the commissioner reasonably requires.

17447 Section 372. Section **31A-23a-111** is amended to read:

17448 **31A-23a-111. Revocation, suspension, surrender, lapsing, limiting, or otherwise**

17449 **terminating a license -- Rulemaking for renewal or reinstatement.**

17450 (1) A license type issued under this chapter remains in force until:

17451 (a) revoked or suspended under Subsection (5);

17452 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

17453 administrative action;

17454 (c) the licensee dies or is adjudicated incompetent as defined under:

17455 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

17456 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

17457 Minors;

17458 (d) lapsed under Section 31A-23a-113; or

17459 (e) voluntarily surrendered.

17460 (2) The following may be reinstated within one year after the day on which the license is

17461 inactivated:

17462 (a) a lapsed license; or

17463 (b) a voluntarily surrendered license.

17464 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a

17465 license, submission and acceptance of a voluntary surrender of a license does not prevent the

17466 department from pursuing additional disciplinary or other action authorized under:

17467 (a) this title; or

17468 (b) rules made under this title in accordance with [~~Title 63, Chapter 46a~~] Title 63G,

17469 Chapter 3, Utah Administrative Rulemaking Act.

17470 (4) A line of authority issued under this chapter remains in force until:

17471 (a) the qualifications pertaining to a line of authority are no longer met by the licensee;

17472 or

17473 (b) the supporting license type:

17474 (i) is revoked or suspended under Subsection (5); or
17475 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
17476 administrative action.
17477 (5) (a) If the commissioner makes a finding under Subsection (5)(b), after an
17478 adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
17479 Procedures Act, the commissioner may:
17480 (i) revoke:
17481 (A) a license; or
17482 (B) a line of authority;
17483 (ii) suspend for a specified period of 12 months or less:
17484 (A) a license; or
17485 (B) a line of authority; or
17486 (iii) limit in whole or in part:
17487 (A) a license; or
17488 (B) a line of authority.
17489 (b) The commissioner may take an action described in Subsection (5)(a) if the
17490 commissioner finds that the licensee:
17491 (i) is unqualified for a license or line of authority under Sections 31A-23a-104 and
17492 31A-23a-105;
17493 (ii) has violated:
17494 (A) an insurance statute;
17495 (B) a rule that is valid under Subsection 31A-2-201(3); or
17496 (C) an order that is valid under Subsection 31A-2-201(4);
17497 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
17498 delinquency proceedings in any state;
17499 (iv) fails to pay any final judgment rendered against the person in this state within 60
17500 days after the day on which the judgment became final;
17501 (v) fails to meet the same good faith obligations in claims settlement that is required of

- 17502 admitted insurers;
- 17503 (vi) is affiliated with and under the same general management or interlocking
- 17504 directorate or ownership as another insurance producer that transacts business in this state
- 17505 without a license;
- 17506 (vii) refuses:
- 17507 (A) to be examined; or
- 17508 (B) to produce its accounts, records, and files for examination;
- 17509 (viii) has an officer who refuses to:
- 17510 (A) give information with respect to the insurance producer's affairs; or
- 17511 (B) perform any other legal obligation as to an examination;
- 17512 (ix) provides information in the license application that is:
- 17513 (A) incorrect;
- 17514 (B) misleading;
- 17515 (C) incomplete; or
- 17516 (D) materially untrue;
- 17517 (x) has violated any insurance law, valid rule, or valid order of another state's insurance
- 17518 department;
- 17519 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 17520 (xii) has improperly withheld, misappropriated, or converted any monies or properties
- 17521 received in the course of doing insurance business;
- 17522 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 17523 (A) insurance contract; or
- 17524 (B) application for insurance;
- 17525 (xiv) has been convicted of a felony;
- 17526 (xv) has admitted or been found to have committed any insurance unfair trade practice
- 17527 or fraud;
- 17528 (xvi) in the conduct of business in this state or elsewhere has:
- 17529 (A) used fraudulent, coercive, or dishonest practices; or

17530 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
17531 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
17532 any other state, province, district, or territory;
17533 (xviii) has forged another's name to:
17534 (A) an application for insurance; or
17535 (B) a document related to an insurance transaction;
17536 (xix) has improperly used notes or any other reference material to complete an
17537 examination for an insurance license;
17538 (xx) has knowingly accepted insurance business from an individual who is not licensed;
17539 (xxi) has failed to comply with an administrative or court order imposing a child
17540 support obligation;
17541 (xxii) has failed to:
17542 (A) pay state income tax; or
17543 (B) comply with any administrative or court order directing payment of state income
17544 tax;
17545 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
17546 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
17547 (xxiv) has engaged in methods and practices in the conduct of business that endanger
17548 the legitimate interests of customers and the public.
17549 (c) For purposes of this section, if a license is held by an agency, both the agency itself
17550 and any natural person named on the license are considered to be the holders of the license.
17551 (d) If a natural person named on the agency license commits any act or fails to perform
17552 any duty that is a ground for suspending, revoking, or limiting the natural person's license, the
17553 commissioner may suspend, revoke, or limit the license of:
17554 (i) the natural person;
17555 (ii) the agency, if the agency:
17556 (A) is reckless or negligent in its supervision of the natural person; or
17557 (B) knowingly participated in the act or failure to act that is the ground for suspending,

17558 revoking, or limiting the license; or
17559 (iii) (A) the natural person; and
17560 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
17561 (6) A licensee under this chapter is subject to the penalties for acting as a licensee
17562 without a license if:
17563 (a) the licensee's license is:
17564 (i) revoked;
17565 (ii) suspended;
17566 (iii) limited;
17567 (iv) surrendered in lieu of administrative action;
17568 (v) lapsed; or
17569 (vi) voluntarily surrendered; and
17570 (b) the licensee:
17571 (i) continues to act as a licensee; or
17572 (ii) violates the terms of the license limitation.
17573 (7) A licensee under this chapter shall immediately report to the commissioner:
17574 (a) a revocation, suspension, or limitation of the person's license in any other state,
17575 District of Columbia, or territory of the United States;
17576 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
17577 District of Columbia, or territory of the United States; or
17578 (c) a judgment or injunction entered against that person on the basis of conduct
17579 involving:
17580 (i) fraud;
17581 (ii) deceit;
17582 (iii) misrepresentation; or
17583 (iv) a violation of an insurance law or rule.
17584 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a
17585 license in lieu of administrative action may specify a time, not to exceed five years, within which

17586 the former licensee may not apply for a new license.

17587 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the
17588 former licensee may not apply for a new license for five years from the day on which the order
17589 or agreement is made without the express approval by the commissioner.

17590 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
17591 a license issued under this part if so ordered by a court.

17592 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
17593 procedures in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17594 Administrative Rulemaking Act.

17595 Section 373. Section **31A-23a-112** is amended to read:

17596 **31A-23a-112. Probation -- Grounds for revocation.**

17597 (1) The commissioner may place a licensee on probation for a period not to exceed 24
17598 months as follows:

17599 (a) after an adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
17600 Administrative Procedures Act, for any circumstances that would justify a suspension under
17601 Section 31A-23a-111; or

17602 (b) at the issuance of a new license:

17603 (i) with an admitted violation under 18 U.S.C. Sections 1033 and 1034; or

17604 (ii) with a response to background information questions on a new license application
17605 indicating that:

17606 (A) the person has been convicted of a crime, that is listed by rule made in accordance
17607 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a
17608 crime that is grounds for probation;

17609 (B) the person is currently charged with a crime, that is listed by rule made in
17610 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
17611 Act, as a crime that is grounds for probation regardless of whether adjudication is withheld;

17612 (C) the person has been involved in an administrative proceeding regarding any
17613 professional or occupational license; or

17614 (D) any business in which the person is or was an owner, partner, officer, or director
17615 has been involved in an administrative proceeding regarding any professional or occupational
17616 license.

17617 (2) The commissioner may place a licensee on probation for a specified period no
17618 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sections 1033
17619 and 1034.

17620 (3) The probation order shall state the conditions for retention of the license, which
17621 shall be reasonable.

17622 (4) Any violation of the probation is grounds for revocation pursuant to any proceeding
17623 authorized under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

17624 Section 374. Section **31A-23a-115** is amended to read:

17625 **31A-23a-115. Appointment of individual and agency insurance producer, limited**
17626 **line producer, or managing general agent -- Reports and lists.**

17627 (1) (a) An insurer shall appoint a natural person or agency that has an insurance
17628 producer, limited line producer, or managing general agent license to act as an insurance
17629 producer, limited line producer, or managing general agent on the insurer's behalf prior to any
17630 producer, limited line producer, or managing general agent doing business for the insurer in this
17631 state.

17632 (b) An insurer shall report to the commissioner, at intervals and in the form the
17633 commissioner establishes by rule:

17634 (i) all new appointments; and

17635 (ii) all terminations of appointments.

17636 (2) (a) (i) An insurer shall report to the commissioner the cause of termination of an
17637 appointment.

17638 (ii) The information provided to the commissioner under this Subsection (2) is a private
17639 record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
17640 Management Act.

17641 (b) An insurer is immune from civil action, civil penalty, or damages if the insurer

17642 complies in good faith with this Subsection (2) in reporting to the commissioner the cause of
17643 termination of an appointment.

17644 (c) Notwithstanding any other provision in this section, an insurer is not immune from
17645 any action or resulting penalty imposed on the reporting insurer as a result of proceedings
17646 brought by or on behalf of the department if the action is based on evidence other than the
17647 report submitted in compliance with this Subsection (2).

17648 (3) If an insurer appoints an agency, the insurer need not appoint, report, or pay
17649 appointment reporting fees for natural persons designated on the agency's license under Section
17650 31A-23a-302.

17651 (4) If an insurer lists a licensee in a report submitted under Subsection (2), there is a
17652 rebuttable presumption that in placing a risk with the insurer the appointed licensee or any of
17653 the licensee's licensed employees acted on behalf of the insurer.

17654 Section 375. Section **31A-23a-202** is amended to read:

17655 **31A-23a-202. Continuing education requirements.**

17656 (1) Pursuant to this section, the commissioner shall by rule prescribe the continuing
17657 education requirements for a producer and a consultant.

17658 (2) (a) The commissioner may not state a continuing education requirement in terms of
17659 formal education.

17660 (b) The commissioner may state a continuing education requirement in terms of
17661 classroom hours, or their equivalent, of insurance-related instruction received.

17662 (c) Insurance-related formal education may be a substitute, in whole or in part, for
17663 classroom hours, or their equivalent, required under Subsection (2)(b).

17664 (3) (a) The commissioner shall impose continuing education requirements in accordance
17665 with a two-year licensing period in which the licensee meets the requirements of this Subsection
17666 (3).

17667 (b) (i) Except as provided in this section, the continuing education requirements shall
17668 require:

17669 (A) that a licensee complete 24 credit hours of continuing education for every two-year

17670 licensing period;

17671 (B) that three of the 24 credit hours described in Subsection (3)(b)(i)(A) be ethics
17672 courses; and

17673 (C) that the licensee complete at least half of the required hours through classroom
17674 hours of insurance-related instruction.

17675 (ii) The hours not completed through classroom hours in accordance with Subsection
17676 (3)(b)(i)(C) may be obtained through:

17677 (A) home study;

17678 (B) video recording;

17679 (C) experience credit; or

17680 (D) other methods provided by rule.

17681 (iii) (A) Notwithstanding Subsections (3)(b)(i)(A) and (B), a title insurance producer is
17682 required to complete 12 credit hours of continuing education for every two-year licensing
17683 period, with three of the credit hours being ethics courses unless the title insurance producer has
17684 been licensed in this state as a title insurance producer for 20 or more consecutive years.

17685 (B) If a title insurance producer has been licensed in this state as a title insurance
17686 producer for 20 or more consecutive years, the title insurance producer is required to complete
17687 six credit hours of continuing education for every two-year licensing period, with three of the
17688 credit hours being ethics courses.

17689 (C) Notwithstanding Subsection (3)(b)(iii)(A) or (B), a title insurance producer is
17690 considered to have met the continuing education requirements imposed under Subsection
17691 (3)(b)(iii)(A) or (B) if the title insurance producer:

17692 (I) is an active member in good standing with the Utah State Bar;

17693 (II) is in compliance with the continuing education requirements of the Utah State Bar;

17694 and

17695 (III) if requested by the department, provides the department evidence that the title
17696 insurance producer complied with the continuing education requirements of the Utah State Bar.

17697 (c) A licensee may obtain continuing education hours at any time during the two-year

17698 licensing period.

17699 (d) (i) Beginning May 3, 1999, a licensee is exempt from continuing education
17700 requirements under this section if:

17701 (A) the licensee was first licensed before April 1, 1970;

17702 (B) the licensee requests an exemption from the department; and

17703 (C) the department approves the exemption.

17704 (ii) If the department approves the exemption under Subsection (3)(d)(i), the licensee is
17705 not required to apply again for the exemption.

17706 (e) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17707 Administrative Rulemaking Act, the commissioner shall, by rule:

17708 (i) publish a list of insurance professional designations whose continuing education
17709 requirements can be used to meet the requirements for continuing education under Subsection
17710 (3)(b); and

17711 (ii) authorize continuing education providers and professional producer or consultant
17712 associations to:

17713 (A) offer qualified programs for all license types and lines of authority on a
17714 geographically accessible basis; and

17715 (B) collect reasonable fees for funding and administration of the continuing education
17716 program, subject to the review and approval of the commissioner.

17717 (iii) The fees permitted under Subsection (3)(e)(ii)(B) that are charged for attendance at
17718 a professional producer or consultant association program may be less for an association
17719 member, based on the member's affiliation expense, but shall preserve the right of a nonmember
17720 to attend without affiliation.

17721 (4) The commissioner shall approve continuing education providers and continuing
17722 education courses that satisfy the requirements of this section.

17723 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
17724 Administrative Rulemaking Act, the commissioner shall by rule set the processes and
17725 procedures for continuing education provider registration and course approval.

17726 (6) The requirements of this section apply only to producers or consultants who are
17727 natural persons.

17728 (7) A nonresident producer or consultant is considered to have satisfied this state's
17729 continuing education requirements if the nonresident producer or consultant satisfies the
17730 nonresident producer's or consultant's home state's continuing education requirements for a
17731 licensed insurance producer or consultant.

17732 (8) A producer or consultant subject to this section shall keep documentation of
17733 completing the continuing education requirements of this section for two years after the end of
17734 the two-year licensing period to which the continuing education applies.

17735 Section 376. Section **31A-23a-302** is amended to read:

17736 **31A-23a-302. Agency designations.**

17737 (1) An agency shall designate a natural person that has a producer, limited line
17738 producer, customer service representative, consultant, managing general agent, or reinsurance
17739 intermediary license to act on its behalf prior to the licensee doing business for the agency.

17740 (2) An agency shall report to the commissioner, at intervals and in the form the
17741 commissioner establishes by rule:

17742 (a) all new designations; and

17743 (b) all terminated designations.

17744 (3) (a) An agency licensed under this chapter shall report to the commissioner the cause
17745 of termination of a designation.

17746 (b) The information provided the commissioner under Subsection (3)(a) is a private
17747 record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
17748 Management Act.

17749 (c) An agency is immune from civil action, civil penalty, or damages if the agency
17750 complies in good faith with this Subsection (3) in reporting to the commissioner the cause of
17751 termination of a designation.

17752 (d) Notwithstanding any other provision in this section, an agency is not immune from
17753 any action or resulting penalty imposed on the reporting agency as a result of proceedings

17754 brought by or on behalf of the department if the action is based on evidence other than the
17755 report submitted in compliance with this Subsection (3).

17756 (4) An agency licensed under this chapter may act in the capacities for which it is
17757 licensed only through natural persons who are licensed under this chapter to act in the same
17758 capacities.

17759 (5) An agency licensed under this chapter shall report to the commissioner by rule the
17760 name of at least one natural person who has authority to act on behalf of the agency in all
17761 matters pertaining to compliance with this title and orders of the commissioner.

17762 (6) If an agency designates a licensee in reports submitted under Subsection (2), there is
17763 a rebuttable presumption that the designated licensee acted on behalf of the agency.

17764 Section 377. Section **31A-23a-402** is amended to read:

17765 **31A-23a-402. Unfair marketing practices -- Communication -- Inducement --**
17766 **Unfair discrimination -- Coercion or intimidation -- Restriction on choice.**

17767 (1) (a) (i) Any of the following may not make or cause to be made any communication
17768 that contains false or misleading information, relating to an insurance product or contract, any
17769 insurer, or any licensee under this title, including information that is false or misleading because
17770 it is incomplete:

17771 (A) a person who is or should be licensed under this title;

17772 (B) an employee or producer of a person described in Subsection (1)(a)(i)(A);

17773 (C) a person whose primary interest is as a competitor of a person licensed under this
17774 title; and

17775 (D) a person on behalf of any of the persons listed in this Subsection (1)(a)(i).

17776 (ii) As used in this Subsection (1), "false or misleading information" includes:

17777 (A) assuring the nonobligatory payment of future dividends or refunds of unused
17778 premiums in any specific or approximate amounts, but reporting fully and accurately past
17779 experience is not false or misleading information; and

17780 (B) with intent to deceive a person examining it:

17781 (I) filing a report;

17782 (II) making a false entry in a record; or
17783 (III) wilfully refraining from making a proper entry in a record.
17784 (iii) A licensee under this title may not:
17785 (A) use any business name, slogan, emblem, or related device that is misleading or likely
17786 to cause the insurer or other licensee to be mistaken for another insurer or other licensee already
17787 in business; or
17788 (B) use any advertisement or other insurance promotional material that would cause a
17789 reasonable person to mistakenly believe that a state or federal government agency:
17790 (I) is responsible for the insurance sales activities of the person;
17791 (II) stands behind the credit of the person;
17792 (III) guarantees any returns on insurance products of or sold by the person; or
17793 (IV) is a source of payment of any insurance obligation of or sold by the person.
17794 (iv) A person who is not an insurer may not assume or use any name that deceptively
17795 implies or suggests that person is an insurer.
17796 (v) A person other than persons licensed as health maintenance organizations under
17797 Chapter 8 may not use the term "Health Maintenance Organization" or "HMO" in referring to
17798 itself.
17799 (b) A licensee's violation creates a rebuttable presumption that the violation was also
17800 committed by the insurer if:
17801 (i) the licensee under this title distributes cards or documents, exhibits a sign, or
17802 publishes an advertisement that violates Subsection (1)(a), with reference to a particular insurer:
17803 (A) that the licensee represents; or
17804 (B) for whom the licensee processes claims; and
17805 (ii) the cards, documents, signs, or advertisements are supplied or approved by that
17806 insurer.
17807 (2) (a) (i) A licensee under this title, or an officer or employee of a licensee may not
17808 induce any person to enter into or continue an insurance contract or to terminate an existing
17809 insurance contract by offering benefits not specified in the policy to be issued or continued,

17810 including premium or commission rebates.

17811 (ii) An insurer may not make or knowingly allow any agreement of insurance that is not
17812 clearly expressed in the policy to be issued or renewed.

17813 (iii) This Subsection (2)(a) does not preclude:

17814 (A) an insurer from reducing premiums because of expense savings;

17815 (B) an insurer from providing to a policyholder or insured one or more incentives to
17816 participate in programs or activities designed to reduce claims or claim expenses;

17817 (C) the usual kinds of social courtesies not related to particular transactions; or

17818 (D) an insurer from receiving premiums under an installment payment plan.

17819 (iv) The commissioner may adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
17820 63G, Chapter 3, Utah Administrative Rulemaking Act, to define what constitutes an incentive
17821 described in Subsection (2)(a)(iii)(B).

17822 (b) A licensee under this title may not absorb the tax under Section 31A-3-301.

17823 (c) (i) A title insurer or producer or any officer or employee of either may not pay,
17824 allow, give, or offer to pay, allow, or give, directly or indirectly, as an inducement to obtaining
17825 any title insurance business:

17826 (A) any rebate, reduction, or abatement of any rate or charge made incident to the
17827 issuance of the title insurance;

17828 (B) any special favor or advantage not generally available to others; or

17829 (C) any money or other consideration, except if approved under Section 31A-2-405; or

17830 (D) material inducement.

17831 (ii) "Charge made incident to the issuance of the title insurance" includes escrow
17832 charges, and any other services that are prescribed in rule by the Title and Escrow Commission
17833 after consultation with the commissioner and subject to Section 31A-2-404.

17834 (iii) An insured or any other person connected, directly or indirectly, with the
17835 transaction, including a mortgage lender, real estate broker, builder, attorney, or any officer,
17836 employee, or agent of any of them, may not knowingly receive or accept, directly or indirectly,
17837 any benefit referred to in Subsection (2)(c)(i).

17838 (3) (a) An insurer may not unfairly discriminate among policyholders by charging
17839 different premiums or by offering different terms of coverage, except on the basis of
17840 classifications related to the nature and the degree of the risk covered or the expenses involved.

17841 (b) Rates are not unfairly discriminatory if they are averaged broadly among persons
17842 insured under a group, blanket, or franchise policy, and the terms of those policies are not
17843 unfairly discriminatory merely because they are more favorable than in similar individual
17844 policies.

17845 (4) (a) This Subsection (4) applies to:

17846 (i) a person who is or should be licensed under this title;

17847 (ii) an employee of that licensee or person who should be licensed;

17848 (iii) a person whose primary interest is as a competitor of a person licensed under this
17849 title; and

17850 (iv) one acting on behalf of any person described in Subsections (4)(a)(i) through (iii).

17851 (b) A person described in Subsection (4)(a) may not commit or enter into any
17852 agreement to participate in any act of boycott, coercion, or intimidation that:

17853 (i) tends to produce:

17854 (A) an unreasonable restraint of the business of insurance; or

17855 (B) a monopoly in that business; or

17856 (ii) results in an applicant purchasing or replacing an insurance contract.

17857 (5) (a) (i) Subject to Subsection (5)(a)(ii), a person may not restrict in the choice of an
17858 insurer or licensee under this chapter, another person who is required to pay for insurance as a
17859 condition for the conclusion of a contract or other transaction or for the exercise of any right
17860 under a contract.

17861 (ii) A person requiring coverage may reserve the right to disapprove the insurer or the
17862 coverage selected on reasonable grounds.

17863 (b) The form of corporate organization of an insurer authorized to do business in this
17864 state is not a reasonable ground for disapproval, and the commissioner may by rule specify
17865 additional grounds that are not reasonable. This Subsection (5) does not bar an insurer from

17866 declining an application for insurance.

17867 (6) A person may not make any charge other than insurance premiums and premium
17868 financing charges for the protection of property or of a security interest in property, as a
17869 condition for obtaining, renewing, or continuing the financing of a purchase of the property or
17870 the lending of money on the security of an interest in the property.

17871 (7) (a) A licensee under this title may not refuse or fail to return promptly all indicia of
17872 agency to the principal on demand.

17873 (b) A licensee whose license is suspended, limited, or revoked under Section
17874 31A-2-308, 31A-23a-111, or 31A-23a-112 may not refuse or fail to return the license to the
17875 commissioner on demand.

17876 (8) (a) A person may not engage in any other unfair method of competition or any other
17877 unfair or deceptive act or practice in the business of insurance, as defined by the commissioner
17878 by rule, after a finding that they:

- 17879 (i) are misleading;
- 17880 (ii) are deceptive;
- 17881 (iii) are unfairly discriminatory;
- 17882 (iv) provide an unfair inducement; or
- 17883 (v) unreasonably restrain competition.

17884 (b) Notwithstanding Subsection (8)(a), for purpose of the title insurance industry, the
17885 Title and Escrow Commission shall make rules, subject to Section 31A-2-404, that define any
17886 other unfair method of competition or any other unfair or deceptive act or practice after a
17887 finding that they:

- 17888 (i) are misleading;
- 17889 (ii) are deceptive;
- 17890 (iii) are unfairly discriminatory;
- 17891 (iv) provide an unfair inducement; or
- 17892 (v) unreasonably restrain competition.

17893 Section 378. Section **31A-23a-417** is amended to read:

17894 **31A-23a-417. Financial services insurance activities regulation.**

17895 (1) It is the intent of the Legislature that the regulation of insurance activities of any
17896 person in this state be based on functional regulation principles established in the
17897 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

17898 (2) The insurance activities of any person in this state shall be functionally regulated by
17899 the commissioner subject to Sections 104, 301-308, 501-507, and 509 of the
17900 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102.

17901 (3) Under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
17902 Rulemaking Act, the commissioner may adopt rules consistent with Section 104(d) of the
17903 Gramm-Leach-Bliley Act of 1999, Pub. L. No. 106-102, and the functional regulation of
17904 insurance activities of any person otherwise subject to the jurisdiction of the commissioner in
17905 this state described in Subsection (2).

17906 (4) The commissioner shall consult and coordinate with the commissioner of the
17907 Department of Financial Institutions and the director of the Division of Securities for the
17908 purpose of assuring, to the extent possible, that the rules prescribed by the department are
17909 consistent and comparable with federal regulations governing the insurance, banking, and
17910 securities industries.

17911 Section 379. Section **31A-23a-809** is amended to read:

17912 **31A-23a-809. Penalties and liabilities.**

17913 (1) A reinsurance intermediary, insurer, or reinsurer found by the commissioner, after a
17914 hearing conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
17915 Administrative Procedures Act, to be in violation of any provisions of this title, shall:

17916 (a) for each separate violation, pay a civil penalty in an amount not exceeding \$5,000;

17917 (b) be subject to revocation or suspension of its license; and

17918 (c) if a violation was committed by the reinsurance intermediary, the reinsurance
17919 intermediary shall make restitution to the insurer, reinsurer, rehabilitator, or liquidator of the
17920 insurer or reinsurer for the net losses incurred by the insurer or reinsurer attributable to the
17921 violation.

17922 (2) Nothing contained in this section affects the right of the commissioner to impose
17923 any other penalties provided in this title.

17924 (3) Nothing contained in this part is intended to, or in any manner limits or restricts the
17925 rights of policyholders, claimants, creditors, or other third parties; nor does it confer any rights
17926 to such persons.

17927 Section 380. Section **31A-25-202** is amended to read:

17928 **31A-25-202. Application for license.**

17929 (1) (a) An application for a license as a third party administrator shall be:

17930 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

17931 and

17932 (ii) accompanied by the applicable fee, which is not refundable if the application is
17933 denied.

17934 (b) The application for a license as a third party administrator shall:

17935 (i) state the applicant's:

17936 (A) Social Security number; or

17937 (B) federal employer identification number;

17938 (ii) provide information about:

17939 (A) the applicant's identity;

17940 (B) the applicant's personal history, experience, education, and business record;

17941 (C) if the applicant is a natural person, whether the applicant is 18 years of age or older;

17942 and

17943 (D) whether the applicant has committed an act that is a ground for denial, suspension,
17944 or revocation as set forth in Section 31A-25-208; and

17945 (iii) any other information as the commissioner reasonably requires.

17946 (2) The commissioner may require documents reasonably necessary to verify the
17947 information contained in the application.

17948 (3) An applicant's Social Security number contained in an application filed under this
17949 section is a private record under Section [~~63-2-302~~] 63G-2-302.

17950 Section 381. Section **31A-25-208** is amended to read:

17951 **31A-25-208. Revocation, suspension, surrender, lapsing, limiting, or otherwise**

17952 **terminating a license -- Rulemaking for renewal and reinstatement.**

17953 (1) A license type issued under this chapter remains in force until:

17954 (a) revoked or suspended under Subsection (4);

17955 (b) surrendered to the commissioner and accepted by the commissioner in lieu of

17956 administrative action;

17957 (c) the licensee dies or is adjudicated incompetent as defined under:

17958 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or

17959 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and

17960 Minors;

17961 (d) lapsed under Section 31A-25-210; or

17962 (e) voluntarily surrendered.

17963 (2) The following may be reinstated within one year after the day on which the license is

17964 inactivated:

17965 (a) a lapsed license; or

17966 (b) a voluntarily surrendered license.

17967 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a

17968 license, submission and acceptance of a voluntary surrender of a license does not prevent the

17969 department from pursuing additional disciplinary or other action authorized under:

17970 (a) this title; or

17971 (b) rules made under this title in accordance with [~~Title 63, Chapter 46a~~] Title 63G,

17972 Chapter 3, Utah Administrative Rulemaking Act.

17973 (4) (a) If the commissioner makes a finding under Subsection (4)(b), after an

17974 adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative

17975 Procedures Act, the commissioner may:

17976 (i) revoke a license;

17977 (ii) suspend a license for a specified period of 12 months or less; or

- 17978 (iii) limit a license in whole or in part.
- 17979 (b) The commissioner may take an action described in Subsection (4)(a) if the
- 17980 commissioner finds that the licensee:
- 17981 (i) is unqualified for a license under Sections 31A-25-202 and 31A-25-203;
- 17982 (ii) has violated:
- 17983 (A) an insurance statute;
- 17984 (B) a rule that is valid under Subsection 31A-2-201(3); or
- 17985 (C) an order that is valid under Subsection 31A-2-201(4);
- 17986 (iii) is insolvent or the subject of receivership, conservatorship, rehabilitation, or other
- 17987 delinquency proceedings in any state;
- 17988 (iv) fails to pay any final judgment rendered against the person in this state within 60
- 17989 days after the day on which the judgment became final;
- 17990 (v) fails to meet the same good faith obligations in claims settlement that is required of
- 17991 admitted insurers;
- 17992 (vi) is affiliated with and under the same general management or interlocking
- 17993 directorate or ownership as another third party administrator that transacts business in this state
- 17994 without a license;
- 17995 (vii) refuses:
- 17996 (A) to be examined; or
- 17997 (B) to produce its accounts, records, and files for examination;
- 17998 (viii) has an officer who refuses to:
- 17999 (A) give information with respect to the third party administrator's affairs; or
- 18000 (B) perform any other legal obligation as to an examination;
- 18001 (ix) provides information in the license application that is:
- 18002 (A) incorrect;
- 18003 (B) misleading;
- 18004 (C) incomplete; or
- 18005 (D) materially untrue;

18006 (x) has violated an insurance law, valid rule, or valid order of another state's insurance
18007 department;

18008 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;

18009 (xii) has improperly withheld, misappropriated, or converted any monies or properties
18010 received in the course of doing insurance business;

18011 (xiii) has intentionally misrepresented the terms of an actual or proposed:

18012 (A) insurance contract; or

18013 (B) application for insurance;

18014 (xiv) has been convicted of a felony;

18015 (xv) has admitted or been found to have committed any insurance unfair trade practice
18016 or fraud;

18017 (xvi) in the conduct of business in this state or elsewhere has:

18018 (A) used fraudulent, coercive, or dishonest practices; or

18019 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;

18020 (xvii) has had an insurance license or its equivalent, denied, suspended, or revoked in
18021 any other state, province, district, or territory;

18022 (xviii) has forged another's name to:

18023 (A) an application for insurance; or

18024 (B) a document related to an insurance transaction;

18025 (xix) has improperly used notes or any other reference material to complete an
18026 examination for an insurance license;

18027 (xx) has knowingly accepted insurance business from an individual who is not licensed;

18028 (xxi) has failed to comply with an administrative or court order imposing a child
18029 support obligation;

18030 (xxii) has failed to:

18031 (A) pay state income tax; or

18032 (B) comply with any administrative or court order directing payment of state income
18033 tax;

18034 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
18035 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or

18036 (xxiv) has engaged in methods and practices in the conduct of business that endanger
18037 the legitimate interests of customers and the public.

18038 (c) For purposes of this section, if a license is held by an agency, both the agency itself
18039 and any natural person named on the license are considered to be the holders of the license.

18040 (d) If a natural person named on the agency license commits any act or fails to perform
18041 any duty that is a ground for suspending, revoking, or limiting the natural person's license, the
18042 commissioner may suspend, revoke, or limit the license of:

18043 (i) the natural person;

18044 (ii) the agency if the agency:

18045 (A) is reckless or negligent in its supervision of the natural person; or

18046 (B) knowingly participated in the act or failure to act that is the ground for suspending,
18047 revoking, or limiting the license; or

18048 (iii) (A) the natural person; and

18049 (B) the agency if the agency meets the requirements of Subsection (4)(d)(ii).

18050 (5) A licensee under this chapter is subject to the penalties for acting as a licensee
18051 without a license if:

18052 (a) the licensee's license is:

18053 (i) revoked;

18054 (ii) suspended;

18055 (iii) limited;

18056 (iv) surrendered in lieu of administrative action;

18057 (v) lapsed; or

18058 (vi) voluntarily surrendered; and

18059 (b) the licensee:

18060 (i) continues to act as a licensee; or

18061 (ii) violates the terms of the license limitation.

18062 (6) A licensee under this chapter shall immediately report to the commissioner:
18063 (a) a revocation, suspension, or limitation of the person's license in any other state, the
18064 District of Columbia, or a territory of the United States;
18065 (b) the imposition of a disciplinary sanction imposed on that person by any other state,
18066 the District of Columbia, or a territory of the United States; or
18067 (c) a judgment or injunction entered against the person on the basis of conduct
18068 involving:
18069 (i) fraud;
18070 (ii) deceit;
18071 (iii) misrepresentation; or
18072 (iv) a violation of an insurance law or rule.
18073 (7) (a) An order revoking a license under Subsection (4) or an agreement to surrender a
18074 license in lieu of administrative action may specify a time, not to exceed five years, within which
18075 the former licensee may not apply for a new license.
18076 (b) If no time is specified in the order or agreement described in Subsection (7)(a), the
18077 former licensee may not apply for a new license for five years from the day on which the order
18078 or agreement is made without the express approval of the commissioner.
18079 (8) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
18080 a license issued under this part if so ordered by the court.
18081 (9) The commissioner shall by rule prescribe the license renewal and reinstatement
18082 procedures in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
18083 Administrative Rulemaking Act.
18084 Section 382. Section **31A-25-209** is amended to read:
18085 **31A-25-209. Probation -- Grounds for revocation.**
18086 (1) The commissioner may place a licensee on probation for a period not to exceed 24
18087 months as follows:
18088 (a) after an adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
18089 Administrative Procedures Act, for any circumstances that would justify a suspension under

18090 Section 31A-25-208; or

18091 (b) at the issuance of a new license:

18092 (i) with an admitted violation under 18 U.S.C. Sections 1033 and 1034; or

18093 (ii) with a response to a background information question on a new license application

18094 indicating that:

18095 (A) the person has been convicted of a crime that is listed by rule made in accordance
18096 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a
18097 crime that is grounds for probation;

18098 (B) the person is currently charged with a crime that is listed by rule made in
18099 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
18100 Act, as a crime that is grounds for probation regardless of whether adjudication is withheld;

18101 (C) the person has been involved in an administrative proceeding regarding any
18102 professional or occupational license; or

18103 (D) any business in which the person is or was an owner, partner, officer, or director
18104 has been involved in an administrative proceeding regarding any professional or occupational
18105 license.

18106 (2) The commissioner may place a licensee on probation for a specified period no
18107 longer than 24 months if the licensee has admitted to a violation under 18 U.S.C. Sections 1033
18108 and 1034.

18109 (3) A probation order under this section shall state the conditions for retention of the
18110 license, which shall be reasonable.

18111 (4) A violation of the probation is grounds for revocation pursuant to any proceeding
18112 authorized under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

18113 Section 383. Section **31A-26-202** is amended to read:

18114 **31A-26-202. Application for license.**

18115 (1) (a) The application for a license as an independent adjuster or public adjuster shall
18116 be:

18117 (i) made to the commissioner on forms and in a manner the commissioner prescribes;

18118 and

18119 (ii) accompanied by the applicable fee, which is not refunded if the application is denied.

18120 (b) The application shall provide:

18121 (i) information about the applicant's identity, including:

18122 (A) the applicant's:

18123 (I) Social Security number; or

18124 (II) federal employer identification number;

18125 (B) the applicant's personal history, experience, education, and business record;

18126 (C) if the applicant is a natural person, whether the applicant is 18 years of age or older;

18127 and

18128 (D) whether the applicant has committed an act that is a ground for denial, suspension,

18129 or revocation as set forth in Section 31A-25-208; and

18130 (ii) any other information as the commissioner reasonably requires.

18131 (2) The commissioner may require documents reasonably necessary to verify the

18132 information contained in the application.

18133 (3) An applicant's Social Security number contained in an application filed under this

18134 section is a private record under Section [~~63-2-302~~] 63G-2-302.

18135 Section 384. Section **31A-26-206** is amended to read:

18136 **31A-26-206. Continuing education requirements.**

18137 (1) Pursuant to this section, the commissioner shall by rule prescribe continuing

18138 education requirements for each class of license under Section 31A-26-204.

18139 (2) (a) The commissioner shall impose continuing education requirements in accordance

18140 with a two-year licensing period in which the licensee meets the requirements of this Subsection

18141 (2).

18142 (b) (i) Except as provided in Subsection (2)(b)(iii), the continuing education

18143 requirements shall require:

18144 (A) that a licensee complete 24 credit hours of continuing education for every two-year

18145 licensing period;

18146 (B) that three of the 24 credit hours described in Subsection (2)(b)(i)(A) be ethics
18147 courses; and

18148 (C) that the licensee complete at least half of the required hours through classroom
18149 hours of insurance-related instruction.

18150 (ii) The hours not completed through classroom hours in accordance with Subsection
18151 (2)(b)(i)(C) may be obtained through:

- 18152 (A) home study;
- 18153 (B) video recording;
- 18154 (C) experience credit; or
- 18155 (D) other methods provided by rule.

18156 (iii) Notwithstanding Subsections (2)(b)(i)(A) and (B), a title insurance adjuster is
18157 required to complete 12 credit hours of continuing education for every two-year licensing
18158 period, with three of the credit hours being ethics courses.

18159 (c) A licensee may obtain continuing education hours at any time during the two-year
18160 licensing period.

18161 (d) (i) Beginning May 3, 1999, a licensee is exempt from the continuing education
18162 requirements of this section if:

- 18163 (A) the licensee was first licensed before April 1, 1970;
- 18164 (B) the licensee requests an exemption from the department; and
- 18165 (C) the department approves the exemption.

18166 (ii) If the department approves the exemption under Subsection (2)(d)(i), the licensee is
18167 not required to apply again for the exemption.

18168 (e) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
18169 Administrative Rulemaking Act, the commissioner shall by rule:

18170 (i) publish a list of insurance professional designations whose continuing education
18171 requirements can be used to meet the requirements for continuing education under Subsection
18172 (2)(b); and

18173 (ii) authorize professional adjuster associations to:

18174 (A) offer qualified programs for all classes of licenses on a geographically accessible
18175 basis; and

18176 (B) collect reasonable fees for funding and administration of the continuing education
18177 programs, subject to the review and approval of the commissioner.

18178 (f) (i) The fees permitted under Subsection (2)(e)(ii)(B) that are charged to fund and
18179 administer a program shall reasonably relate to the costs of administering the program.

18180 (ii) Nothing in this section shall prohibit a provider of continuing education programs or
18181 courses from charging fees for attendance at courses offered for continuing education credit.

18182 (iii) The fees permitted under Subsection (2)(e)(ii)(B) that are charged for attendance
18183 at an association program may be less for an association member, based on the member's
18184 affiliation expense, but shall preserve the right of a nonmember to attend without affiliation.

18185 (3) The requirements of this section apply only to licensees who are natural persons.

18186 (4) The requirements of this section do not apply to members of the Utah State Bar.

18187 (5) The commissioner shall designate courses that satisfy the requirements of this
18188 section, including those presented by insurers.

18189 (6) A nonresident adjuster is considered to have satisfied this state's continuing
18190 education requirements if:

18191 (a) the nonresident adjuster satisfies the nonresident producer's home state's continuing
18192 education requirements for a licensed insurance adjuster; and

18193 (b) on the same basis the nonresident adjuster's home state considers satisfaction of
18194 Utah's continuing education requirements for a producer as satisfying the continuing education
18195 requirements of the home state.

18196 (7) A licensee subject to this section shall keep documentation of completing the
18197 continuing education requirements of this section for two years after the end of the two-year
18198 licensing period to which the continuing education requirement applies.

18199 Section 385. Section **31A-26-213** is amended to read:

18200 **31A-26-213. Revocation, suspension, surrender, lapsing, limiting, or otherwise**
18201 **terminating a license -- Rulemaking for renewal or reinstatement.**

- 18202 (1) A license type issued under this chapter remains in force until:
- 18203 (a) revoked or suspended under Subsection (5);
- 18204 (b) surrendered to the commissioner and accepted by the commissioner in lieu of
- 18205 administrative action;
- 18206 (c) the licensee dies or is adjudicated incompetent as defined under:
- 18207 (i) Title 75, Chapter 5, Part 3, Guardians of Incapacitated Persons; or
- 18208 (ii) Title 75, Chapter 5, Part 4, Protection of Property of Persons Under Disability and
- 18209 Minors;
- 18210 (d) lapsed under Section 31A-26-214.5; or
- 18211 (e) voluntarily surrendered.
- 18212 (2) The following may be reinstated within one year after the day on which the license is
- 18213 inactivated:
- 18214 (a) a lapsed license; or
- 18215 (b) a voluntarily surrendered license.
- 18216 (3) Unless otherwise stated in the written agreement for the voluntary surrender of a
- 18217 license, submission and acceptance of a voluntary surrender of a license does not prevent the
- 18218 department from pursuing additional disciplinary or other action authorized under:
- 18219 (a) this title; or
- 18220 (b) rules made under this title in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 18221 Chapter 3, Utah Administrative Rulemaking Act.
- 18222 (4) A license classification issued under this chapter remains in force until:
- 18223 (a) the qualifications pertaining to a license classification are no longer met by the
- 18224 licensee; or
- 18225 (b) the supporting license type:
- 18226 (i) is revoked or suspended under Subsection (5); or
- 18227 (ii) is surrendered to the commissioner and accepted by the commissioner in lieu of
- 18228 administrative action.
- 18229 (5) (a) If the commissioner makes a finding under Subsection (5)(b) after an

18230 adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
18231 Procedures Act, the commissioner may:

- 18232 (i) revoke:
 - 18233 (A) a license; or
 - 18234 (B) a license classification;
- 18235 (ii) suspend for a specified period of 12 months or less:
 - 18236 (A) a license; or
 - 18237 (B) a license classification; or
- 18238 (iii) limit in whole or in part:
 - 18239 (A) a license; or
 - 18240 (B) a license classification.
- 18241 (b) The commissioner may take an action described in Subsection (5)(a) if the
18242 commissioner finds that the licensee:
 - 18243 (i) is unqualified for a license or license classification under Sections 31A-26-202,
18244 31A-26-203, and 31A-26-204;
 - 18245 (ii) has violated:
 - 18246 (A) an insurance statute;
 - 18247 (B) a rule that is valid under Subsection 31A-2-201(3); or
 - 18248 (C) an order that is valid under Subsection 31A-2-201(4);
 - 18249 (iii) is insolvent, or the subject of receivership, conservatorship, rehabilitation, or other
18250 delinquency proceedings in any state;
 - 18251 (iv) fails to pay any final judgment rendered against the person in this state within 60
18252 days after the judgment became final;
 - 18253 (v) fails to meet the same good faith obligations in claims settlement that is required of
18254 admitted insurers;
 - 18255 (vi) is affiliated with and under the same general management or interlocking
18256 directorate or ownership as another insurance adjuster that transacts business in this state
18257 without a license;

- 18258 (vii) refuses:
- 18259 (A) to be examined; or
- 18260 (B) to produce its accounts, records, and files for examination;
- 18261 (viii) has an officer who refuses to:
- 18262 (A) give information with respect to the insurance adjuster's affairs; or
- 18263 (B) perform any other legal obligation as to an examination;
- 18264 (ix) provides information in the license application that is:
- 18265 (A) incorrect;
- 18266 (B) misleading;
- 18267 (C) incomplete; or
- 18268 (D) materially untrue;
- 18269 (x) has violated any insurance law, valid rule, or valid order of another state's insurance
- 18270 department;
- 18271 (xi) has obtained or attempted to obtain a license through misrepresentation or fraud;
- 18272 (xii) has improperly withheld, misappropriated, or converted any monies or properties
- 18273 received in the course of doing insurance business;
- 18274 (xiii) has intentionally misrepresented the terms of an actual or proposed:
- 18275 (A) insurance contract; or
- 18276 (B) application for insurance;
- 18277 (xiv) has been convicted of a felony;
- 18278 (xv) has admitted or been found to have committed any insurance unfair trade practice
- 18279 or fraud;
- 18280 (xvi) in the conduct of business in this state or elsewhere has:
- 18281 (A) used fraudulent, coercive, or dishonest practices; or
- 18282 (B) demonstrated incompetence, untrustworthiness, or financial irresponsibility;
- 18283 (xvii) has had an insurance license, or its equivalent, denied, suspended, or revoked in
- 18284 any other state, province, district, or territory;
- 18285 (xviii) has forged another's name to:

- 18286 (A) an application for insurance; or
- 18287 (B) any document related to an insurance transaction;
- 18288 (xix) has improperly used notes or any other reference material to complete an
- 18289 examination for an insurance license;
- 18290 (xx) has knowingly accepted insurance business from an individual who is not licensed;
- 18291 (xxi) has failed to comply with an administrative or court order imposing a child
- 18292 support obligation;
- 18293 (xxii) has failed to:
- 18294 (A) pay state income tax; or
- 18295 (B) comply with any administrative or court order directing payment of state income
- 18296 tax;
- 18297 (xxiii) has violated or permitted others to violate the federal Violent Crime Control and
- 18298 Law Enforcement Act of 1994, 18 U.S.C. Secs. 1033 and 1034; or
- 18299 (xxiv) has engaged in methods and practices in the conduct of business that endanger
- 18300 the legitimate interests of customers and the public.
- 18301 (c) For purposes of this section, if a license is held by an agency, both the agency itself
- 18302 and any natural person named on the license are considered to be the holders of the license.
- 18303 (d) If a natural person named on the agency license commits any act or fails to perform
- 18304 any duty that is a ground for suspending, revoking, or limiting the natural person's license, the
- 18305 commissioner may suspend, revoke, or limit the license of:
- 18306 (i) the natural person;
- 18307 (ii) the agency, if the agency:
- 18308 (A) is reckless or negligent in its supervision of the natural person; or
- 18309 (B) knowingly participated in the act or failure to act that is the ground for suspending,
- 18310 revoking, or limiting the license; or
- 18311 (iii) (A) the natural person; and
- 18312 (B) the agency if the agency meets the requirements of Subsection (5)(d)(ii).
- 18313 (6) A licensee under this chapter is subject to the penalties for conducting an insurance

18314 business without a license if:

18315 (a) the licensee's license is:

18316 (i) revoked;

18317 (ii) suspended;

18318 (iii) limited;

18319 (iv) surrendered in lieu of administrative action;

18320 (v) lapsed; or

18321 (vi) voluntarily surrendered; and

18322 (b) the licensee:

18323 (i) continues to act as a licensee; or

18324 (ii) violates the terms of the license limitation.

18325 (7) A licensee under this chapter shall immediately report to the commissioner:

18326 (a) a revocation, suspension, or limitation of the person's license in any other state, the

18327 District of Columbia, or a territory of the United States;

18328 (b) the imposition of a disciplinary sanction imposed on that person by any other state,

18329 the District of Columbia, or a territory of the United States; or

18330 (c) a judgment or injunction entered against that person on the basis of conduct

18331 involving:

18332 (i) fraud;

18333 (ii) deceit;

18334 (iii) misrepresentation; or

18335 (iv) a violation of an insurance law or rule.

18336 (8) (a) An order revoking a license under Subsection (5) or an agreement to surrender a

18337 license in lieu of administrative action may specify a time not to exceed five years within which

18338 the former licensee may not apply for a new license.

18339 (b) If no time is specified in the order or agreement described in Subsection (8)(a), the

18340 former licensee may not apply for a new license for five years without the express approval of

18341 the commissioner.

18342 (9) The commissioner shall promptly withhold, suspend, restrict, or reinstate the use of
18343 a license issued under this part if so ordered by a court.

18344 (10) The commissioner shall by rule prescribe the license renewal and reinstatement
18345 procedures in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
18346 Administrative Rulemaking Act.

18347 Section 386. Section **31A-26-214** is amended to read:

18348 **31A-26-214. Probation -- Grounds for revocation.**

18349 (1) The commissioner may place a licensee on probation for a period not to exceed 24
18350 months as follows:

18351 (a) after an adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
18352 Administrative Procedures Act, for any circumstances that would justify a suspension under
18353 Section 31A-26-213; or

18354 (b) at the issuance of a new license:

18355 (i) with an admitted violation under 18 U.S.C. Sections 1033 and 1034; or

18356 (ii) with a response to a background information question on any new license
18357 application indicating that:

18358 (A) the person has been convicted of a crime, that is listed by rule made in accordance
18359 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as a
18360 crime that is grounds for probation;

18361 (B) the person is currently charged with a crime, that is listed by rule made in
18362 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
18363 Act, as a crime that is grounds for probation regardless of whether adjudication was withheld;

18364 (C) the person has been involved in an administrative proceeding regarding any
18365 professional or occupational license; or

18366 (D) any business in which the person is or was an owner, partner, officer, or director
18367 has been involved in an administrative proceeding regarding any professional or occupational
18368 license.

18369 (2) The commissioner may put a licensee on probation for a specified period no longer

18370 than 24 months if the licensee has admitted to violations under 18 U.S.C. Sections 1033 and
18371 1034.

18372 (3) A probation order under this section shall state the conditions for retention of the
18373 license, which shall be reasonable.

18374 (4) A violation of the probation is grounds for revocation pursuant to any proceeding
18375 authorized under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
18376 Section 387. Section **31A-27a-102** is amended to read:

18377 **31A-27a-102. Definitions.**

18378 As used in this chapter:

18379 (1) "Admitted assets" is as defined by and is measured in accordance with the National
18380 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as
18381 incorporated in this state by rules made by the department in accordance with [~~Title 63, Chapter~~
18382 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection
18383 31A-4-113(1)(b)(ii).

18384 (2) "Affected guaranty association" means a guaranty association that is or may become
18385 liable for payment of a covered claim.

18386 (3) "Affiliate" is as defined in Section 31A-1-301.

18387 (4) Notwithstanding Section 31A-1-301, "alien insurer" means an insurer incorporated
18388 or organized under the laws of a jurisdiction that is not a state.

18389 (5) Notwithstanding Section 31A-1-301, "claimant" or "creditor" means a person
18390 having a claim against an insurer whether the claim is:

18391 (a) matured or not matured;

18392 (b) liquidated or unliquidated;

18393 (c) secured or unsecured;

18394 (d) absolute; or

18395 (e) fixed or contingent.

18396 (6) "Commissioner" is as defined in Section 31A-1-301.

18397 (7) "Commodity contract" means:

- 18398 (a) a contract for the purchase or sale of a commodity for future delivery on, or subject
18399 to the rules of:
- 18400 (i) a board of trade or contract market under the Commodity Exchange Act, 7 U.S.C.
18401 Sec. 1 et seq.; or
- 18402 (ii) a board of trade outside the United States;
- 18403 (b) an agreement that is:
- 18404 (i) subject to regulation under Section 19 of the Commodity Exchange Act, 7 U.S.C.
18405 Sec. 1 et seq.; and
- 18406 (ii) commonly known to the commodities trade as:
- 18407 (A) a margin account;
- 18408 (B) a margin contract;
- 18409 (C) a leverage account; or
- 18410 (D) a leverage contract;
- 18411 (c) an agreement or transaction that is:
- 18412 (i) subject to regulation under Section 4c(b) of the Commodity Exchange Act, 7 U.S.C.
18413 Sec. 1 et seq.; and
- 18414 (ii) commonly known to the commodities trade as a commodity option;
- 18415 (d) a combination of the agreements or transactions referred to in this Subsection (7);
18416 or
- 18417 (e) an option to enter into an agreement or transaction referred to in this Subsection
18418 (7).
- 18419 (8) "Control" is as defined in Section 31A-1-301.
- 18420 (9) "Delinquency proceeding" means a:
- 18421 (a) proceeding instituted against an insurer for the purpose of rehabilitating or
18422 liquidating the insurer; and
- 18423 (b) summary proceeding under Section 31A-27a-201.
- 18424 (10) "Department" is as defined in Section 31A-1-301 unless the context requires
18425 otherwise.

18426 (11) "Doing business," "doing insurance business," and "business of insurance" includes
18427 any of the following acts, whether effected by mail, electronic means, or otherwise:

18428 (a) issuing or delivering a contract, certificate, or binder relating to insurance or
18429 annuities:

18430 (i) to a person who is resident in this state; or

18431 (ii) covering a risk located in this state;

18432 (b) soliciting an application for the contract, certificate, or binder described in
18433 Subsection (11)(a);

18434 (c) negotiating preliminary to the execution of the contract, certificate, or binder
18435 described in Subsection (11)(a);

18436 (d) collecting premiums, membership fees, assessments, or other consideration for the
18437 contract, certificate, or binder described in Subsection (11)(a);

18438 (e) transacting matters:

18439 (i) subsequent to execution of the contract, certificate, or binder described in
18440 Subsection (11)(a); and

18441 (ii) arising out of the contract, certificate, or binder described in Subsection (11)(a);

18442 (f) operating as an insurer under a license or certificate of authority issued by the
18443 department; or

18444 (g) engaging in an act identified in Chapter 15, Unauthorized Insurers, Surplus Lines,
18445 and Risk Retention Groups.

18446 (12) Notwithstanding Section 31A-1-301, "domiciliary state" means the state in which
18447 an insurer is incorporated or organized, except that "domiciliary state" means:

18448 (a) in the case of an alien insurer, its state of entry; or

18449 (b) in the case of a risk retention group, the state in which the risk retention group is
18450 chartered as contemplated in the Liability Risk Retention Act, 15 U.S.C. Sec. 3901 et seq.

18451 (13) "Estate" has the same meaning as "property of the insurer" as defined in
18452 Subsection (30).

18453 (14) "Fair consideration" is given for property or an obligation:

18454 (a) when in exchange for the property or obligation, as a fair equivalent for it, and in
18455 good faith:

- 18456 (i) property is conveyed;
- 18457 (ii) services are rendered;
- 18458 (iii) an obligation is incurred; or
- 18459 (iv) an antecedent debt is satisfied; or

18460 (b) when the property or obligation is received in good faith to secure a present
18461 advance or an antecedent debt in amount not disproportionately small compared to the value of
18462 the property or obligation obtained.

18463 (15) Notwithstanding Section 31A-1-301, "foreign insurer" means an insurer domiciled
18464 in another state.

18465 (16) "Formal delinquency proceeding" means a rehabilitation or liquidation proceeding.

18466 (17) "Forward contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
18467 Sec. 1821(e)(8)(D).

18468 (18) (a) "General assets" include all property of the estate that is not:

- 18469 (i) subject to a properly perfected secured claim;
- 18470 (ii) subject to a valid and existing express trust for the security or benefit of a specified
18471 person or class of person; or
- 18472 (iii) required by the insurance laws of this state or any other state to be held for the
18473 benefit of a specified person or class of person.

18474 (b) "General assets" include all property of the estate or its proceeds in excess of the
18475 amount necessary to discharge a claim described in Subsection (18)(a).

18476 (19) "Good faith" means honesty in fact and intention, and in regard to Part 5, Asset
18477 Recovery, also requires the absence of:

18478 (a) information that would lead a reasonable person in the same position to know that
18479 the insurer is financially impaired or insolvent; and

18480 (b) knowledge regarding the imminence or pendency of a delinquency proceeding
18481 against the insurer.

- 18482 (20) "Guaranty association" means:
- 18483 (a) a mechanism mandated by Chapter 28, Guaranty Associations; or
- 18484 (b) a similar mechanism in another state that is created for the payment of claims or
- 18485 continuation of policy obligations of a financially impaired or insolvent insurer.
- 18486 (21) "Impaired" means that an insurer:
- 18487 (a) does not have admitted assets at least equal to the sum of:
- 18488 (i) all its liabilities; and
- 18489 (ii) the minimum surplus required to be maintained by Section 31A-5-211 or
- 18490 31A-8-209; or
- 18491 (b) has a total adjusted capital that is less than its authorized control level RBC, as
- 18492 defined in Section 31A-17-601.
- 18493 (22) "Insolvency" or "insolvent" means that an insurer:
- 18494 (a) is unable to pay its obligations when they are due;
- 18495 (b) does not have admitted assets at least equal to all of its liabilities; or
- 18496 (c) has a total adjusted capital that is less than its mandatory control level RBC, as
- 18497 defined in Section 31A-17-601.
- 18498 (23) Notwithstanding Section 31A-1-301, "insurer" means a person who:
- 18499 (a) is doing, has done, purports to do, or is licensed to do the business of insurance;
- 18500 (b) is or has been subject to the authority of, or to rehabilitation, liquidation,
- 18501 reorganization, supervision, or conservation by an insurance commissioner; or
- 18502 (c) is included under Section 31A-27a-104.
- 18503 (24) "Liabilities" is as defined by and is measured in accordance with the National
- 18504 Association of Insurance Commissioner's Statements of Statutory Accounting Principles, as
- 18505 incorporated in this state by rules made by the department in accordance with [~~Title 63, Chapter~~
- 18506 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the purposes of Subsection
- 18507 31A-4-113(1)(b)(ii).
- 18508 (25) (a) Subject to Subsection (21)(b), "netting agreement" means:
- 18509 (i) a contract or agreement that:

- 18510 (A) documents one or more transactions between the parties to the agreement for or
18511 involving one or more qualified financial contracts; and
- 18512 (B) provides for the netting, liquidation, setoff, termination, acceleration, or close out
18513 under or in connection with:
- 18514 (I) one or more qualified financial contracts; or
- 18515 (II) present or future payment or delivery obligations or payment or delivery
18516 entitlements under the agreement, including liquidation or close-out values relating to the
18517 obligations or entitlements, among the parties to the netting agreement;
- 18518 (ii) a master agreement or bridge agreement for one or more master agreements
18519 described in Subsection (25)(a)(i); or
- 18520 (iii) any of the following related to a contract or agreement described in Subsection
18521 (25)(a)(i) or (ii):
- 18522 (A) a security agreement;
- 18523 (B) a security arrangement;
- 18524 (C) other credit enhancement or guarantee; or
- 18525 (D) a reimbursement obligation.
- 18526 (b) If a contract or agreement described in Subsection (25)(a)(i) or (ii) relates to an
18527 agreement or transaction that is not a qualified financial contract, the contract or agreement
18528 described in Subsection (25)(a)(i) or (ii) is considered a netting agreement only with respect to
18529 an agreement or transaction that is a qualified financial contract.
- 18530 (c) "Netting agreement" includes:
- 18531 (i) a term or condition incorporated by reference in the contract or agreement described
18532 in Subsection (25)(a); or
- 18533 (ii) a master agreement described in Subsection (25)(a).
- 18534 (d) A master agreement described in Subsection (25)(a), together with all schedules,
18535 confirmations, definitions, and addenda to that master agreement and transactions under any of
18536 the items described in this Subsection (25)(d), are treated as one netting agreement.
- 18537 (26) (a) "New value" means:

- 18538 (i) money;
- 18539 (ii) money's worth in goods, services, or new credit; or
- 18540 (iii) release by a transferee of property previously transferred to the transferee in a
- 18541 transaction that is neither void nor voidable by the insurer or the receiver under any applicable
- 18542 law, including proceeds of the property.
- 18543 (b) "New value" does not include an obligation substituted for an existing obligation.
- 18544 (27) "Party in interest" means:
- 18545 (a) the commissioner;
- 18546 (b) a nondomiciliary commissioner in whose state the insurer has outstanding claims
- 18547 liabilities;
- 18548 (c) an affected guaranty association; and
- 18549 (d) the following parties if the party files a request with the receivership court for
- 18550 inclusion as a party in interest and to be on the service list:
- 18551 (i) an insurer that ceded to or assumed business from the insurer;
- 18552 (ii) a policyholder;
- 18553 (iii) a third party claimant;
- 18554 (iv) a creditor;
- 18555 (v) a 10% or greater equity security holder in the insolvent insurer; and
- 18556 (vi) a person, including an indenture trustee, with a financial or regulatory interest in the
- 18557 delinquency proceeding.
- 18558 (28) (a) Notwithstanding Section 31A-1-301, "policy" means, notwithstanding what it
- 18559 is called:
- 18560 (i) a written contract of insurance;
- 18561 (ii) a written agreement for or affecting insurance; or
- 18562 (iii) a certificate of a written contract or agreement described in this Subsection (28)(a).
- 18563 (b) "Policy" includes all clauses, riders, endorsements, and papers that are a part of a
- 18564 policy.
- 18565 (c) "Policy" does not include a contract of reinsurance.

18566 (29) "Preference" means a transfer of property of an insurer to or for the benefit of a
18567 creditor:

18568 (a) for or on account of an antecedent debt, made or allowed by the insurer within one
18569 year before the day on which a successful petition for rehabilitation or liquidation is filed under
18570 this chapter;

18571 (b) the effect of which transfer may enable the creditor to obtain a greater percentage of
18572 the creditor's debt than another creditor of the same class would receive; and

18573 (c) if a liquidation order is entered while the insurer is already subject to a rehabilitation
18574 order and the transfer otherwise qualifies, that is made or allowed within the shorter of:

18575 (i) one year before the day on which a successful petition for rehabilitation is filed; or

18576 (ii) two years before the day on which a successful petition for liquidation is filed.

18577 (30) "Property of the insurer" or "property of the estate" includes:

18578 (a) a right, title, or interest of the insurer in property:

18579 (i) whether:

18580 (A) legal or equitable;

18581 (B) tangible or intangible; or

18582 (C) choate or inchoate; and

18583 (ii) including choses in action, contract rights, and any other interest recognized under
18584 the laws of this state;

18585 (b) entitlements that exist before the entry of an order of rehabilitation or liquidation;

18586 (c) entitlements that may arise by operation of this chapter or other provisions of law
18587 allowing the receiver to avoid prior transfers or assert other rights; and

18588 (d) (i) records or data that is otherwise the property of the insurer; and

18589 (ii) records or data similar to those described in Subsection (30)(d)(i) that are within the
18590 possession, custody, or control of a managing general agent, a third party administrator, a
18591 management company, a data processing company, an accountant, an attorney, an affiliate, or
18592 other person.

18593 (31) Subject to Subsection 31A-27a-611(10), "qualified financial contract" means any

18594 of the following:

18595 (a) a commodity contract;

18596 (b) a forward contract;

18597 (c) a repurchase agreement;

18598 (d) a securities contract;

18599 (e) a swap agreement; or

18600 (f) any similar agreement that the commissioner determines by rule or order to be a

18601 qualified financial contract for purposes of this chapter.

18602 (32) As the context requires, "receiver" means a rehabilitator, liquidator, or ancillary

18603 receiver.

18604 (33) As the context requires, "receivership" means a rehabilitation, liquidation, or

18605 ancillary receivership.

18606 (34) Unless the context requires otherwise, "receivership court" refers to the court in

18607 which a delinquency proceeding is pending.

18608 (35) "Reciprocal state" means any state other than this state that:

18609 (a) enforces a law substantially similar to this chapter;

18610 (b) requires the commissioner to be the receiver of a delinquent insurer; and

18611 (c) has laws for the avoidance of fraudulent conveyances and preferential transfers by

18612 the receiver of a delinquent insurer.

18613 (36) "Record," when used as a noun, means any information or data, in whatever form

18614 maintained, including:

18615 (a) a book;

18616 (b) a document;

18617 (c) a paper;

18618 (d) a file;

18619 (e) an application file;

18620 (f) a policyholder list;

18621 (g) policy information;

18622 (h) a claim or claim file;

18623 (i) an account;

18624 (j) a voucher;

18625 (k) a litigation file;

18626 (l) a premium record;

18627 (m) a rate book;

18628 (n) an underwriting manual;

18629 (o) a personnel record;

18630 (p) a financial record; or

18631 (q) other material.

18632 (37) "Reinsurance" means a transaction or contract under which an assuming insurer

18633 agrees to indemnify a ceding insurer against all, or a part, of any loss that the ceding insurer may

18634 sustain under the one or more policies that the ceding insurer issues or will issue.

18635 (38) "Repurchase agreement" is as defined in the Federal Deposit Insurance Act, 12

18636 U.S.C. Sec. 1821(e)(8)(D).

18637 (39) (a) "Secured claim" means, subject to Subsection (39)(b):

18638 (i) a claim secured by an asset that is not a general asset; or

18639 (ii) the right to set off as provided in Section 31A-27a-510.

18640 (b) "Secured claim" does not include:

18641 (i) a special deposit claim;

18642 (ii) a claim based on mere possession; or

18643 (iii) a claim arising from a constructive or resulting trust.

18644 (40) "Securities contract" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.

18645 Sec. 1821(e)(8)(D).

18646 (41) "Special deposit" means a deposit established pursuant to statute for the security

18647 or benefit of a limited class or classes of persons.

18648 (42) (a) Subject to Subsection (42)(b), "special deposit claim" means a claim secured by

18649 a special deposit.

18650 (b) "Special deposit claim" does not include a claim against the general assets of the
18651 insurer.

18652 (43) "State" means a state, district, or territory of the United States.

18653 (44) "Subsidiary" is as defined in Section 31A-1-301.

18654 (45) "Swap agreement" is as defined in the Federal Deposit Insurance Act, 12 U.S.C.
18655 Sec. 1821(e)(8)(D).

18656 (46) (a) "Transfer" includes the sale and every other and different mode of disposing of
18657 or parting with property or with an interest in property, whether:

18658 (i) directly or indirectly;

18659 (ii) absolutely or conditionally;

18660 (iii) voluntarily or involuntarily; or

18661 (iv) by or without judicial proceedings.

18662 (b) An interest in property includes:

18663 (i) a set off;

18664 (ii) having possession of the property; or

18665 (iii) fixing a lien on the property or on an interest in the property.

18666 (c) The retention of a security title in property delivered to an insurer and foreclosure of
18667 the insurer's equity of redemption is considered a transfer suffered by the insurer.

18668 (47) Notwithstanding Section 31A-1-301, "unauthorized insurer" means an insurer
18669 transacting the business of insurance in this state that has not received a certificate of authority
18670 from this state, or some other type of authority that allows for the transaction of the business of
18671 insurance in this state.

18672 Section 388. Section **31A-27a-116** is amended to read:

18673 **31A-27a-116. Financial reporting.**

18674 (1) (a) The receiver shall comply with all requirements for receivership financial
18675 reporting as specified by the commissioner by rule within:

18676 (i) 180 days after the day on which the receivership court enters an order of
18677 receivership; and

18678 (ii) 45 days following each calendar quarter after the period specified in Subsection
18679 (1)(a)(i).

18680 (b) The rule described in this Subsection (1) shall:

18681 (i) comply with this section;

18682 (ii) be made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
18683 Administrative Rulemaking Act; and

18684 (iii) require the receiver to file any financial report with the receivership court in
18685 addition to any other person specified in the rule.

18686 (c) A financial report shall include, at a minimum, a statement of:

18687 (i) the assets and liabilities of the insurer;

18688 (ii) the changes in those assets and liabilities; and

18689 (iii) all funds received or disbursed by the receiver during that reporting period.

18690 (d) The receiver may qualify a financial report or provide notes to the financial
18691 statement for further explanation.

18692 (e) The receivership court may order the receiver to provide any additional information
18693 as the receivership court considers appropriate.

18694 (2) Each affected guaranty association shall file one or more reports with the liquidator:

18695 (a) (i) within 180 days after the day on which the receivership court enters an order of
18696 liquidation; and

18697 (ii) (A) within 45 days following each calendar quarter after the period described in
18698 Subsection (2)(a)(i); or

18699 (B) at an interval:

18700 (I) agreed to between the liquidator and the affected guaranty association; or

18701 (II) required by the receivership court; and

18702 (b) in no event less than annually.

18703 (3) For good cause shown, the receivership court may grant:

18704 (a) relief for an extension or modification of time to comply with Subsection (1) or (2);
18705 or

18706 (b) such other relief as may be appropriate.

18707 Section 389. Section **31A-27a-117** is amended to read:

18708 **31A-27a-117. Records.**

18709 (1) (a) Upon entry of an order of rehabilitation or liquidation, the receiver is vested with
18710 title to all of the records of the insurer:

18711 (i) of whatever nature;

18712 (ii) in whatever medium;

18713 (iii) wherever located; and

18714 (iv) regardless of whether the item is in the custody and control of:

18715 (A) a third party administrator;

18716 (B) a managing general agent;

18717 (C) an attorney; or

18718 (D) other representatives of the insurer.

18719 (b) The receiver may immediately take possession and control of:

18720 (i) all of the records of the insurer; and

18721 (ii) the premises where the records are located.

18722 (c) At the request of the receiver, a third party administrator, managing general agent,
18723 attorney, or other representatives of the insurer shall release all records of the insurer to:

18724 (i) the receiver; or

18725 (ii) the receiver's designee.

18726 (d) With the receiver's approval, an affected guaranty association with an obligation
18727 under a policy issued by the insurer may take actions necessary to obtain directly from a third
18728 party administrator, managing general agent, attorney, or other representative of the insurer all
18729 records pertaining to the insurer's business that are appropriate or necessary for the affected
18730 guaranty association to fulfill its statutory obligations.

18731 (2) The receiver may certify a record of a delinquent insurer described in Subsection (1)
18732 and a record of the receiver's office created and maintained in connection with a delinquent
18733 insurer, as follows:

- 18734 (a) a record of a delinquent insurer may be certified by the receiver in an affidavit
18735 stating that the record is a true and correct copy of the record of the insurer that is received
18736 from the custody of the insurer, or found among the insurer's effects; or
- 18737 (b) a record created by or filed with the receiver's office in connection with a delinquent
18738 insurer may be certified by the receiver's affidavit stating that the record is a true and correct
18739 copy of the record maintained by the receiver's office.
- 18740 (3) (a) An original record or copy of a record certified under Subsection (2):
18741 (i) when admitted in evidence is prima facie evidence of the facts disclosed; and
18742 (ii) is admissible in evidence in the same manner as a document described in Utah Rules
18743 of Evidence, Rule 902(1).
- 18744 (b) The receivership court may consider the certification of a record by the receiver
18745 pursuant to this section as satisfying the requirements of Utah Rules of Evidence, Rule 803(6).
- 18746 (4) A record of a delinquent insurer held by the receiver:
18747 (a) is not a record of the department for any purposes; and
18748 (b) not subject to ~~[Title 63, Chapter 2]~~ Title 63G, Chapter 2, Government Records
18749 Access and Management Act.
- 18750 Section 390. Section ~~31A-27a-514~~ is amended to read:
18751 **31A-27a-514. Recovery of premiums owed.**
- 18752 (1) (a) An insured shall pay any unpaid earned premium or retrospectively rated
18753 premium due the insurer:
18754 (i) directly to the receiver; or
18755 (ii) to an agent that pays or is obligated to pay the receiver on behalf of the insured.
- 18756 (b) (i) Premium on surety business is considered earned at inception if no policy term
18757 can be determined.
18758 (ii) All premium other than that described in Subsection (1)(b)(i) is considered earned
18759 and is prorated equally over the determined policy term, regardless of any provision in the bond,
18760 guaranty, contract, or other agreement.
- 18761 (2) (a) A person, other than the insured, responsible for the remittance of a premium,

18762 shall turn over to the receiver any unpaid premium due and owing as shown on the records of
18763 the insurer for the full policy term due the insurer at the time of the entry of the receivership
18764 order:

18765 (i) including any amount representing commissions; and
18766 (ii) whether earned or unearned based on the termination of coverage under Sections
18767 31A-27a-402 and 31A-27a-403.

18768 (b) The unpaid premium due the receiver from any person other than the insured
18769 excludes any premium not collected from the insured and not earned based on the termination of
18770 coverage under Sections 31A-27a-402 and 31A-27a-403.

18771 (3) (a) A person, other than the insured, responsible for the remittance of a premium,
18772 shall turn over to the receiver any unearned commission of that person based on the termination
18773 of coverage under Sections 31A-27a-402 and 31A-27a-403.

18774 (b) A credit, setoff, or both may not be allowed to an agent, broker, premium finance
18775 company, or any other person for an:

18776 (i) amount advanced to the insurer by the person on behalf of, but in the absence of a
18777 payment by, the insured; or

18778 (ii) other amount paid by the person to any other person after the day on which the
18779 order of receivership is entered.

18780 (4) Regardless of any provision to the contrary in an agency contract or other
18781 agreement, a person that collects premium or finances premium under a premium finance
18782 contract, that is due the insurer in receivership is considered to:

18783 (a) hold that premium in trust as a fiduciary for the benefit of the insurer; and

18784 (b) have availed itself of the laws of this state.

18785 (5) (a) A premium finance company is obligated to pay an amount due the insurer from
18786 a premium finance contract, whether the premium is earned or unearned.

18787 (b) The receiver may collect an unpaid financed premium directly from:

18788 (i) the premium finance company by taking an assignment of the underlying premium
18789 finance contract; or

- 18790 (ii) the insured that is a party to the premium finance contract.
- 18791 (6) Upon satisfactory evidence of a violation of this section by a person other than an
18792 insured, the commissioner may pursue one or more of the following courses of action:
- 18793 (a) suspend, revoke, or refuse to renew the license of an offending party;
- 18794 (b) impose a penalty of not more than \$1,000 for each act in violation of this section by
18795 a party; and
- 18796 (c) impose any other sanction or penalty allowed for by law.
- 18797 (7) (a) Before the commissioner may take an action set forth in Subsection (6), written
18798 notice shall be given to the person accused of violating the law:
- 18799 (i) stating specifically the nature of the alleged violation; and
- 18800 (ii) fixing a time and place, at least ten days after the day on which the notice is sent,
18801 when a hearing on the matter is to be held.
- 18802 (b) After a hearing, or upon failure of the accused to appear at a hearing, the
18803 commissioner, if a violation is found, shall impose the penalties under Subsection (6) that the
18804 commissioner considers advisable.
- 18805 (c) If the commissioner takes action under this Subsection (7), the party aggrieved may
18806 appeal from that action as provided in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
18807 Administrative Procedures Act.
- 18808 Section 391. Section **31A-27a-515** is amended to read:
- 18809 **31A-27a-515. Commutation and release agreements.**
- 18810 (1) For purposes of this section, "casualty claims" means the insurer's aggregate claims
18811 arising out of insurance contracts in the following lines:
- 18812 (a) farm owner multiperil;
- 18813 (b) homeowner multiperil;
- 18814 (c) commercial multiperil;
- 18815 (d) medical malpractice;
- 18816 (e) workers' compensation;
- 18817 (f) other liability;

18818 (g) products liability;

18819 (h) auto liability;

18820 (i) aircraft, all peril; and

18821 (j) international, for lines listed in Subsections (1)(a) through (i).

18822 (2) (a) Notwithstanding Section 31A-27a-512, the liquidator and a reinsurer may

18823 negotiate a voluntary commutation and release of all obligations arising from a reinsurance

18824 agreement in which the insurer is the ceding party.

18825 (b) A commutation and release agreement voluntarily entered into by the parties shall be

18826 commercially reasonable, actuarially sound, and in the best interests of the creditors of the

18827 insurer.

18828 (c) (i) An agreement subject to this Subsection (2) that has a gross consideration in

18829 excess of \$250,000 shall be submitted pursuant to Section 31A-27a-107 to the receivership

18830 court for approval.

18831 (ii) An agreement described in this Subsection (2)(c) shall be approved by the

18832 receivership court if it meets the standards described in this Subsection (2).

18833 (3) Without derogating from Section 31A-27a-512, if the liquidator is unable to

18834 negotiate a voluntary commutation with a reinsurer with respect to a reinsurance agreement

18835 between the insurer and that reinsurer, the liquidator may, in addition to any other remedy

18836 available under applicable law, apply to the receivership court, with notice to the reinsurer, for

18837 an order requiring that the parties submit commutation proposals with respect to the reinsurance

18838 agreement to a panel of three arbitrators:

18839 (a) at any time after 75% of the actuarially estimated ultimate incurred liability for all of

18840 the casualty claims against the liquidation estate is reached by allowance of claims in the

18841 liquidation estate pursuant to Sections 31A-27a-603 and 31A-27a-605, calculated:

18842 (i) as of the day on which the order of liquidation is entered by or at the instance of the

18843 liquidator; and

18844 (ii) for purposes of this Subsection (3), not performed during the five-year period

18845 subsequent to the day on which the order of liquidation is entered; or

18846 (b) at any time in regard to a reinsurer if that reinsurer has a total adjusted capital that is
18847 less than 250% of its authorized control level RBC as defined in Section 31A-17-601.

18848 (4) Venue for the arbitration is within the district of the receivership court's jurisdiction
18849 or at another location agreed to by the parties.

18850 (5) (a) If the liquidator determines that commutation would be in the best interests of
18851 the creditors of the liquidation estate, the liquidator may petition the receivership court to order
18852 arbitration.

18853 (b) If the liquidator petitions the receivership court under Subsection (5)(a), the
18854 receivership court shall require that the liquidator and the reinsurer each appoint an arbitrator
18855 within 30 days after the day on which the order for arbitration is entered.

18856 (c) If either party fails to appoint an arbitrator within the 30-day period, the other party
18857 may appoint both arbitrators and the appointments are binding on the parties.

18858 (d) The two arbitrators shall be active or retired executive officers of insurance or
18859 reinsurance companies, not under the control of or affiliated with the insurer or the reinsurer.

18860 (e) (i) Within 30 days after the day on which both arbitrators have been appointed, the
18861 two arbitrators shall agree to the appointment of a third independent, impartial, disinterested
18862 arbitrator.

18863 (ii) If agreement to the disinterested arbitrator is not reached within the 30-day period,
18864 the third arbitrator shall be appointed by the receivership court.

18865 (f) The disinterested arbitrator shall be a person who:

18866 (i) is or, if retired, has been, an executive officer of a United States domiciled insurance
18867 or reinsurance company that is not under the control of or affiliated with either of the parties;
18868 and

18869 (ii) has at least 15 years experience in the reinsurance industry.

18870 (6) (a) The arbitration panel may choose to retain as an expert to assist the panel in its
18871 determinations, a retired, disinterested executive officer of a United States domiciled insurance
18872 or reinsurance company having at least 15 years loss reserving actuarial experience.

18873 (b) If the arbitration panel is unable to unanimously agree on the identity of the expert

18874 within 14 days of the day on which the disinterested arbitrator is appointed, the expert shall be:
18875 (i) designated by the commissioner:
18876 (A) by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
18877 Administrative Rulemaking Act; and
18878 (B) on the basis of recommendations made by a nationally recognized society of
18879 actuaries; and
18880 (ii) a disinterested person that has knowledge, experience, and training applicable to the
18881 line of insurance that is the subject of the arbitration.
18882 (c) The expert:
18883 (i) may not vote in the proceeding; and
18884 (ii) shall issue a written report and recommendations to the arbitration panel within 60
18885 days after the day on which the arbitration panel receives the commutation proposals submitted
18886 by the parties pursuant to Subsection (7), which report shall:
18887 (A) be included as part of the arbitration record; and
18888 (B) accompany the award issued by the arbitration panel pursuant to Subsection (8).
18889 (d) The cost of the expert is to be paid equally by the parties.
18890 (7) Within 90 days after the day on which the disinterested arbitrator is appointed under
18891 Subsection (5), each party shall submit to the arbitration panel:
18892 (a) the party's commutation proposals; and
18893 (b) other documents and information relevant to the determination of the parties' rights
18894 and obligations under the reinsurance agreement to be commuted, including:
18895 (i) a written review of any disputed paid claim balances;
18896 (ii) any open claim files and related case reserves at net present value; and
18897 (iii) any actuarial estimates with the basis of computation of any other reserves and any
18898 incurred-but-not-reported losses at net present value.
18899 (8) (a) Within 90 days after the day on which the parties submit the information
18900 required by Subsection (7), the arbitration panel:
18901 (i) shall issue an award, determined by a majority of the arbitration panel, specifying the

18902 terms of a commercially reasonable and actuarially sound commutation agreement between the
18903 parties; or

18904 (ii) may issue an award declining commutation between the parties for a period not to
18905 exceed two years if a majority of the arbitration panel determines that it is unable to derive a
18906 commercially reasonable and actuarially sound commutation on the basis of:

18907 (A) the submissions of the parties; and

18908 (B) if applicable, the report and recommendation of the expert retained in accordance
18909 with Subsection (6).

18910 (b) Following the expiration of the two-year period described in Subsection (8)(a), the
18911 liquidator may again invoke arbitration in accordance with Subsection (2), in which event
18912 Subsections (2) through (9) apply to the renewed proceeding, except that the arbitration panel is
18913 obliged to issue an award under Subsection (8)(a).

18914 (9) Once an award is issued, the liquidator shall promptly submit the award to the
18915 receivership court for confirmation.

18916 (10) (a) Within 30 days of the day on which the receivership court confirms the award,
18917 the reinsurer shall give notice to the receiver that the reinsurer:

18918 (i) will commute the reinsurer's liabilities to the insurer for the amount of the award in
18919 return for a full and complete release of all liabilities between the parties, whether past, present,
18920 or future; or

18921 (ii) will not commute the reinsurer's liabilities to the insurer.

18922 (b) If the reinsurer's liabilities are not commuted under Subsection (10)(a), the reinsurer
18923 shall:

18924 (i) establish and maintain in accordance with Section 31A-27a-516 a reinsurance
18925 recoverable trust in the amount of 102% of the award; and

18926 (ii) pay the costs and fees associated with establishing and maintaining the trust
18927 established under this Subsection (10)(b).

18928 (11) (a) If the reinsurer notifies the liquidator that it will commute the reinsurer's
18929 liabilities pursuant to Subsection (10)(a)(i), the liquidator has 30 days from the day on which the

18930 reinsurer notifies the liquidator to:

18931 (i) tender to the reinsurer a proposed commutation and release agreement:

18932 (A) providing for a full and complete release of all liabilities between the parties,
18933 whether past, present, or future;

18934 (B) that requires that the reinsurer make payment of the commutation amount within 14
18935 days from the day on which the agreement is consummated; or

18936 (ii) reject the commutation in writing, subject to receivership court approval.

18937 (b) If the liquidator rejects the commutation subject to approval of the receivership
18938 court in accordance with Subsection (11)(a)(ii), the reinsurer shall establish and maintain a
18939 reinsurance recoverable trust in accordance with Section 31A-27a-516.

18940 (c) The liquidator and the reinsurer shall share equally in the costs and fees associated
18941 with establishing and maintaining the trust established under Subsection (11)(b).

18942 (12) Except for the period provided in Subsection (8)(b), the time periods established in
18943 Subsections (6), (7), (8), (10), and (11) may be extended:

18944 (a) upon the consent of the parties; or

18945 (b) by order of the receivership court, for good cause shown.

18946 (13) Subject to Subsection (14), this section may not be construed to supersede or
18947 impair any provision in a reinsurance agreement that establishes a commercially reasonable and
18948 actuarially sound method for valuing and commuting the obligations of the parties to the
18949 reinsurance agreement by providing in the contract the specific methodology to be used for
18950 valuing and commuting the obligations between the parties.

18951 (14) (a) A commutation provision in a reinsurance agreement is not effective if it is
18952 demonstrated to the receivership court that the provision is entered into in contemplation of the
18953 insolvency of one or more of the parties.

18954 (b) A contractual commutation provision entered into within one year of the day on
18955 which the liquidation order of the insurer is entered is rebuttably presumed to have been entered
18956 into in contemplation of insolvency.

18957 Section 392. Section **31A-27a-804** is amended to read:

18958 **31A-27a-804. Disposition of records during and after termination of liquidation.**

18959 (1) Whenever it appears to the receiver that records of the insurer in receivership are no
18960 longer useful, the receiver may recommend to the receivership court, and the receivership court
18961 shall direct what records shall be destroyed.

18962 (2) (a) If the receiver determines that records should be maintained after the closing of
18963 the delinquency proceeding, the receiver may reserve property from the receivership estate for
18964 the maintenance of the records.

18965 (b) Any amounts retained under this Subsection (2) are an administrative expense of the
18966 estate under Subsection 31A-27a-701(2)(a).

18967 (c) Any records retained pursuant to this Subsection (2) shall be transferred to the
18968 custody of the commissioner, and the commissioner may retain or dispose of the records as
18969 appropriate, at the commissioner's discretion.

18970 (d) Records of a delinquent insurer that are transferred to the commissioner:

18971 (i) may not be considered a record of the department for any purpose; and

18972 (ii) are not subject to [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
18973 Access and Management Act.

18974 Section 393. Section **31A-29-106** is amended to read:

18975 **31A-29-106. Powers of board.**

18976 (1) The board shall have the general powers and authority granted under the laws of
18977 this state to insurance companies licensed to transact health care insurance business. In
18978 addition, the board shall have the specific authority to:

18979 (a) enter into contracts to carry out the provisions and purposes of this chapter,
18980 including, with the approval of the commissioner, contracts with:

18981 (i) similar pools of other states for the joint performance of common administrative
18982 functions; or

18983 (ii) persons or other organizations for the performance of administrative functions;

18984 (b) sue or be sued, including taking such legal action necessary to avoid the payment of
18985 improper claims against the pool or the coverage provided through the pool;

- 18986 (c) establish appropriate rates, rate schedules, rate adjustments, expense allowances,
18987 agents' referral fees, claim reserve formulas, and any other actuarial function appropriate to the
18988 operation of the pool;
- 18989 (d) issue policies of insurance in accordance with the requirements of this chapter;
- 18990 (e) retain an executive director and appropriate legal, actuarial, and other personnel as
18991 necessary to provide technical assistance in the operations of the pool;
- 18992 (f) establish rules, conditions, and procedures for reinsuring risks under this chapter;
- 18993 (g) cause the pool to have an annual audit of its operations by the state auditor;
- 18994 (h) coordinate with the Department of Health in seeking to obtain from the Centers for
18995 Medicare and Medicaid Services, or other appropriate office or agency of government, all
18996 appropriate waivers, authority, and permission needed to coordinate the coverage available
18997 from the pool with coverage available under Medicaid, either before or after Medicaid
18998 coverage, or as a conversion option upon completion of Medicaid eligibility, without the
18999 necessity for requalification by the enrollee;
- 19000 (i) provide for and employ cost containment measures and requirements including
19001 preadmission certification, concurrent inpatient review, and individual case management for the
19002 purpose of making the pool more cost-effective;
- 19003 (j) offer pool coverage through contracts with health maintenance organizations,
19004 preferred provider organizations, and other managed care systems that will manage costs while
19005 maintaining quality care;
- 19006 (k) establish annual limits on benefits payable under the pool to or on behalf of any
19007 enrollee;
- 19008 (l) exclude from coverage under the pool specific benefits, medical conditions, and
19009 procedures for the purpose of protecting the financial viability of the pool;
- 19010 (m) administer the Pool Fund;
- 19011 (n) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
19012 Administrative Rulemaking Act, to implement this chapter; and
- 19013 (o) adopt, trademark, and copyright a trade name for the pool for use in marketing and

19014 publicizing the pool and its products.

19015 (2) (a) The board shall prepare and submit an annual report to the Legislature which
19016 shall include:

- 19017 (i) the net premiums anticipated;
- 19018 (ii) actuarial projections of payments required of the pool;
- 19019 (iii) the expenses of administration; and
- 19020 (iv) the anticipated reserves or losses of the pool.

19021 (b) The budget for operation of the pool is subject to the approval of the board.

19022 (c) The administrative budget of the board and the commissioner under this chapter
19023 shall comply with the requirements of [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary
19024 Procedures Act, and is subject to review and approval by the Legislature.

19025 (3) (a) The board shall on or before September 1, 2004, require the plan administrator
19026 or an independent actuarial consultant retained by the plan administrator to redetermine the
19027 reasonable equivalent of the criteria for uninsurability required under Subsection
19028 31A-30-106(1)(j) that is used by the board to determine eligibility for coverage in the pool.

19029 (b) The board shall redetermine the criteria established in Subsection (3)(a) at least
19030 every five years thereafter.

19031 Section 394. Section **31A-29-110** is amended to read:

19032 **31A-29-110. Pool administrator -- Selection -- Powers.**

19033 (1) The board shall select a pool administrator in accordance with [~~Title 63, Chapter~~
19034 ~~56~~] Title 63G, Chapter 6, Utah Procurement Code. The board shall evaluate bids based on
19035 criteria established by the board, which shall include:

- 19036 (a) ability to manage medical expenses;
- 19037 (b) proven ability to handle accident and health insurance;
- 19038 (c) efficiency of claim paying procedures;
- 19039 (d) marketing and underwriting;
- 19040 (e) proven ability for managed care and quality assurance;
- 19041 (f) provider contracting and discounts;

- 19042 (g) pharmacy benefit management;
- 19043 (h) an estimate of total charges for administering the pool; and
- 19044 (i) ability to administer the pool in a cost-efficient manner.
- 19045 (2) A pool administrator may be:
- 19046 (a) a health insurer;
- 19047 (b) a health maintenance organization;
- 19048 (c) a third-party administrator; or
- 19049 (d) any person or entity which has demonstrated ability to meet the criteria in
- 19050 Subsection (1).
- 19051 (3) (a) The pool administrator shall serve for a period of three years, with two one-year
- 19052 extension options, subject to the terms, conditions, and limitations of the contract between the
- 19053 board and the administrator.
- 19054 (b) At least one year prior to the expiration of the contract between the board and the
- 19055 pool administrator, the board shall invite all interested parties, including the current pool
- 19056 administrator, to submit bids to serve as the pool administrator.
- 19057 (c) Selection of the pool administrator for a succeeding period shall be made at least six
- 19058 months prior to the expiration of the period of service under Subsection (3)(a).
- 19059 (4) The pool administrator is responsible for all operational functions of the pool and
- 19060 shall:
- 19061 (a) have access to all nonpatient specific experience data, statistics, treatment criteria,
- 19062 and guidelines compiled or adopted by the Medicaid program, the Public Employees Health
- 19063 Plan, the Department of Health, or the Insurance Department, and which are not otherwise
- 19064 declared by statute to be confidential;
- 19065 (b) perform all marketing, eligibility, enrollment, member agreements, and
- 19066 administrative claim payment functions relating to the pool;
- 19067 (c) establish, administer, and operate a monthly premium billing procedure for
- 19068 collection of premiums from enrollees;
- 19069 (d) perform all necessary functions to assure timely payment of benefits to enrollees,

19070 including:

19071 (i) making information available relating to the proper manner of submitting a claim for
19072 benefits to the pool administrator and distributing forms upon which submission shall be made;
19073 and

19074 (ii) evaluating the eligibility of each claim for payment by the pool;

19075 (e) submit regular reports to the board regarding the operation of the pool, the
19076 frequency, content, and form of which reports shall be determined by the board;

19077 (f) following the close of each calendar year, determine net written and earned
19078 premiums, the expense of administration, and the paid and incurred losses for the year and
19079 submit a report of this information to the board, the commissioner, and the Division of Finance
19080 on a form prescribed by the commissioner; and

19081 (g) be paid as provided in the plan of operation for expenses incurred in the
19082 performance of the pool administrator's services.

19083 Section 395. Section **31A-29-111** is amended to read:

19084 **31A-29-111. Eligibility -- Limitations.**

19085 (1) (a) Except as provided in Subsection (1)(b), an individual who is not HIPAA
19086 eligible is eligible for pool coverage if the individual:

19087 (i) pays the established premium;

19088 (ii) is a resident of this state; and

19089 (iii) meets the health underwriting criteria under Subsection (5)(a).

19090 (b) Notwithstanding Subsection (1)(a), an individual who is not HIPAA eligible is not
19091 eligible for pool coverage if one or more of the following conditions apply:

19092 (i) the individual is eligible for health care benefits under Medicaid or Medicare, except
19093 as provided in Section 31A-29-112;

19094 (ii) the individual has terminated coverage in the pool, unless:

19095 (A) 12 months have elapsed since the termination date; or

19096 (B) the individual demonstrates that creditable coverage has been involuntarily
19097 terminated for any reason other than nonpayment of premium;

19098 (iii) the pool has paid the maximum lifetime benefit to or on behalf of the individual;
19099 (iv) the individual is an inmate of a public institution;
19100 (v) the individual is eligible for a public health plan, as defined in federal regulations
19101 adopted pursuant to 42 U.S.C. 300gg;
19102 (vi) the individual's health condition does not meet the criteria established under
19103 Subsection (5);
19104 (vii) the individual is eligible for coverage under an employer group that offers health
19105 insurance or a self-insurance arrangement to its eligible employees, dependents, or members as:
19106 (A) an eligible employee;
19107 (B) a dependent of an eligible employee; or
19108 (C) a member;
19109 (viii) the individual:
19110 (A) has coverage substantially equivalent to a pool policy, as established by the board in
19111 administrative rule, either as an insured or a covered dependent; or
19112 (B) would be eligible for the substantially equivalent coverage if the individual elected
19113 to obtain the coverage;
19114 (ix) at the time of application, the individual has not resided in Utah for at least 12
19115 consecutive months preceding the date of application; or
19116 (x) the individual's employer pays any part of the individual's health insurance premium,
19117 either as an insured or a dependent, for pool coverage.
19118 (2) (a) Except as provided in Subsection (2)(b), an individual who is HIPAA eligible is
19119 eligible for pool coverage if the individual:
19120 (i) pays the established premium; and
19121 (ii) is a resident of this state.
19122 (b) Notwithstanding Subsection (2)(a), a HIPAA eligible individual is not eligible for
19123 pool coverage if one or more of the following conditions apply:
19124 (i) the individual is eligible for health care benefits under Medicaid or Medicare, except
19125 as provided in Section 31A-29-112;

- 19126 (ii) the individual is eligible for a public health plan, as defined in federal regulations
19127 adopted pursuant to 42 U.S.C. 300gg;
- 19128 (iii) the individual is covered under any other health insurance;
- 19129 (iv) the individual is eligible for coverage under an employer group that offers health
19130 insurance or self-insurance arrangements to its eligible employees, dependents, or members as:
- 19131 (A) an eligible employee;
- 19132 (B) a dependent of an eligible employee; or
- 19133 (C) a member;
- 19134 (v) the pool has paid the maximum lifetime benefit to or on behalf of the individual;
- 19135 (vi) the individual is an inmate of a public institution; or
- 19136 (vii) the individual's employer pays any part of the individual's health insurance
19137 premium, either as an insured or a dependent, for pool coverage.
- 19138 (3) (a) Notwithstanding Subsection (1)(b)(ix), if otherwise eligible under Subsection
19139 (1)(a), an individual whose health insurance coverage from a state high risk pool with similar
19140 coverage is terminated because of nonresidency in another state is eligible for coverage under
19141 the pool subject to the conditions of Subsections (1)(b)(i) through (viii).
- 19142 (b) Coverage sought under Subsection (3)(a) shall be applied for within 63 days after
19143 the termination date of the previous high risk pool coverage.
- 19144 (c) The effective date of this state's pool coverage shall be the date of termination of the
19145 previous high risk pool coverage.
- 19146 (d) The waiting period of an individual with a preexisting condition applying for
19147 coverage under this chapter shall be waived:
- 19148 (i) to the extent to which the waiting period was satisfied under a similar plan from
19149 another state; and
- 19150 (ii) if the other state's benefit limitation was not reached.
- 19151 (4) (a) If an eligible individual applies for pool coverage within 30 days of being denied
19152 coverage by an individual carrier, the effective date for pool coverage shall be no later than the
19153 first day of the month following the date of submission of the completed insurance application

19154 to the carrier.

19155 (b) Notwithstanding Subsection (4)(a), for individuals eligible for coverage under
19156 Subsection (3), the effective date shall be the date of termination of the previous high risk pool
19157 coverage.

19158 (5) (a) The board shall establish and adjust, as necessary, health underwriting criteria
19159 based on:

19160 (i) health condition; and

19161 (ii) expected claims so that the expected claims are anticipated to remain within
19162 available funding.

19163 (b) The board, with approval of the commissioner, may contract with one or more
19164 providers under [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, to
19165 develop underwriting criteria under Subsection (5)(a).

19166 (c) If an individual is denied coverage by the pool under the criteria established in
19167 Subsection (5)(a), the pool shall issue a certificate of insurability to the individual for coverage
19168 under Subsection 31A-30-108(3).

19169 Section 396. Section ~~31A-29-116~~ is amended to read:

19170 **31A-29-116. Notice of availability.**

19171 The commissioner shall establish rules in accordance with [~~Title 63, Chapter 46a~~] Title
19172 63G, Chapter 3, Utah Administrative Rulemaking Act, governing notice of availability which is
19173 to be given by insurers to potential enrollees in the pool.

19174 Section 397. Section ~~31A-30-106~~ is amended to read:

19175 **31A-30-106. Premiums -- Rating restrictions -- Disclosure.**

19176 (1) Premium rates for health benefit plans under this chapter are subject to the
19177 provisions of this Subsection (1).

19178 (a) The index rate for a rating period for any class of business may not exceed the index
19179 rate for any other class of business by more than 20%.

19180 (b) (i) For a class of business, the premium rates charged during a rating period to
19181 covered insureds with similar case characteristics for the same or similar coverage, or the rates

19182 that could be charged to such employers under the rating system for that class of business, may
19183 not vary from the index rate by more than 30% of the index rate, except as provided in Section
19184 31A-22-625.

19185 (ii) A covered carrier that offers individual and small employer health benefit plans may
19186 use the small employer index rates to establish the rate limitations for individual policies, even if
19187 some individual policies are rated below the small employer base rate.

19188 (c) The percentage increase in the premium rate charged to a covered insured for a new
19189 rating period, adjusted pro rata for rating periods less than a year, may not exceed the sum of
19190 the following:

19191 (i) the percentage change in the new business premium rate measured from the first day
19192 of the prior rating period to the first day of the new rating period;

19193 (ii) any adjustment, not to exceed 15% annually and adjusted pro rata for rating periods
19194 of less than one year, due to the claim experience, health status, or duration of coverage of the
19195 covered individuals as determined from the covered carrier's rate manual for the class of
19196 business, except as provided in Section 31A-22-625; and

19197 (iii) any adjustment due to change in coverage or change in the case characteristics of
19198 the covered insured as determined from the covered carrier's rate manual for the class of
19199 business.

19200 (d) (i) Adjustments in rates for claims experience, health status, and duration from issue
19201 may not be charged to individual employees or dependents.

19202 (ii) Any adjustment described in Subsection (1)(d)(i) shall be applied uniformly to the
19203 rates charged for all employees and dependents of the small employer.

19204 (e) A covered carrier may use industry as a case characteristic in establishing premium
19205 rates, provided that the highest rate factor associated with any industry classification does not
19206 exceed the lowest rate factor associated with any industry classification by more than 15%.

19207 (f) (i) Covered carriers shall apply rating factors, including case characteristics,
19208 consistently with respect to all covered insureds in a class of business.

19209 (ii) Rating factors shall produce premiums for identical groups that:

19210 (A) differ only by the amounts attributable to plan design; and
19211 (B) do not reflect differences due to the nature of the groups assumed to select
19212 particular health benefit products.

19213 (iii) A covered carrier shall treat all health benefit plans issued or renewed in the same
19214 calendar month as having the same rating period.

19215 (g) For the purposes of this Subsection (1), a health benefit plan that uses a restricted
19216 network provision may not be considered similar coverage to a health benefit plan that does not
19217 use such a network, provided that use of the restricted network provision results in substantial
19218 difference in claims costs.

19219 (h) The covered carrier may not, without prior approval of the commissioner, use case
19220 characteristics other than:

- 19221 (i) age;
- 19222 (ii) gender;
- 19223 (iii) industry;
- 19224 (iv) geographic area;
- 19225 (v) family composition; and
- 19226 (vi) group size.

19227 (i) (i) The commissioner may establish rules in accordance with [~~Title 63, Chapter 46a~~]
19228 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

19229 (A) implement this chapter; and

19230 (B) assure that rating practices used by covered carriers are consistent with the
19231 purposes of this chapter.

19232 (ii) The rules described in Subsection (1)(i)(i) may include rules that:

19233 (A) assure that differences in rates charged for health benefit products by covered
19234 carriers are reasonable and reflect objective differences in plan design, not including differences
19235 due to the nature of the groups assumed to select particular health benefit products;

19236 (B) prescribe the manner in which case characteristics may be used by covered carriers;

19237 (C) implement the individual enrollment cap under Section 31A-30-110, including

19238 specifying:

19239 (I) the contents for certification;

19240 (II) auditing standards;

19241 (III) underwriting criteria for uninsurable classification; and

19242 (IV) limitations on high risk enrollees under Section 31A-30-111; and

19243 (D) establish the individual enrollment cap under Subsection 31A-30-110(1).

19244 (j) Before implementing regulations for underwriting criteria for uninsurable

19245 classification, the commissioner shall contract with an independent consulting organization to

19246 develop industry-wide underwriting criteria for uninsurability based on an individual's expected

19247 claims under open enrollment coverage exceeding 200% of that expected for a standard

19248 insurable individual with the same case characteristics.

19249 (k) The commissioner shall revise rules issued for Sections 31A-22-602 and

19250 31A-22-605 regarding individual accident and health policy rates to allow rating in accordance

19251 with this section.

19252 (2) For purposes of Subsection (1)(c)(i), if a health benefit product is a health benefit

19253 product into which the covered carrier is no longer enrolling new covered insureds, the covered

19254 carrier shall use the percentage change in the base premium rate, provided that the change does

19255 not exceed, on a percentage basis, the change in the new business premium rate for the most

19256 similar health benefit product into which the covered carrier is actively enrolling new covered

19257 insureds.

19258 (3) (a) A covered carrier may not transfer a covered insured involuntarily into or out of

19259 a class of business.

19260 (b) A covered carrier may not offer to transfer a covered insured into or out of a class

19261 of business unless the offer is made to transfer all covered insureds in the class of business

19262 without regard:

19263 (i) to case characteristics;

19264 (ii) claim experience;

19265 (iii) health status; or

19266 (iv) duration of coverage since issue.

19267 (4) (a) Each covered carrier shall maintain at the covered carrier's principal place of
19268 business a complete and detailed description of its rating practices and renewal underwriting
19269 practices, including information and documentation that demonstrate that the covered carrier's
19270 rating methods and practices are:

19271 (i) based upon commonly accepted actuarial assumptions; and

19272 (ii) in accordance with sound actuarial principles.

19273 (b) (i) Each covered carrier shall file with the commissioner, on or before April 1 of
19274 each year, in a form, manner, and containing such information as prescribed by the
19275 commissioner, an actuarial certification certifying that:

19276 (A) the covered carrier is in compliance with this chapter; and

19277 (B) the rating methods of the covered carrier are actuarially sound.

19278 (ii) A copy of the certification required by Subsection (4)(b)(i) shall be retained by the
19279 covered carrier at the covered carrier's principal place of business.

19280 (c) A covered carrier shall make the information and documentation described in this
19281 Subsection (4) available to the commissioner upon request.

19282 (d) Records submitted to the commissioner under this section shall be maintained by the
19283 commissioner as protected records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
19284 Government Records Access and Management Act.

19285 Section 398. Section **31A-30-106.7** is amended to read:

19286 **31A-30-106.7. Surcharge for groups changing carriers.**

19287 (1) (a) Except as provided in Subsection (1)(b), if prior notice is given, a covered
19288 carrier may impose upon a small group that changes coverage to that carrier from another
19289 carrier a one-time surcharge of up to 25% of the annualized premium that the carrier could
19290 otherwise charge under Section 31A-30-106.

19291 (b) A covered carrier may not impose the surcharge described in Subsection (1)(a) if:

19292 (i) the change in carriers occurs on the anniversary of the plan year, as defined in
19293 Section 31A-1-301;

19294 (ii) the previous coverage was terminated under Subsection 31A-30-107(3)(e); or

19295 (iii) employees from an existing group form a new business.

19296 (2) A covered carrier may not impose the surcharge described in Subsection (1) if the
19297 offer to cover the group occurs at a time other than the anniversary of the plan year because:

19298 (a) (i) the application for coverage is made prior to the anniversary date in accordance
19299 with the covered carrier's published policies; and

19300 (ii) the offer to cover the group is not issued until after the anniversary date; or

19301 (b) (i) the application for coverage is made prior to the anniversary date in accordance
19302 with the covered carrier's published policies; and

19303 (ii) additional underwriting or rating information requested by the covered carrier is not
19304 received until after the anniversary date.

19305 (3) If a covered carrier chooses to apply a surcharge under Subsection (1), the
19306 application of the surcharge and the criteria for incurring or avoiding the surcharge shall be
19307 clearly stated in the:

19308 (a) written application materials provided to the applicant at the time of application; and

19309 (b) written producer guidelines.

19310 (4) The commissioner shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
19311 63G, Chapter 3, Utah Administrative Rulemaking Act, to ensure compliance with this section.

19312 Section 399. Section **31A-31-104** is amended to read:

19313 **31A-31-104. Disclosure of information.**

19314 (1) (a) Subject to Subsection (2), upon written request by an insurer to an authorized
19315 agency, the authorized agency may release to the insurer information or evidence that is relevant
19316 to any suspected insurance fraud.

19317 (b) Upon written request by an authorized agency to an insurer, the insurer or an agent
19318 authorized by the insurer to act on the insurer's behalf shall release to the authorized agency
19319 information or evidence that is relevant to any suspected insurance fraud.

19320 (2) (a) Any information or evidence furnished to an authorized agency under this
19321 section may be classified as a protected record in accordance with Subsection [~~63-2-304~~]

19322 63G-2-305(9).

19323 (b) Any information or evidence furnished to an insurer under this section is not subject
19324 to discovery in a civil proceeding unless, after reasonable notice to any insurer, agent, or any
19325 authorized agency that has an interest in the information and subsequent hearing, a court
19326 determines that the public interest and any ongoing criminal investigation will not be
19327 jeopardized by the disclosure.

19328 (c) An insurer shall report to the department agency terminations based upon a violation
19329 of this chapter.

19330 Section 400. Section **31A-31-106** is amended to read:

19331 **31A-31-106. Disciplinary action.**

19332 (1) If, after giving notice and a hearing conducted pursuant to [~~Title 63, Chapter 46b~~]
19333 Title 63G, Chapter 4, Administrative Procedures Act, the commissioner finds by a
19334 preponderance of the evidence that a person licensed under Title 31A has committed a
19335 fraudulent insurance act, the commissioner may suspend or revoke the license issued under Title
19336 31A.

19337 (2) If the appropriate licensing authority finds by a preponderance of the evidence that a
19338 service provider violated Section 31A-31-103, the service provider is subject to revocation or
19339 suspension of the service provider's license.

19340 (3) The commissioner may notify the appropriate licensing authority of conduct by a
19341 service provider that the commissioner believes may constitute a fraudulent insurance act.

19342 Section 401. Section **31A-31-108** is amended to read:

19343 **31A-31-108. Assessment of insurers.**

19344 (1) For purposes of this section:

19345 (a) The commissioner shall by rule made in accordance with [~~Title 63, Chapter 46a~~]
19346 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, define:

19347 (i) "annuity consideration";

19348 (ii) "membership fees";

19349 (iii) "other fees";

- 19350 (iv) "deposit-type contract funds"; and
19351 (v) "other considerations in Utah."
19352 (b) "Utah consideration" means:
19353 (i) the total premiums written for Utah risks;
19354 (ii) annuity consideration;
19355 (iii) membership fees collected by the insurer;
19356 (iv) other fees collected by the insurer;
19357 (v) deposit-type contract funds; and
19358 (vi) other considerations in Utah.
19359 (c) "Utah risks" means insurance coverage on the lives, health, or against the liability of
19360 persons residing in Utah, or on property located in Utah, other than property temporarily in
19361 transit through Utah.
19362 (2) To implement this chapter, Section 34A-2-110, and Section 76-6-521, the
19363 commissioner may assess each admitted insurer and each nonadmitted insurer transacting
19364 insurance under Chapter 15, Parts 1 and 2, an annual fee as follows:
19365 (a) \$150 for an insurer if the sum of the Utah consideration for that insurer is less than
19366 or equal to \$1,000,000;
19367 (b) \$400 for an insurer if the sum of the Utah consideration for that insurer is greater
19368 than \$1,000,000 but is less than or equal to \$2,500,000;
19369 (c) \$700 for an insurer if the sum of the Utah consideration for that insurer is greater
19370 than \$2,500,000 but is less than or equal to \$5,000,000;
19371 (d) \$1,350 for an insurer if the sum of the Utah consideration for that insurer is greater
19372 than \$5,000,000 but less than or equal to \$10,000,000;
19373 (e) \$5,150 for an insurer if the sum of the Utah consideration for that insurer is greater
19374 than \$10,000,000 but less than \$50,000,000; and
19375 (f) \$12,350 for an insurer if the sum of the Utah consideration for that insurer equals or
19376 exceeds \$50,000,000.
19377 (3) (a) All money received by the state under this section shall be deposited in the

19378 General Fund as a dedicated credit of the department for the purpose of providing funds to pay
19379 for any costs and expenses incurred by the department in the administration, investigation, and
19380 enforcement of this chapter, Section 34A-2-110, and Section 76-6-521.

19381 (b) All monies received by the department to pay for the costs and expenses incurred by
19382 the department in the administration, investigation, and enforcement of this chapter, Section
19383 34A-2-110, and Section 76-6-521 shall be nonlapsing.

19384 Section 402. Section **31A-33-104** is amended to read:

19385 **31A-33-104. Workers' Compensation Fund exempted.**

19386 (1) The Workers' Compensation Fund is exempt from the provisions of:

19387 (a) Title 52, Chapter 4, Open and Public Meetings Act;

19388 (b) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
19389 Management Act; and

19390 (c) Title 63A, Utah Administrative Services Code.

19391 (2) The board may specifically exempt the Workers' Compensation Fund from any
19392 provisions of:

19393 (a) Title 67, Chapter 19, Utah State Personnel Management Act; and

19394 (b) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code.

19395 (3) The provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
19396 Procedures Act, do not govern the initial determination of any person's eligibility for benefits
19397 under Title 34A, Chapter 2, Workers' Compensation Act, and Title 34A, Chapter 3, Utah
19398 Occupational Disease Act.

19399 Section 403. Section **31A-33-107** is amended to read:

19400 **31A-33-107. Duties of board -- Creation of subsidiaries -- Entering into joint**
19401 **enterprises.**

19402 (1) The board shall:

19403 (a) appoint a chief executive officer to administer the Workers' Compensation Fund;

19404 (b) receive and act upon financial, management, and actuarial reports covering the
19405 operations of the Workers' Compensation Fund;

- 19406 (c) ensure that the Workers' Compensation Fund is administered according to law;
- 19407 (d) examine and approve an annual operating budget for the Workers' Compensation
- 19408 Fund;
- 19409 (e) serve as investment trustees and fiduciaries of the Injury Fund;
- 19410 (f) receive and act upon recommendations of the chief executive officer;
- 19411 (g) develop broad policy for the long-term operation of the Workers' Compensation
- 19412 Fund, consistent with its mission and fiduciary responsibility;
- 19413 (h) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve any rating
- 19414 plans that would modify a policyholder's premium;
- 19415 (i) subject to Chapter 19a, Part 4, Workers' Compensation Rates, approve the amount
- 19416 of deviation, if any, from standard insurance rates;
- 19417 (j) approve the amount of the dividends, if any, to be returned to policyholders;
- 19418 (k) adopt a procurement policy consistent with the provisions of [~~Title 63, Chapter 56~~
- 19419 Title 63G, Chapter 6, Utah Procurement Code;
- 19420 (l) develop and publish an annual report to policyholders, the governor, the Legislature,
- 19421 and interested parties that describes the financial condition of the Injury Fund, including a
- 19422 statement of expenses and income and what measures were taken or will be necessary to keep
- 19423 the Injury Fund actuarially sound;
- 19424 (m) establish a fiscal year;
- 19425 (n) determine and establish an actuarially sound price for insurance offered by the fund;
- 19426 (o) establish conflict of interest requirements that govern the board, officers, and
- 19427 employees;
- 19428 (p) establish compensation and reasonable expenses to be paid to directors on the board
- 19429 subject to the requirements of Section 31A-33-106, so that the board may not approve
- 19430 compensation that exceeds the amount described in Subsection 31A-33-106(18)(a)(i)(B); and
- 19431 (q) perform all other acts necessary for the policymaking and oversight of the Workers'
- 19432 Compensation Fund.
- 19433 (2) Subject to board review and its responsibilities under Subsection (1)(e), the board

19434 may delegate authority to make daily investment decisions.

19435 (3) The fund may form or acquire a subsidiary or enter into a joint enterprise:

19436 (a) only if that action is approved by the board; and

19437 (b) subject to the limitations in Section 31A-33-103.5.

19438 Section 404. Section **31A-34-104** is amended to read:

19439 **31A-34-104. Alliance -- Required license.**

19440 (1) A person must be licensed as an alliance pursuant to this chapter to directly or
19441 indirectly make available or otherwise arrange for health insurance through multiple unaffiliated
19442 insurers through the use of coordinated actuarial models, coordinated underwriting, or
19443 coordinated marketing methodologies.

19444 (2) (a) A person may not hold itself out as a health insurance purchasing alliance,
19445 purchasing alliance, health insurance purchasing cooperative, purchasing cooperative, or
19446 otherwise use a similar name unless licensed by the commissioner as an alliance.

19447 (b) Notwithstanding Subsection (2)(a), a person may hold itself out as a voluntary
19448 health insurance purchasing association without being licensed by the commissioner as provided
19449 in Section 31A-34-105.

19450 (3) To apply for licensure as an alliance, a person shall complete an application in a
19451 form designated by the commissioner and file it with the commissioner, together with the
19452 applicable filing fees determined by the commissioner under Section [~~63-38-3.2~~] 63J-1-303.

19453 Section 405. Section **31A-35-301** is amended to read:

19454 **31A-35-301. The commissioner's authority.**

19455 (1) The commissioner shall:

19456 (a) make rules as necessary for the administration of this chapter;

19457 (b) with information as provided by the board, issue or deny licensure under this
19458 chapter;

19459 (c) take action regarding a license, including suspension or revocation; and

19460 (d) maintain and publish a current list of licensed bail bond surety companies and
19461 producers.

19462 (2) The commissioner may establish fees for the issuance, renewal, and reinstatement of
19463 a bail bond surety company license in accordance with Section [~~63-38-3.2~~] 63J-1-303.

19464 Section 406. Section **31A-35-401** is amended to read:

19465 **31A-35-401. Requirement for license or certificate of authority -- Process -- Fees**
19466 **-- Limitations.**

19467 (1) (a) A person may not engage in the bail bond surety insurance business unless that
19468 person:

19469 (i) is a bail bond surety company licensed under this chapter;

19470 (ii) is a surety insurer that is granted a certificate under this section in the same manner
19471 as other insurers doing business in this state are granted certificates of authority under this title;

19472 or

19473 (iii) is a bail bond producer licensed in accordance with this section.

19474 (b) A bail bond surety company shall be licensed under this chapter as an agency.

19475 (c) A bail bond producer shall be licensed under Chapter 23a, Insurance Marketing -
19476 Licensing Producers, Consultants, and Reinsurance Intermediaries, as a limited lines producer.

19477 (2) A person applying for a bail bond surety company license under this chapter shall
19478 submit to the commissioner:

19479 (a) a completed application form as prescribed by the commissioner;

19480 (b) a fee as determined by the commissioner in accordance with Section [~~63-38-3.2~~]
19481 63J-1-303; and

19482 (c) any additional information required by rule.

19483 (3) Fees required under this section are not refundable.

19484 (4) Fees collected from a bail bond surety company shall be deposited in a restricted
19485 account created in Section 31A-35-407.

19486 (5) (a) A bail bond surety company shall be domiciled in Utah.

19487 (b) A bail bond producer shall be a resident of Utah.

19488 (c) A foreign surety insurer that is granted a certificate to issue bail bonds may only
19489 issue bail bonds through a bail bond surety company licensed under this chapter.

19490 Section 407. Section **31A-35-405** is amended to read:

19491 **31A-35-405. Issuance of license -- Denial -- Right of appeal.**

19492 (1) Upon a determination by the board that a person applying for a bail bond surety
19493 company license meets the requirements for issuance of a license under this chapter, the
19494 commissioner shall issue to that person a bail bond surety company license.

19495 (2) (a) If the commissioner denies an application for a bail bond surety company license
19496 under this chapter, the commissioner shall provide prompt written notification to the person
19497 applying for licensure:

19498 (i) stating the grounds for denial; and

19499 (ii) notifying the person applying for licensure as a bail bond company that:

19500 (A) the person is entitled to a hearing if that person wants to contest the denial; and

19501 (B) if the person wants a hearing, the person shall submit the request in writing to the
19502 commissioner within 30 days after the issuance of the denial.

19503 (b) The hearing described in Subsection (2)(a) shall be scheduled not later than 60 days
19504 after the commissioner's receipt of the request.

19505 (c) The department shall hear the appeal, and may:

19506 (i) return the case to the commissioner for reconsideration;

19507 (ii) modify the commissioner's decision; or

19508 (iii) reverse the commissioner's decision.

19509 (3) A decision under this section is subject to review under [~~Title 63, Chapter 46b~~] Title
19510 63G, Chapter 4, Administrative Procedures Act.

19511 Section 408. Section **31A-35-406** is amended to read:

19512 **31A-35-406. Renewal and reinstatement.**

19513 (1) (a) To renew its license under this chapter, on or before the last day of the month in
19514 which the license expires a bail bond surety company shall:

19515 (i) complete and submit a renewal application to the department; and

19516 (ii) pay the department the applicable renewal fee established in accordance with
19517 Section [~~63-38-3.2~~] 63J-1-303.

19518 (b) A bail bond surety company shall renew its license under this chapter annually as
19519 established by department rule, regardless of when the license is issued.

19520 (2) A bail bond surety company may renew a bail bond surety company license not
19521 renewed under Subsection (1) within 30 days after the expiration date by:

19522 (a) submitting a renewal application required by Subsection (1); and

19523 (b) paying a late renewal fee established in accordance with Section [~~63-38-3.2~~]

19524 63J-1-303.

19525 (3) A bail bond surety company may apply for reinstatement of an expired bail bond
19526 surety company license between 31 days and six months following the expiration of the license
19527 under Subsection (1) by:

19528 (a) submitting the renewal application required by Subsection (1); and

19529 (b) paying a license reinstatement fee established in accordance with Section [~~63-38-3.2~~]

19530 63J-1-303.

19531 (4) If a bail bond surety company license has been expired for more than six months, the
19532 person applying for reinstatement of the bail bond surety license shall:

19533 (a) submit an application form to the commissioner; and

19534 (b) pay the application fee established in accordance with Section [~~63-38-3.2~~]

19535 63J-1-303.

19536 (5) If a bail bond surety company license is suspended, the applicant may not submit an
19537 application for a bail bond surety company license until after the end of the period of
19538 suspension.

19539 (6) Fees collected under this section shall be deposited in the restricted account created
19540 in Section 31A-35-407.

19541 Section 409. Section **31A-35-502** is amended to read:

19542 **31A-35-502. Notification of violation of chapter.**

19543 If the commissioner has reason to believe a person licensed as a bail bond surety
19544 company or a bail bond producer has violated this chapter, written notice shall be sent to that
19545 person, advising the person of:

- 19546 (1) the alleged violation;
- 19547 (2) the commissioner's authority to take action against the person's license;
- 19548 (3) the person's right to an administrative hearing under [~~Title 63, Chapter 46b~~] Title
- 19549 63G, Chapter 4, Administrative Procedures Act; and
- 19550 (4) the period of time within which the hearing described in Subsection (3) shall be
- 19551 requested if the person requests a hearing.

19552 Section 410. Section **31A-36-104** is amended to read:

19553 **31A-36-104. License requirements, revocation, and denial.**

19554 (1) (a) A person may not, without first obtaining a license from the commissioner,

19555 operate in or from this state as:

- 19556 (i) a viatical settlement provider; or
- 19557 (ii) a viatical settlement producer.

19558 (b) Viatical settlements are included within the scope of the life insurance producer line

19559 of authority.

19560 (2) (a) To obtain a license as a viatical settlement provider, an applicant shall:

- 19561 (i) comply with Section 31A-23a-117;
- 19562 (ii) file an application; and
- 19563 (iii) pay the license fee.

19564 (b) If an applicant complies with Subsection (2)(a), the commissioner shall investigate

19565 the applicant and issue a license if the commissioner finds that the applicant is competent and

19566 trustworthy to engage in the business of providing viatical settlements by experience, training,

19567 or education.

19568 (3) In addition to the requirements in Sections 31A-23a-111, 31A-23a-112 and

19569 31A-23a-113, the commissioner may refuse to issue, suspend, revoke, or refuse to renew the

19570 license of a viatical settlement provider or viatical settlement producer if the commissioner finds

19571 that:

- 19572 (a) a viatical settlement provider demonstrates a pattern of unreasonable payments to
- 19573 viators;

19574 (b) the applicant, the licensee, an officer, partner, or member, or key management
19575 personnel:

19576 (i) has, whether or not a judgment of conviction has been entered by the court, been
19577 found guilty of, or pleaded guilty or nolo contendere to:

19578 (A) a felony; or
19579 (B) a misdemeanor involving fraud or moral turpitude;

19580 (ii) violated any provision of this chapter; or
19581 (iii) has been subject to a final administrative action by another state or federal
19582 jurisdiction.

19583 (c) a viatical settlement provider has entered into a viatical settlement not approved
19584 under this chapter;

19585 (d) a viatical settlement provider has failed to honor obligations of a viatical settlement;
19586 (e) a viatical settlement provider has assigned, transferred, or pledged a viaticated
19587 policy to a person other than:

19588 (i) a viatical settlement provider licensed under this chapter;
19589 (ii) a viatical settlement purchaser;
19590 (iii) an accredited investor as defined in Regulation D, Rule 501, 17 C.F.R. Sec.
19591 230.501;

19592 (iv) a qualified institutional buyer as defined in Rule 144A, 17 C.F.R. Sec. 230.144A;
19593 (v) a financing entity;
19594 (vi) a special purpose entity; or
19595 (vii) a related provider trust; or

19596 (f) a viatical settlement provider has failed to maintain a standard set forth in Subsection
19597 (2)(b).

19598 (4) If the commissioner denies a license application or suspends, revokes, or refuses to
19599 renew the license of a viatical settlement provider or viatical settlement producer, the
19600 commissioner shall conduct an adjudicative proceeding under [~~Title 63, Chapter 46b~~] Title 63G,
19601 Chapter 4, Administrative Procedures Act.

19602 Section 411. Section **31A-36-115** is amended to read:

19603 **31A-36-115. Confidentiality.**

19604 (1) The following shall be classified as protected records under [~~Title 63, Chapter 2~~]
19605 Title 63G, Chapter 2, Government Records Access and Management Act:

19606 (a) a document or information furnished pursuant to Section 31A-36-114; and

19607 (b) a document or information obtained by the commissioner in an investigation of a
19608 violation of Section 31A-36-113.

19609 (2) Subsection (1) does not prohibit the commissioner from disclosing documents or
19610 evidence so furnished or obtained:

19611 (a) in an administrative or judicial proceeding to enforce laws administered by the
19612 commissioner;

19613 (b) to federal, state, or local law enforcement or regulatory agencies;

19614 (c) to an organization established to detect and prevent fraudulent viatical settlement
19615 acts;

19616 (d) to the National Association of Insurance Commissioners; or

19617 (e) to a person engaged in the business of viatical settlements that is aggrieved by the
19618 violation.

19619 (3) Disclosure of a document or evidence under Subsection (2) does not abrogate or
19620 modify the privilege granted in Subsection (1).

19621 Section 412. Section **31A-36-117** is amended to read:

19622 **31A-36-117. Antifraud initiatives.**

19623 (1) The following shall establish and maintain antifraud initiatives which are reasonably
19624 calculated to prevent, detect, and assist in the prosecution of violations of Section 31A-36-113:

19625 (a) a viatical settlement provider; and

19626 (b) an agency that is a viatical settlement producer.

19627 (2) The commissioner may order, or a licensee may request and the commissioner may
19628 approve, modifications of the measures otherwise required under this section, more or less
19629 restrictive than those measures, as necessary to protect against fraud.

19630 (3) Antifraud initiatives shall include:
19631 (a) fraud investigators, that may be either:
19632 (i) employees of a viatical settlement provider or viatical settlement producer; or
19633 (ii) independent contractors;
19634 (b) an antifraud plan submitted to the commissioner, which shall include:
19635 (i) a description of the procedures for:
19636 (A) detecting and investigating possible violations of Section 31A-36-113; and
19637 (B) resolving material inconsistencies between medical records and applications for
19638 insurance;
19639 (ii) a description of the procedures for reporting possible violations to the
19640 commissioner;
19641 (iii) a description of the plan for educating and training underwriters and other
19642 personnel against fraud; and
19643 (iv) a description or chart of the organizational arrangement of the personnel
19644 responsible for detecting and investigating possible violations of Section 31A-36-113 and for
19645 resolving material inconsistencies between medical records and applications for insurance.
19646 (4) A plan submitted to the commissioner shall be classified as a protected record under
19647 [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.
19648 Section 413. Section **31A-36-119** is amended to read:
19649 **31A-36-119. Authority to make rules.**
19650 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
19651 Rulemaking Act, the commissioner may adopt rules to:
19652 (1) establish the requirements for the annual statement required under Section
19653 31A-36-106;
19654 (2) establish standards for evaluating the reasonableness of payments under viatical
19655 settlements;
19656 (3) establish appropriate licensing requirements, fees, and standards for continued
19657 licensure for:

- 19658 (a) a viatical settlement provider; and
- 19659 (b) a viatical settlement producer;
- 19660 (4) require a bond or otherwise ensure financial accountability of:
- 19661 (a) a viatical settlement provider; and
- 19662 (b) a viatical settlement producer;
- 19663 (5) govern the relationship of insurers with a viatical settlement provider or viatical
- 19664 settlement producer during the viatication of a policy;
- 19665 (6) determine the specific disclosures required under Section 31A-36-108;
- 19666 (7) determine whether advertising for viatical settlements violates Section 31A-36-112;
- 19667 (8) determine the information to be provided to the commissioner under Section
- 19668 31A-36-114 and the manner of providing the information;
- 19669 (9) determine additional acts or practices that are prohibited under Section 31A-36-111;
- 19670 (10) establish payment requirements for the payments in Section 31A-36-110; and
- 19671 (11) establish the filing procedure for the forms listed in Subsection 31A-36-105(1).
- 19672 Section 414. Section **31A-37-106** is amended to read:
- 19673 **31A-37-106. Authority to make rules -- Authority to issue orders.**
- 19674 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 19675 Administrative Rulemaking Act, the commissioner may adopt rules to:
- 19676 (a) determine circumstances under which a branch captive insurance company is not
- 19677 required to be a pure captive insurance company;
- 19678 (b) determine any statement, document, or information a captive insurance company
- 19679 must provide to the commissioner to obtain a certificate of authority;
- 19680 (c) determine any factors a captive insurance company shall provide evidence of under
- 19681 Subsection 31A-37-202(4)(c);
- 19682 (d) prescribe capital requirements for a captive insurance company in addition to those
- 19683 required under Section 31A-37-204 based on the type, volume, and nature of insurance business
- 19684 transacted by the captive insurance company;
- 19685 (e) establish:

- 19686 (i) the amount of capital or surplus required to be retained under Subsection
19687 31A-37-205(4) at the payment of a dividend or other distribution by a captive insurance
19688 company; or
- 19689 (ii) a formula to determine the amount described in Subsection 31A-37-205(4);
- 19690 (f) waive or modify the requirements for public notice and hearing for any of the
19691 following by a captive insurance company:
- 19692 (i) merger;
- 19693 (ii) consolidation;
- 19694 (iii) conversion;
- 19695 (iv) mutualization; or
- 19696 (v) redomestication;
- 19697 (g) approve the use of alternative reliable methods of valuation and rating for:
- 19698 (i) an association captive insurance company;
- 19699 (ii) a sponsored captive insurance company; or
- 19700 (iii) an industrial insured group;
- 19701 (h) prohibit or limit an investment that threatens the solvency or liquidity of:
- 19702 (i) a pure captive insurance company; or
- 19703 (ii) an industrial insured captive insurance company;
- 19704 (i) determine the financial reports a sponsored captive insurance company shall annually
19705 file with the commissioner;
- 19706 (j) determine the required forms and reports under Section 31A-37-501; and
- 19707 (k) establish standards to ensure that a parent or affiliate of a pure captive insurance
19708 company is able to exercise control of the risk management function of any controlled
19709 unaffiliated business to be insured by the pure captive insurance company.
- 19710 (2) Notwithstanding Subsection (1)(k), until the commissioner adopts the rules
19711 authorized under Subsection (1)(k), the commissioner may by temporary order grant authority
19712 to a pure captive insurance company to insure risks.
- 19713 (3) The commissioner may issue prohibitory, mandatory, and other orders relating to

19714 captive insurance companies as necessary to enable the commissioner to secure compliance with
19715 this chapter.

19716 Section 415. Section **31A-37-202** is amended to read:

19717 **31A-37-202. Permissive areas of insurance.**

19718 (1) (a) Except as provided in Subsection (1)(b), when permitted by its articles of
19719 incorporation or charter, a captive insurance company may apply to the commissioner for a
19720 certificate of authority to do all insurance authorized by this title except workers' compensation
19721 insurance.

19722 (b) Notwithstanding Subsection (1)(a):

19723 (i) a pure captive insurance company may not insure any risks other than those of its:

19724 (A) parent and affiliates;

19725 (B) controlled unaffiliated business; or

19726 (C) a combination of Subsections (1)(b)(i)(A) and (B);

19727 (ii) an association captive insurance company may not insure any risks other than those
19728 of the:

19729 (A) member organizations of its association; and

19730 (B) affiliates of the member organizations of its association;

19731 (iii) an industrial insured captive insurance company may not insure any risks other than
19732 those of the:

19733 (A) industrial insureds that comprise the industrial insured group; and

19734 (B) affiliates of the industrial insureds that comprise the industrial insured group;

19735 (iv) a special purpose captive insurance company may only insure the risk of its parent;

19736 (v) a captive insurance company may not provide personal motor vehicle or

19737 homeowner's insurance coverage or any component of these coverages; and

19738 (vi) a captive insurance company may not accept or cede reinsurance except as
19739 provided in Section 31A-37-303.

19740 (c) Notwithstanding Subsection (1)(b)(iv), for risks approved by the commissioner a
19741 special purpose captive insurance company may provide:

- 19742 (i) insurance;
- 19743 (ii) reinsurance; or
- 19744 (iii) both insurance and reinsurance.
- 19745 (2) To conduct insurance business in this state a captive insurance company shall:
- 19746 (a) obtain from the commissioner a certificate of authority authorizing it to conduct
- 19747 insurance business in this state;
- 19748 (b) hold at least once each year in this state:
- 19749 (i) a board of directors meeting; or
- 19750 (ii) in the case of a reciprocal insurer, a subscriber's advisory committee meeting;
- 19751 (c) maintain in this state:
- 19752 (i) the principal place of business of the captive insurance company; or
- 19753 (ii) in the case of a branch captive insurance company, the principal place of business
- 19754 for the branch operations of the branch captive insurance company; and
- 19755 (d) except as provided in Subsection (3), appoint a resident registered agent to accept
- 19756 service of process and to otherwise act on behalf of the captive insurance company in this state.
- 19757 (3) Notwithstanding Subsection (2)(d), in the case of a captive insurance company
- 19758 formed as a corporation or a reciprocal insurer, whenever the registered agent cannot with
- 19759 reasonable diligence be found at the registered office of the captive insurance company, the
- 19760 commissioner shall be an agent of the captive insurance company upon whom any process,
- 19761 notice, or demand may be served.
- 19762 (4) (a) Before receiving a certificate of authority, a captive insurance company:
- 19763 (i) formed as a corporation shall file with the commissioner:
- 19764 (A) a certified copy of:
- 19765 (I) articles of incorporation or the charter of the corporation; and
- 19766 (II) bylaws of the corporation;
- 19767 (B) a statement under oath of the president and secretary of the corporation showing
- 19768 the financial condition of the corporation; and
- 19769 (C) any other statement or document required by the commissioner under Section

19770 31A-37-106;

19771 (ii) formed as a reciprocal shall:

19772 (A) file with the commissioner:

19773 (I) a certified copy of the power of attorney of the attorney-in-fact of the reciprocal;

19774 (II) a certified copy of the subscribers' agreement of the reciprocal;

19775 (III) a statement under oath of the attorney-in-fact of the reciprocal showing the

19776 financial condition of the reciprocal; and

19777 (IV) any other statement or document required by the commissioner under Section

19778 31A-37-106; and

19779 (B) submit to the commissioner for approval a description of the:

19780 (I) coverages;

19781 (II) deductibles;

19782 (III) coverage limits;

19783 (IV) rates; and

19784 (V) any other information the commissioner requires under Section 31A-37-106.

19785 (b) (i) If there is a subsequent material change in an item in the description required

19786 under Subsection (4)(a)(ii)(B) for a reciprocal captive insurance company, the reciprocal captive

19787 insurance company shall submit to the commissioner for approval an appropriate revision to the

19788 description required under Subsection (4)(a)(ii)(B).

19789 (ii) A reciprocal captive insurance company that is required to submit a revision under

19790 Subsection (4)(b)(i) may not offer any additional kinds of insurance until the commissioner

19791 approves a revision of the description.

19792 (iii) A reciprocal captive insurance company shall inform the commissioner of any

19793 material change in rates within 30 days of the adoption of the change.

19794 (c) In addition to the information required by Subsection (4)(a), an applicant captive

19795 insurance company shall file with the commissioner evidence of:

19796 (i) the amount and liquidity of the assets of the applicant captive insurance company

19797 relative to the risks to be assumed by the applicant captive insurance company;

19798 (ii) the adequacy of the expertise, experience, and character of the person who will
19799 manage the applicant captive insurance company;

19800 (iii) the overall soundness of the plan of operation of the applicant captive insurance
19801 company;

19802 (iv) the adequacy of the loss prevention programs of the applicant captive insurance
19803 company's parent, member organizations, or industrial insureds, as applicable; and

19804 (v) any other factors the commissioner:

19805 (A) adopts by rule under Section 31A-37-106; and

19806 (B) considers relevant in ascertaining whether the applicant captive insurance company
19807 will be able to meet the policy obligations of the applicant captive insurance company.

19808 (d) In addition to the information required by Subsections (4)(a), (b), and (c), an
19809 applicant sponsored captive insurance company shall file with the commissioner:

19810 (i) a business plan at the level of detail required by the commissioner under Section
19811 31A-37-106 demonstrating:

19812 (A) the manner in which the applicant sponsored captive insurance company will
19813 account for the losses and expenses of each protected cell; and

19814 (B) the manner in which the applicant sponsored captive insurance company will report
19815 to the commissioner the financial history, including losses and expenses, of each protected cell;

19816 (ii) a statement acknowledging that all financial records of the applicant sponsored
19817 captive insurance company, including records pertaining to any protected cell, shall be made
19818 available for inspection or examination by the commissioner;

19819 (iii) any contract or sample contract between the applicant sponsored captive insurance
19820 company and any participant; and

19821 (iv) evidence that expenses will be allocated to each protected cell in an equitable
19822 manner.

19823 (e) Information submitted pursuant to this Subsection (4) shall be classified as a
19824 protected record under ~~[Title 63, Chapter 2]~~ Title 63G, Chapter 2, Government Records Access
19825 and Management Act.

19826 (f) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
19827 Access and Management Act, the commissioner may disclose information submitted pursuant to
19828 this Subsection (4) to a public official having jurisdiction over the regulation of insurance in
19829 another state if:

19830 (i) the public official receiving the information agrees in writing to maintain the
19831 confidentiality of the information; and

19832 (ii) the laws of the state in which the public official serves require the information to be
19833 confidential.

19834 (g) Subsections (4)(e) and (4)(f) do not apply to information provided by an industrial
19835 insured captive insurance company insuring the risks of an industrial insured group.

19836 (5) (a) A captive insurance company shall pay to the department the following
19837 nonrefundable fees established by the department under Sections 31A-3-103 and [~~63-38-3.2~~]
19838 63J-1-303:

19839 (i) a fee for examining, investigating, and processing, by department employees, of an
19840 application for a certificate of authority made by a captive insurance company;

19841 (ii) a fee for obtaining a certificate of authority for the year the captive insurance
19842 company is issued a certificate of authority by the department; and

19843 (iii) a certificate of authority renewal fee.

19844 (b) The commissioner may retain legal, financial, and examination services from outside
19845 the department to perform the services under Subsection (5)(a) and Section 31A-37-502 and
19846 charge the reasonable cost of those services against the applicant captive insurance company.

19847 (6) If the commissioner is satisfied that the documents and statements filed by the
19848 applicant captive insurance company comply with the provisions of this chapter, the
19849 commissioner may grant a certificate of authority authorizing the company to do insurance
19850 business in this state.

19851 (7) A certificate of authority granted under this section expires annually and must be
19852 renewed by July 1 of each year.

19853 Section 416. Section **31A-37-503** is amended to read:

19854 **31A-37-503. Classification and use of records.**

19855 (1) The following shall be classified as a protected record under [~~Title 63, Chapter 2~~
19856 Title 63G, Chapter 2, Government Records Access and Management Act:

- 19857 (a) examination reports under this section;
- 19858 (b) preliminary examination reports or results under this section;
- 19859 (c) working papers for an examination conducted under this section;
- 19860 (d) recorded information for an examination conducted under this section; and
- 19861 (e) documents and copies of documents produced by, obtained by, or disclosed to the
19862 commissioner or any other person in the course of an examination conducted under this section.

19863 (2) This section does not prevent the commissioner from using the information provided
19864 under this section in furtherance of the commissioner's regulatory authority under this title.

19865 (3) Notwithstanding other provisions of this section, the commissioner may grant
19866 access to the information provided under this section to:

- 19867 (a) public officers having jurisdiction over the regulation of insurance in any other state
19868 or country; or
- 19869 (b) law enforcement officers of this state or any other state or agency of the federal
19870 government, if the officers receiving the information agree in writing to hold the information in
19871 a manner consistent with this section.

19872 Section 417. Section **31A-37-602** is amended to read:

19873 **31A-37-602. Requirements of a captive reinsurance company.**

19874 (1) (a) If permitted by its articles of incorporation or charter, a captive reinsurance
19875 company may apply to the commissioner for a license to write reinsurance covering:

- 19876 (i) property and casualty insurance; or
- 19877 (ii) reinsurance contracts.

19878 (b) A captive reinsurance company authorized by the commissioner may write
19879 reinsurance contracts covering risks in any state.

19880 (2) To conduct business in this state, a captive reinsurance company shall:

- 19881 (a) obtain from the commissioner a license authorizing it to conduct business as a

19882 captive reinsurance company in this state;

19883 (b) hold at least one board of directors' meeting each year in this state;

19884 (c) maintain its principal place of business in this state; and

19885 (d) appoint a registered agent to accept service of process and act otherwise on its

19886 behalf in this state.

19887 (3) Before receiving a license, a captive reinsurance company shall file with the

19888 commissioner:

19889 (a) a certified copy of its:

19890 (i) (A) articles of incorporation; or

19891 (B) charter; and

19892 (ii) bylaws;

19893 (b) a statement under oath of its president and secretary showing its financial condition;

19894 and

19895 (c) other documents required by the commissioner.

19896 (4) In addition to the information required by Subsection (3), the applicant captive

19897 reinsurance company shall file with the commissioner evidence of:

19898 (a) the amount and liquidity of the captive reinsurance company's assets relative to the

19899 risks to be assumed;

19900 (b) the adequacy of the expertise, experience, and character of the person who manages

19901 the captive reinsurance company;

19902 (c) the overall soundness of the captive reinsurance company's plan of operation; and

19903 (d) other overall factors considered relevant by the commissioner in ascertaining if the

19904 proposed captive reinsurance company is able to meet its policy obligations.

19905 (5) (a) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government

19906 Records Access and Management Act, information submitted pursuant to this section is

19907 confidential and may not be made public by the commissioner or an agent or employee of the

19908 commissioner without the written consent of the company, except that:

19909 (i) information may be discoverable by a party in a civil action or contested case to

19910 which the submitting captive reinsurance company is a party, upon a showing by the party
19911 seeking to discover the information that:

19912 (A) the information sought is relevant to and necessary for the furtherance of the action
19913 or case;

19914 (B) the information sought is unavailable from other nonconfidential sources; and

19915 (C) a subpoena issued by a judicial or administrative law officer of competent
19916 jurisdiction has been submitted to the commissioner; and

19917 (ii) the commissioner may disclose the information to the public officer having
19918 jurisdiction over the regulation of insurance in another state if:

19919 (A) the public official agrees in writing to maintain the confidentiality of the
19920 information; and

19921 (B) the laws of the state in which the public official serves require the information to be
19922 confidential.

19923 (b) This Subsection (5) does not apply to an industrial insured captive reinsurance
19924 company insuring the risks of an industrial insured group.

19925 Section 418. Section **32A-1-115** is amended to read:

19926 **32A-1-115. Alcoholic Beverage Enforcement and Treatment Restricted Account**
19927 **-- Distribution.**

19928 (1) As used in this section:

19929 (a) "Account" means the Alcoholic Beverage Enforcement and Treatment Restricted
19930 Account created in this section.

19931 (b) "Alcohol-related offense" means:

19932 (i) a violation of:

19933 (A) Section 41-6a-502; or

19934 (B) an ordinance that complies with the requirements of:

19935 (I) Subsection 41-6a-510(1); or

19936 (II) Section 76-5-207; or

19937 (ii) an offense involving the:

- 19938 (A) illegal sale of alcohol;
- 19939 (B) illegal distribution of alcohol;
- 19940 (C) illegal transportation of alcohol;
- 19941 (D) illegal possession of alcohol; or
- 19942 (E) illegal consumption of alcohol.
- 19943 (c) "Annual conviction time period" means the time period that:
- 19944 (i) begins on July 1 and ends on June 30; and
- 19945 (ii) immediately precedes the fiscal year for which an appropriation under this section is
- 19946 made.
- 19947 (d) "Coordinating council" means the Utah Substance Abuse and Anti-Violence
- 19948 Coordinating Council created in Section [~~63-25a-201~~] 63M-7-301.
- 19949 (e) "Municipality" means:
- 19950 (i) a city; or
- 19951 (ii) a town.
- 19952 (2) (a) There is created in the General Fund a restricted account called the "Alcoholic
- 19953 Beverage Enforcement and Treatment Restricted Account."
- 19954 (b) The account shall be funded from:
- 19955 (i) amounts deposited by the state treasurer in accordance with Section 59-15-109;
- 19956 (ii) any appropriations made to the account by the Legislature; and
- 19957 (iii) interest described in Subsection (2)(c).
- 19958 (c) Interest earned on the account shall be deposited into the account.
- 19959 (d) (i) Consistent with the policies provided in Subsection 32A-1-104(4)(b), the
- 19960 revenues in the account shall be used for statewide public purposes including promoting the
- 19961 reduction of the harmful effects of over consumption of alcoholic beverages by adults and
- 19962 alcohol consumption by minors by funding exclusively programs or projects related to
- 19963 prevention, treatment, detection, prosecution, and control of violations of this title and other
- 19964 offenses in which alcohol is a contributing factor except as provided in Subsection (2)(d)(ii).
- 19965 (ii) The portion distributed under this section to counties may also be used for the

19966 confinement or treatment of persons arrested for or convicted of offenses in which alcohol is a
19967 contributing factor.

19968 (iii) Any municipality or county entitled to receive funds shall use the funds exclusively
19969 as required by this Subsection (2)(d).

19970 (iv) The appropriations provided for under Subsection (3) are:

19971 (A) intended to supplement the budget of the appropriate agencies of each municipality
19972 and county within the state to enable the municipalities and counties to more effectively fund the
19973 programs and projects described in this Subsection (2)(d); and

19974 (B) not intended to replace funds that would otherwise be allocated for the programs
19975 and projects in this Subsection (2)(d).

19976 (3) (a) The revenues deposited into the account shall be distributed to municipalities
19977 and counties:

19978 (i) to the extent appropriated by the Legislature except that the Legislature shall
19979 appropriate each fiscal year an amount equal to at least the amount deposited in the account in
19980 accordance with Section 59-15-109; and

19981 (ii) as provided in this Subsection (3).

19982 (b) The amount appropriated from the account shall be distributed as follows:

19983 (i) 25% to municipalities and counties based upon the percentage of the state
19984 population residing in each municipality and county;

19985 (ii) 30% to municipalities and counties based upon each municipality's and county's
19986 percentage of the statewide convictions for all alcohol-related offenses;

19987 (iii) 20% to municipalities and counties based upon the percentage of all state stores,
19988 package agencies, liquor licensees, and beer licensees in the state that are located in each
19989 municipality and county; and

19990 (iv) 25% to the counties for confinement and treatment purposes authorized by this
19991 section based upon the percentage of the state population located in each county.

19992 (c) (i) Except as provided in Subsection (3)(c)(iii), a municipality that does not have a
19993 law enforcement agency may not receive monies under this section.

19994 (ii) The State Tax Commission:
19995 (A) may not distribute the monies the municipality would receive but for the
19996 municipality not having a law enforcement agency to that municipality; and
19997 (B) shall distribute the monies that the municipality would have received but for it not
19998 having a law enforcement agency to the county in which the municipality is located for use by
19999 the county in accordance with this section.
20000 (iii) Notwithstanding Subsections (3)(c)(i) and (ii), if the coordinating council finds that
20001 a municipality described in Subsection (3)(c)(i) demonstrates that the municipality can use the
20002 monies that the municipality is otherwise eligible to receive in accordance with this section, the
20003 coordinating council may direct the State Tax Commission to distribute the money to the
20004 municipality.
20005 (4) To determine the distributions required by Subsection (3)(b)(ii), the State Tax
20006 Commission shall annually:
20007 (a) for an annual conviction time period:
20008 (i) multiply by two the total number of convictions in the state obtained during the
20009 annual conviction time period for violation of:
20010 (A) Section 41-6a-502; or
20011 (B) an ordinance that complies with the requirements of Subsection 41-6a-510(1) or
20012 Section 76-5-207; and
20013 (ii) add to the number calculated under Subsection (4)(a)(i) the number of convictions
20014 obtained during the annual conviction time period for all alcohol-related offenses other than the
20015 alcohol-related offenses described in Subsection (4)(a)(i);
20016 (b) divide an amount equal to 30% of the appropriation for that fiscal year by the sum
20017 obtained in Subsection (4)(a); and
20018 (c) multiply the amount calculated under Subsection (4)(b), by the number of
20019 convictions obtained in each municipality and county during the annual conviction time period
20020 for alcohol-related offenses.
20021 (5) For purposes of this section:

- 20022 (a) the number of state stores, package agencies, and licensees located within the limits
20023 of each municipality and county:
- 20024 (i) is the number determined by the department to be so located;
- 20025 (ii) includes all:
- 20026 (A) private clubs;
- 20027 (B) restaurants;
- 20028 (C) limited restaurants;
- 20029 (D) on-premise banquet licenses;
- 20030 (E) airport lounges;
- 20031 (F) package agencies; and
- 20032 (G) state stores; and
- 20033 (iii) does not include on-premise beer retailer licensees;
- 20034 (b) the number of state stores, package agencies, and licensees in a county consists only
20035 of that number located within unincorporated areas of the county;
- 20036 (c) population figures shall be determined according to the most current population
20037 estimates prepared by the Utah Population Estimates Committee;
- 20038 (d) a county's population figure for the 25% distribution to municipalities and counties
20039 under Subsection (3)(b)(i) shall be determined only with reference to the population in the
20040 unincorporated areas of the county;
- 20041 (e) a county's population figure under Subsection (3)(b)(iv) for the 25% distribution to
20042 counties only shall be determined with reference to the total population in the county, including
20043 that of municipalities;
- 20044 (f) a conviction occurs in the municipality or county that actually prosecutes the offense
20045 to judgment; and
- 20046 (g) in the case of a conviction based upon a guilty plea, the conviction is considered to
20047 occur in the municipality or county that, except for the guilty plea, would have prosecuted the
20048 offense.
- 20049 (6) By not later than September 1 each year:

20050 (a) the state court administrator shall certify to the State Tax Commission the number
20051 of convictions obtained for alcohol-related offenses in each municipality or county in the state
20052 during the annual conviction time period; and

20053 (b) the coordinating council shall notify the State Tax Commission of any municipality
20054 that does not have a law enforcement agency.

20055 (7) By not later than December 1 of each year, the coordinating council shall notify the
20056 State Tax Commission for the fiscal year of appropriation of:

20057 (a) any municipality that may receive a distribution under Subsection (3)(c)(iii);

20058 (b) any county that may receive a distribution allocated to a municipality described in
20059 Subsection (3)(c)(ii);

20060 (c) any municipality or county that may not receive a distribution because the
20061 coordinating council has suspended the payment under Subsection (10)(a)(i); and

20062 (d) any municipality or county that receives a distribution because the suspension of
20063 payment has been cancelled under Subsection (10)(a)(ii).

20064 (8) (a) By not later than January 1 of the fiscal year of appropriation, the State Tax
20065 Commission shall annually distribute to each municipality and county the portion of the
20066 appropriation that the municipality or county is eligible to receive under this section, except for
20067 any municipality or county that the coordinating council notifies the State Tax Commission in
20068 accordance with Subsection (7) may not receive a distribution in that fiscal year.

20069 (b) (i) The State Tax Commission shall prepare forms for use by municipalities and
20070 counties in applying for distributions under this section.

20071 (ii) The forms described in this Subsection (8) may require the submission of
20072 information the State Tax Commission considers necessary to enable the State Tax Commission
20073 to comply with this section.

20074 (9) A municipality or county that receives any monies under this section during a fiscal
20075 year shall by no later than October 1 following the fiscal year:

20076 (a) report to the coordinating council:

20077 (i) the programs or projects of the municipality or county that receive monies under this

20078 section;

20079 (ii) if the monies for programs or projects were exclusively used as required by

20080 Subsection (2)(d);

20081 (iii) indicators of whether the programs or projects that receive monies under this

20082 section are effective; and

20083 (iv) if any monies received under this section were not expended by the municipality or

20084 county; and

20085 (b) provide the coordinating council a statement signed by the chief executive officer of

20086 the county or municipality attesting that the monies received under this section were used in

20087 addition to any monies appropriated or otherwise available for the county's or municipality's law

20088 enforcement and were not used to supplant those monies.

20089 (10) (a) The coordinating council may, by a majority vote:

20090 (i) suspend future payments under Subsection (8) to a municipality or county that:

20091 (A) does not file a report that meets the requirements of Subsection (9); or

20092 (B) the coordinating council finds does not use the monies as required by Subsection

20093 (2)(d) on the basis of the report filed by the municipality or county under Subsection (9); and

20094 (ii) cancel a suspension under Subsection (10)(a)(i).

20095 (b) The State Tax Commission shall:

20096 (i) retain monies that a municipality or county does not receive under Subsection

20097 (10)(a); and

20098 (ii) notify the coordinating council of the balance of retained monies under this

20099 Subsection (10)(b) after the annual distribution under Subsection (8).

20100 (11) (a) Subject to the requirements of this Subsection (11), the coordinating council

20101 shall award the balance of retained monies under Subsection (10)(b):

20102 (i) as prioritized by majority vote of the coordinating council; and

20103 (ii) as grants to:

20104 (A) a county;

20105 (B) a municipality;

20106 (C) the Department of Alcoholic Beverage Control;
20107 (D) the Department of Human Services;
20108 (E) the Department of Public Safety; or
20109 (F) the Utah State Office of Education.
20110 (b) By not later than May 30 of the fiscal year of the appropriation, the coordinating
20111 council shall notify the State Tax Commission of any grants awarded under this Subsection
20112 (11).
20113 (c) The State Tax Commission shall make payments of grants:
20114 (i) upon receiving notice as provided under Subsection (11)(b); and
20115 (ii) by not later than June 30 of the fiscal year of the appropriation.
20116 (d) An entity that receives a grant under this Subsection (11) shall use the grant monies
20117 exclusively for programs or projects described in Subsection (2)(d).
20118 Section 419. Section **32A-1-118** is amended to read:
20119 **32A-1-118. Liability insurance -- Governmental immunity.**
20120 (1) The department shall maintain insurance against loss on each motor vehicle operated
20121 by it on any public highway. Each motor vehicle shall be covered for:
20122 (a) any liability imposed by law upon the department for damages from bodily injuries
20123 suffered by any person or persons by reason of the ownership, maintenance, or use of the motor
20124 vehicle; and
20125 (b) any liability or loss from damage to or destruction of property of any description,
20126 including liability of the department for the resultant loss of use of the property, which results
20127 from accident due to the ownership, maintenance, or use of the motor vehicle.
20128 (2) The department is liable to respond in damages in all cases if a private corporation
20129 under the same circumstances would be liable.
20130 (3) The provisions of [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental
20131 Immunity Act of Utah, apply in all actions commenced against the department in any action for
20132 damages sustained as a result of department ownership, maintenance, or use of motor vehicles
20133 under Subsections (1) and (2). Immunity from suit against the commission or any member of

20134 the commission, is in all respects retained in any such action.

20135 Section 420. Section **32A-1-119** is amended to read:

20136 **32A-1-119. Disciplinary proceedings -- Procedure.**

20137 (1) (a) As used in this section and Section 32A-1-120, "disciplinary proceeding" means
20138 an adjudicative proceeding permitted under this title:

20139 (i) against:

20140 (A) a permittee;

20141 (B) a licensee;

20142 (C) a manufacturer;

20143 (D) a supplier;

20144 (E) an importer;

20145 (F) an out-of-state brewer holding a certificate of approval under Section 32A-8-101;

20146 or

20147 (G) an officer, employee, or agent of:

20148 (I) a person listed in Subsections (1)(a)(i)(A) through (F); or

20149 (II) a package agent; and

20150 (ii) that is brought on the basis of a violation of this title.

20151 (b) As used in Subsection (4), "final adjudication" means an adjudication for which a
20152 final unappealable judgment or order has been issued.

20153 (2) (a) The following may conduct adjudicative proceedings to inquire into any matter
20154 necessary and proper for the administration of this title and rules adopted under this title:

20155 (i) the commission;

20156 (ii) a hearing examiner appointed by the commission for the purposes provided in
20157 Subsection 32A-1-107(3);

20158 (iii) the director; and

20159 (iv) the department.

20160 (b) Except as provided in this section or Section 32A-3-106, the following shall comply
20161 with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,

20162 Administrative Procedures Act, in adjudicative proceedings:

20163 (i) the commission;

20164 (ii) a hearing examiner appointed by the commission;

20165 (iii) the director; and

20166 (iv) the department.

20167 (c) Except where otherwise provided by law, all adjudicative proceedings before the

20168 commission or its appointed hearing examiner shall be:

20169 (i) video or audio recorded; and

20170 (ii) subject to Subsection (5)(e), conducted in accordance with Title 52, Chapter 4,

20171 Open and Public Meetings Act.

20172 (d) All adjudicative proceedings concerning departmental personnel shall be conducted

20173 in accordance with Title 67, Chapter 19, Utah State Personnel Management Act.

20174 (e) All hearings that are informational, fact gathering, and nonadversarial in nature shall

20175 be conducted in accordance with rules, policies, and procedures promulgated by the

20176 commission, director, or department.

20177 (3) (a) A disciplinary proceeding shall be conducted under the authority of the

20178 commission, which is responsible for rendering a final decision and order on any disciplinary

20179 matter.

20180 (b) (i) Nothing in this section precludes the commission from appointing necessary

20181 officers, including hearing examiners, from within or without the department, to administer the

20182 disciplinary proceeding process.

20183 (ii) A hearing examiner appointed by the commission:

20184 (A) may conduct a disciplinary proceeding hearing on behalf of the commission; and

20185 (B) shall submit to the commission a report including:

20186 (I) findings of fact determined on the basis of a preponderance of the evidence

20187 presented at the hearing;

20188 (II) conclusions of law; and

20189 (III) recommendations.

20190 (c) Nothing in this section precludes the commission, after the commission has rendered
20191 its final decision and order, from having the director prepare, issue, and cause to be served on
20192 the parties the final written order on behalf of the commission.

20193 (4) (a) The department may initiate a disciplinary proceeding described in Subsection
20194 (4)(b) when the department receives:

20195 (i) a report from any government agency, peace officer, examiner, or investigator
20196 alleging that any person listed in Subsections (1)(a)(i)(A) through (G) has violated this title or
20197 the rules of the commission;

20198 (ii) a final adjudication of criminal liability against any person listed in Subsections
20199 (1)(a)(i)(A) through (G) based on an alleged violation of this title; or

20200 (iii) a final adjudication of civil liability under Chapter 14a, Alcoholic Beverage
20201 Liability, against any person listed in Subsections (1)(a)(i)(A) through (G) based on an alleged
20202 violation of this title.

20203 (b) The department may initiate a disciplinary proceeding if the department receives an
20204 item listed in Subsection (4)(a) to determine:

20205 (i) whether any person listed in Subsections (1)(a)(i)(A) through (G) violated this title
20206 or rules of the commission; and

20207 (ii) if a violation is found, the appropriate sanction to be imposed.

20208 (5) (a) Unless waived by the respondent, a disciplinary proceeding shall be held:

20209 (i) if required by law;

20210 (ii) before revoking or suspending any permit, license, or certificate of approval issued
20211 under this title; or

20212 (iii) before imposing a fine against any person listed in Subsections (1)(a)(i)(A) through
20213 (G).

20214 (b) Inexcusable failure of a respondent to appear at a scheduled disciplinary proceeding
20215 hearing after receiving proper notice is an admission of the charged violation.

20216 (c) The validity of a disciplinary proceeding is not affected by the failure of any person
20217 to attend or remain in attendance.

20218 (d) All disciplinary proceeding hearings shall be presided over by the commission or an
20219 appointed hearing examiner.

20220 (e) A disciplinary proceeding hearing may be closed only after the commission or
20221 hearing examiner makes a written finding that the public interest in an open hearing is clearly
20222 outweighed by factors enumerated in the closure order.

20223 (f) (i) The commission or its hearing examiner as part of a disciplinary proceeding
20224 hearing may:

20225 (A) administer oaths or affirmations;

20226 (B) take evidence;

20227 (C) take depositions within or without this state; and

20228 (D) require by subpoena from any place within this state:

20229 (I) the testimony of any person at a hearing; and

20230 (II) the production of any books, records, papers, contracts, agreements, documents, or
20231 other evidence considered relevant to the inquiry.

20232 (ii) A person subpoenaed in accordance with this Subsection (5)(f) shall testify and
20233 produce any books, papers, documents, or tangible things as required in the subpoena.

20234 (iii) Any witness subpoenaed or called to testify or produce evidence who claims a
20235 privilege against self-incrimination may not be compelled to testify, but the commission or the
20236 hearing examiner shall file a written report with the county attorney or district attorney in the
20237 jurisdiction where the privilege was claimed or where the witness resides setting forth the
20238 circumstance of the claimed privilege.

20239 (iv) (A) A person is not excused from obeying a subpoena without just cause.

20240 (B) Any district court within the judicial district in which a person alleged to be guilty
20241 of willful contempt of court or refusal to obey a subpoena is found or resides, upon application
20242 by the party issuing the subpoena, may issue an order requiring the person to:

20243 (I) appear before the issuing party; and

20244 (II) (Aa) produce documentary evidence if so ordered; or

20245 (Bb) give evidence regarding the matter in question.

20246 (C) Failure to obey an order of the court may be punished by the court as contempt.

20247 (g) (i) In all disciplinary proceeding hearings heard by a hearing examiner, the hearing
20248 examiner shall prepare a report required by Subsection (3)(b)(ii) to the commission.

20249 (ii) The report required by Subsection (3)(b)(ii) and this Subsection (5)(g) may not
20250 recommend a penalty more severe than that initially sought by the department in the notice of
20251 agency action.

20252 (iii) A copy of the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
20253 shall be served upon the respective parties.

20254 (iv) The respondent and the department shall be given reasonable opportunity to file any
20255 written objections to the report required by Subsection (3)(b)(ii) and this Subsection (5)(g)
20256 before final commission action.

20257 (h) In all cases heard by the commission, it shall issue its final decision and order in
20258 accordance with Subsection (3).

20259 (6) (a) The commission shall:

20260 (i) render a final decision and order on any disciplinary action; and

20261 (ii) cause its final order to be prepared in writing, issued, and served on all parties.

20262 (b) Any order of the commission is considered final on the date the order becomes
20263 effective.

20264 (c) If the commission is satisfied that a person listed in Subsections (1)(a)(i)(A) through
20265 (G) has committed a violation of this title or the commission's rules, in accordance with ~~[Title~~
20266 ~~63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, the commission may:

20267 (i) suspend or revoke the permit, license, or certificate of approval;

20268 (ii) impose a fine against a person listed in Subsections (1)(a)(i)(A) through (G);

20269 (iii) assess the administrative costs of any disciplinary proceeding to the permittee, the
20270 licensee, or certificate holder; or

20271 (iv) any combination of Subsections (6)(c)(i) through (iii).

20272 (d) A fine imposed in accordance with this Subsection (6) is subject to Subsections
20273 32A-1-107(1)(p) and (4).

20274 (e) (i) If a permit or license is suspended under this Subsection (6), a sign provided by
20275 the department shall be prominently posted:

20276 (A) during the suspension;

20277 (B) by the permittee or licensee; and

20278 (C) at the entrance of the premises of the permittee or licensee.

20279 (ii) The sign required by this Subsection (6)(e) shall:

20280 (A) read "The Utah Alcoholic Beverage Control Commission has suspended the
20281 alcoholic beverage license or permit of this establishment. Alcoholic beverages may not be sold,
20282 served, furnished, or consumed on these premises during the period of suspension."; and

20283 (B) include the dates of the suspension period.

20284 (iii) A permittee or licensee may not remove, alter, obscure, or destroy a sign required
20285 to be posted under this Subsection (6)(e) during the suspension period.

20286 (f) If a permit or license is revoked, the commission may order the revocation of any
20287 compliance bond posted by the permittee or licensee.

20288 (g) Any permittee or licensee whose permit or license is revoked may not reapply for a
20289 permit or license under this title for three years from the date on which the permit or license is
20290 revoked.

20291 (h) All costs assessed by the commission shall be transferred into the General Fund in
20292 accordance with Section 32A-1-113.

20293 (7) (a) In addition to any action taken against a permittee, licensee, or certificate holder
20294 under this section, the department may initiate disciplinary action against an officer, employee,
20295 or agent of a permittee, licensee, or certificate holder.

20296 (b) If any officer, employee, or agent is found to have violated this title, the commission
20297 may prohibit the officer, employee, or agent from serving, selling, distributing, manufacturing,
20298 wholesaling, warehousing, or handling alcoholic beverages in the course of employment with
20299 any permittee, licensee, or certificate holder under this title for a period determined by the
20300 commission.

20301 (8) (a) The department may initiate a disciplinary proceeding for an alleged violation of

20302 this title or the rules of the commission against:

20303 (i) a manufacturer, supplier, or importer of alcoholic beverages; or

20304 (ii) an officer, employee, agent, or representative of a person listed in Subsection

20305 (8)(a)(i).

20306 (b) (i) If the commission makes the finding described in Subsection (8)(b)(ii), the

20307 commission may, in addition to other penalties prescribed by this title, order:

20308 (A) the removal of the manufacturer's, supplier's, or importer's products from the

20309 department's sales list; and

20310 (B) a suspension of the department's purchase of the products described in Subsection

20311 (8)(b)(i)(A) for a period determined by the commission.

20312 (ii) The commission may take the action described in Subsection (8)(b)(i) if:

20313 (A) any manufacturer, supplier, or importer of liquor, wine, or heavy beer or its officer,

20314 employee, agent, or representative violates any provision of this title; and

20315 (B) the manufacturer, supplier, or importer:

20316 (I) directly committed the violation; or

20317 (II) solicited, requested, commanded, encouraged, or intentionally aided another to

20318 engage in the violation.

20319 (9) (a) The department may initiate a disciplinary proceeding against a brewer holding a

20320 certificate of approval under Section 32A-8-101 for an alleged violation of this title or the rules

20321 of the commission.

20322 (b) If the commission makes a finding that the brewer holding a certificate of approval

20323 violates this title or rules of the commission, the commission may take any action against the

20324 brewer holding a certificate of approval that the commission could take against a licensee

20325 including:

20326 (i) suspension or revocation of the certificate of approval; and

20327 (ii) imposition of a fine.

20328 (10) (a) If a respondent requests a disciplinary proceeding hearing, the hearing held by

20329 the commission or a hearing examiner appointed by the commission shall proceed formally in

20330 accordance with Sections ~~[63-46b-6]~~ 63G-4-204 through ~~[63-46b-11]~~ 63G-4-209 in any case
20331 where:

20332 (i) the alleged violation poses, or potentially poses, a grave risk to public safety, health,
20333 and welfare;

20334 (ii) the alleged violation involves:

20335 (A) selling, serving, or otherwise furnishing alcoholic products to a minor;

20336 (B) attire, conduct, or entertainment prohibited by Part 6, Attire, Conduct, and
20337 Entertainment Act;

20338 (C) fraud, deceit, willful concealment, or misrepresentation of the facts by or on behalf
20339 of the respondent;

20340 (D) interfering or refusing to cooperate with:

20341 (I) an authorized official of the department or the state in the discharge of the official's
20342 duties in relation to the enforcement of this title; or

20343 (II) a peace officer in the discharge of the peace officer's duties in relation to the
20344 enforcement of this title;

20345 (E) an unlawful trade practice under Sections 32A-12-601 through 32A-12-606;

20346 (F) unlawful importation of alcoholic products; or

20347 (G) unlawful supply of liquor by a liquor industry member, as defined in Subsection
20348 32A-12-601(2), to any person other than the department or a military installation, except to the
20349 extent permitted by this title; or

20350 (iii) the department determines to seek in a disciplinary proceeding hearing:

20351 (A) an administrative fine exceeding \$3,000;

20352 (B) a suspension of a license, permit, or certificate of approval of more than ten days;

20353 or

20354 (C) a revocation of a license, permit, or certificate of approval.

20355 (b) The commission shall make rules in accordance with ~~[Title 63, Chapter 46a]~~ Title

20356 63G, Chapter 3, Utah Administrative Rulemaking Act, to provide a procedure to implement this
20357 Subsection (10).

20358 Section 421. Section **32A-1-120** is amended to read:

20359 **32A-1-120. Judicial review -- Enforcement.**

20360 (1) In a disciplinary proceeding, as defined in Section 32A-1-119, a respondent found in
20361 a final order of the commission to have violated this title or rules of the commission made under
20362 this title may seek judicial review in a court of competent jurisdiction pursuant to the judicial
20363 review provisions of Sections [~~63-46b-14~~] 63G-4-401 through [~~63-46b-18~~] 63G-4-405.

20364 (2) Notwithstanding Subsection [~~63-46b-16~~] 63G-4-403(4)(g), an appellate court may
20365 not grant relief on the basis that a finding of fact by the commission in a formal disciplinary
20366 proceeding is not supported, if the commission's finding of fact is supported by any evidence of
20367 substance in the record of the formal disciplinary proceeding when viewed in light of the whole
20368 record before the court.

20369 (3) In addition to any other remedy provided by law, the commission may seek
20370 enforcement of a commission order in a disciplinary proceeding by seeking civil enforcement in
20371 a state district court in accordance with Section [~~63-46b-19~~] 63G-4-501.

20372 Section 422. Section **32A-1-603** is amended to read:

20373 **32A-1-603. Sexually oriented entertainer.**

20374 (1) Subject to the restrictions of this section, live entertainment is permitted on a
20375 premises or at an event regulated by the commission.

20376 (2) Notwithstanding Subsection (1), a licensee or permittee may not permit a person to:

20377 (a) appear or perform in a state of nudity;

20378 (b) perform or simulate an act of:

20379 (i) sexual intercourse;

20380 (ii) masturbation;

20381 (iii) sodomy;

20382 (iv) bestiality;

20383 (v) oral copulation;

20384 (vi) flagellation; or

20385 (v) a sexual act that is prohibited by Utah law; or

- 20386 (c) touch, caress, or fondle the breast, buttocks, anus, or genitals.
- 20387 (3) A sexually oriented entertainer may perform in a state of seminudity:
- 20388 (a) only in a tavern or class D private club; and
- 20389 (b) only if:
- 20390 (i) all windows, doors, and other apertures to the premises are darkened or otherwise
- 20391 constructed to prevent anyone outside the premises from seeing the performance; and
- 20392 (ii) the outside entrance doors of the premises remain unlocked.
- 20393 (4) A sexually oriented entertainer may perform only upon a stage or in a designated
- 20394 performance area that is:
- 20395 (a) approved by the commission in accordance with rules made by the commission in
- 20396 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
- 20397 Act;
- 20398 (b) configured so as to preclude a patron from:
- 20399 (i) touching the sexually oriented entertainer; or
- 20400 (ii) placing any money or object on or within the costume or the person of the sexually
- 20401 oriented entertainer; and
- 20402 (c) configured so as to preclude the sexually oriented entertainer from touching a
- 20403 patron.
- 20404 (5) A sexually oriented entertainer may not touch a patron:
- 20405 (a) during the sexually oriented entertainer's performance; or
- 20406 (b) while the sexually oriented entertainer is dressed in performance attire or costume.
- 20407 (6) A sexually oriented entertainer, while in the portion of the premises used by patrons,
- 20408 must be dressed in opaque clothing which covers and conceals the sexually oriented entertainer's
- 20409 performance attire or costume from the top of the breast to the knee.
- 20410 (7) A patron may not be on the stage or in the performance area while a sexually
- 20411 oriented entertainer is appearing or performing on the stage or in the performance area.
- 20412 (8) A patron may not:
- 20413 (a) touch a sexually oriented entertainer:

20414 (i) during the sexually oriented entertainer's performance; or
20415 (ii) while the sexually oriented entertainer is dressed in performance attire or costume;

20416 or

20417 (b) place money or any other object on or within the costume or the person of the
20418 sexually oriented entertainer.

20419 (9) A minor may not be on a premises described in Subsection (3) when a sexually
20420 oriented entertainer is performing on the premises.

20421 (10) A person who appears or performs for the entertainment of patrons on a premises
20422 or at an event regulated by the commission that is not a tavern or class D private club:

20423 (a) may not appear or perform in a state of nudity or a state of seminudity; and

20424 (b) may appear or perform in opaque clothing that completely covers the person's
20425 genitals, pubic area, and anus if the covering:

20426 (i) is not less than the following at its widest point:

20427 (A) four inches coverage width in the front of the human body; and

20428 (B) five inches coverage width in the back of the human body;

20429 (ii) does not taper to less than one inch wide at the narrowest point; and

20430 (iii) if covering a female, completely covers the breast below the top of the areola.

20431 Section 423. Section **32A-4-103** is amended to read:

20432 **32A-4-103. Qualifications.**

20433 (1) (a) The commission may not grant a restaurant liquor license to any person who has
20434 been convicted of:

20435 (i) a felony under any federal or state law;

20436 (ii) any violation of any federal or state law or local ordinance concerning the sale,
20437 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

20438 (iii) any crime involving moral turpitude; or

20439 (iv) on two or more occasions within the five years before the day on which the license
20440 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
20441 and any drug.

20442 (b) In the case of a partnership, corporation, or limited liability company the
20443 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
20444 offense described in Subsection (1)(a):

20445 (i) a partner;

20446 (ii) a managing agent;

20447 (iii) a manager;

20448 (iv) an officer;

20449 (v) a director;

20450 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
20451 the applicant corporation; or

20452 (vii) a member who owns at least 20% of the applicant limited liability company.

20453 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
20454 supervisory or managerial capacity for a restaurant has been convicted of any offense described
20455 in Subsection (1)(a).

20456 (2) The commission may immediately suspend or revoke a restaurant liquor license if
20457 after the day on which the restaurant liquor license is granted, a person described in Subsection
20458 (1)(a), (b), or (c):

20459 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
20460 to the license being granted; or

20461 (b) on or after the day on which the license is granted:

20462 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

20463 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
20464 influence of alcohol and any drug; and

20465 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
20466 influence of alcohol and any drug within five years before the day on which the person is
20467 convicted of the offense described in Subsection (2)(b)(ii)(A).

20468 (3) The director may take emergency action by immediately suspending the operation of
20469 a restaurant liquor license according to the procedures and requirements of ~~[Title 63, Chapter~~

20470 ~~46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the
20471 criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

20472 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

20473 or

20474 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
20475 any drug, or the combined influence of alcohol and any drug; and

20476 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
20477 influence of alcohol and any drug within five years before the day on which the person is
20478 arrested on a charge described in Subsection (3)(b)(i).

20479 (4) (a) (i) The commission may not grant a restaurant liquor license to any person who
20480 has had any type of license, agency, or permit issued under this title revoked within the last
20481 three years.

20482 (ii) The commission may not grant a restaurant liquor license to an applicant that is a
20483 partnership, corporation, or limited liability company if any partner, managing agent, manager,
20484 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
20485 of the applicant corporation, or member who owns at least 20% of the applicant limited liability
20486 company is or was:

20487 (A) a partner or managing agent of any partnership that had any type of license, agency,
20488 or permit issued under this title revoked within the last three years;

20489 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
20490 of the total issued and outstanding stock of any corporation that had any type of license,
20491 agency, or permit issued under this title revoked within the last three years; or

20492 (C) a manager or member who owns or owned at least 20% of any limited liability
20493 company that had any type of license, agency, or permit issued under this title revoked within
20494 the last three years.

20495 (b) An applicant that is a partnership, corporation, or limited liability company may not
20496 be granted a restaurant liquor license if any of the following had any type of license, agency, or
20497 permit issued under this title revoked while acting in that person's individual capacity within the

20498 last three years:

20499 (i) a partner or managing agent of the applicant partnership;

20500 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
20501 total issued and outstanding stock of the applicant corporation; or

20502 (iii) a manager or member who owns at least 20% of the applicant limited liability
20503 company.

20504 (c) A person acting in an individual capacity may not be granted a restaurant liquor
20505 license if that person was:

20506 (i) a partner or managing agent of a partnership that had any type of license, agency, or
20507 permit issued under this title revoked within the last three years;

20508 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
20509 total issued and outstanding stock of a corporation that had any type of license, agency, or
20510 permit issued under this title revoked within the last three years; or

20511 (iii) a manager or member of a limited liability company who owned at least 20% of the
20512 limited liability company that had any type of license, agency, or permit issued under this title
20513 revoked within the last three years.

20514 (5) (a) A minor may not be granted a restaurant liquor license.

20515 (b) The commission may not grant a restaurant liquor license to an applicant that is a
20516 partnership, corporation, or limited liability company if any of the following is a minor:

20517 (i) a partner or managing agent of the applicant partnership;

20518 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
20519 total issued and outstanding stock of the applicant corporation; or

20520 (iii) a manager or member who owns at least 20% of the applicant limited liability
20521 company.

20522 (6) If any person to whom a license has been issued under this part no longer possesses
20523 the qualifications required by this title for obtaining that license, the commission may suspend or
20524 revoke that license.

20525 Section 424. Section **32A-4-203** is amended to read:

20526 **32A-4-203. Qualifications.**

20527 (1) (a) The commission may not grant an airport lounge liquor license to any person
20528 who has been convicted of:

20529 (i) a felony under any federal or state law;

20530 (ii) any violation of any federal or state law or local ordinance concerning the sale,
20531 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

20532 (iii) any crime involving moral turpitude; or

20533 (iv) on two or more occasions within the five years before the day on which the license
20534 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
20535 and any drug.

20536 (b) In the case of a partnership, corporation, or limited liability company the
20537 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
20538 offense described in Subsection (1)(a):

20539 (i) a partner;

20540 (ii) a managing agent;

20541 (iii) a manager;

20542 (iv) an officer;

20543 (v) a director;

20544 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
20545 the applicant corporation; or

20546 (vii) a member who owns at least 20% of the limited liability company.

20547 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
20548 supervisory or managerial capacity for an airport lounge has been convicted of any offense
20549 described in Subsection (1)(a).

20550 (2) The commission may immediately suspend or revoke an airport lounge license if
20551 after the day on which the airport lounge license is granted, a person described in Subsection
20552 (1)(a), (b), or (c):

20553 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior

20554 to the license being granted; or

20555 (b) on or after the day on which the license is granted:

20556 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

20557 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
20558 influence of alcohol and any drug; and

20559 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
20560 influence of alcohol and any drug within five years before the day on which the person is
20561 convicted of the offense described in Subsection (2)(b)(ii)(A).

20562 (3) The director may take emergency action by immediately suspending the operation of
20563 an airport lounge liquor license according to the procedures and requirements of [~~Title 63,~~
20564 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which
20565 the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

20566 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

20567 or

20568 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
20569 any drug, or the combined influence of alcohol and any drug; and

20570 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
20571 influence of alcohol and any drug within five years before the day on which the person is
20572 arrested on a charge described in Subsection (3)(b)(i).

20573 (4) (a) (i) The commission may not grant an airport lounge liquor license to any person
20574 who has had any type of license, agency, or permit issued under this title revoked within the last
20575 three years.

20576 (ii) The commission may not grant an airport lounge liquor license to any applicant that
20577 is a partnership, corporation, or limited liability company if any partner, managing agent,
20578 manager, officer, director, stockholder who holds at least 20% of the total issued and
20579 outstanding stock of the applicant corporation, or member who owns at least 20% of the
20580 applicant limited liability company is or was:

20581 (A) a partner or managing agent of any partnership that had any type of license, agency,

20582 or permit issued under this title revoked within the last three years;

20583 (B) a managing agent, officer, director, or a stockholder who holds or held at least 20%
20584 of the total issued and outstanding stock of any corporation that had any type of license,
20585 agency, or permit issued under this title revoked within the last three years; or

20586 (C) a manager or member who owns or owned at least 20% of the limited liability
20587 company that had any type of license, agency, or permit issued under this title revoked within
20588 the last three years.

20589 (b) A corporation or partnership applicant may not be granted an airport lounge liquor
20590 license if any of the following had any type of license, agency, or permit issued under this title
20591 revoked while acting in that person's individual capacity within the last three years:

20592 (i) any partner or managing agent of the applicant partnership;

20593 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
20594 total issued and outstanding stock of the applicant corporation; or

20595 (iii) any manager or member who owns at least 20% of the applicant limited liability
20596 company.

20597 (c) A person acting in an individual capacity may not be granted an airport lounge
20598 liquor license if that person was:

20599 (i) a partner or managing agent of a partnership that had any type of license, agency, or
20600 permit issued under this title revoked within the last three years;

20601 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
20602 total issued and outstanding stock of a corporation that had any type of license, agency, or
20603 permit issued under this title revoked within the last three years; or

20604 (iii) a manager or member who owns at least 20% of a limited liability company that
20605 had any type of license, agency, or permit issued under this title revoked within the last three
20606 years.

20607 (5) (a) A minor may not be granted an airport lounge liquor license.

20608 (b) The commission may not grant an airport lounge liquor license to an applicant that
20609 is a partnership, corporation, or limited liability company if any of the following is a minor:

20610 (i) a partner or managing agent of the applicant partnership;
20611 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
20612 total issued and outstanding stock of the applicant corporation; or
20613 (iii) a manager or member who owns at least 20% of the applicant limited liability
20614 company.

20615 (6) If any person to whom a license has been issued under this part no longer possesses
20616 the qualifications required by this title for obtaining that license, the commission may suspend or
20617 revoke that license.

20618 Section 425. Section **32A-4-304** is amended to read:

20619 **32A-4-304. Qualifications.**

20620 (1) (a) The commission may not grant a limited restaurant license to any person who
20621 has been convicted of:

- 20622 (i) a felony under any federal or state law;
- 20623 (ii) any violation of any federal or state law or local ordinance concerning the sale,
20624 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- 20625 (iii) any crime involving moral turpitude; or
- 20626 (iv) on two or more occasions within the five years before the day on which the license
20627 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
20628 and any drug.

20629 (b) In the case of a partnership, corporation, or limited liability company, the
20630 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
20631 offense described in Subsection (1)(a):

- 20632 (i) a partner;
- 20633 (ii) a managing agent;
- 20634 (iii) a manager;
- 20635 (iv) an officer;
- 20636 (v) a director;
- 20637 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of

20638 the applicant corporation; or

20639 (vii) a member who owns at least 20% of the applicant limited liability company.

20640 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
20641 supervisory or managerial capacity for the limited restaurant has been convicted of any offense
20642 described in Subsection (1)(a).

20643 (2) The commission may immediately suspend or revoke a limited restaurant license if
20644 after the day on which the limited restaurant license is granted, a person described in Subsection
20645 (1)(a), (b), or (c):

20646 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
20647 to the license being granted; or

20648 (b) on or after the day on which the license is granted:

20649 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

20650 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
20651 influence of alcohol and any drug; and

20652 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
20653 influence of alcohol and any drug within five years before the day on which the person is
20654 convicted of the offense described in Subsection (2)(b)(ii)(A).

20655 (3) The director may take emergency action by immediately suspending the operation of
20656 the limited restaurant license according to the procedures and requirements of [~~Title 63,~~
20657 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which
20658 the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

20659 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii) or (iii); or

20660 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
20661 any drug, or the combined influence of alcohol and any drug; and

20662 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
20663 influence of alcohol and any drug within five years before the day on which the person is
20664 arrested on a charge described in Subsection (3)(b)(i).

20665 (4) (a) (i) The commission may not grant a limited restaurant license to any person who

20666 has had any type of license, agency, or permit issued under this title revoked within the last
20667 three years.

20668 (ii) The commission may not grant a limited restaurant license to an applicant that is a
20669 partnership, corporation, or limited liability company if any partner, managing agent, manager,
20670 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
20671 of an applicant corporation, or member who owns at least 20% of an applicant limited liability
20672 company is or was:

20673 (A) a partner or managing agent of any partnership that had any type of license, agency,
20674 or permit issued under this title revoked within the last three years;

20675 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
20676 of the total issued and outstanding stock of any corporation that had any type of license,
20677 agency, or permit issued under this title revoked within the last three years; or

20678 (C) a manager or member of any limited liability company who owns or owned at least
20679 20% of a limited liability company that had any type of license, agency, or permit issued under
20680 this title revoked within the last three years.

20681 (b) An applicant that is a partnership, corporation, or limited liability company may not
20682 be granted a limited restaurant license if any of the following had any type of license, agency, or
20683 permit issued under this title revoked while acting in their individual capacity within the last
20684 three years:

20685 (i) any partner or managing agent of the applicant partnership;

20686 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
20687 total issued and outstanding stock of the applicant corporation; or

20688 (iii) any manager or member who owns at least 20% of the applicant limited liability
20689 company.

20690 (c) A person acting in an individual capacity may not be granted a limited restaurant
20691 license if that person was:

20692 (i) a partner or managing agent of a partnership that had any type of license, agency, or
20693 permit issued under this title revoked within the last three years;

20694 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
20695 total issued and outstanding stock of a corporation that had any type of license, agency, or
20696 permit issued under this title revoked within the last three years; or

20697 (iii) a manager or member of a limited liability company who owned at least 20% of the
20698 limited liability company that had any type of license, agency, or permit issued under this title
20699 revoked within the last three years.

20700 (5) (a) A minor may not be granted a limited restaurant license.

20701 (b) The commission may not grant a limited restaurant license to an applicant that is a
20702 partnership, corporation, or limited liability company if any of the following is a minor:

20703 (i) a partner or managing agent of the applicant partnership;

20704 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
20705 total issued and outstanding stock of the applicant corporation; or

20706 (iii) a manager or member who owns at least 20% of the applicant limited liability
20707 company.

20708 (6) If any person to whom a license has been issued under this part no longer possesses
20709 the qualifications required by this title for obtaining that license, the commission may suspend or
20710 revoke that license.

20711 Section 426. Section **32A-4-403** is amended to read:

20712 **32A-4-403. Qualifications.**

20713 (1) (a) The commission may not grant an on-premise banquet license to any person who
20714 has been convicted of:

20715 (i) a felony under any federal or state law;

20716 (ii) any violation of any federal or state law or local ordinance concerning the sale,
20717 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

20718 (iii) any crime involving moral turpitude; or

20719 (iv) on two or more occasions within the five years before the day on which the license
20720 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
20721 and any drug.

20722 (b) In the case of a partnership, corporation, or limited liability company, the
20723 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
20724 offense described in Subsection (1)(a):

20725 (i) a partner;

20726 (ii) a managing agent;

20727 (iii) a manager;

20728 (iv) an officer;

20729 (v) a director;

20730 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
20731 the applicant corporation; or

20732 (vii) a member who owns at least 20% of the applicant limited liability company.

20733 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
20734 supervisory or managerial capacity for the on-premise banquet licensee has been convicted of
20735 any offense described in Subsection (1)(a).

20736 (2) The commission may immediately suspend or revoke an on-premise banquet license
20737 if after the day on which the on-premise banquet license is granted, a person described in
20738 Subsection (1)(a), (b), or (c):

20739 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
20740 to the license being granted; or

20741 (b) on or after the day on which the license is granted:

20742 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

20743 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
20744 influence of alcohol and any drug; and

20745 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
20746 influence of alcohol and any drug within five years before the day on which the person is
20747 convicted of the offense described in Subsection (2)(b)(ii)(A).

20748 (3) The director may take emergency action by immediately suspending the operation of
20749 an on-premise banquet license according to the procedures and requirements of ~~[Title 63,~~

20750 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which
20751 the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

20752 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

20753 or

20754 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
20755 any drug, or the combined influence of alcohol and any drug; and

20756 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
20757 influence of alcohol and any drug within five years before the day on which the person is
20758 arrested on a charge described in Subsection (3)(b)(i).

20759 (4) (a) (i) The commission may not grant an on-premise banquet license to any person
20760 who has had any type of license, agency, or permit issued under this title revoked within the last
20761 three years.

20762 (ii) The commission may not grant an on-premise banquet license to an applicant that is
20763 a partnership, corporation, or limited liability company if any partner, managing agent, manager,
20764 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
20765 of an applicant corporation, or member who owns at least 20% of an applicant limited liability
20766 company is or was:

20767 (A) a partner or managing agent of any partnership that had any type of license, agency,
20768 or permit issued under this title revoked within the last three years;

20769 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
20770 of the total issued and outstanding stock of any corporation that had any type of license,
20771 agency, or permit issued under this title revoked within the last three years; or

20772 (C) a manager or member who owns or owned at least 20% of any limited liability
20773 company that had any type of license, agency, or permit issued under this title revoked within
20774 the last three years.

20775 (b) An applicant that is a partnership, corporation, or limited liability company may not
20776 be granted an on-premise banquet license if any of the following had any type of license, agency,
20777 or permit issued under this title revoked while acting in their individual capacity within the last

20778 three years:

20779 (i) any partner or managing agent of the applicant partnership;

20780 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
20781 total issued and outstanding stock of the applicant corporation; or

20782 (iii) any manager or member who owns at least 20% of the applicant limited liability
20783 company.

20784 (c) A person acting in an individual capacity may not be granted an on-premise banquet
20785 license if that person was:

20786 (i) a partner or managing agent of a partnership that had any type of license, agency, or
20787 permit issued under this title revoked within the last three years;

20788 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
20789 total issued and outstanding stock of a corporation that had any type of license, agency, or
20790 permit issued under this title revoked within the last three years; or

20791 (iii) a manager or member who owned at least 20% of the limited liability company that
20792 had any type of license, agency, or permit issued under this title revoked within the last three
20793 years.

20794 (5) (a) A minor may not be granted an on-premise banquet license.

20795 (b) The commission may not grant an on-premise banquet license to an applicant that is
20796 a partnership, corporation, or limited liability company if any of the following is a minor:

20797 (i) a partner or managing agent of the applicant partnership;

20798 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
20799 total issued and outstanding stock of the applicant corporation; or

20800 (iii) a manager or member who owns at least 20% of the applicant limited liability
20801 company.

20802 (6) If any person to whom a license has been issued under this part no longer possesses
20803 the qualifications required by this title for obtaining that license, the commission may suspend or
20804 revoke that license.

20805 Section 427. Section **32A-4-406** is amended to read:

20806 **32A-4-406. Operational restrictions.**

20807 Each person granted an on-premise banquet license and the employees and management
20808 personnel of the on-premise banquet licensee shall comply with this title, the rules of the
20809 commission, and the following conditions and requirements. Failure to comply may result in a
20810 suspension or revocation of the license or other disciplinary action taken against individual
20811 employees or management personnel.

20812 (1) A person involved in the sale or service of alcoholic beverages under the on-premise
20813 banquet license shall:

20814 (a) be under the supervision and direction of the on-premise banquet licensee; and

20815 (b) complete the seminar provided for in Section 62A-15-401.

20816 (2) (a) Liquor may not be purchased by the on-premise banquet licensee except from
20817 state stores or package agencies.

20818 (b) Liquor purchased in accordance with Subsection (2)(a) may be transported by the
20819 on-premise banquet licensee from the place of purchase to the licensed premises.

20820 (c) Payment for liquor shall be made in accordance with rules established by the
20821 commission.

20822 (3) Alcoholic beverages may be sold or provided at a banquet subject to the restrictions
20823 set forth in this Subsection (3).

20824 (a) An on-premise banquet licensee may sell or provide any primary spirituous liquor
20825 only in a quantity not to exceed one ounce per beverage dispensed through a calibrated metered
20826 dispensing system approved by the department in accordance with commission rules adopted
20827 under this title, except that:

20828 (i) spirituous liquor need not be dispensed through a calibrated metered dispensing
20829 system if used as a secondary flavoring ingredient in a beverage subject to the following
20830 restrictions:

20831 (A) the secondary ingredient may be dispensed only in conjunction with the purchase of
20832 a primary spirituous liquor;

20833 (B) the secondary ingredient may not be the only spirituous liquor in the beverage;

20834 (C) the on-premise banquet licensee shall designate a location where flavorings are
20835 stored on the floor plan provided to the department; and

20836 (D) all flavoring containers shall be plainly and conspicuously labeled "flavorings";

20837 (ii) spirituous liquor need not be dispensed through a calibrated metered dispensing
20838 system if used:

20839 (A) as a flavoring on desserts; and

20840 (B) in the preparation of flaming food dishes, drinks, and desserts;

20841 (iii) each attendee may have no more than 2.75 ounces of spirituous liquor at a time
20842 before the attendee; and

20843 (iv) each attendee may have no more than one spirituous liquor drink at a time before
20844 the attendee.

20845 (b) (i) (A) Wine may be sold and served by the glass or an individual portion not to
20846 exceed five ounces per glass or individual portion.

20847 (B) An individual portion may be served to an attendee in more than one glass as long
20848 as the total amount of wine does not exceed five ounces.

20849 (C) An individual portion of wine is considered to be one alcoholic beverage under
20850 Subsection (5)(c).

20851 (ii) Wine may be sold and served in containers not exceeding 1.5 liters at prices fixed by
20852 the commission.

20853 (iii) A wine service may be performed and a service charge assessed by the on-premise
20854 banquet licensee as authorized by commission rule for wine purchased on the banquet premises.

20855 (c) (i) Heavy beer may be served in original containers not exceeding one liter at prices
20856 fixed by the commission.

20857 (ii) A service charge may be assessed by the on-premise banquet licensee as authorized
20858 by commission rule for heavy beer purchased on the banquet premises.

20859 (d) (i) Except as provided in Subsection (3)(d)(ii), beer may be sold and served for
20860 on-premise consumption:

20861 (A) in an open container; and

20862 (B) on draft.

20863 (ii) Beer sold pursuant to Subsection (3)(d)(i) shall be in a size of container that does
20864 not exceed two liters, except that beer may not be sold to an individual attendee in a container
20865 size that exceeds one liter.

20866 (4) Alcoholic beverages may not be stored, served, or sold in any place other than as
20867 designated in the on-premise banquet licensee's application, except that additional locations in
20868 or on the premises of an on-premise banquet licensee may be approved in accordance with
20869 guidelines approved by the commission as provided in Subsection 32A-4-402(2).

20870 (5) (a) An attendee may only make alcoholic beverage purchases from and be served by
20871 a person employed, designated, and trained by the on-premise banquet licensee to sell and serve
20872 alcoholic beverages.

20873 (b) Notwithstanding Subsection (5)(a), an attendee who has purchased bottled wine
20874 from an employee of the on-premise banquet licensee may thereafter serve wine from the bottle
20875 to the attendee or others at the attendee's table.

20876 (c) Each attendee may have no more than two alcoholic beverages of any kind at a time
20877 before the attendee.

20878 (6) The alcoholic beverage storage area shall remain locked at all times other than those
20879 hours and days when alcoholic beverage sales are authorized by law.

20880 (7) (a) Except as provided in Subsection (7)(b), alcoholic beverages may be offered for
20881 sale, sold, served, or otherwise furnished from 10 a.m. to 1 a.m. seven days a week:

20882 (i) at a banquet; or

20883 (ii) in connection with room service.

20884 (b) Notwithstanding Subsection (7)(a), a sale or service of liquor may not occur at a
20885 banquet or in connection with room service until after the polls are closed on the day of:

20886 (i) a regular general election;

20887 (ii) a regular primary election; or

20888 (iii) a statewide special election.

20889 (8) Alcoholic beverages may not be sold, served, or otherwise furnished to any:

- 20890 (a) minor;
- 20891 (b) person actually, apparently, or obviously intoxicated;
- 20892 (c) known habitual drunkard; or
- 20893 (d) known interdicted person.
- 20894 (9) (a) (i) Liquor may be sold only at prices fixed by the commission.
- 20895 (ii) Liquor may not be sold at discount prices on any date or at any time.
- 20896 (b) Alcoholic beverages may not be sold at less than the cost of the alcoholic beverage
- 20897 to the licensee.
- 20898 (c) An alcoholic beverage may not be sold at a special or reduced price that encourages
- 20899 over consumption or intoxication.
- 20900 (d) An alcoholic beverage may not be sold at a special or reduced price for only certain
- 20901 hours of the on-premise banquet licensee's business day such as a "happy hour."
- 20902 (e) The sale or service of more than one alcoholic beverage for the price of a single
- 20903 alcoholic beverage is prohibited.
- 20904 (f) An on-premise banquet licensee may not engage in a public promotion involving or
- 20905 offering free alcoholic beverages to the general public.
- 20906 (10) Alcoholic beverages may not be purchased for an attendee by:
- 20907 (a) the on-premise banquet licensee; or
- 20908 (b) any employee or agent of the on-premise banquet licensee.
- 20909 (11) An attendee of a banquet may not bring any alcoholic beverage into or onto, or
- 20910 remove any alcoholic beverage from the premises of a banquet.
- 20911 (12) (a) Except as otherwise provided in this title, the sale and service of alcoholic
- 20912 beverages by an on-premise banquet licensee at a banquet shall be made only for consumption at
- 20913 the location of the banquet.
- 20914 (b) The host of a banquet, an attendee, or any other person other than the on-premise
- 20915 banquet licensee or its employees, may not remove any alcoholic beverage from the premises of
- 20916 the banquet.
- 20917 (13) An on-premise banquet licensee employee shall remain at the banquet at all times

20918 when alcoholic beverages are being sold, served, or consumed at the banquet.

20919 (14) (a) An on-premise banquet licensee may not leave any unsold alcoholic beverages
20920 at the banquet following the conclusion of the banquet.

20921 (b) At the conclusion of a banquet, the on-premise banquet licensee or its employees,
20922 shall:

20923 (i) destroy any opened and unused alcoholic beverages that are not saleable, under
20924 conditions established by the department; and

20925 (ii) return to the on-premise banquet licensee's approved locked storage area any:

20926 (A) opened and unused alcoholic beverage that is saleable; and

20927 (B) unopened containers of alcoholic beverages.

20928 (15) Except as provided in Subsection (14), any open or sealed container of alcoholic
20929 beverages not sold or consumed at a banquet:

20930 (a) shall be stored by the on-premise banquet licensee in the licensee's approved locked
20931 storage area; and

20932 (b) may be used at more than one banquet.

20933 (16) An on-premise banquet licensee may not employ a minor to sell, serve, dispense, or
20934 otherwise furnish alcoholic beverages in connection with the licensee's banquet and room
20935 service activities.

20936 (17) An employee of an on-premise banquet licensee, while on duty, may not:

20937 (a) consume an alcoholic beverage; or

20938 (b) be intoxicated.

20939 (18) An on-premise banquet licensee shall prominently display at each banquet at which
20940 alcoholic beverages are sold or served:

20941 (a) a copy of the licensee's on-premise banquet license; and

20942 (b) a sign in large letters stating: "Warning: Driving under the influence of alcohol or
20943 drugs is a serious crime that is prosecuted aggressively in Utah."

20944 (19) An on-premise banquet licensee may not on the premises of the hotel, resort
20945 facility, sports center, or convention center:

20946 (a) engage in or permit any form of gambling, as defined and proscribed in Title 76,
20947 Chapter 10, Part 11, Gambling;

20948 (b) have any video gaming device, as defined and proscribed by Title 76, Chapter 10,
20949 Part 11, Gambling; or

20950 (c) engage in or permit a contest, game, gaming scheme, or gaming device that requires
20951 the risking of something of value for a return or for an outcome when the return or outcome is
20952 based upon an element of chance, excluding the playing of an amusement device that confers
20953 only an immediate and unrecorded right of replay not exchangeable for value.

20954 (20) (a) An on-premise banquet licensee shall maintain accounting and such other
20955 records and documents as the commission or department may require.

20956 (b) An on-premise banquet licensee or person acting for the on-premise banquet
20957 licensee, who knowingly forges, falsifies, alters, cancels, destroys, conceals, or removes the
20958 entries in any of the books of account or other documents of the on-premise banquet licensee
20959 required to be made, maintained, or preserved by this title or the rules of the commission for the
20960 purpose of deceiving the commission or department, or any of their officials or employees, is
20961 subject to:

20962 (i) the suspension or revocation of the on-premise banquet license; and

20963 (ii) possible criminal prosecution under Chapter 12, Criminal Offenses.

20964 (21) (a) For the purpose described in Subsection (21)(b), an on-premise banquet
20965 licensee shall provide the department with advance notice of a scheduled banquet in accordance
20966 with rules made by the commission in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
20967 Chapter 3, Utah Administrative Rulemaking Act.

20968 (b) The advance notice required by Subsection (21)(a) is required to provide any of the
20969 following the opportunity to conduct a random inspection of a banquet:

20970 (i) an authorized representative of the commission or the department; or

20971 (ii) a law enforcement officer.

20972 (22) An on-premise banquet licensee shall maintain at least 50% of its total annual
20973 banquet gross receipts from the sale of food, not including:

20974 (a) mix for alcoholic beverages; and

20975 (b) charges in connection with the service of alcoholic beverages.

20976 (23) A person may not transfer an on-premise banquet license from one business
20977 location to another without prior written approval of the commission.

20978 (24) (a) An on-premise banquet licensee may not sell, transfer, assign, exchange, barter,
20979 give, or attempt in any way to dispose of the license to any other person, whether for monetary
20980 gain or not.

20981 (b) An on-premise banquet license has no monetary value for the purpose of any type of
20982 disposition.

20983 (25) (a) Room service of alcoholic beverages to a guest room of a hotel or resort
20984 facility shall be provided in person by an on-premise banquet licensee employee only to an adult
20985 guest in the guest room.

20986 (b) Alcoholic beverages may not be left outside a guest room for retrieval by a guest.

20987 (c) An on-premise banquet licensee may only provide alcoholic beverages for room
20988 service in sealed containers.

20989 Section 428. Section **32A-5-103** is amended to read:

20990 **32A-5-103. Qualifications.**

20991 (1) (a) The commission may not grant a private club license to any person who has been
20992 convicted of:

20993 (i) a felony under any federal or state law;

20994 (ii) any violation of any federal or state law or local ordinance concerning the sale,
20995 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

20996 (iii) any crime involving moral turpitude; or

20997 (iv) on two or more occasions within the five years before the day on which the license
20998 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
20999 and any drug.

21000 (b) In the case of a partnership, corporation, or limited liability company, the

21001 proscription under Subsection (1)(a) applies if any of the following has been convicted of any

21002 offense described in Subsection (1)(a):

21003 (i) a partner;

21004 (ii) a managing agent;

21005 (iii) a manager;

21006 (iv) an officer;

21007 (v) a director;

21008 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of

21009 the applicant corporation; or

21010 (vii) a member who owns at least 20% of the applicant limited liability company.

21011 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a

21012 supervisory or managerial capacity for a private club has been convicted of any offense

21013 described in Subsection (1)(a).

21014 (2) The commission may immediately suspend or revoke a private club license if after

21015 the day on which the private club license is granted, a person described in Subsection (1)(a), (b),

21016 or (c):

21017 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior

21018 to the license being granted; or

21019 (b) on or after the day on which the license is granted:

21020 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21021 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined

21022 influence of alcohol and any drug; and

21023 (B) was convicted of driving under the influence of alcohol, any drug, or the combined

21024 influence of alcohol and any drug within five years before the day on which the person is

21025 convicted of the offense described in Subsection (2)(b)(ii)(A).

21026 (3) The director may take emergency action by immediately suspending the operation of

21027 a private club license according to the procedures and requirements of [~~Title 63, Chapter 46b~~

21028 Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal

21029 matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

21030 (a) is arrested on a charge for any offense described in Subsection (1)(a)(i), (ii), or (iii);
21031 or

21032 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21033 any drug, or the combined influence of alcohol and any drug; and

21034 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21035 influence of alcohol and any drug within five years before the day on which the person is
21036 arrested on a charge described in Subsection (3)(b)(i).

21037 (4) (a) (i) The commission may not grant a private club license to any person who has
21038 had any type of license, agency, or permit issued under this title revoked within the last three
21039 years.

21040 (ii) The commission may not grant a private club license to any applicant that is a
21041 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21042 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21043 of an applicant corporation, or member who owns at least 20% of an applicant limited liability
21044 company is or was:

21045 (A) a partner or managing agent of any partnership that had any type of license, agency,
21046 or permit issued under this title revoked within the last three years;

21047 (B) a managing agent, officer, director, or a stockholder who holds or held at least 20%
21048 of the total issued and outstanding stock of any corporation that had any type of license,
21049 agency, or permit issued under this title revoked within the last three years; or

21050 (C) a manager or member who owns or owned at least 20% of any limited liability
21051 company that had any type of license, agency, or permit issued under this title revoked within
21052 the last three years.

21053 (b) An applicant that is a partnership, corporation, or limited liability company may not
21054 be granted a private club license if any of the following had any type of license, agency, or
21055 permit issued under this title revoked while acting in that person's individual capacity within the
21056 last three years:

21057 (i) any partner or managing agent of the applicant partnership;

21058 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21059 total issued and outstanding stock of the applicant corporation; or
21060 (iii) any manager or member who owned at least 20% of the applicant limited liability
21061 company.
21062 (c) A person acting in an individual capacity may not be granted a private club license if
21063 that person was:
21064 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21065 permit issued under this title revoked within the last three years;
21066 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21067 total issued and outstanding stock of a corporation that had any type of license, agency, or
21068 permit issued under this title revoked within the last three years; or
21069 (iii) a manager or member of a limited liability company who owned at least 20% of the
21070 limited liability company that had any type of license, agency, or permit issued under this title
21071 revoked within the last three years.
21072 (5) (a) A minor may not be granted a private club license.
21073 (b) The commission may not grant a private club license to an applicant that is a
21074 partnership, corporation, or limited liability company if any of the following is a minor:
21075 (i) a partner or managing agent of the applicant partnership;
21076 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21077 total issued and outstanding stock of the applicant corporation; or
21078 (iii) a manager or member who owns at least 20% of the applicant limited liability
21079 company.
21080 (6) If any person or entity to whom a license has been issued under this chapter no
21081 longer possesses the qualifications required by this title for obtaining that license, the
21082 commission may suspend or revoke that license.
21083 Section 429. Section **32A-6-103** is amended to read:
21084 **32A-6-103. Qualifications.**
21085 (1) Special use permits may be granted only to the following persons or organizations:

- 21086 (a) a religious wine use permit may be granted to a church or religious organization;
- 21087 (b) an industrial or manufacturing use permit may be granted to a person or
- 21088 organization engaged in an industrial or manufacturing pursuit;
- 21089 (c) a scientific or educational use permit may be granted to a person or organization
- 21090 engaged in a scientific or educational pursuit;
- 21091 (d) a health care facility use permit may be granted to a hospital or health care facility;
- 21092 and
- 21093 (e) a public service permit may be granted to an operator of an airline, railroad, or other
- 21094 public conveyance.
- 21095 (2) (a) The commission may not issue a special use permit to any person who has been
- 21096 convicted of:
- 21097 (i) a felony under any federal or state law;
- 21098 (ii) any violation of any federal or state law or local ordinance concerning the sale,
- 21099 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic products;
- 21100 (iii) any crime involving moral turpitude; or
- 21101 (iv) on two or more occasions within the five years before the day on which the special
- 21102 use permit is granted, driving under the influence of alcohol, any drug, or the combined
- 21103 influence of alcohol and any drug.
- 21104 (b) In the case of a partnership, corporation, or limited liability company the
- 21105 proscription under Subsection (2)(a) applies if any of the following has been convicted of any
- 21106 offense described in Subsection (2)(a):
- 21107 (i) a partner;
- 21108 (ii) a managing agent;
- 21109 (iii) a manager;
- 21110 (iv) an officer;
- 21111 (v) a director;
- 21112 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
- 21113 an applicant corporation; or

21114 (vii) a member who owns at least 20% of an applicant limited liability company.

21115 (c) The proscription under Subsection (2)(a) applies if any person employed to act in a
21116 supervisory or managerial capacity for a special use permittee has been convicted of any offense
21117 described in Subsection (2)(a).

21118 (3) The commission may immediately suspend or revoke a special use permit if after the
21119 day on which the special use permit is granted, a person described in Subsection (2)(a), (b), or
21120 (c):

21121 (a) is found to have been convicted of any offense described in Subsection (2)(a) prior
21122 to the permit being granted; or

21123 (b) on or after the day on which the permit is granted:

21124 (i) is convicted of an offense described in Subsection (2)(a)(i), (ii), or (iii); or

21125 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21126 influence of alcohol and any drug; and

21127 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21128 influence of alcohol and any drug within five years before the day on which the person is
21129 convicted of the offense described in Subsection (3)(b)(ii)(A).

21130 (4) The director may take emergency action by immediately suspending the operation of
21131 a special use permit according to the procedures and requirements of [~~Title 63, Chapter 46b~~]
21132 Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the criminal
21133 matter is being adjudicated if a person described in Subsection (2)(a), (b), or (c):

21134 (a) is arrested on a charge described in Subsection (2)(a)(i), (ii), or (iii); or

21135 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21136 any drug, or the combined influence of alcohol and any drug; and

21137 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21138 influence of alcohol and any drug within five years before the day on which the person is
21139 arrested on a charge described in Subsection (4)(b)(i).

21140 (5) (a) (i) The commission may not grant a special use permit to any person who has
21141 had any type of license, agency, or permit issued under this title revoked within the last three

21142 years.

21143 (ii) The commission may not grant a special use permit to any applicant that is a
21144 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21145 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21146 of the applicant corporation, or member who owns at least 20% of the applicant limited liability
21147 company is or was:

21148 (A) a partner or managing agent of any partnership that had any type of license, agency,
21149 or permit issued under this title revoked within the last three years;

21150 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21151 of the total issued and outstanding stock of any corporation that had any type of license,
21152 agency, or permit issued under this title revoked within the last three years; or

21153 (C) a manager or member who owns or owned at least 20% of any limited liability
21154 company that had any type of license, agency, or permit issued under this title revoked within
21155 the last three years.

21156 (b) An applicant that is a partnership, corporation, or limited liability company may not
21157 be granted a special use permit if any of the following had any type of license, agency, or permit
21158 issued under this title revoked while acting in that person's individual capacity within the last
21159 three years:

21160 (i) any partner or managing agent of the applicant partnership;

21161 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21162 total issued and outstanding stock of the applicant corporation; or

21163 (iii) any manager or member who owns at least 20% of the applicant limited liability
21164 company.

21165 (c) A person acting in an individual capacity may not be granted a special use permit if
21166 that person was:

21167 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21168 permit issued under this title revoked within the last three years;

21169 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the

21170 total issued and outstanding stock of a corporation that had any type of license, agency, or
21171 permit issued under this title revoked within the last three years; or

21172 (iii) a manager or member who owned at least 20% of a limited liability company that
21173 had any type of license, agency, or permit revoked within the last three years.

21174 (6) (a) A minor may not be:

21175 (i) granted a special use permit; or

21176 (ii) employed by a permittee to handle alcoholic beverages.

21177 (b) The commission may not grant a special use permit to an applicant that is a
21178 partnership, corporation, or limited liability company if any of the following is a minor:

21179 (i) a partner or managing agent of the applicant partnership;

21180 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21181 total issued and outstanding stock of the applicant corporation; or

21182 (iii) a manager or member who owns at least 20% of the applicant limited liability
21183 company.

21184 (7) If any person to whom a permit has been issued under this chapter no longer
21185 possesses the qualifications required by this title for obtaining that permit, the commission may
21186 suspend or revoke that permit.

21187 Section 430. Section **32A-7-103** is amended to read:

21188 **32A-7-103. Qualifications.**

21189 (1) To qualify for a single event permit, the applicant shall have been in existence as a
21190 bona fide organization for at least one year prior to the date of application.

21191 (2) (a) The commission may not grant a single event permit to any person who has been
21192 convicted of:

21193 (i) a felony under any federal or state law;

21194 (ii) any violation of any federal or state law or local ordinance concerning the sale,
21195 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

21196 (iii) any crime involving moral turpitude; or

21197 (iv) on two or more occasions within the last five years before the day on which the

21198 permit is granted, driving under the influence of alcohol, any drug, or the combined influence of
21199 alcohol and any drug.

21200 (b) In the case of a partnership, corporation, or limited liability company the
21201 proscription under Subsection (2)(a) applies if any of the following has been convicted of any
21202 offense described in Subsection (2)(a):

21203 (i) a partner;

21204 (ii) a managing agent;

21205 (iii) a manager;

21206 (iv) an officer;

21207 (v) a director;

21208 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21209 an applicant corporation; or

21210 (vii) a member who owns at least 20% of an applicant limited liability company.

21211 (c) The proscription under Subsection (2)(a) applies if any person employed to act in a
21212 supervisory or managerial capacity for the single event permittee has been convicted of any
21213 offense described in Subsection (2)(a).

21214 (3) The commission may immediately suspend or revoke a single event permit if after
21215 the day on which the permit is granted, a person described in Subsection (2)(a), (b), or (c):

21216 (a) is found to have been convicted of any offense described in Subsection (2)(a) prior
21217 to the permit being granted; or

21218 (b) on or after the day on which the permit is granted:

21219 (i) is convicted of an offense described in Subsection (2)(a)(i), (ii), or (iii); or

21220 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21221 influence of alcohol and any drug; and

21222 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21223 influence of alcohol and any drug within five years before the day on which the person is
21224 convicted of the offense described in Subsection (3)(b)(ii)(A).

21225 (4) The director may take emergency action by immediately revoking the permit

21226 according to the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
21227 Administrative Procedures Act, if a person described in Subsection (2)(a), (b), or (c):

21228 (a) is arrested on a charge for an offense described in Subsection (2)(a)(i), (ii), or (iii);
21229 or

21230 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21231 any drug, or the combined influence of alcohol and any drug; and

21232 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21233 influence of alcohol and any drug within five years before the day on which the person is
21234 arrested on a charge described in Subsection (4)(b)(i).

21235 (5) (a) (i) The commission may not grant a single event permit to any person who has
21236 had any type of license, agency, or permit issued under this title revoked within the last three
21237 years.

21238 (ii) The commission may not grant a single event permit to any applicant that is a
21239 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21240 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21241 of the applicant corporation, or member who owns at least 20% of the applicant limited liability
21242 company is or was:

21243 (A) a partner or managing agent of any partnership that had any type of license, agency,
21244 or permit issued under this title revoked within the last three years;

21245 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21246 of the total issued and outstanding stock of any corporation that had any type of license,
21247 agency, or permit issued under this title revoked within the last three years; or

21248 (C) a manager or member who owns or owned at least 20% of any limited liability
21249 company that had a liquor license, agency, or permit revoked within the last three years.

21250 (b) An applicant that is a partnership, corporation, or limited liability company may not
21251 be granted a permit if any of the following had any type of license, agency, or permit issued
21252 under this title revoked while acting in that person's individual capacity within the last three
21253 years:

21254 (i) any partner or managing agent of the applicant partnership;
21255 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21256 total issued and outstanding stock of the applicant corporation; or
21257 (iii) any manager or member who owns at least 20% of the applicant limited liability
21258 company.

21259 (6) (a) A minor may not be:
21260 (i) granted a single event permit; or
21261 (ii) employed by a single event permittee to handle alcoholic beverages.

21262 (b) The commission may not grant a single event permit to an applicant that is a
21263 partnership, corporation, or limited liability company if any of the following is a minor:
21264 (i) a partner or managing agent of the applicant partnership;
21265 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21266 total issued and outstanding stock of the applicant corporation; or
21267 (iii) a manager or member who owns at least 20% of the applicant limited liability
21268 company.

21269 (7) If a person to whom a permit has been issued under this chapter no longer possesses
21270 the qualifications required by this title for obtaining that permit, the commission may suspend or
21271 revoke that permit.

21272 Section 431. Section **32A-8-103** is amended to read:
21273 **32A-8-103. Qualifications.**
21274 (1) (a) The commission may not grant an alcoholic beverage manufacturing license to
21275 any person who has been convicted of:
21276 (i) a felony under any federal or state law;
21277 (ii) any violation of any federal or state law or local ordinance concerning the sale,
21278 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
21279 (iii) any crime involving moral turpitude; or
21280 (iv) on two or more occasions within the five years before the day on which the license
21281 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol

21282 and any drug.

21283 (b) In the case of a partnership, corporation, or limited liability company the
21284 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
21285 offense described in Subsection (1)(a):

21286 (i) a partner;

21287 (ii) a managing agent;

21288 (iii) a manager;

21289 (iv) an officer;

21290 (v) a director;

21291 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21292 the applicant corporation; or

21293 (vii) a member who owns at least 20% of the applicant limited liability company.

21294 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
21295 supervisory or managerial capacity for the manufacturer has been convicted of any offense
21296 described in Subsection (1)(a).

21297 (2) The commission may immediately suspend or revoke an alcoholic beverage
21298 manufacturing license if after the day on which the alcoholic beverage manufacturing license is
21299 granted, a person described in Subsection (1)(a), (b), or (c):

21300 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
21301 to the license being granted; or

21302 (b) on or after the day on which the license is granted:

21303 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21304 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21305 influence of alcohol and any drug; and

21306 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21307 influence of alcohol and any drug within five years before the day on which the person is
21308 convicted of the offense described in Subsection (2)(b)(ii)(A).

21309 (3) The director may take emergency action by immediately suspending the operation of

21310 the licensee according to the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
21311 Chapter 4, Administrative Procedures Act, for the period during which the criminal matter is
21312 being adjudicated if a person described in Subsection (1)(a), (b), or (c):

21313 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

21314 or

21315 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21316 any drug, or the combined influence of alcohol and any drug; and

21317 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21318 influence of alcohol and any drug within five years before the day on which the person is
21319 arrested on a charge described in Subsection (3)(b)(i).

21320 (4) (a) (i) The commission may not grant a manufacturing license to any person who
21321 has had any type of license, agency, or permit issued under this title revoked within the last
21322 three years.

21323 (ii) The commission may not grant a manufacturing license to any applicant that is a
21324 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21325 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21326 of the applicant corporation, or member who owns at least 20% of the applicant limited liability
21327 company is or was:

21328 (A) a partner or managing agent of any partnership that had any type of license, agency,
21329 or permit issued under this title revoked within the last three years;

21330 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21331 of the total issued and outstanding stock of any corporation that had any type of license,
21332 agency, or permit issued under this title revoked within the last three years; or

21333 (C) a manager or member who owns or owned at least 20% of the limited liability
21334 company that had any type of license, agency, or permit issued under this title revoked within
21335 the last three years.

21336 (b) An applicant that is a partnership, corporation, or limited liability company may not
21337 be granted a manufacturing license if any of the following had any type of license, agency, or

21338 permit issued under this title revoked while acting in that person's individual capacity within the
21339 last three years:

21340 (i) any partner or managing agent of the applicant partnership;

21341 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21342 total issued and outstanding stock of the applicant corporation; or

21343 (iii) any manager or member who owns at least 20% of the applicant limited liability
21344 company.

21345 (c) A person acting in an individual capacity may not be granted a manufacturing license
21346 if that person was:

21347 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21348 permit issued under this title revoked within the last three years;

21349 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21350 total issued and outstanding stock of a corporation that had any type of license, agency, or
21351 permit issued under this title revoked within the last three years; or

21352 (iii) a manager or member who owned at least 20% of a limited liability company that
21353 had any type of license, agency, or permit issued under this title revoked within the last three
21354 years.

21355 (5) (a) A minor may not be:

21356 (i) granted an alcoholic beverage manufacturing license; or

21357 (ii) employed by a manufacturing licensee to handle alcoholic beverages.

21358 (b) The commission may not grant an alcoholic beverage manufacturing license to an
21359 applicant that is a partnership, corporation, or limited liability company if any of the following is
21360 a minor:

21361 (i) a partner or managing agent of the applicant partnership;

21362 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21363 total issued and outstanding stock of the applicant corporation; or

21364 (iii) a manager or member who owns at least 20% of the applicant limited liability
21365 company.

21366 (6) The commission may not grant an alcoholic beverage manufacturing license to any
21367 person who has not met any applicable federal requirements for the operation of wineries,
21368 distilleries, or breweries.

21369 (7) If any person to whom a license has been issued under this chapter no longer
21370 possesses the qualifications required by this title for obtaining that license, the commission may
21371 suspend or revoke that license.

21372 Section 432. Section **32A-8-503** is amended to read:

21373 **32A-8-503. Qualifications.**

21374 (1) (a) The commission may not grant a local industry representative license to any
21375 person who has been convicted of:

21376 (i) a felony under any federal or state law;

21377 (ii) any violation of any federal or state law or local ordinance concerning the sale,
21378 manufacture, distribution, importing, warehousing, adulteration, or transportation of alcoholic
21379 beverages;

21380 (iii) any crime involving moral turpitude; or

21381 (iv) on two or more occasions within the five years before the day on which the license
21382 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
21383 and any drug.

21384 (b) In the case of a partnership, corporation, or limited liability company the
21385 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
21386 offense described in Subsection (1)(a):

21387 (i) a partner;

21388 (ii) a managing agent;

21389 (iii) a manager;

21390 (iv) an officer;

21391 (v) a director;

21392 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21393 the applicant corporation; or

21394 (vii) a member who owns at least 20% of the applicant limited liability company.

21395 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
21396 supervisory or managerial capacity for the local industry representative has been convicted of
21397 any offense described in Subsection (1)(a).

21398 (2) The commission may immediately suspend or revoke the local industry
21399 representative license if after the day on which the local industry representative license is
21400 granted, a person described in Subsection (1)(a), (b), or (c):

21401 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
21402 to the license being granted; or

21403 (b) on or after the day on which the license is granted:

21404 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21405 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21406 influence of alcohol and any drug; and

21407 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21408 influence of alcohol and any drug within five years before the day on which the person is
21409 convicted of the offense described in Subsection (2)(b)(ii)(A).

21410 (3) The director may take emergency action by immediately suspending the operation of
21411 the local industry representative license according to the procedures and requirements of [~~Title
21412 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, for the period during
21413 which the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or
21414 (c):

21415 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);
21416 or

21417 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21418 any drug, or the combined influence of alcohol and any drug; and

21419 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21420 influence of alcohol and any drug within five years before the day on which the person is
21421 arrested on a charge described in Subsection (3)(b)(i).

21422 (4) (a) (i) The commission may not grant a local industry representative license to any
21423 individual who has had any type of license, agency, or permit issued under this title revoked
21424 within the last three years.

21425 (ii) The commission may not grant a local industry representative license to an applicant
21426 that is a partnership, corporation, or limited liability company if any partner, managing agent,
21427 manager, officer, director, stockholder who holds at least 20% of the total issued and
21428 outstanding stock of an applicant corporation, or member who owns at least 20% of an
21429 applicant limited liability company is or was:

21430 (A) a partner or managing agent of any partnership that had any type of license, agency,
21431 or permit issued under this title revoked within the last three years;

21432 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21433 of the total issued and outstanding stock of any corporation that had any type of license,
21434 agency, or permit issued under this title revoked within the last three years; or

21435 (C) a manager or member who owns or owned at least 20% of any limited liability
21436 company that had any type of license, agency, or permit issued under this title revoked within
21437 the last three years.

21438 (b) An applicant that is a partnership, corporation, or limited liability company may not
21439 be granted a local industry representative license if any of the following had any type of license,
21440 agency, or permit issued under this title revoked while acting in that person's individual capacity
21441 within the last three years:

21442 (i) any partner or managing agent of the applicant partnership;

21443 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21444 total issued and outstanding stock of the applicant corporation; or

21445 (iii) any manager or member who owns at least 20% of the applicant limited liability
21446 company.

21447 (c) A person acting in an individual capacity may not be granted an industry
21448 representative license if that person was:

21449 (i) a partner or managing agent of a partnership that had any type of license, agency, or

21450 permit issued under this title revoked within the last three years;

21451 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21452 total issued and outstanding stock of a corporation that had any type of license, agency, or
21453 permit issued under this title revoked within the last three years; or

21454 (iii) a manager or member who owned at least 20% of a limited liability company that
21455 had any type of license, agency, or permit issued under this title revoked within the last three
21456 years.

21457 (5) (a) The commission may not grant a local industry representative license to a minor.

21458 (b) The commission may not grant a local industry representative license to an applicant
21459 that is a partnership, corporation, or limited liability company if any of the following is a minor:

21460 (i) a partner or managing agent of the applicant partnership;

21461 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21462 total issued and outstanding stock of the applicant corporation; or

21463 (iii) a manager or member who owns at least 20% of the applicant limited liability
21464 company.

21465 (6) Except as otherwise provided, the commission may not grant a local industry
21466 representative license to:

21467 (a) any holder of any retail license issued under this title that sells spirituous liquor,
21468 wine, or heavy beer;

21469 (b) any employee or agent of any retail license issued under this title that sells spirituous
21470 liquor, wine, or heavy beer; or

21471 (c) any individual, partnership, corporation, or limited liability company who holds any
21472 interest in any retail license issued under this title that sells spirituous liquor, wine, or heavy
21473 beer.

21474 (7) If any individual, partnership, corporation, or limited liability company to whom a
21475 local industry representative license has been issued under this part no longer possesses the
21476 qualifications required by this title for obtaining that license, the commission may suspend or
21477 revoke that license.

21478 Section 433. Section **32A-9-103** is amended to read:

21479 **32A-9-103. Qualifications.**

21480 (1) (a) The commission may not grant a warehousing license to any person who has
21481 been convicted of:

21482 (i) a felony under any federal or state law;

21483 (ii) any federal or state law or local ordinance concerning the sale, manufacture,
21484 distribution, warehousing, adulteration, or transportation of alcoholic beverages;

21485 (iii) any crime involving moral turpitude; or

21486 (iv) on two or more occasions within the five years before the day on which the license
21487 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
21488 and any drug.

21489 (b) In the case of a partnership, corporation, or limited liability company the
21490 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
21491 offense described in Subsection (1)(a):

21492 (i) a partner;

21493 (ii) a managing agent;

21494 (iii) a manager;

21495 (iv) an officer;

21496 (v) a director;

21497 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21498 the applicant corporation; or

21499 (vii) a member who owns at least 20% of the applicant limited liability company.

21500 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
21501 supervisory or managerial capacity for the warehouse has been convicted of any offense
21502 described in Subsection (1)(a).

21503 (2) The commission may immediately suspend or revoke a warehousing license if after
21504 the day on which the warehousing license is granted, a person described in Subsection (1)(a),
21505 (b), or (c):

21506 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
21507 to the license being granted; or
21508 (b) on or after the day on which the license is granted:
21509 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or
21510 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21511 influence of alcohol and any drug; and
21512 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21513 influence of alcohol and any drug within five years before the day on which the person is
21514 convicted of the offense described in Subsection (2)(b)(ii)(A).
21515 (3) The director may take emergency action by immediately suspending the operation of
21516 the warehousing license according to the procedures and requirements of [~~Title 63, Chapter~~
21517 ~~46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the
21518 criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):
21519 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);
21520 or
21521 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21522 any drug, or the combined influence of alcohol and any drug; and
21523 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21524 influence of alcohol and any drug within five years before the day on which the person is
21525 arrested on a charge described in Subsection (3)(b)(i).
21526 (4) (a) (i) The commission may not grant a warehousing license to any person who has
21527 had any type of license, agency, or permit issued under this title revoked within the last three
21528 years.
21529 (ii) The commission may not grant a warehousing license to an applicant that is a
21530 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21531 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21532 of an applicant corporation, or member who owns at least 20% of an applicant limited liability
21533 company is or was:

21534 (A) a partner or managing agent of any partnership that had any type of license, agency,
21535 or permit issued under this title revoked within the last three years;

21536 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21537 of the total issued and outstanding stock of any corporation that had any type of license,
21538 agency, or permit issued under this title revoked within the last three years; or

21539 (C) a manager or member who owns or owned at least 20% of any limited liability
21540 company that had any type of license, agency, or permit issued under this title revoked within
21541 the last three years.

21542 (b) An applicant that is a partnership, corporation, or limited liability company may not
21543 be granted a warehousing license if any of the following had any type of license, agency, or
21544 permit issued under this title revoked while acting in that person's individual capacity within the
21545 last three years:

21546 (i) any partner or managing agent of the applicant partnership;

21547 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21548 total issued and outstanding stock of the applicant corporation; or

21549 (iii) any manager or member who owns at least 20% of the applicant limited liability
21550 company.

21551 (c) A person acting in an individual capacity may not be granted a warehousing license
21552 if that person was:

21553 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21554 permit issued under this title revoked within the last three years;

21555 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21556 total issued and outstanding stock of a corporation that had any type of license, agency, or
21557 permit issued under this title revoked within the last three years; or

21558 (iii) any manager or member who owned at least 20% of a limited liability company that
21559 had any type of license, agency, or permit issued under this title revoked within the last three
21560 years.

21561 (5) (a) A minor may not be:

- 21562 (i) granted a warehousing license; or
- 21563 (ii) employed by a warehouse to handle liquor.
- 21564 (b) The commission may not grant a warehousing license to an applicant that is a
- 21565 partnership, corporation, or limited liability company if any of the following is a minor:
- 21566 (i) a partner or managing agent of the applicant partnership;
- 21567 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
- 21568 total issued and outstanding stock of the applicant corporation; or
- 21569 (iii) a manager or member who owns at least 20% of the applicant limited liability
- 21570 company.
- 21571 (6) A person, through any officer, director, representative, agent, or employee, or
- 21572 otherwise, either directly or indirectly, may not hold at the same time both a warehousing
- 21573 license and any other kind of license, agency, or permit issued under Title 32A, Chapter 3, 4, 5,
- 21574 6, or 7, or Chapter 10, Part 2.
- 21575 (7) If any person to whom a license has been issued under this chapter no longer
- 21576 possesses the qualifications required by this title for obtaining that license, the commission may
- 21577 suspend or revoke that license.
- 21578 Section 434. Section **32A-10-203** is amended to read:
- 21579 **32A-10-203. Qualifications.**
- 21580 (1) (a) The commission may not grant an on-premise beer retailer license to any person
- 21581 who has been convicted of:
- 21582 (i) a felony under any federal or state law;
- 21583 (ii) any violation of any federal or state law or local ordinance concerning the sale,
- 21584 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;
- 21585 (iii) of any crime involving moral turpitude; or
- 21586 (iv) on two or more occasions within the five years before the day on which the license
- 21587 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
- 21588 and any drug.
- 21589 (b) In the case of a partnership, corporation, or limited liability company the

21590 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
21591 offense described in Subsection (1)(a):

- 21592 (i) a partner;
- 21593 (ii) a managing agent;
- 21594 (iii) a manager;
- 21595 (iv) an officer;
- 21596 (v) a director;
- 21597 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21598 the applicant corporation; or
- 21599 (vii) a manager or member who owns at least 20% of the applicant limited liability
21600 company.

21601 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
21602 supervisory or managerial capacity for the on-premise beer retailer has been convicted of any
21603 offense described in Subsection (1)(a).

21604 (2) The commission may immediately suspend or revoke an on-premise beer retailer
21605 license if after the day on which the on-premise beer retailer license is granted, a person
21606 described in Subsection (1)(a), (b), or (c):

21607 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior
21608 to the license being granted; or

21609 (b) on or after the day on which the license is granted:

21610 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21611 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21612 influence of alcohol and any drug; and

21613 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21614 influence of alcohol and any drug within five years before the day on which the person is
21615 convicted of the offense described in Subsection (2)(b)(ii)(A).

21616 (3) The director may take emergency action by immediately suspending the operation of
21617 an on-premise beer retailer license according to the procedures and requirements of ~~[Title 63;~~

21618 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, for the period during which
21619 the criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

21620 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

21621 or

21622 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21623 any drug, or the combined influence of alcohol and any drug; and

21624 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21625 influence of alcohol and any drug within five years before the day on which the person is
21626 arrested on a charge described in Subsection (3)(b)(i).

21627 (4) (a) (i) The commission may not grant an on-premise beer retailer license to any
21628 person who has had any type of license, agency, or permit issued under this title revoked within
21629 the last three years.

21630 (ii) The commission may not grant an on-premise beer retailer license to any applicant
21631 that is a partnership, corporation, or limited liability company if any partner, managing agent,
21632 manager, officer, director, stockholder who holds at least 20% of the total issued and
21633 outstanding stock of the applicant corporation, or member who owns at least 20% of the
21634 applicant limited liability company is or was:

21635 (A) a partner or managing agent of any partnership that had any type of license, agency,
21636 or permit issued under this title revoked within the last three years;

21637 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21638 of the total issued and outstanding stock of any corporation that had any type of license,
21639 agency, or permit issued under this title revoked within the last three years; or

21640 (C) a manager or member who owns or owned at least 20% of any limited liability
21641 company that had any type of license, agency, or permit issued under this title revoked within
21642 the last three years.

21643 (b) An applicant that is a partnership, corporation, or limited liability company may not
21644 be granted an on-premise beer retailer license if any of the following had any type of license,
21645 agency, or permit issued under this title revoked while acting in that person's individual capacity

21646 within the last three years:

21647 (i) any partner or managing agent of the applicant partnership;

21648 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21649 total issued and outstanding stock of the applicant corporation; or

21650 (iii) any manager or member company who owns at least 20% of the applicant limited
21651 liability company.

21652 (c) A person acting in an individual capacity may not be granted an on-premise beer
21653 retailer license if that person was:

21654 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21655 permit issued under this title revoked within the last three years;

21656 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21657 total issued and outstanding stock of a corporation that had any type of license, agency, or
21658 permit issued under this title revoked within the last three years; or

21659 (iii) a manager or member of any limited liability company who owned at least 20% of a
21660 limited liability company that had any type of license, agency, or permit issued under this title
21661 revoked within the last three years.

21662 (5) (a) A minor may not be granted an on-premise beer retailer license.

21663 (b) The commission may not grant a on-premise beer retailer license to an applicant that
21664 is a partnership, corporation, or limited liability company if any of the following is a minor:

21665 (i) a partner or managing agent of the applicant partnership;

21666 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21667 total issued and outstanding stock of the applicant corporation; or

21668 (iii) a manager or member who owns at least 20% of the applicant limited liability
21669 company.

21670 (6) If any person to whom a license has been issued under this part no longer possesses
21671 the qualifications required by this title for obtaining that license, the commission may suspend or
21672 revoke that license.

21673 Section 435. Section **32A-10-303** is amended to read:

21674 **32A-10-303. Qualifications.**

21675 (1) (a) The commission may not grant a temporary special event beer permit to any
21676 person who has been convicted of:

21677 (i) a felony under any federal or state law;

21678 (ii) any violation of any federal or state law or local ordinance concerning the sale,
21679 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic beverages;

21680 (iii) any crime involving moral turpitude; or

21681 (iv) on two or more occasions within the five years before the day on which the permit
21682 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
21683 and any drug.

21684 (b) In the case of a partnership, corporation, or limited liability company, the
21685 proscription under Subsection (1)(a) applies if any of the following has been convicted of an
21686 offense described in Subsection (1)(a):

21687 (i) a partner;

21688 (ii) a managing agent;

21689 (iii) a manager;

21690 (iv) an officer;

21691 (v) a director;

21692 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of
21693 the applicant corporation; or

21694 (vii) a member who owns at least 20% of the applicant limited liability company.

21695 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a
21696 supervisory or managerial capacity for the temporary special event beer permittee has been
21697 convicted of any offense as provided in Subsection (1)(a).

21698 (2) The commission may immediately suspend or revoke a temporary special event
21699 permit if after the day on which the permit is granted, a person described in Subsection (1)(a),
21700 (b), or (c):

21701 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior

21702 to the permit being granted; or

21703 (b) on or after the day on which the permit is granted:

21704 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21705 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined
21706 influence of alcohol and any drug; and

21707 (B) was convicted of driving under the influence of alcohol, any drug, or the combined
21708 influence of alcohol and any drug within five years before the day on which the person is
21709 convicted of the offense described in Subsection (2)(b)(ii)(A).

21710 (3) The director may take emergency action by immediately revoking the temporary
21711 special event permit according to the procedures and requirements of [~~Title 63, Chapter 46b~~]
21712 Title 63G, Chapter 4, Administrative Procedures Act, if a person described in Subsection (1)(a),
21713 (b), or (c):

21714 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

21715 or

21716 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,
21717 any drug, or the combined influence of alcohol and any drug; and

21718 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21719 influence of alcohol and any drug within five years before the day on which the person is
21720 arrested on a charge described in Subsection (3)(b)(i).

21721 (4) (a) (i) The commission may not grant a temporary special event beer permit to any
21722 person who has had any type of license, agency, or permit issued under this title revoked within
21723 the last three years.

21724 (ii) The commission may not grant a temporary special event permit to an applicant that
21725 is a partnership, corporation, or limited liability company if any partner, managing agent,
21726 manager, officer, director, stockholder who holds at least 20% of the total issued and
21727 outstanding stock of an applicant corporation, or member who owns at least 20% of an
21728 applicant limited liability company is or was:

21729 (A) a partner or managing agent of any partnership that had any type of license, agency,

21730 or permit issued under this title revoked within the last three years;

21731 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21732 of the total issued and outstanding stock of any corporation that had any type of license,
21733 agency, or permit issued under this title revoked within the last three years; or

21734 (C) a manager or member who owns or owned at least 20% of any limited liability
21735 company that had any type of license, agency, or permit issued under this title revoked within
21736 the last three years.

21737 (b) An applicant that is a partnership, corporation, or limited liability company may not
21738 be granted a temporary special event permit if any of the following had any type of license,
21739 agency, or permit issued under this title revoked while acting in their individual capacity within
21740 the last three years:

21741 (i) any partner or managing agent of the applicant partnership;

21742 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21743 total issued and outstanding stock of the applicant corporation; or

21744 (iii) any manager or member who owns at least 20% of the applicant limited liability
21745 company.

21746 (c) A person acting in an individual capacity may not be granted a temporary special
21747 event permit if that person was:

21748 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21749 permit issued under this title revoked within the last three years;

21750 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21751 total issued and outstanding stock of a corporation that had any type of license, agency, or
21752 permit issued under this title revoked within the last three years; or

21753 (iii) a manager or member who owned at least 20% of the limited liability company that
21754 had any type of license, agency, or permit issued under this title revoked within the last three
21755 years.

21756 (5) (a) A minor may not be:

21757 (i) granted a temporary special event permit; or

21758 (ii) employed by a temporary special event permittee to handle alcoholic beverages.

21759 (b) The commission may not grant a temporary special event permit to an applicant that
21760 is a partnership, corporation, or limited liability company if any of the following is a minor:

21761 (i) a partner or managing agent of the applicant partnership;

21762 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21763 total issued and outstanding stock of the applicant corporation; or

21764 (iii) a manager or member who owns at least 20% of the applicant limited liability
21765 company.

21766 (6) If any person to whom a permit has been issued under this part no longer possesses
21767 the qualifications required by this title for obtaining that permit, the commission may suspend or
21768 revoke that permit.

21769 Section 436. Section **32A-11-103** is amended to read:

21770 **32A-11-103. Qualifications.**

21771 (1) (a) The commission may not issue a beer wholesaling license to any person who has
21772 been convicted of:

21773 (i) a felony under any federal or state law;

21774 (ii) any violation of any federal or state law or local ordinance concerning the sale,
21775 manufacture, distribution, warehousing, adulteration, or transportation of alcoholic products;

21776 (iii) any crime involving moral turpitude; or

21777 (iv) on two or more occasions within the five years before the day on which the license
21778 is granted, driving under the influence of alcohol, any drug, or the combined influence of alcohol
21779 and any drug.

21780 (b) In the case of a partnership, corporation, or limited liability company, the
21781 proscription under Subsection (1)(a) applies if any of the following has been convicted of any
21782 offense described in Subsection (1)(a):

21783 (i) a partner;

21784 (ii) a managing agent;

21785 (iii) a manager;

21786 (iv) an officer;

21787 (v) a director;

21788 (vi) a stockholder who holds at least 20% of the total issued and outstanding stock of

21789 the applicant corporation; or

21790 (vii) a member who owns at least 20% of the applicant limited liability company.

21791 (c) The proscription under Subsection (1)(a) applies if any person employed to act in a

21792 supervisory or managerial capacity for the wholesaler has been convicted of any offense as

21793 provided in Subsection (1)(a).

21794 (2) The commission may immediately suspend or revoke a beer wholesaling license if

21795 after the day on which the beer wholesaling license is granted, a person described in Subsection

21796 (1)(a), (b), or (c):

21797 (a) is found to have been convicted of any offense described in Subsection (1)(a) prior

21798 to the license being granted; or

21799 (b) on or after the day on which the license is granted:

21800 (i) is convicted of an offense described in Subsection (1)(a)(i), (ii), or (iii); or

21801 (ii) (A) is convicted of driving under the influence of alcohol, any drug, or the combined

21802 influence of alcohol and any drug; and

21803 (B) was convicted of driving under the influence of alcohol, any drug, or the combined

21804 influence of alcohol and any drug within five years before the day on which the person is

21805 convicted of the offense described in Subsection (2)(b)(ii)(A).

21806 (3) The director may take emergency action by immediately suspending the operation of

21807 a beer wholesaling license according to the procedures and requirements of [~~Title 63, Chapter~~

21808 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, for the period during which the

21809 criminal matter is being adjudicated if a person described in Subsection (1)(a), (b), or (c):

21810 (a) is arrested on a charge for an offense described in Subsection (1)(a)(i), (ii), or (iii);

21811 or

21812 (b) (i) is arrested on a charge for the offense of driving under the influence of alcohol,

21813 any drug, or the combined influence of alcohol and any drug; and

21814 (ii) was convicted of driving under the influence of alcohol, any drug, or the combined
21815 influence of alcohol and any drug within five years before the day on which the person is
21816 arrested on a charge described in Subsection (3)(b)(i).

21817 (4) (a) (i) The commission may not grant a beer wholesaling license to any person who
21818 has had any type of license, agency, or permit issued under this title revoked within the last
21819 three years.

21820 (ii) The commission may not grant a beer wholesaling license to an applicant that is a
21821 partnership, corporation, or limited liability company if any partner, managing agent, manager,
21822 officer, director, stockholder who holds at least 20% of the total issued and outstanding stock
21823 of the applicant corporation, or member who owns at least 20% of the applicant limited liability
21824 company is or was:

21825 (A) a partner or managing agent of any partnership that had any type of license, agency,
21826 or permit issued under this title revoked within the last three years;

21827 (B) a managing agent, officer, director, or stockholder who holds or held at least 20%
21828 of the total issued and outstanding stock of any corporation that had any type of license,
21829 agency, or permit issued under this title revoked within the last three years; or

21830 (C) a manager or member who owns or owned at least 20% of any limited liability
21831 company that had any type of license, agency, or permit issued under this title revoked within
21832 the last three years.

21833 (b) An applicant that is a partnership, corporation, or limited liability company may not
21834 be granted a beer wholesaling license if any of the following had any type of license, agency, or
21835 permit issued under this title revoked while acting in that person's individual capacity within the
21836 last three years:

21837 (i) a partner or managing agent of the applicant partnership;

21838 (ii) any managing agent, officer, director, or stockholder who holds at least 20% of the
21839 total issued and outstanding stock of the applicant corporation; or

21840 (iii) any manager or member who owns at least 20% of the applicant limited liability
21841 company.

21842 (c) A person acting in an individual capacity may not be granted a beer wholesaling
21843 license if that person was:

21844 (i) a partner or managing agent of a partnership that had any type of license, agency, or
21845 permit issued under this title revoked within the last three years;

21846 (ii) a managing agent, officer, director, or stockholder who held at least 20% of the
21847 total issued and outstanding stock of a corporation that had any type of license, agency, or
21848 permit issued under this title revoked within the last three years; or

21849 (iii) a manager or member who owned at least 20% of the limited liability company that
21850 had any type of license, agency, or permit issued under this title revoked within the last three
21851 years.

21852 (5) (a) A minor may not be:

21853 (i) granted a beer wholesaling license; or

21854 (ii) employed by a licensee to handle beer.

21855 (b) The commission may not grant a beer wholesaling license to an applicant that is a
21856 partnership, corporation, or limited liability company if any of the following is a minor:

21857 (i) a partner or managing agent of the applicant partnership;

21858 (ii) a managing agent, officer, director, or stockholder who holds at least 20% of the
21859 total issued and outstanding stock of the applicant corporation; or

21860 (iii) a manager or member who owns at least 20% of the applicant limited liability
21861 company.

21862 (6) (a) A beer wholesaler may not be issued, directly or indirectly, nor hold, through
21863 any wholly or partially owned subsidiaries or otherwise, a brewery license or a retail beer license
21864 simultaneously with a wholesaling license.

21865 (b) A retail beer licensee may not be issued, directly or indirectly, nor hold, through any
21866 wholly or partially owned subsidiaries or otherwise, a wholesaling license.

21867 (7) The commission may not grant a beer wholesaling license to any person who has not
21868 met any applicable federal requirements for beer wholesaling.

21869 (8) If any person to whom a license has been issued under this chapter no longer

21870 possesses the qualifications required by this title for obtaining that license, the commission may
21871 suspend or revoke that license.

21872 Section 437. Section **32A-15a-103** is amended to read:

21873 **32A-15a-103. Rulemaking.**

21874 In accordance with this chapter and [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
21875 Administrative Rulemaking Act, the commission may make rules that govern the filing under
21876 this chapter of:

21877 (1) a formal objection to the renewal of a retail license; and

21878 (2) a request for hearing filed by a retail licensee.

21879 Section 438. Section **32A-15a-201** is amended to read:

21880 **32A-15a-201. Commission to prohibit nuisance activities by licensees -- License**
21881 **not renewed.**

21882 (1) In accordance with Section 32A-1-103, the commission shall require a retail
21883 licensee as a condition of being licensed under this title to operate in a manner so as not to
21884 endanger the public health, peace, safety, welfare, or morals of the community.

21885 (2) (a) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
21886 Procedures Act, and Sections 32A-15a-202 and 32A-15a-203, the commission may deny the
21887 renewal of any retail license issued under this title if:

21888 (i) a formal objection to the renewal is filed; and

21889 (ii) the commission determines that the retail licensee has engaged in nuisance activities
21890 to such an extent that the nuisance activities have adversely impacted the public health, peace,
21891 safety, welfare, or morals of the neighboring community of the licensed premises.

21892 (b) In making a determination under this Subsection (2), the commission may consider:

21893 (i) the types of nuisance activities in which a licensee has engaged;

21894 (ii) the frequency or pattern of the nuisance activities; and

21895 (iii) the retail licensee's notice of and failure to abate or correct the nuisance activities.

21896 Section 439. Section **34-20-10** is amended to read:

21897 **34-20-10. Unfair labor practices -- Powers of board to prevent -- Procedure.**

21898 (1) (a) The board may prevent any person from engaging in any unfair labor practice, as
21899 listed in Section 34-20-8, affecting intrastate commerce or the orderly operation of industry.

21900 (b) This authority is exclusive and is not affected by any other means of adjustment or
21901 prevention that has been or may be established by agreement, code, law, or otherwise.

21902 (2) The board shall comply with the procedures and requirements of [~~Title 63, Chapter~~
21903 ~~46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

21904 (3) When it is charged that any person has engaged in or is engaged in any unfair labor
21905 practice, the board, or any agent or agency designated by the board, may issue and serve a
21906 notice of agency action on that person.

21907 (4) (a) If, upon all the testimony taken, the board finds that any person named in the
21908 complaint has engaged in or is engaging in an unfair labor practice, the board shall state its
21909 findings of fact and shall issue and serve on the person an order to cease and desist from the
21910 unfair labor practice and to take other affirmative action designated by the commission,
21911 including reinstatement of employees with or without back pay, to effectuate the policies of this
21912 chapter.

21913 (b) The order may require the person to make periodic reports showing the extent to
21914 which it has complied with the order.

21915 (c) If, upon all the testimony taken, the board determines that no person named in the
21916 complaint has engaged in or is engaging in any unfair labor practice, the board shall state its
21917 findings of fact and shall issue an order dismissing the complaint.

21918 (5) (a) The board may petition the district court to enforce the order and for
21919 appropriate temporary relief or for a restraining order.

21920 (b) The board shall certify and file in the court:

21921 (i) a transcript of the entire record in the proceeding;

21922 (ii) the pleadings and testimony upon which the order was entered; and

21923 (iii) the findings and order of the board.

21924 (c) When the petition is filed, the board shall serve notice on all parties to the action.

21925 (d) Upon filing of the petition, the court has jurisdiction of the proceeding and of the

21926 question to be determined.

21927 (e) The court may grant temporary relief or a restraining order, and, based upon the
21928 pleadings, testimony, and proceedings set forth in the transcript, order that the board's order be
21929 enforced, modified, or set aside in whole or in part.

21930 (f) The court may not consider any objection that was not presented before the board,
21931 its member, agent, or agency, unless the failure or neglect to urge the objection is excused
21932 because of extraordinary circumstances.

21933 (g) The board's findings of fact, if supported by evidence, are conclusive.

21934 (h) (i) If either party applies to the court for leave to adduce additional evidence, and
21935 shows to the satisfaction of the court that the additional evidence is material and that there were
21936 reasonable grounds for the failure to adduce the evidence in the hearing before the board, its
21937 member, agent, or agency, the court may order additional evidence to be taken before the
21938 board, its member, agent, or agency, and to be made part of the transcript.

21939 (ii) The board may modify its findings as to the facts, or make new findings, because of
21940 the additional evidence taken and filed.

21941 (iii) The board shall file the modified or new findings, which, if supported by evidence,
21942 are conclusive, and shall file its recommendations, if any, for the modification or setting aside of
21943 its original order.

21944 Section 440. Section **34-23-104** is amended to read:

21945 **34-23-104. Duty of commission to establish hours and conditions -- Promulgation**
21946 **of rules.**

21947 (1) The commission shall ascertain and establish the hours and the conditions of labor
21948 and employment for any occupation in which minors are employed.

21949 (2) The commission may promulgate rules consistent with this chapter in accordance
21950 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

21951 Section 441. Section **34-23-401** is amended to read:

21952 **34-23-401. Investigation by division -- Administrative penalty.**

21953 (1) The director of the division or the director's designee shall have authority to enter

21954 and inspect any place or establishment covered by this chapter and to have access to such
21955 records as may aid in the enforcement of this chapter.

21956 (2) The division may investigate any complaint under this chapter and may commence
21957 an administrative proceeding with a penalty of up to \$500 per violation. Administrative
21958 proceedings conducted under this section shall be consistent with [~~Title 63, Chapter 46b, the~~
21959 Title 63G, Chapter 4, Administrative Procedures Act.

21960 Section 442. Section **34-28-19** is amended to read:

21961 **34-28-19. Retaliation prohibited -- Administrative process -- Enforcement --**
21962 **Rulemaking.**

21963 (1) (a) An employer violates this chapter if the employer takes an action described in
21964 Subsection (1)(b) against an employee because:

21965 (i) the employee files a complaint or testifies in a proceeding relative to the enforcement
21966 of this chapter;

21967 (ii) the employee is going to file a complaint or testify in a proceeding relative to the
21968 enforcement of this chapter; or

21969 (iii) the employer believes that the employee may file a complaint or testify in any
21970 proceeding relative to the enforcement of this chapter.

21971 (b) Subsection (1)(a) applies to the following actions of an employer:

21972 (i) the discharge of an employee;

21973 (ii) the demotion of an employee; or

21974 (iii) any other form of retaliation against an employee in the terms, privileges, or
21975 conditions of employment.

21976 (2) (a) An employee claiming to be aggrieved by an action of the employer in violation
21977 of Subsection (1) may file with the division a request for agency action.

21978 (b) On receipt of a request for agency action under Subsection (2)(a), the division:

21979 (i) shall conduct an adjudicative proceeding pursuant to [~~Title 63, Chapter 46b~~] Title
21980 63G, Chapter 4, Administrative Procedures Act; and

21981 (ii) may attempt to reach a settlement between the parties through a settlement

21982 conference.

21983 (3) If the division determines that a violation has occurred, the division may require the
21984 employer to:

21985 (a) cease and desist any retaliatory action;

21986 (b) compensate the employee, which compensation may not exceed reimbursement for,
21987 and payment of, lost wages and benefits to the employee; or

21988 (c) do both (3)(a) and (b).

21989 (4) The division may enforce this section in accordance with Subsections 34-28-9(3)
21990 and (4).

21991 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
21992 Administrative Rulemaking Act, the commission shall adopt rules, as required, to implement this
21993 section.

21994 Section 443. Section **34-40-104** is amended to read:

21995 **34-40-104. Exemptions.**

21996 (1) The minimum wage established in this chapter does not apply to:

21997 (a) any employee who is entitled to a minimum wage as provided in 29 U.S.C. Sec. 201
21998 et seq., the Fair Labor Standards Act of 1938, as amended;

21999 (b) outside sales persons;

22000 (c) an employee who is a member of the employer's immediate family;

22001 (d) companionship service for persons who, because of age or infirmity, are unable to
22002 care for themselves;

22003 (e) casual and domestic employees as defined by the commission;

22004 (f) seasonal employees of nonprofit camping programs, religious or recreation
22005 programs, and nonprofit educational and charitable organizations registered under Title 13,
22006 Chapter 22, Charitable Solicitations Act;

22007 (g) an individual employed by the United States of America;

22008 (h) any prisoner employed through the penal system;

22009 (i) any employee employed in agriculture if the employee:

- 22010 (i) is principally engaged in the range production of livestock;
- 22011 (ii) is employed as a harvest laborer and is paid on a piece rate basis in an operation that
- 22012 has been and is generally recognized by custom as having been paid on a piece rate basis in the
- 22013 region of employment;
- 22014 (iii) was employed in agriculture less than 13 weeks during the preceding calendar year;
- 22015 or
- 22016 (iv) is a retired or semiretired person performing part-time or incidental work as a
- 22017 condition of the employee's residence on a farm or ranch;
- 22018 (j) registered apprentices or students employed by the educational institution in which
- 22019 they are enrolled; or
- 22020 (k) any seasonal hourly employee employed by a seasonal amusement establishment
- 22021 with permanent structures and facilities if the other direct monetary compensation from tips,
- 22022 incentives, commissions, end-of-season bonus, or other forms of pay is sufficient to cause the
- 22023 average hourly rate of total compensation for the season of seasonal hourly employees who
- 22024 continue to work to the end of the operating season to equal the applicable minimum wage if
- 22025 the seasonal amusement establishment:
- 22026 (i) does not operate for more than seven months in any calendar year; or
- 22027 (ii) during the preceding calendar year its average receipts for any six months of that
- 22028 year were not more than 33-1/3% of its average receipts for the other six months of that year.
- 22029 (2) (a) Persons with a disability whose earnings or productive capacities are impaired by
- 22030 age, physical or mental deficiencies, or injury may be employed at wages that are lower than the
- 22031 minimum wage, provided the wage is related to the employee's productivity.
- 22032 (b) The commission may establish and regulate the wages paid or wage scales for
- 22033 persons with a disability.
- 22034 (3) The commission may establish or may set a lesser minimum wage for learners not to
- 22035 exceed the first 160 hours of employment.
- 22036 (4) (a) An employer of a tipped employee shall pay the tipped employee at least the
- 22037 minimum wage established by this chapter.

22038 (b) In computing a tipped employee's wage under this Subsection (4), an employer of a
22039 tipped employee:

22040 (i) shall pay the tipped employee at least the cash wage obligation as an hourly wage;
22041 and

22042 (ii) may compute the remainder of the tipped employee's wage using the tips or
22043 gratuities the tipped employee actually receives.

22044 (c) An employee shall retain all tips and gratuities except to the extent that the
22045 employee participates in a bona fide tip pooling or sharing arrangement with other tipped
22046 employees.

22047 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
22048 Administrative Rulemaking Act, the commission shall by rule establish the cash wage obligation
22049 in conjunction with its review of the minimum wage under Section 34-40-103.

22050 Section 444. Section **34-40-105** is amended to read:

22051 **34-40-105. Grant of rulemaking authority.**

22052 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
22053 Rulemaking Act, the commission may issue rules that are consistent with this chapter.

22054 Section 445. Section **34-40-202** is amended to read:

22055 **34-40-202. Enforcement.**

22056 The division shall enforce this chapter and investigate complaints under this chapter.

22057 The division may commence administrative proceedings in accordance with [~~Title 63, Chapter~~
22058 ~~46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act, and may impose a penalty of up
22059 to \$500 per violation of this chapter.

22060 Section 446. Section **34-41-103** is amended to read:

22061 **34-41-103. Policy requirements.**

22062 (1) (a) Before testing or retesting for the presence of drugs, a local governmental entity
22063 or state institution of higher education shall:

22064 (i) adopt a written policy or ordinance;

22065 (ii) distribute it to employees and volunteers; and

22066 (iii) make it available for review by prospective employees and prospective volunteers.

22067 (b) The local governmental entity or state institution of higher education may only test
22068 or retest for the presence of drugs by following the procedures and requirements of that
22069 ordinance or policy.

22070 (2) The collection and testing of samples shall be conducted in accordance with Section
22071 34-41-104 and not necessarily limited to circumstances where there are indications of individual,
22072 job-related impairment of an employee or volunteer.

22073 (3) The use and disposition of all drug test results are subject to the limitations of [~~Title~~
22074 ~~63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act, and
22075 Americans with Disabilities Act of 1990, 42 U.S.C. 12101 through 12213.

22076 (4) An employee, prospective employee, volunteer, or prospective volunteer shall
22077 submit a split urine sample for testing or retesting.

22078 (5) A split urine sample shall consist of at least 45 ml of urine. The urine shall be
22079 divided into two specimen bottles, with at least 30 ml of urine in one bottle and at least 15 ml of
22080 urine in the other. If the test results of the 30 ml urine sample indicate the presence of drugs,
22081 the donor of the test shall have 72 hours from the time [~~he~~] the donor is so notified to request,
22082 at [~~his~~] the donor's option that the 15 ml urine sample be tested for the indicated drugs, the
22083 expense of which shall be divided equally between the donor and employer. In addition to the
22084 test results of the 30 ml urine sample, the test results of the 15 ml urine sample shall be
22085 considered at any subsequent disciplinary hearing if the requirements of this section and Section
22086 34-41-104 have been complied with in the collection, handling, and testing of these samples.

22087 Section 447. Section **34A-1-104** is amended to read:

22088 **34A-1-104. Commission authority.**

22089 Within all other authority or responsibility granted to it by law, the commission may:

22090 (1) adopt rules when authorized by this title, or Title 34, Labor in General, in
22091 accordance with the procedures of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
22092 Administrative Rulemaking Act;

22093 (2) conduct adjudicative proceedings in accordance with the procedures of [~~Title 63,~~

22094 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act;

22095 (3) license agencies in accordance with this title or Title 34, Labor in General;

22096 (4) employ and determine the compensation of clerical, legal, technical, investigative,
22097 and other employees necessary to carry out its policymaking, regulatory, and enforcement
22098 powers, rights, duties, and responsibilities under this title or Title 34, Labor in General;

22099 (5) administer and enforce all laws for the protection of the life, health, and safety, of
22100 employees;

22101 (6) ascertain and fix reasonable standards, and prescribe, modify, and enforce
22102 reasonable orders, for the adoption of safety devices, safeguards, and other means or methods
22103 of protection, to be as nearly uniform as possible, as necessary to carry out all laws and lawful
22104 orders relative to the protection of the life, health, and safety, of employees in employment and
22105 places of employment;

22106 (7) ascertain, fix, and order reasonable standards for the construction, repair, and
22107 maintenance of places of employment as shall make them safe;

22108 (8) investigate, ascertain, and determine reasonable classifications of persons,
22109 employments, and places of employment as necessary to carry out the purposes of this title or
22110 Title 34, Labor in General;

22111 (9) promote the voluntary arbitration, mediation, and conciliation of disputes between
22112 employers and employees;

22113 (10) ascertain and adopt reasonable standards and rules, prescribe and enforce
22114 reasonable orders, and take other actions appropriate for the protection of life, health, and
22115 safety of all persons with respect to all prospects, tunnels, pits, banks, open cut workings,
22116 quarries, strip mine operations, ore mills, and surface operations or any other mining operation,
22117 whether or not the relationship of employer and employee exists, but the commission may not
22118 assume jurisdiction or authority over adopted standards and regulations or perform any mining
22119 inspection or enforcement of mining rules and regulations so long as Utah's mining operations
22120 are governed by federal regulations;

22121 (11) develop processes to ensure that the commission responds to the full range of

22122 employee and employer clients; and

22123 (12) carry out the responsibilities assigned to it by statute.

22124 Section 448. Section **34A-1-106** is amended to read:

22125 **34A-1-106. Fees.**

22126 (1) Unless otherwise provided by statute, the commission may adopt a schedule of fees
22127 assessed for services provided by the commission by following the procedures and requirements
22128 of Section [~~63-38-3.2~~] 63J-1-303.

22129 (2) The commission shall submit each fee established under this section to the
22130 Legislature for its approval as part of the commission's annual appropriations request.

22131 Section 449. Section **34A-1-302** is amended to read:

22132 **34A-1-302. Presiding officers for adjudicative proceedings -- Subpoenas --**
22133 **Independent judgment -- Consolidation -- Record -- Notice of order.**

22134 (1) (a) The commissioner shall authorize the Division of Adjudication to call, assign a
22135 presiding officer, and conduct hearings and adjudicative proceedings when an application for a
22136 proceeding is filed with the Division of Adjudication under this title.

22137 (b) The director of the Division of Adjudication or the director's designee may issue
22138 subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation
22139 and offenders may be punished as provided in Section 78-32-15.

22140 (c) Witnesses subpoenaed under this section are allowed fees as provided by law for
22141 witnesses in the district court of the state. The witness fees shall be paid by the state unless the
22142 witness is subpoenaed at the instance of a party other than the commission.

22143 (d) A presiding officer assigned under this section may not participate in any case in
22144 which the presiding officer is an interested party. Each decision of a presiding officer shall
22145 represent the presiding officer's independent judgment.

22146 (2) If, in the judgment of the presiding officer having jurisdiction of the proceeding the
22147 consolidation would not be prejudicial to any party, when the same or substantially similar
22148 evidence is relevant and material to the matters in issue in more than one proceeding, the
22149 presiding officer may:

22150 (a) fix the same time and place for considering each matter;
22151 (b) jointly conduct hearings;
22152 (c) make a single record of the proceedings; and
22153 (d) consider evidence introduced with respect to one proceeding as introduced in the
22154 others.

22155 (3) (a) The commission shall keep a full and complete record of all adjudicative
22156 proceedings in connection with a disputed matter.

22157 (b) All testimony at any hearing shall be recorded but need not be transcribed. If a
22158 party requests transcription, the transcription shall be provided at the party's expense.

22159 (c) All records on appeals shall be maintained by the Division of Adjudication. The
22160 records shall include an appeal docket showing the receipt and disposition of the appeals.

22161 (4) A party in interest shall be given notice of the entry of a presiding officer's order or
22162 any order or award of the commission. The mailing of the copy of the order or award to the
22163 last-known address in the files of the commission of a party in interest and to the attorneys or
22164 agents of record in the case, if any, is considered to be notice of the order.

22165 (5) In any formal adjudicative proceeding, the presiding officer may take any action
22166 permitted under Section [~~63-46b-8~~] 63G-4-206.

22167 Section 450. Section **34A-1-303** is amended to read:

22168 **34A-1-303. Review of administrative decision.**

22169 (1) A decision entered by an administrative law judge under this title is the final order of
22170 the commission unless a further appeal is initiated:

22171 (a) under this title; and

22172 (b) in accordance with the rules of the commission governing the review.

22173 (2) (a) Unless otherwise provided, a person who is entitled to appeal a decision of an
22174 administrative law judge under this title may appeal the decision by filing a motion for review
22175 with the Division of Adjudication.

22176 (b) (i) Unless a party in interest to the appeal requests in accordance with Subsection
22177 (3) that the appeal be heard by the Appeals Board, the commissioner shall hear the review in

22178 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

22179 (ii) A decision of the commissioner is a final order of the commission unless set aside by

22180 the court of appeals.

22181 (c) (i) If in accordance with Subsection (3) a party in interest to the appeal requests that

22182 the appeal be heard by the Appeals Board, the Appeals Board shall hear the review in

22183 accordance with:

22184 (A) Section 34A-1-205; and

22185 (B) [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

22186 (ii) A decision of the Appeals Board is a final order of the commission unless set aside

22187 by the court of appeals.

22188 (3) A party in interest may request that an appeal be heard by the Appeals Board by

22189 filing the request with the Division of Adjudication:

22190 (a) as part of the motion for review; or

22191 (b) if requested by a party in interest who did not file a motion for review, within 20

22192 days of the date the motion for review is filed with the Division of Adjudication.

22193 (4) (a) On appeal, the commissioner or the Appeals Board may:

22194 (i) affirm the decision of an administrative law judge;

22195 (ii) modify the decision of an administrative law judge;

22196 (iii) return the case to an administrative law judge for further action as directed; or

22197 (iv) reverse the findings, conclusions, and decision of an administrative law judge.

22198 (b) The commissioner or Appeals Board may not conduct a trial de novo of the case.

22199 (c) The commissioner or Appeals Board may base its decision on:

22200 (i) the evidence previously submitted in the case; or

22201 (ii) on written argument or written supplemental evidence requested by the

22202 commissioner or Appeals Board.

22203 (d) The commissioner or Appeals Board may permit the parties to:

22204 (i) file briefs or other papers; or

22205 (ii) conduct oral argument.

22206 (e) The commissioner or Appeals Board shall promptly notify the parties to any
22207 proceedings before the commissioner or Appeals Board of its decision, including its findings and
22208 conclusions.

22209 (5) (a) Each decision of a member of the Appeals Board shall represent the member's
22210 independent judgment.

22211 (b) A member of the Appeals Board may not participate in any case in which the
22212 member is an interested party.

22213 (c) If a member of the Appeals Board may not participate in a case because the member
22214 is an interested party, the two members of the Appeals Board that may hear the case shall assign
22215 an individual to participate as a member of the board in that case if the individual:

22216 (i) is not an interested party in the case;

22217 (ii) was not previously assigned to:

22218 (A) preside over any proceeding related to the case; or

22219 (B) take any administrative action related to the case; and

22220 (iii) is representative of the following group that was represented by the member that
22221 may not hear the case under Subsection (5)(b):

22222 (A) employers;

22223 (B) employees; or

22224 (C) the public.

22225 (d) The two members of the Appeals Board may appoint an individual to participate as
22226 a member of the Appeals Board in a case if:

22227 (i) there is a vacancy on the board at the time the Appeals Board hears the review of the
22228 case;

22229 (ii) the individual appointed meets the conditions described in Subsections (5)(c)(i) and
22230 (ii); and

22231 (iii) the individual appointed is representative of the following group that was
22232 represented by the member for which there is a vacancy:

22233 (A) employers;

22234 (B) employees; or

22235 (C) the public.

22236 (6) If an order is appealed to the court of appeals after the party appealing the order has
22237 exhausted all administrative appeals, the court of appeals has jurisdiction to:

22238 (a) review, reverse, remand, or annul any order of the commissioner or Appeals Board;
22239 or

22240 (b) suspend or delay the operation or execution of the order of the commissioner or
22241 Appeals Board being appealed.

22242 Section 451. Section **34A-1-304** is amended to read:

22243 **34A-1-304. Rulemaking -- Electronic or similar methods of proceedings.**

22244 (1) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
22245 Administrative Rulemaking Act, the commission shall make rules governing adjudicative
22246 procedures including the forms of notices and the manner of serving notice in all claims.

22247 (b) Except as provided in this title and [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
22248 Administrative Procedures Act, the rules made under this section are not required to conform to
22249 common law or statutory rules of evidence or other technical rules of procedure.

22250 (2) The rules made under this section shall include procedures to dispose of cases
22251 informally, or to expedite claims adjudication, narrow issues, and simplify the methods of proof
22252 at hearings.

22253 (3) The commission may by rule permit hearings or other adjudicative proceedings to be
22254 conducted, recorded, or published by means of electronic devices or other similar methods.

22255 Section 452. Section **34A-1-307** is amended to read:

22256 **34A-1-307. Action permitted in adjudicative proceedings.**

22257 For the purposes mentioned in this title, the commission may take any action permitted:

22258 (1) if a formal adjudicative proceeding, under Section [~~63-46b-7~~] 63G-4-205 or
22259 [~~63-46b-8~~] 63G-4-206; or

22260 (2) if an informal adjudicative proceeding, under Section [~~63-46b-5~~] 63G-4-203.

22261 Section 453. Section **34A-1-309** is amended to read:

22262 **34A-1-309. Attorney fees.**

22263 (1) In all cases coming before the commission in which attorneys have been employed,
22264 the commission is vested with full power to regulate and fix the fees of the attorneys.

22265 (2) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
22266 Procedures Act, an attorney may file an application for hearing with the Division of
22267 Adjudication to appeal a decision or final order to the extent it concerns the award of attorney
22268 fees.

22269 (3) (a) The commission may award reasonable attorneys' fees on a contingency basis
22270 when disability or death benefits or interest on disability or death benefits are generated.

22271 (b) Attorney fees awarded under Subsection (3)(a) shall be paid by the employer or its
22272 insurance carrier out of the award of disability or death benefits, or interest on disability or
22273 death benefits.

22274 (4) (a) If the commission orders that only medical benefits be paid, the commission may
22275 award reasonable [~~attorneys' fee~~] attorney fees on a contingency basis for medical benefits
22276 ordered paid if:

22277 (i) the commission's informal dispute resolution mechanisms were fully used by the
22278 parties prior to adjudication; and

22279 (ii) at no time were disability or death benefits or interest on disability or death benefits
22280 at issue in the adjudication of the medical benefit claim.

22281 (b) Attorneys' fees awarded under Subsection (3)(a) shall be paid by the employer or its
22282 insurance carrier in addition to the payment of medical benefits ordered.

22283 Section 454. Section **34A-1-402** is amended to read:

22284 **34A-1-402. Publication of orders, rules, and rates.**

22285 (1) (a) The commission shall make available in proper form for distribution to the
22286 public, its orders and rules; and

22287 (b) furnish the information made available under Subsection (1) to any person upon
22288 request.

22289 (2) The commission may in accordance with Section [~~63-2-203~~] 63G-2-203 charge a

22290 fee for furnishing materials under this section.

22291 Section 455. Section **34A-2-111** is amended to read:

22292 **34A-2-111. Managed health care programs -- Other safety programs.**

22293 (1) As used in this section:

22294 (a) (i) "Health care provider" means a person who furnishes treatment or care to
22295 persons who have suffered bodily injury.

22296 (ii) "Health care provider" includes:

22297 (A) a hospital;

22298 (B) a clinic;

22299 (C) an emergency care center;

22300 (D) a physician;

22301 (E) a nurse;

22302 (F) a nurse practitioner;

22303 (G) a physician's assistant;

22304 (H) a paramedic; or

22305 (I) an emergency medical technician.

22306 (b) "Physician" means any health care provider licensed under:

22307 (i) Title 58, Chapter 5a, Podiatric Physician Licensing Act;

22308 (ii) Title 58, Chapter 24a, Physical Therapist Practice Act;

22309 (iii) Title 58, Chapter 67, Utah Medical Practice Act;

22310 (iv) Title 58, Chapter 68, Utah Osteopathic Medical Practice Act;

22311 (v) Title 58, Chapter 69, Dentist and Dental Hygienist Practice Act;

22312 (vi) Title 58, Chapter 70a, Physician Assistant Act;

22313 (vii) Title 58, Chapter 71, Naturopathic Physician Practice Act;

22314 (viii) Title 58, Chapter 72, Acupuncture Licensing Act; and

22315 (ix) Title 58, Chapter 73, Chiropractic Physician Practice Act.

22316 (c) "Preferred health care facility" means a facility:

22317 (i) that is a health care facility as defined in Section 26-21-2; and

22318 (ii) designated under a managed health care program.

22319 (d) "Preferred provider physician" means a physician designated under a managed
22320 health care program.

22321 (e) "Self-insured employer" is as defined in Section 34A-2-201.5.

22322 (2) (a) A self-insured employer and insurance carrier may adopt a managed health care
22323 program to provide employees the benefits of this chapter or Chapter 3, Utah Occupational
22324 Disease Act, beginning January 1, 1993. The plan shall comply with this Subsection (2).

22325 (b) (i) A preferred provider program may be developed if the preferred provider
22326 program allows a selection by the employee of more than one physician in the health care
22327 specialty required for treating the specific problem of an industrial patient.

22328 (ii) (A) Subject to the requirements of this section, if a preferred provider program is
22329 developed by an insurance carrier or self-insured employer, an employee is required to use:

22330 (I) preferred provider physicians; and
22331 (II) preferred health care facilities.

22332 (B) If a preferred provider program is not developed, an employee may have free choice
22333 of health care providers.

22334 (iii) The failure to do the following may, if the employee has been notified of the
22335 preferred provider program, result in the employee being obligated for any charges in excess of
22336 the preferred provider allowances:

22337 (A) use a preferred health care facility; or
22338 (B) initially receive treatment from a preferred provider physician.

22339 (iv) Notwithstanding the requirements of Subsections (2)(b)(i) through (iii), a
22340 self-insured employer or other employer may:

22341 (A) (I) (Aa) have its own health care facility on or near its worksite or premises; and
22342 (Bb) continue to contract with other health care providers; or
22343 (II) operate a health care facility; and
22344 (B) require employees to first seek treatment at the provided health care or contracted
22345 facility.

22346 (v) An employee subject to a preferred provider program or employed by an employer
22347 having its own health care facility may procure the services of any qualified health care provider:

22348 (A) for emergency treatment, if a physician employed in the preferred provider program
22349 or at the health care facility is not available for any reason;

22350 (B) for conditions the employee in good faith believes are nonindustrial; or

22351 (C) when an employee living in a rural area would be unduly burdened by traveling to:

22352 (I) a preferred provider physician; or

22353 (II) preferred health care facility.

22354 (c) (i) (A) An employer, insurance carrier, or self-insured employer may enter into
22355 contracts with the following for the purposes listed in Subsection (2)(c)(i)(B):

22356 (I) health care providers;

22357 (II) medical review organizations; or

22358 (III) vendors of medical goods, services, and supplies including medicines.

22359 (B) A contract described in Subsection (1)(c)(i)(A) may be made for the following
22360 purposes:

22361 (I) insurance carriers or self-insured employers may form groups in contracting for
22362 managed health care services with health care providers;

22363 (II) peer review;

22364 (III) methods of utilization review;

22365 (IV) use of case management;

22366 (V) bill audit;

22367 (VI) discounted purchasing; and

22368 (VII) the establishment of a reasonable health care treatment protocol program
22369 including the implementation of medical treatment and quality care guidelines that are:

22370 (Aa) scientifically based;

22371 (Bb) peer reviewed; and

22372 (Cc) consistent with standards for health care treatment protocol programs that the
22373 commission shall establish by rules made in accordance with [~~Title 63, Chapter 46a~~] Title 63G.

22374 Chapter 3, Utah Administrative Rulemaking Act, including the authority of the commission to
22375 approve a health care treatment protocol program before it is used or disapprove a health care
22376 treatment protocol program that does not comply with this Subsection (2)(c)(i)(B)(VII).

22377 (ii) An insurance carrier may make any or all of the factors in Subsection (2)(c)(i) a
22378 condition of insuring an entity in its insurance contract.

22379 (3) (a) In addition to a managed health care program, an insurance carrier may require
22380 an employer to establish a work place safety program if the employer:

22381 (i) has an experience modification factor of 1.00 or higher, as determined by the
22382 National Council on Compensation Insurance; or

22383 (ii) is determined by the insurance carrier to have a three-year loss ratio of 100% or
22384 higher.

22385 (b) A workplace safety program may include:

22386 (i) a written workplace accident and injury reduction program that:

22387 (A) promotes safe and healthful working conditions; and

22388 (B) is based on clearly stated goals and objectives for meeting those goals; and

22389 (ii) a documented review of the workplace accident and injury reduction program each
22390 calendar year delineating how procedures set forth in the program are met.

22391 (c) A written workplace accident and injury reduction program permitted under
22392 Subsection (3)(b)(i) should describe:

22393 (i) how managers, supervisors, and employees are responsible for implementing the
22394 program;

22395 (ii) how continued participation of management will be established, measured, and
22396 maintained;

22397 (iii) the methods used to identify, analyze, and control new or existing hazards,
22398 conditions, and operations;

22399 (iv) how the program will be communicated to all employees so that the employees are
22400 informed of work-related hazards and controls;

22401 (v) how workplace accidents will be investigated and corrective action implemented;

22402 and

22403 (vi) how safe work practices and rules will be enforced.

22404 (d) For the purposes of a workplace accident and injury reduction program of an
22405 eligible employer described in Subsection 34A-2-103(7)(f), the workplace accident and injury
22406 reduction program shall:

22407 (i) include the provisions described in Subsections (3)(b) and (c), except that the
22408 employer shall conduct a documented review of the workplace accident and injury reduction
22409 program at least semiannually delineating how procedures set forth in the workplace accident
22410 and injury reduction program are met; and

22411 (ii) require a written agreement between the employer and all contractors and
22412 subcontractors on a project that states that:

22413 (A) the employer has the right to control the manner or method by which the work is
22414 executed;

22415 (B) if a contractor, subcontractor, or any employee of a contractor or subcontractor
22416 violates the workplace accident and injury reduction program, the employer maintains the right
22417 to:

22418 (I) terminate the contract with the contractor or subcontractor;

22419 (II) remove the contractor or subcontractor from the work site; or

22420 (III) require that the contractor or subcontractor not permit an employee that violates
22421 the workplace accident and injury reduction program to work on the project for which the
22422 employer is procuring work; and

22423 (C) the contractor or subcontractor shall provide safe and appropriate equipment
22424 subject to the right of the employer to:

22425 (I) inspect on a regular basis the equipment of a contractor or subcontractor; and

22426 (II) require that the contractor or subcontractor repair, replace, or remove equipment
22427 the employer determines not to be safe or appropriate.

22428 (4) The premiums charged to any employer who fails or refuses to establish a
22429 workplace safety program pursuant to Subsection (3)(b)(i) or (ii) may be increased by 5% over

22430 any existing current rates and premium modifications charged that employer.

22431 Section 456. Section **34A-2-203** is amended to read:

22432 **34A-2-203. Payment of premiums for workers' compensation.**

22433 (1) Until June 30, 2007, a department, commission, board, or other agency of the state
22434 shall pay the insurance premium on its employees direct to the Workers' Compensation Fund.

22435 (2) Beginning July 1, 2007, the state shall secure the payment of workers' compensation
22436 benefits for its employees:

22437 (a) by:

22438 (i) insuring, and keeping insured, the payment of this compensation with the Workers'
22439 Compensation Fund;

22440 (ii) insuring, and keeping insured, the payment of this compensation with any stock
22441 corporation or mutual association authorized to transact the business of workers' compensation
22442 insurance in this state; or

22443 (iii) paying direct compensation as a self-insured employer in the amount, in the manner,
22444 and when due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act;

22445 (b) in accordance with Title 63A, Chapter 4, Risk Management; and

22446 (c) subject to Subsection (3).

22447 (3) (a) If the state determines to secure the payment of workers' compensation benefits
22448 for its employees by paying direct compensation as a self-insured employer in the amount, in the
22449 manner, and due as provided for in this chapter or Chapter 3, Utah Occupational Disease Act,
22450 the state is:

22451 (i) exempt from Section 34A-2-202.5 and Subsection 34A-2-704(14); and

22452 (ii) required to pay a premium assessment as provided in Section 34A-2-202.

22453 (b) If the state chooses to pay workers' compensation benefits for its employees through
22454 insuring under Subsection (2)(a)(i) or (ii), the state shall obtain that insurance in accordance
22455 with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code.

22456 Section 457. Section **34A-2-205** is amended to read:

22457 **34A-2-205. Notification of workers' compensation insurance coverage to division**

22458 -- Cancellation requirements -- Penalty for violation.

22459 (1) (a) Every insurance carrier writing workers' compensation insurance coverage in
22460 this state or for this state, regardless of the state in which the policy is written, shall file
22461 notification of that coverage with the division or its designee within 30 days after the inception
22462 date of the policy in the form prescribed by the division.

22463 (b) A policy described in Subsection (1)(a) is in effect from inception until canceled by
22464 filing with the division or its designee a notification of cancellation in the form prescribed by the
22465 division within ten days after the cancellation of a policy.

22466 (c) Failure to notify the division or its designee under Subsection (1)(b) will result in the
22467 continued liability of the carrier until the date that notice of cancellation is received by the
22468 division or its designee.

22469 (d) Filings shall be made within 30 days of:

22470 (i) the reinstatement of a policy;

22471 (ii) the changing or addition of a name or address of the insured; or

22472 (iii) the merger of an insured with another entity.

22473 (e) All filings under this section shall include:

22474 (i) the name of the insured;

22475 (ii) the principal business address;

22476 (iii) any and all assumed name designations;

22477 (iv) the address of all locations within this state where business is conducted; and

22478 (v) all federal employer identification numbers or federal tax identification numbers.

22479 (2) Noncompliance with this section is grounds for revocation of an insurance carrier's
22480 certificate of authority in addition to the grounds specified in Title 31A, Insurance Code.

22481 (3) The division may assess an insurer up to \$150, payable to the Uninsured Employers'
22482 Fund, if the insurer fails to comply with this section.

22483 (4) (a) The notification of workers' compensation insurance coverage required to be
22484 filed under Subsection (1) is a protected record under Section [~~63-2-304~~] 63G-2-305.

22485 (b) The commission or any of its divisions may not disclose the information described in

22486 Subsection (4)(a) except as provided in:

22487 (i) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
22488 Management Act, for a protected record; or

22489 (ii) Subsection (4)(c), notwithstanding whether [~~Title 63, Chapter 2~~] Title 63G, Chapter
22490 2, Government Records Access and Management Act, permits disclosure.

22491 (c) The commission may disclose the information described in Subsection (4)(a) if:

22492 (i) the information is disclosed on an individual case basis related to a single employer;

22493 (ii) the information facilitates the:

22494 (A) coverage of subcontractors by identifying the insurance carrier providing workers'
22495 compensation coverage for an employer;

22496 (B) filing of a claim by an employee; or

22497 (C) payment of services rendered on an employee's claim by a medical practitioner; and

22498 (iii) promotes the purposes of this chapter or Chapter 3, Utah Occupational Disease
22499 Act.

22500 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
22501 Administrative Rulemaking Act, the commission shall make rules concerning when information
22502 may be disclosed under Subsection (4)(c).

22503 Section 458. Section **34A-2-211** is amended to read:

22504 **34A-2-211. Notice of noncompliance to employer -- Enforcement power of**
22505 **division -- Penalty.**

22506 (1) (a) In addition to the remedies specified in Section 34A-2-210, if the division has
22507 reason to believe that an employer is conducting business without securing the payment of
22508 benefits in one of the three ways provided in Section 34A-2-201, the division may give that
22509 employer written notice of the noncompliance by certified mail to the last-known address of the
22510 employer.

22511 (b) If the employer does not remedy the default within 15 days after delivery of the
22512 notice, the division may issue an order requiring the employer to appear before the division and
22513 show cause why the employer should not be ordered to comply with Section 34A-2-201.

22514 (c) If it is found that the employer has failed to provide for the payment of benefits in
22515 one of the three ways provided in Section 34A-2-201, the division may require any employer to
22516 comply with Section 34A-2-201.

22517 (2) (a) Notwithstanding Subsection (1), the division may impose a penalty against the
22518 employer under this Subsection (2):

22519 (i) subject to the notice and other requirements of [~~Title 63, Chapter 46b~~] Title 63G,
22520 Chapter 4, Administrative Procedures Act; and

22521 (ii) if the division believes that an employer of one or more employees is conducting
22522 business without securing the payment of benefits in one of the three ways provided in Section
22523 34A-2-201.

22524 (b) The penalty imposed under Subsection (2)(a) shall be the greater of:

22525 (i) \$1,000; or

22526 (ii) three times the amount of the premium the employer would have paid for workers'
22527 compensation insurance based on the rate filing of the Workers' Compensation Fund, during the
22528 period of noncompliance.

22529 (c) For purposes of Subsection (2)(b)(ii), the premium is calculated by applying rates
22530 and rate multipliers to the payroll basis under Subsection (2)(d), using the highest rated
22531 employee class code applicable to the employer's operations.

22532 (d) The payroll basis for the purpose of calculating the premium penalty shall be 150%
22533 of the state's average weekly wage multiplied by the highest number of workers employed by
22534 the employer during the period of the employer's noncompliance multiplied by the number of
22535 weeks of the employer's noncompliance up to a maximum of 156 weeks.

22536 (3) The penalty imposed under Subsection (2) shall be deposited in the Uninsured
22537 Employers' Fund created by Section 34A-2-704 and used for the purposes of that fund.

22538 (4) (a) An employer who disputes the determination, imposition, or amount of a penalty
22539 imposed under Subsection (2) shall request a hearing before an administrative law judge within
22540 30 days of the date of issuance of the administrative action imposing the penalty or the
22541 administrative action becomes a final order of the commission.

22542 (b) The employer's request for a hearing under Subsection (4)(a) shall specify the facts
22543 and grounds that are the basis of the employer's objection to the determination, imposition, or
22544 amount of the penalty.

22545 (c) An administrative law judge's decision under this Subsection (4) may be reviewed
22546 pursuant to Part 8, Adjudication.

22547 (5) (a) After a penalty has been issued and becomes a final order of the commission the
22548 division on behalf of the commission may file an abstract for any uncollected penalty in the
22549 district court.

22550 (b) The abstract filed under Subsection (5)(a) shall state:

22551 (i) the amount of the uncollected penalty;

22552 (ii) reasonable [attorneys'] attorney fees;

22553 (iii) costs of collection; and

22554 (iv) court costs.

22555 (c) The filed abstract shall have the effect of a judgment of that court.

22556 (6) Any administrative action issued by the division under this section shall:

22557 (a) be in writing;

22558 (b) be sent by certified mail to the last-known address of the employer;

22559 (c) state the findings and administrative action of the division; and

22560 (d) specify its effective date, which may be immediate or may be at a later date.

22561 (7) The final order of the commission under this section, upon application by the
22562 division on behalf of the commission made on or after the effective date of the order to a court
22563 of general jurisdiction in any county in this state, may be enforced by an order to comply
22564 entered ex parte and without notice by the court.

22565 Section 459. Section **34A-2-407** is amended to read:

22566 **34A-2-407. Reporting of industrial injuries -- Regulation of health care providers**

22567 **-- Funeral expenses.**

22568 (1) As used in this section, "physician" is as defined in Section 34A-2-111.

22569 (2) (a) Any employee sustaining an injury arising out of and in the course of

22570 employment shall provide notification to the employee's employer promptly of the injury.

22571 (b) If the employee is unable to provide the notification required by Subsection (2)(a),
22572 the following may provide notification of the injury to the employee's employer:

22573 (i) the employee's next-of-kin; or

22574 (ii) the employee's attorney.

22575 (c) An employee claiming benefits under this chapter, or Chapter 3, Utah Occupational
22576 Disease Act, shall comply with rules adopted by the commission regarding disclosure of medical
22577 records of the employee medically relevant to the industrial accident or occupational disease
22578 claim.

22579 (3) (a) An employee is barred for any claim of benefits arising from an injury if the
22580 employee fails to notify within the time period described in Subsection (3)(b):

22581 (i) the employee's employer in accordance with Subsection (2); or

22582 (ii) the division.

22583 (b) The notice required by Subsection (3)(a) shall be made within:

22584 (i) 180 days of the day on which the injury occurs; or

22585 (ii) in the case of an occupational hearing loss, the time period specified in Section
22586 34A-2-506.

22587 (4) The following constitute notification of injury required by Subsection (2):

22588 (a) an employer's or physician's injury report filed with:

22589 (i) the division;

22590 (ii) the employer; or

22591 (iii) the employer's insurance carrier; or

22592 (b) the payment of any medical or disability benefits by:

22593 (i) the employer; or

22594 (ii) the employer's insurance carrier.

22595 (5) (a) In the form prescribed by the division, each employer shall file a report with the
22596 division of any:

22597 (i) work-related fatality; or

22598 (ii) work-related injury resulting in:
22599 (A) medical treatment;
22600 (B) loss of consciousness;
22601 (C) loss of work;
22602 (D) restriction of work; or
22603 (E) transfer to another job.
22604 (b) The employer shall file the report required by Subsection (5)(a) within seven days
22605 after:
22606 (i) the occurrence of a fatality or injury;
22607 (ii) the employer's first knowledge of the fatality or injury; or
22608 (iii) the employee's notification of the fatality or injury.
22609 (c) (i) An employer shall file a subsequent report with the division of any previously
22610 reported injury that later results in death.
22611 (ii) The subsequent report required by this Subsection (5)(c) shall be filed with the
22612 division within seven days following:
22613 (A) the death; or
22614 (B) the employer's first knowledge or notification of the death.
22615 (d) A report is not required to be filed under this Subsection (5) for minor injuries, such
22616 as cuts or scratches that require first-aid treatment only, unless:
22617 (i) a treating physician files a report with the division in accordance with Subsection (9);
22618 or
22619 (ii) a treating physician is required to file a report with the division in accordance with
22620 Subsection (9).
22621 (6) An employer required to file a report under Subsection (5) shall provide the
22622 employee with:
22623 (a) a copy of the report submitted to the division; and
22624 (b) a statement, as prepared by the division, of the employee's rights and responsibilities
22625 related to the industrial injury.

22626 (7) Each employer shall maintain a record in a manner prescribed by the division of all:
22627 (a) work-related fatalities; or
22628 (b) work-related injuries resulting in:
22629 (i) medical treatment;
22630 (ii) loss of consciousness;
22631 (iii) loss of work;
22632 (iv) restriction of work; or
22633 (v) transfer to another job.
22634 (8) (a) Except as provided in Subsection (8)(b), an employer who refuses or neglects to
22635 make reports, to maintain records, or to file reports with the division as required by this section
22636 is:
22637 (i) guilty of a class C misdemeanor; and
22638 (ii) subject to a civil assessment:
22639 (A) imposed by the division, subject to the requirements of [~~Title 63, Chapter 46b~~] Title
22640 63G, Chapter 4, Administrative Procedures Act; and
22641 (B) that may not exceed \$500.
22642 (b) An employer is not subject to the civil assessment or guilty of a class C
22643 misdemeanor under this Subsection (8) if:
22644 (i) the employer submits a report later than required by this section; and
22645 (ii) the division finds that the employer has shown good cause for submitting a report
22646 later than required by this section.
22647 (c) A civil assessment collected under this Subsection (8) shall be deposited into the
22648 Uninsured Employers' Fund created in Section 34A-2-704.
22649 (9) (a) A physician attending an injured employee shall comply with rules established by
22650 the commission regarding:
22651 (i) fees for physician's services;
22652 (ii) disclosure of medical records of the employee medically relevant to the employee's
22653 industrial accident or occupational disease claim; and

22654 (iii) reports to the division regarding:

22655 (A) the condition and treatment of an injured employee; or

22656 (B) any other matter concerning industrial cases that the physician is treating.

22657 (b) A physician who is associated with, employed by, or bills through a hospital is

22658 subject to Subsection (9)(a).

22659 (c) A hospital providing services for an injured employee is not subject to the

22660 requirements of Subsection (9)(a) except for rules made by the commission that are described in

22661 Subsection (9)(a)(ii) or (iii).

22662 (d) The commission's schedule of fees may reasonably differentiate remuneration to be

22663 paid to providers of health services based on:

22664 (i) the severity of the employee's condition;

22665 (ii) the nature of the treatment necessary; and

22666 (iii) the facilities or equipment specially required to deliver that treatment.

22667 (e) This Subsection (9) does not prohibit a contract with a provider of health services

22668 relating to the pricing of goods and services.

22669 (10) A copy of the initial report filed under Subsection (9)(a)(iii) shall be furnished to:

22670 (a) the division;

22671 (b) the employee; and

22672 (c) (i) the employer; or

22673 (ii) the employer's insurance carrier.

22674 (11) (a) Except as provided in Subsection (11)(b), a person subject to Subsection

22675 (9)(a)(iii) who fails to comply with Subsection (9)(a)(iii) is guilty of a class C misdemeanor for

22676 each offense.

22677 (b) A person subject to Subsection (9)(a)(iii) is not guilty of a class C misdemeanor

22678 under this Subsection (11), if:

22679 (i) the person files a late report; and

22680 (ii) the division finds that there is good cause for submitting a late report.

22681 (12) (a) Subject to appellate review under Section 34A-1-303, the commission has

22682 exclusive jurisdiction to hear and determine:

22683 (i) whether goods provided to or services rendered to an employee are compensable
22684 pursuant to this chapter or Chapter 3, Utah Occupational Disease Act, including:

22685 (A) medical, nurse, or hospital services;

22686 (B) medicines; and

22687 (C) artificial means, appliances, or prosthesis;

22688 (ii) the reasonableness of the amounts charged or paid for a good or service described
22689 in Subsection (12)(a)(i); and

22690 (iii) collection issues related to a good or service described in Subsection (12)(a)(i).

22691 (b) Except as provided in Subsection (12)(a), Subsection 34A-2-211(7), or Section
22692 34A-2-212, a person may not maintain a cause of action in any forum within this state other
22693 than the commission for collection or payment for goods or services described in Subsection
22694 (12)(a) that are compensable under this chapter or Chapter 3, Utah Occupational Disease Act.

22695 Section 460. Section **34A-2-704** is amended to read:

22696 **34A-2-704. Uninsured Employers' Fund.**

22697 (1) (a) There is created an Uninsured Employers' Fund. The Uninsured Employers'
22698 Fund has the purpose of assisting in the payment of workers' compensation benefits to any
22699 person entitled to the benefits, if:

22700 (i) that person's employer:

22701 (A) is individually, jointly, or severally liable to pay the benefits; and

22702 (B) (I) becomes or is insolvent;

22703 (II) appoints or has appointed a receiver; or

22704 (III) otherwise does not have sufficient funds, insurance, sureties, or other security to
22705 cover workers' compensation liabilities; and

22706 (ii) the employment relationship between that person and the person's employer is
22707 localized within the state as provided in Subsection (20).

22708 (b) The Uninsured Employers' Fund succeeds to all monies previously held in the
22709 Default Indemnity Fund.

22710 (c) If it becomes necessary to pay benefits, the Uninsured Employers' Fund is liable for
22711 all obligations of the employer as set forth in this chapter and Chapter 3, Utah Occupational
22712 Disease Act, with the exception of penalties on those obligations.

22713 (2) (a) Monies for the Uninsured Employers' Fund shall be deposited into the Uninsured
22714 Employers' Fund in accordance with this chapter and Subsection 59-9-101(2).

22715 (b) The commissioner shall appoint an administrator of the Uninsured Employers' Fund.

22716 (c) (i) The state treasurer is the custodian of the Uninsured Employers' Fund.

22717 (ii) The administrator shall make provisions for and direct distribution from the
22718 Uninsured Employers' Fund.

22719 (3) Reasonable costs of administering the Uninsured Employers' Fund or other fees
22720 required to be paid by the Uninsured Employers' Fund may be paid from the Uninsured
22721 Employers' Fund.

22722 (4) The state treasurer shall:

22723 (a) receive workers' compensation premium assessments from the State Tax
22724 Commission; and

22725 (b) invest the Uninsured Employers' Fund to ensure maximum investment return for
22726 both long and short term investments in accordance with Section 51-7-12.5.

22727 (5) (a) The administrator may employ, retain, or appoint counsel to represent the
22728 Uninsured Employers' Fund in all proceedings brought to enforce claims against or on behalf of
22729 the Uninsured Employers' Fund.

22730 (b) If requested by the commission, the following shall aid in the representation of the
22731 Uninsured Employers' Fund:

22732 (i) the attorney general; or

22733 (ii) the city attorney, or county attorney of the locality in which:

22734 (A) any investigation, hearing, or trial under this chapter or Chapter 3, Utah
22735 Occupational Disease Act, is pending;

22736 (B) the employee resides; or

22737 (C) an employer:

22738 (I) resides; or
22739 (II) is doing business.

22740 (6) To the extent of the compensation and other benefits paid or payable to or on behalf
22741 of an employee or the employee's dependents from the Uninsured Employers' Fund, the
22742 Uninsured Employers' Fund, by subrogation, has all the rights, powers, and benefits of the
22743 employee or the employee's dependents against the employer failing to make the compensation
22744 payments.

22745 (7) (a) The receiver, trustee, liquidator, or statutory successor of an employer meeting a
22746 condition listed in Subsection (1)(a)(i)(B) is bound by settlements of covered claims by the
22747 Uninsured Employers' Fund.

22748 (b) The court with jurisdiction shall grant all payments made under this section a
22749 priority equal to that to which the claimant would have been entitled in the absence of this
22750 section against the assets of the employer meeting a condition listed in Subsection (1)(a)(i)(B).

22751 (c) The expenses of the Uninsured Employers' Fund in handling claims shall be
22752 accorded the same priority as the liquidator's expenses.

22753 (8) (a) The administrator shall periodically file the information described in Subsection
22754 (8)(b) with the receiver, trustee, or liquidator of:

22755 (i) an employer that meets a condition listed in Subsection (1)(a)(i)(B);
22756 (ii) a public agency insurance mutual, as defined in Section 31A-1-103, that meets a
22757 condition listed in Subsection (1)(a)(i)(B); or
22758 (iii) an insolvent insurance carrier.

22759 (b) The information required to be filed under Subsection (8)(a) is:
22760 (i) statements of the covered claims paid by the Uninsured Employers' Fund; and
22761 (ii) estimates of anticipated claims against the Uninsured Employers' Fund.

22762 (c) The filings under this Subsection (8) shall preserve the rights of the Uninsured
22763 Employers' Fund for claims against the assets of the employer that meets a condition listed in
22764 Subsection (1)(a)(i)(B).

22765 (9) When any injury or death for which compensation is payable from the Uninsured

22766 Employers' Fund has been caused by the wrongful act or neglect of another person not in the
22767 same employment, the Uninsured Employers' Fund has the same rights as allowed under Section
22768 34A-2-106.

22769 (10) The Uninsured Employers' Fund, subject to approval of the administrator, shall
22770 discharge its obligations by:

22771 (a) adjusting its own claims; or

22772 (b) contracting with an adjusting company, risk management company, insurance
22773 company, or other company that has expertise and capabilities in adjusting and paying workers'
22774 compensation claims.

22775 (11) (a) For the purpose of maintaining the Uninsured Employers' Fund, an
22776 administrative law judge, upon rendering a decision with respect to any claim for workers'
22777 compensation benefits in which an employer that meets a condition listed in Subsection
22778 (1)(a)(i)(B) was duly joined as a party, shall:

22779 (i) order the employer that meets a condition listed in Subsection (1)(a)(i)(B) to
22780 reimburse the Uninsured Employers' Fund for all benefits paid to or on behalf of an injured
22781 employee by the Uninsured Employers' Fund along with interest, costs, and attorneys' fees; and

22782 (ii) impose a penalty against the employer that meets a condition listed in Subsection
22783 (1)(a)(i)(B) of 15% of the value of the total award in connection with the claim that shall be
22784 paid into the Uninsured Employers' Fund.

22785 (b) Awards may be docketed as other awards under this chapter and Chapter 3, Utah
22786 Occupational Disease Act.

22787 (12) The liability of the state, the commission, and the state treasurer, with respect to
22788 payment of any compensation benefits, expenses, fees, or disbursement properly chargeable
22789 against the Uninsured Employers' Fund, is limited to the assets in the Uninsured Employers'
22790 Fund, and they are not otherwise in any way liable for the making of any payment.

22791 (13) The commission may make reasonable rules for the processing and payment of
22792 claims for compensation from the Uninsured Employers' Fund.

22793 (14) (a) (i) If it becomes necessary for the Uninsured Employers' Fund to pay benefits

22794 under this section to an employee described in Subsection (14)(a)(ii), the Uninsured Employers'
22795 Fund may assess all other self-insured employers amounts necessary to pay:

22796 (A) the obligations of the Uninsured Employers' Fund subsequent to a condition listed
22797 in Subsection (1)(a)(i)(B) occurring;

22798 (B) the expenses of handling covered claims subsequent to a condition listed in
22799 Subsection (1)(a)(i)(B) occurring;

22800 (C) the cost of examinations under Subsection (15); and

22801 (D) other expenses authorized by this section.

22802 (ii) This Subsection (14) applies to benefits paid to an employee of:

22803 (A) a self-insured employer, as defined in Section 34A-2-201.5, that meets a condition
22804 listed in Subsection (1)(a)(i)(B); or

22805 (B) if the self-insured employer that meets a condition described in Subsection
22806 (1)(a)(i)(B) is a public agency insurance mutual, a member of the public agency insurance
22807 mutual.

22808 (b) The assessments of each self-insured employer shall be in the proportion that the
22809 manual premium of the self-insured employer for the preceding calendar year bears to the
22810 manual premium of all self-insured employers for the preceding calendar year.

22811 (c) Each self-insured employer shall be notified of the self-insured employer's
22812 assessment not later than 30 days before the day on which the assessment is due.

22813 (d) (i) A self-insured employer may not be assessed in any year an amount greater than
22814 2% of that self-insured employer's manual premium for the preceding calendar year.

22815 (ii) If the maximum assessment does not provide in any one year an amount sufficient to
22816 make all necessary payments from the Uninsured Employers' Fund for one or more self-insured
22817 employers that meet a condition listed in Subsection (1)(a)(i)(B), the unpaid portion shall be
22818 paid as soon as funds become available.

22819 (e) All self-insured employers are liable under this section for a period not to exceed
22820 three years after the day on which the Uninsured Employers' Fund first pays benefits to an
22821 employee described in Subsection (14)(a)(ii) for the self-insured employer that meets a

22822 condition listed in Subsection (1)(a)(i)(B).

22823 (f) This Subsection (14) does not apply to claims made against a self-insured employer
22824 that meets a condition listed in Subsection (1)(a)(i)(B) if the condition listed in Subsection
22825 (1)(a)(i)(B) occurred prior to July 1, 1986.

22826 (15) (a) The following shall notify the division of any information indicating that any of
22827 the following may be insolvent or in a financial condition hazardous to its employees or the
22828 public:

22829 (i) a self-insured employer; or

22830 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
22831 public agency insurance mutual.

22832 (b) Upon receipt of the notification described in Subsection (15)(a) and with good
22833 cause appearing, the division may order an examination of:

22834 (i) that self-insured employer; or

22835 (ii) if the self-insured employer is a public agency insurance mutual, a member of the
22836 public agency mutual.

22837 (c) The cost of the examination ordered under Subsection (15)(b) shall be assessed
22838 against all self-insured employers as provided in Subsection (14).

22839 (d) The results of the examination ordered under Subsection (15)(b) shall be kept
22840 confidential.

22841 (16) (a) In any claim against an employer by the Uninsured Employers' Fund, or by or
22842 on behalf of the employee to whom or to whose dependents compensation and other benefits
22843 are paid or payable from the Uninsured Employers' Fund, the burden of proof is on the
22844 employer or other party in interest objecting to the claim.

22845 (b) The claim described in Subsection (16)(a) is presumed to be valid up to the full
22846 amount of workers' compensation benefits claimed by the employee or the employee's
22847 dependents.

22848 (c) This Subsection (16) applies whether the claim is filed in court or in an adjudicative
22849 proceeding under the authority of the commission.

22850 (17) A partner in a partnership or an owner of a sole proprietorship may not recover
22851 compensation or other benefits from the Uninsured Employers' Fund if:

22852 (a) the person is not included as an employee under Subsection 34A-2-104(3); or

22853 (b) the person is included as an employee under Subsection 34A-2-104(3), but:

22854 (i) the person's employer fails to insure or otherwise provide adequate payment of direct
22855 compensation; and

22856 (ii) the failure described in Subsection (17)(b)(i) is attributable to an act or omission
22857 over which the person had or shared control or responsibility.

22858 (18) A director or officer of a corporation may not recover compensation or other
22859 benefits from the Uninsured Employers' Fund if the director or officer is excluded from
22860 coverage under Subsection 34A-2-104(4).

22861 (19) The Uninsured Employers' Fund:

22862 (a) shall be:

22863 (i) used in accordance with this section only for:

22864 (A) the purpose of assisting in the payment of workers' compensation benefits in
22865 accordance with Subsection (1); and

22866 (B) in accordance with Subsection (3), payment of:

22867 (I) reasonable costs of administering the Uninsured Employers' Fund; or

22868 (II) fees required to be paid by the Uninsured Employers' Fund; and

22869 (ii) expended according to processes that can be verified by audit; and

22870 (b) may not be used for:

22871 (i) administrative costs unrelated to the Uninsured Employers' Fund; or

22872 (ii) any activity of the commission other than an activity described in Subsection

22873 (19)(a).

22874 (20) (a) For purposes of Subsection (1), an employment relationship is localized in the
22875 state if:

22876 (i) (A) the employer who is liable for the benefits has a business premise in the state;

22877 and

22878 (B) (I) the contract for hire is entered into in the state; or
22879 (II) the employee regularly performs work duties in the state for the employer who is
22880 liable for the benefits; or

22881 (ii) the employee is:

22882 (A) a resident of the state; and

22883 (B) regularly performs work duties in the state for the employer who is liable for the
22884 benefits.

22885 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
22886 Administrative Rulemaking Act, the commission shall by rule define what constitutes regularly
22887 performing work duties in the state.

22888 Section 461. Section **34A-2-801** is amended to read:

22889 **34A-2-801. Initiating adjudicative proceedings -- Procedure for review of**
22890 **administrative action.**

22891 (1) (a) To contest an action of the employee's employer or its insurance carrier
22892 concerning a compensable industrial accident or occupational disease alleged by the employee,
22893 any of the following shall file an application for hearing with the Division of Adjudication:

22894 (i) the employee; or

22895 (ii) a representative of the employee, the qualifications of whom are defined in rule by
22896 the commission.

22897 (b) To appeal the imposition of a penalty or other administrative act imposed by the
22898 division on the employer or its insurance carrier for failure to comply with this chapter or
22899 Chapter 3, Utah Occupational Disease Act, any of the following shall file an application for
22900 hearing with the Division of Adjudication:

22901 (i) the employer;

22902 (ii) the insurance carrier; or

22903 (iii) a representative of either the employer or the insurance carrier, the qualifications of
22904 whom are defined in rule by the commission.

22905 (c) A person providing goods or services described in Subsections 34A-2-407(12) and

22906 34A-3-108(12) may file an application for hearing in accordance with Section 34A-2-407 or
22907 34A-3-108.

22908 (d) An attorney may file an application for hearing in accordance with Section
22909 34A-1-309.

22910 (2) Unless a party in interest appeals the decision of an administrative law judge in
22911 accordance with Subsection (3), the decision of an administrative law judge on an application
22912 for hearing filed under Subsection (1) is a final order of the commission 30 days after the date
22913 the decision is issued.

22914 (3) (a) A party in interest may appeal the decision of an administrative law judge by
22915 filing a motion for review with the Division of Adjudication within 30 days of the date the
22916 decision is issued.

22917 (b) Unless a party in interest to the appeal requests under Subsection (3)(c) that the
22918 appeal be heard by the Appeals Board, the commissioner shall hear the review.

22919 (c) A party in interest may request that an appeal be heard by the Appeals Board by
22920 filing the request with the Division of Adjudication:

22921 (i) as part of the motion for review; or

22922 (ii) if requested by a party in interest who did not file a motion for review, within 20
22923 days of the date the motion for review is filed with the Division of Adjudication.

22924 (d) A case appealed to the Appeals Board shall be decided by the majority vote of the
22925 Appeals Board.

22926 (4) All records on appeals shall be maintained by the Division of Adjudication. Those
22927 records shall include an appeal docket showing the receipt and disposition of the appeals on
22928 review.

22929 (5) Upon appeal, the commissioner or Appeals Board shall make its decision in
22930 accordance with Section 34A-1-303.

22931 (6) The commissioner or Appeals Board shall promptly notify the parties to any
22932 proceedings before it of its decision, including its findings and conclusions.

22933 (7) The decision of the commissioner or Appeals Board is final unless within 30 days

22934 after the date the decision is issued further appeal is initiated under the provisions of this section
22935 or [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

22936 (8) (a) Within 30 days after the date the decision of the commissioner or Appeals Board
22937 is issued, any aggrieved party may secure judicial review by commencing an action in the court
22938 of appeals against the commissioner or Appeals Board for the review of the decision of the
22939 commissioner or Appeals Board.

22940 (b) In an action filed under Subsection (8)(a):

22941 (i) any other party to the proceeding before the commissioner or Appeals Board shall be
22942 made a party; and

22943 (ii) the commission shall be made a party.

22944 (c) A party claiming to be aggrieved may seek judicial review only if the party has
22945 exhausted the party's remedies before the commission as provided by this section.

22946 (d) At the request of the court of appeals, the commission shall certify and file with the
22947 court all documents and papers and a transcript of all testimony taken in the matter together
22948 with the decision of the commissioner or Appeals Board.

22949 Section 462. Section **34A-5-102** is amended to read:

22950 **34A-5-102. Definitions.**

22951 As used in this chapter:

22952 (1) "Apprenticeship" means a program for the training of apprentices including a
22953 program providing the training of those persons defined as apprentices by Section 35A-6-102.

22954 (2) "Bona fide occupational qualification" means a characteristic applying to an
22955 employee:

22956 (a) that is necessary to the operation; or

22957 (b) is the essence of the employee's employer's business.

22958 (3) "Court" means:

22959 (a) the district court in the judicial district of the state in which the asserted unfair
22960 employment practice occurred; or

22961 (b) if this court is not in session at that time, a judge of the court described in

- 22962 Subsection (3)(a).
- 22963 (4) "Director" means the director of the division.
- 22964 (5) "Disability" means a physical or mental disability as defined and covered by the
22965 Americans with Disabilities Act of 1990, 42 U.S.C. 12102.
- 22966 (6) "Division" means the Division of Antidiscrimination and Labor.
- 22967 (7) "Employee" means any person applying with or employed by an employer.
- 22968 (8) (a) "Employer" means:
- 22969 (i) the state;
- 22970 (ii) any political subdivision;
- 22971 (iii) a board, commission, department, institution, school district, trust, or agent of the
22972 state or its political subdivisions; or
- 22973 (iv) a person employing 15 or more employees within the state for each working day in
22974 each of 20 calendar weeks or more in the current or preceding calendar year.
- 22975 (b) "Employer" does not include:
- 22976 (i) a religious organization or association;
- 22977 (ii) a religious corporation sole; or
- 22978 (iii) any corporation or association constituting a wholly owned subsidiary or agency of
22979 any religious organization or association or religious corporation sole.
- 22980 (9) "Employment agency" means any person:
- 22981 (a) undertaking to procure employees or opportunities to work for any other person; or
- 22982 (b) holding itself out to be equipped to take an action described in Subsection (9)(a).
- 22983 (10) "Joint apprenticeship committee" means any association of representatives of a
22984 labor organization and an employer providing, coordinating, or controlling an apprentice
22985 training program.
- 22986 (11) "Labor organization" means any organization that exists for the purpose in whole
22987 or in part of:
- 22988 (a) collective bargaining;
- 22989 (b) dealing with employers concerning grievances, terms or conditions of employment;

22990 or

22991 (c) other mutual aid or protection in connection with employment.

22992 (12) "National origin" means the place of birth, domicile, or residence of an individual

22993 or of an individual's ancestors.

22994 (13) "On-the-job-training" means any program designed to instruct a person who, while

22995 learning the particular job for which the person is receiving instruction:

22996 (a) is also employed at that job; or

22997 (b) may be employed by the employer conducting the program during the course of the

22998 program, or when the program is completed.

22999 (14) "Person" means one or more individuals, partnerships, associations, corporations,

23000 legal representatives, trusts or trustees, receivers, the state and all political subdivisions and

23001 agencies of the state.

23002 (15) "Presiding officer" means the same as that term is defined in Section [~~63-46b-2~~]

23003 63G-4-103.

23004 (16) "Prohibited employment practice" means a practice specified as discriminatory, and

23005 therefore unlawful, in Section 34A-5-106.

23006 (17) "Retaliate" means the taking of adverse action by an employer, employment

23007 agency, labor organization, apprenticeship program, on-the-job training program, or vocational

23008 school against one of its employees, applicants, or members because the employee, applicant, or

23009 member:

23010 (a) has opposed any employment practice prohibited under this chapter; or

23011 (b) filed charges, testified, assisted, or participated in any way in any proceeding,

23012 investigation, or hearing under this chapter.

23013 (18) "Vocational school" means any school or institution conducting a course of

23014 instruction, training, or retraining to prepare individuals to follow an occupation or trade, or to

23015 pursue a manual, technical, industrial, business, commercial, office, personal services, or other

23016 nonprofessional occupations.

23017 Section 463. Section **34A-5-107** is amended to read:

23018 **34A-5-107. Procedure for aggrieved person to file claim -- Investigations --**
23019 **Adjudicative proceedings -- Settlement -- Reconsideration -- Determination.**

23020 (1) (a) Any person claiming to be aggrieved by a discriminatory or prohibited
23021 employment practice may, or that person's attorney or agent may, make, sign, and file with the
23022 division a request for agency action.

23023 (b) Every request for agency action shall be verified under oath or affirmation.

23024 (c) A request for agency action made under this section shall be filed within 180 days
23025 after the alleged discriminatory or prohibited employment practice occurred.

23026 (d) The division may transfer a request for agency action filed with the division
23027 pursuant to this section to the federal Equal Employment Opportunity Commission in
23028 accordance with the provisions of any work-share agreement that is:

23029 (i) between the division and the Equal Employment Opportunity Commission; and

23030 (ii) in effect on the day on which the request for agency action is transferred.

23031 (2) Any employer, labor organization, joint apprenticeship committee, or vocational
23032 school who has an employee or member who refuses or threatens to refuse to comply with this
23033 chapter may file with the division a request for agency action asking the division for assistance
23034 to obtain the employee's or member's compliance by conciliation or other remedial action.

23035 (3) (a) Before a hearing is set or held as part of any adjudicative proceeding, the
23036 division shall promptly assign an investigator to attempt a settlement between the parties by
23037 conference, conciliation, or persuasion.

23038 (b) If no settlement is reached, the investigator shall make a prompt impartial
23039 investigation of all allegations made in the request for agency action.

23040 (c) The division and its staff, agents, and employees:

23041 (i) shall conduct every investigation in fairness to all parties and agencies involved; and

23042 (ii) may not attempt a settlement between the parties if it is clear that no discriminatory
23043 or prohibited employment practice has occurred.

23044 (d) An aggrieved party may withdraw the request for agency action prior to the
23045 issuance of a final order.

23046 (4) (a) If the initial attempts at settlement are unsuccessful, and the investigator
23047 uncovers insufficient evidence during the investigation to support the allegations of a
23048 discriminatory or prohibited employment practice set out in the request for agency action, the
23049 investigator shall formally report these findings to the director or the director's designee.

23050 (b) Upon receipt of the investigator's report described in Subsection (4)(a), the director
23051 or the director's designee may issue a determination and order for dismissal of the adjudicative
23052 proceeding.

23053 (c) A party may make a written request to the Division of Adjudication for an
23054 evidentiary hearing to review de novo the director's or the director's designee's determination
23055 and order within 30 days of the date the determination and order for dismissal is issued.

23056 (d) If the director or the director's designee receives no timely request for a hearing, the
23057 determination and order issued by the director or the director's designee becomes the final order
23058 of the commission.

23059 (5) (a) If the initial attempts at settlement are unsuccessful and the investigator
23060 uncovers sufficient evidence during the investigation to support the allegations of a
23061 discriminatory or prohibited employment practice set out in the request for agency action, the
23062 investigator shall formally report these findings to the director or the director's designee.

23063 (b) (i) Upon receipt of the investigator's report described in Subsection (5)(a), the
23064 director or the director's designee may issue a determination and order based on the
23065 investigator's report.

23066 (ii) A determination and order issued under this Subsection (5)(b) shall:

23067 (A) direct the respondent to cease any discriminatory or prohibited employment
23068 practice; and

23069 (B) provide relief to the aggrieved party as the director or the director's designee
23070 determines is appropriate.

23071 (c) A party may file a written request to the Division of Adjudication for an evidentiary
23072 hearing to review de novo the director's or the director's designee's determination and order
23073 within 30 days of the date the determination and order is issued.

23074 (d) If the director or the director's designee receives no timely request for a hearing, the
23075 determination and order issued by the director or the director's designee in accordance with
23076 Subsection (5)(b) becomes the final order of the commission.

23077 (6) In any adjudicative proceeding to review the director's or the director's designee's
23078 determination that a prohibited employment practice has occurred, the division shall present the
23079 factual and legal basis of the determination or order issued under Subsection (5).

23080 (7) (a) Prior to commencement of an evidentiary hearing:

23081 (i) the party filing the request for agency action may reasonably and fairly amend any
23082 allegation; and

23083 (ii) the respondent may amend its answer.

23084 (b) An amendment permitted under this Subsection (7) may be made:

23085 (i) during or after a hearing; and

23086 (ii) only with permission of the presiding officer.

23087 (8) (a) If, upon all the evidence at a hearing, the presiding officer finds that a
23088 respondent has not engaged in a discriminatory or prohibited employment practice, the presiding
23089 officer shall issue an order dismissing the request for agency action containing the allegation of
23090 a discriminatory or prohibited employment practice.

23091 (b) The presiding officer may order that the respondent be reimbursed by the
23092 complaining party for the respondent's attorneys' fees and costs.

23093 (9) If upon all the evidence at the hearing, the presiding officer finds that a respondent
23094 has engaged in a discriminatory or prohibited employment practice, the presiding officer shall
23095 issue an order requiring the respondent to:

23096 (a) cease any discriminatory or prohibited employment practice; and

23097 (b) provide relief to the complaining party, including:

23098 (i) reinstatement;

23099 (ii) back pay and benefits;

23100 (iii) attorneys' fees; and

23101 (iv) costs.

23102 (10) Conciliation between the parties is to be urged and facilitated at all stages of the
23103 adjudicative process.

23104 (11) (a) Either party may file with the Division of Adjudication a written request for
23105 review before the commissioner or Appeals Board of the order issued by the presiding officer in
23106 accordance with:

23107 (i) Section [~~63-46b-12~~] 63G-4-301; and

23108 (ii) Chapter 1, Part 3, Adjudicative Proceedings.

23109 (b) If there is no timely request for review, the order issued by the presiding officer
23110 becomes the final order of the commission.

23111 (12) An order of the commission under Subsection (11)(a) is subject to judicial review
23112 as provided in:

23113 (a) Section [~~63-46b-16~~] 63G-4-403; and

23114 (b) Chapter 1, Part 3, Adjudicative Proceedings.

23115 (13) The commission shall have authority to make rules concerning procedures under
23116 this chapter in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
23117 Administrative Rulemaking Act.

23118 (14) The commission and its staff may not divulge or make public any information
23119 gained from any investigation, settlement negotiation, or proceeding before the commission
23120 except as provided in Subsections (14)(a) through (d).

23121 (a) Information used by the director or the director's designee in making any
23122 determination may be provided to all interested parties for the purpose of preparation for and
23123 participation in proceedings before the commission.

23124 (b) General statistical information may be disclosed provided the identities of the
23125 individuals or parties are not disclosed.

23126 (c) Information may be disclosed for inspection by the attorney general or other legal
23127 representatives of the state or the commission.

23128 (d) Information may be disclosed for information and reporting requirements of the
23129 federal government.

23130 (15) The procedures contained in this section are the exclusive remedy under state law
23131 for employment discrimination based upon:

- 23132 (a) race;
- 23133 (b) color;
- 23134 (c) sex;
- 23135 (d) retaliation;
- 23136 (e) pregnancy, childbirth, or pregnancy-related conditions;
- 23137 (f) age;
- 23138 (g) religion;
- 23139 (h) national origin; or
- 23140 (i) disability.

23141 (16) (a) The commencement of an action under federal law for relief based upon any act
23142 prohibited by this chapter bars the commencement or continuation of any adjudicative
23143 proceeding before the commission in connection with the same claims under this chapter.

23144 (b) The transfer of a request for agency action to the Equal Employment Opportunity
23145 Commission in accordance with Subsection (1)(d) is considered the commencement of an action
23146 under federal law for purposes of Subsection (16)(a).

23147 (c) Nothing in this Subsection (16) is intended to alter, amend, modify, or impair the
23148 exclusive remedy provision set forth in Subsection (15).

23149 Section 464. Section **34A-5-108** is amended to read:

23150 **34A-5-108. Judicial enforcement of division findings.**

23151 (1) The commission or the attorney general at the request of the commission shall
23152 commence an action under Section [~~63-46b-19~~] 63G-4-501 for civil enforcement of a final
23153 order of the commission issued under Subsection 34A-5-107(11) if:

- 23154 (a) the order finds that there is reasonable cause to believe that a respondent has
23155 engaged or is engaging in discriminatory or prohibited employment practices made unlawful by
23156 this chapter;
- 23157 (b) counsel to the commission or the attorney general determines after reasonable

23158 inquiry that the order is well grounded in fact and is warranted by existing law;

23159 (c) the respondent has not received an order of automatic stay or discharge from the
23160 United States Bankruptcy Court; and

23161 (d) (i) the commission has not accepted a conciliation agreement to which the aggrieved
23162 party and respondent are parties; or

23163 (ii) the respondent has not conciliated or complied with the final order of the
23164 commission within 30 days from the date the order is issued.

23165 (2) If the respondent seeks judicial review of the final order under Section [~~63-46b-16~~]
23166 63G-4-403, pursuant to Section [~~63-46b-18~~] 63G-4-405 the commission may stay seeking civil
23167 enforcement pending the completion of the judicial review.

23168 Section 465. Section **34A-6-103** is amended to read:

23169 **34A-6-103. Definitions.**

23170 As used in this chapter:

23171 (1) "Administrator" means the director of the Division of Occupational Safety and
23172 Health.

23173 (2) "Amendment" means such modification or change in a code, standard, rule, or order
23174 intended for universal or general application.

23175 (3) "Commission" means the Labor Commission.

23176 (4) "Council" means the Utah Occupational Safety and Health Advisory Council.

23177 (5) "Division" means the Division of Occupational Safety and Health.

23178 (6) "Employee" includes any person suffered or permitted to work by an employer.

23179 (7) "Employer" means:

23180 (a) the state;

23181 (b) each county, city, town, and school district in the state; and

23182 (c) every person, firm, and private corporation, including public utilities, having one or
23183 more workers or operatives regularly employed in the same business, or in or about the same
23184 establishment, under any contract of hire.

23185 (8) "Hearing" means a proceeding conducted by the commission.

23186 (9) "Imminent danger" means a danger exists which reasonably could be expected to
23187 cause an occupational disease, death, or serious physical harm immediately, or before the
23188 danger could be eliminated through enforcement procedures under this chapter.

23189 (10) "National consensus standard" means any occupational safety and health standard
23190 or modification:

23191 (a) adopted by a nationally recognized standards-producing organization under
23192 procedures where it can be determined by the administrator and division that persons interested
23193 and affected by the standard have reached substantial agreement on its adoption;

23194 (b) formulated in a manner which affords an opportunity for diverse views to be
23195 considered; and

23196 (c) designated as such a standard by the Secretary of the United States Department of
23197 Labor.

23198 (11) "Person" means the general public, one or more individuals, partnerships,
23199 associations, corporations, legal representatives, trustees, receivers, and the state and its
23200 political subdivisions.

23201 (12) "Publish" means publication in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
23202 Chapter 3, Utah Administrative Rulemaking Act.

23203 (13) "Secretary" means the Secretary of the United States Department of Labor.

23204 (14) "Standard" means an occupational health and safety standard or group of standards
23205 which requires conditions, or the adoption or use of one or more practices, means, methods,
23206 operations, or processes, reasonably necessary to provide safety and healthful employment and
23207 places of employment.

23208 (15) "Variance" means a special, limited modification or change in the code or standard
23209 applicable to the particular establishment of the employer or person petitioning for the
23210 modification or change.

23211 (16) "Workplace" means any place of employment.

23212 Section 466. Section **34A-6-105** is amended to read:

23213 **34A-6-105. Procedures -- Adjudicative proceedings.**

23214 The commission, the division, and the administrator shall comply with the procedures
23215 and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
23216 Act, in any adjudicative proceedings that they conduct under this chapter.

23217 Section 467. Section **34A-6-202** is amended to read:

23218 **34A-6-202. Standards -- Procedure for issuance, modification, or revocation by**
23219 **division -- Emergency temporary standard -- Variances from standards -- Statement of**
23220 **reasons for administrator's actions -- Judicial review -- Priority for establishing**
23221 **standards.**

23222 (1) (a) The division, as soon as practicable, shall issue as standards any national
23223 consensus standard, any adopted federal standard, or any adopted Utah standard, unless it
23224 determines that issuance of the standard would not result in improved safety or health.

23225 (b) All codes, standards, and rules adopted under Subsection (1)(a) shall take effect 30
23226 days after publication unless otherwise specified.

23227 (c) If any conflict exists between standards, the division shall issue the standard that
23228 assures the greatest protection of safety or health for affected employees.

23229 (2) The division may issue, modify, or revoke any standard as follows:

23230 (a) (i) Whenever the administrator determines upon the basis of information submitted
23231 in writing by an interested person, a representative of any organization of employers or
23232 employees, a nationally recognized standards-producing organization, the Department of
23233 Health, or a state agency or political subdivision, or on information developed by the division or
23234 otherwise available, that a rule should be promulgated to promote the objectives of this chapter,
23235 the administrator may request recommendations from the advisory council.

23236 (ii) The administrator shall provide the advisory council with proposals, together with
23237 all pertinent factual information developed by the division, or otherwise available, including the
23238 results of research, demonstrations, and experiments.

23239 (iii) The advisory council shall submit to the administrator its recommendations
23240 regarding the rule to be promulgated within a period as prescribed by the administrator.

23241 (b) The division shall publish a proposed rule issuing, modifying, or revoking an

23242 occupational safety or health standard and shall afford interested parties an opportunity to
23243 submit written data or comments as prescribed by [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
23244 Utah Administrative Rulemaking Act. When the administrator determines that a rule should be
23245 issued, the division shall publish the proposed rule after the submission of the advisory council's
23246 recommendations or the expiration of the period prescribed by the administrator for submission.

23247 (c) The administrator, in issuing standards for toxic materials or harmful physical agents
23248 under this subsection, shall set the standard which most adequately assures, to the extent
23249 feasible, on the basis of the best available evidence, that no employee will suffer material
23250 impairment of health or functional capacity even if the employee has regular exposure to the
23251 hazard during an employee's working life. Development of standards under this subsection shall
23252 be based upon research, demonstrations, experiments, and other information deemed
23253 appropriate. In addition to the attainment of the highest degree of health and safety protection
23254 for the employee, other considerations shall be the latest available scientific data in the field, the
23255 feasibility of the standards, and experience under this and other health and safety laws.
23256 Whenever practicable, the standard shall be expressed in terms of objective criteria and of the
23257 performance desired.

23258 (d) (i) Any employer may apply to the administrator for a temporary order granting a
23259 variance from a standard issued under this section. Temporary orders shall be granted only if
23260 the employer:

23261 (A) files an application which meets the requirements of Subsection (2)(d)(iv);

23262 (B) establishes that the employer is unable to comply with a standard by its effective
23263 date because of unavailability of professional or technical personnel or of materials and
23264 equipment needed for compliance with the standard or because necessary construction or
23265 alteration of facilities cannot be completed by the effective date;

23266 (C) establishes that the employer is taking all available steps to safeguard the employer's
23267 employees against hazards; and

23268 (D) establishes that the employer has an effective program for compliance as quickly as
23269 practicable.

23270 (ii) Any temporary order shall prescribe the practices, means, methods, operations, and
23271 processes which the employer must adopt and use while the order is in effect and state in detail
23272 the employer's program for compliance with the standard. A temporary order may be granted
23273 only after notice to employees and an opportunity for a public hearing; provided, that the
23274 administrator may issue one interim order effective until a decision is made after public hearing.

23275 (iii) A temporary order may not be in effect longer than the period reasonably required
23276 by the employer to achieve compliance. In no case shall the period of a temporary order exceed
23277 one year.

23278 (iv) An application for a temporary order under Subsection (2)(d) shall contain:

23279 (A) a specification of the standard or part from which the employer seeks a variance;

23280 (B) a representation by the employer, supported by representations from qualified
23281 persons having first-hand knowledge of the facts represented, that the employer is unable to
23282 comply with the standard or some part of the standard;

23283 (C) a detailed statement of the reasons the employer is unable to comply;

23284 (D) a statement of the measures taken and anticipated with specific dates, to protect
23285 employees against the hazard;

23286 (E) a statement of when the employer expects to comply with the standard and what
23287 measures the employer has taken and those anticipated, giving specific dates for compliance;
23288 and

23289 (F) a certification that the employer has informed the employer's employees of the
23290 application by:

23291 (I) giving a copy to their authorized representative;

23292 (II) posting a statement giving a summary of the application and specifying where a
23293 copy may be examined at the place or places where notices to employees are normally posted;
23294 and

23295 (III) by other appropriate means.

23296 (v) The certification required under Subsection (2)(d)(iv) shall contain a description of
23297 how employees have been informed.

23298 (vi) The information to employees required under Subsection (2)(d)(v) shall inform the
23299 employees of their right to petition the division for a hearing.

23300 (vii) The administrator is authorized to grant a variance from any standard or some part
23301 of the standard when the administrator determines that it is necessary to permit an employer to
23302 participate in a research and development project approved by the administrator to demonstrate
23303 or validate new and improved techniques to safeguard the health or safety of workers.

23304 (e) (i) Any standard issued under this subsection shall prescribe the use of labels or
23305 other forms of warning necessary to ensure that employees are apprised of all hazards, relevant
23306 symptoms and emergency treatment, and proper conditions and precautions of safe use or
23307 exposure. When appropriate, a standard shall prescribe suitable protective equipment and
23308 control or technological procedures for use in connection with such hazards and provide for
23309 monitoring or measuring employee exposure at such locations and intervals, and in a manner
23310 necessary for the protection of employees. In addition, any such standard shall prescribe the
23311 type and frequency of medical examinations or other tests which shall be made available by the
23312 employer, or at ~~his~~ the employer's cost, to employees exposed to hazards in order to most
23313 effectively determine whether the health of employees is adversely affected by exposure. If
23314 medical examinations are in the nature of research as determined by the division, the
23315 examinations may be furnished at division expense. The results of such examinations or tests
23316 shall be furnished only to the division; and, at the request of the employee, to the employee's
23317 physician.

23318 (ii) The administrator may by rule make appropriate modifications in requirements for
23319 the use of labels or other forms of warning, monitoring or measuring, and medical examinations
23320 warranted by experience, information, or medical or technological developments acquired
23321 subsequent to the promulgation of the relevant standard.

23322 (f) Whenever a rule issued by the administrator differs substantially from an existing
23323 national consensus standard, the division shall publish a statement of the reasons why the rule as
23324 adopted will better effectuate the purposes of this chapter than the national consensus standard.

23325 (g) Whenever a rule, standard, or national consensus standard is modified by the

23326 secretary so as to make less restrictive the federal Williams-Steiger Occupational Safety and
23327 Health Act of 1970, the less restrictive modification shall be immediately applicable to this
23328 chapter and shall be immediately implemented by the division.

23329 (3) (a) The administrator shall provide an emergency temporary standard to take
23330 immediate effect upon publication if the administrator determines that:

23331 (i) employees are exposed to grave danger from exposure to substances or agents
23332 determined to be toxic or physically harmful or from new hazards; and

23333 (ii) that the standard is necessary to protect employees from danger.

23334 (b) An emergency standard shall be effective until superseded by a standard issued in
23335 accordance with the procedures prescribed in Subsection (3)(c).

23336 (c) Upon publication of an emergency standard the division shall commence a
23337 proceeding in accordance with Subsection (2) and the standard as published shall serve as a
23338 proposed rule for the proceedings. The division shall issue a standard under Subsection (3) no
23339 later than 120 days after publication of the emergency standard.

23340 (4) (a) Any affected employer may apply to the division for a rule or order for a
23341 variance from a standard issued under this section. Affected employees shall be given notice of
23342 each application and may participate in a hearing. The administrator shall issue a rule or order if
23343 the administrator determines on the record, after opportunity for an inspection where
23344 appropriate and a hearing, that the proponent of the variance has demonstrated by a
23345 preponderance of the evidence that the conditions, practices, means, methods, operations, or
23346 processes used or proposed to be used by an employer will provide employment and a
23347 workplace to the employer's employees that are as safe and healthful as those which would
23348 prevail if the employer complied with the standard.

23349 (b) The rule or order issued under Subsection (4)(a) shall prescribe the conditions the
23350 employer must maintain, and the practices, means, methods, operations and processes that the
23351 employer must adopt and use to the extent they differ from the standard in question.

23352 (c) A rule or order issued under Subsection (4)(a) may be modified or revoked upon
23353 application by an employer, employees, or by the administrator on its own motion, in the

23354 manner prescribed for its issuance under Subsection (4) at any time after six months from its
 23355 issuance.

23356 (5) The administrator shall include a statement of reasons for the administrator's actions
 23357 when the administrator:

23358 (a) issues any code, standard, rule, or order;

23359 (b) grants any exemption or extension of time; or

23360 (c) compromises, mitigates, or settles any penalty assessed under this chapter.

23361 (6) Any person adversely affected by a standard issued under this section, at any time
 23362 prior to 60 days after a standard is issued, may file a petition challenging its validity with the
 23363 district court having jurisdiction for judicial review. A copy of the petition shall be served upon
 23364 the division by the petitioner. The filing of a petition shall not, unless otherwise ordered by the
 23365 court, operate as a stay of the standard. The determinations of the division shall be conclusive if
 23366 supported by substantial evidence on the record as a whole.

23367 (7) In determining the priority for establishing standards under this section, the division
 23368 shall give due regard to the urgency of the need for mandatory safety and health standards for
 23369 particular industries, trades, crafts, occupations, businesses, workplaces or work environments.
 23370 The administrator shall also give due regard to the recommendations of the Department of
 23371 Health about the need for mandatory standards in determining the priority for establishing the
 23372 standards.

23373 Section 468. Section **34A-6-301** is amended to read:

23374 **34A-6-301. Inspection and investigation of workplace, worker injury, illness, or**
 23375 **complaint -- Warrants -- Attendance of witnesses -- Recordkeeping by employers --**
 23376 **Employer and employee representatives -- Request for inspection -- Compilation and**
 23377 **publication of reports and information -- Rules.**

23378 (1) (a) The division or its representatives, upon presenting appropriate credentials to the
 23379 owner, operator, or agent in charge, may:

23380 (i) enter without delay at reasonable times any workplace where work is performed by
 23381 an employee of an employer;

23382 (ii) inspect and investigate during regular working hours and at other reasonable times
23383 in a reasonable manner, any workplace, worker injury, occupational disease, or complaint and
23384 all pertinent methods, operations, processes, conditions, structures, machines, apparatus,
23385 devices, equipment, and materials in the workplace; and

23386 (iii) question privately any such employer, owner, operator, agent, or employee.

23387 (b) The division, upon an employer's refusal to permit an inspection, may seek a warrant
23388 pursuant to the Utah Rules of Criminal Procedure.

23389 (2) (a) The division or its representatives may require the attendance and testimony of
23390 witnesses and the production of evidence under oath.

23391 (b) Witnesses shall receive fees and mileage in accordance with Section 78-46-28.

23392 (c) (i) If any person fails or refuses to obey an order of the division to appear, any
23393 district court within the jurisdiction of which such person is found, or resides or transacts
23394 business, upon the application by the division, shall have jurisdiction to issue to any person an
23395 order requiring that person to:

23396 (A) appear to produce evidence if, as, and when so ordered; and

23397 (B) give testimony relating to the matter under investigation or in question.

23398 (ii) Any failure to obey an order of the court described in this Subsection (2)(c) may be
23399 punished by the court as a contempt.

23400 (3) (a) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~]
23401 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers:

23402 (i) to keep records regarding activities related to this chapter considered necessary for
23403 enforcement or for the development of information about the causes and prevention of
23404 occupational accidents and diseases; and

23405 (ii) through posting of notices or other means, to inform employees of their rights and
23406 obligations under this chapter including applicable standards.

23407 (b) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
23408 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records
23409 regarding any work-related death and injury and any occupational disease as provided in this

23410 Subsection (3)(b).

23411 (i) Each employer shall investigate or cause to be investigated all work-related injuries
23412 and occupational diseases and any sudden or unusual occurrence or change of conditions that
23413 pose an unsafe or unhealthful exposure to employees.

23414 (ii) Each employer shall, within eight hours of occurrence, notify the division of any:

23415 (A) work-related fatality;

23416 (B) disabling, serious, or significant injury; or

23417 (C) occupational disease incident.

23418 (iii) (A) Each employer shall file a report with the Division of Industrial Accidents
23419 within seven days after the occurrence of an injury or occupational disease, after the employer's
23420 first knowledge of the occurrence, or after the employee's notification of the same, in the form
23421 prescribed by the Division of Industrial Accidents, of any work-related fatality or any
23422 work-related injury or occupational disease resulting in:

23423 (I) medical treatment;

23424 (II) loss of consciousness;

23425 (III) loss of work;

23426 (IV) restriction of work; or

23427 (V) transfer to another job.

23428 (B) (I) Each employer shall file a subsequent report with the Division of Industrial
23429 Accidents of any previously reported injury or occupational disease that later resulted in death.

23430 (II) The subsequent report shall be filed with the Division of Industrial Accidents within
23431 seven days following the death or the employer's first knowledge or notification of the death.

23432 (iv) A report is not required for minor injuries, such as cuts or scratches that require
23433 first-aid treatment only, unless a treating physician files, or is required to file, the Physician's
23434 Initial Report of Work Injury or Occupational Disease with the Division of Industrial Accidents.

23435 (v) A report is not required:

23436 (A) for occupational diseases that manifest after the employee is no longer employed by
23437 the employer with which the exposure occurred; or

23438 (B) where the employer is not aware of an exposure occasioned by the employment
23439 which results in a compensable occupational disease as defined by Section 34A-3-103.

23440 (vi) Each employer shall provide the employee with:

23441 (A) a copy of the report submitted to the Division of Industrial Accidents; and

23442 (B) a statement, as prepared by the Division of Industrial Accidents, of the employee's
23443 rights and responsibilities related to the industrial injury or occupational disease.

23444 (vii) Each employer shall maintain a record in a manner prescribed by the commission of
23445 all work-related fatalities or work-related injuries and of all occupational diseases resulting in:

23446 (A) medical treatment;

23447 (B) loss of consciousness;

23448 (C) loss of work;

23449 (D) restriction of work; or

23450 (E) transfer to another job.

23451 (viii) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
23452 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this Subsection (3)(b)
23453 consistent with nationally recognized rules or standards on the reporting and recording of
23454 work-related injuries and occupational diseases.

23455 (c) (i) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
23456 63G, Chapter 3, Utah Administrative Rulemaking Act, requiring employers to keep records
23457 regarding exposures to potentially toxic materials or harmful physical agents required to be
23458 measured or monitored under Section 34A-6-202.

23459 (ii) (A) The rules made under Subsection (3)(c)(i) shall provide for employees or their
23460 representatives:

23461 (I) to observe the measuring or monitoring; and

23462 (II) to have access to the records of the measuring or monitoring, and to records that
23463 indicate their exposure to toxic materials or harmful agents.

23464 (B) Each employer shall promptly notify employees being exposed to toxic materials or
23465 harmful agents in concentrations that exceed prescribed levels and inform any such employee of

23466 the corrective action being taken.

23467 (4) Information obtained by the division shall be obtained with a minimum burden upon
23468 employers, especially those operating small businesses.

23469 (5) A representative of the employer and a representative authorized by employees shall
23470 be given an opportunity to accompany the division's authorized representative during the
23471 physical inspection of any workplace. If there is no authorized employee representative, the
23472 division's authorized representative shall consult with a reasonable number of employees
23473 concerning matters of health and safety in the workplace.

23474 (6) (a) (i) (A) Any employee or representative of employees who believes that a
23475 violation of an adopted safety or health standard exists that threatens physical harm, or that an
23476 imminent danger exists, may request an inspection by giving notice to the division's authorized
23477 representative of the violation or danger. The notice shall be:

23478 (I) in writing, setting forth with reasonable particularity the grounds for notice; and

23479 (II) signed by the employee or representative of employees.

23480 (B) A copy of the notice shall be provided the employer or the employer's agent no later
23481 than at the time of inspection.

23482 (C) Upon request of the person giving notice, the person's name and the names of
23483 individual employees referred to in the notice shall not appear in the copy or on any record
23484 published, released, or made available pursuant to Subsection (7).

23485 (ii) (A) If upon receipt of the notice the division's authorized representative determines
23486 there are reasonable grounds to believe that a violation or danger exists, the authorized
23487 representative shall make a special inspection in accordance with this section as soon as
23488 practicable to determine if a violation or danger exists.

23489 (B) If the division's authorized representative determines there are no reasonable
23490 grounds to believe that a violation or danger exists, the authorized representative shall notify the
23491 employee or representative of the employees in writing of that determination.

23492 (b) (i) Prior to or during any inspection of a workplace, any employee or representative
23493 of employees employed in the workplace may notify the division or its representative of any

23494 violation of a standard that they have reason to believe exists in the workplace.

23495 (ii) The division shall:

23496 (A) by rule, establish procedures for informal review of any refusal by a representative
23497 of the division to issue a citation with respect to any alleged violation; and

23498 (B) furnish the employees or representative of employees requesting review a written
23499 statement of the reasons for the division's final disposition of the case.

23500 (7) (a) The division may compile, analyze, and publish, either in summary or detailed
23501 form, all reports or information obtained under this section, subject to the limitations set forth in
23502 Section 34A-6-306.

23503 (b) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
23504 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to carry out its responsibilities
23505 under this chapter, including rules for information obtained under this section, subject to the
23506 limitations set forth in Section 34A-6-306.

23507 (8) Any employer who refuses or neglects to make reports, to maintain records, or to
23508 file reports with the commission as required by this section is guilty of a class C misdemeanor
23509 and subject to citation under Section 34A-6-302 and a civil assessment as provided under
23510 Section 34A-6-307, unless the commission finds that the employer has shown good cause for
23511 submitting a report later than required by this section.

23512 Section 469. Section **34A-6-304** is amended to read:

23513 **34A-6-304. Procedure for review of order entered by administrative law judge --**
23514 **Continuing jurisdiction of commission.**

23515 (1) (a) Administrative law judges assigned by the director of the Division of
23516 Adjudication shall hear and determine any proceeding assigned to them by the Division of
23517 Adjudication.

23518 (b) The administrative law judge shall enter the administrative law judge's findings of
23519 fact, conclusions of law, and order not later than 30 days after final receipt of all matters
23520 concerned in the hearing.

23521 (c) The findings of fact, conclusions of law, and order of the administrative law judge

23522 shall become the final order of the commission unless objections are made in accordance with
23523 Subsection (2).

23524 (2) (a) Any party of interest who is dissatisfied with the order entered by an
23525 administrative law judge may obtain a review by appealing the decision in accordance with
23526 Section [~~63-46b-12~~] 63G-4-301 and Chapter 1, Part 3, Adjudicative Proceedings.

23527 (b) The commissioner or Appeals Board shall make its decision in accordance with
23528 Section 34A-1-303.

23529 (c) The decision of the commission is final unless judicial review is requested in
23530 accordance with Chapter 1, Part 3, Adjudicative Proceedings.

23531 (d) To the extent that new facts are provided, the commission has continuing
23532 jurisdiction to amend, reverse, or enhance prior orders.

23533 Section 470. Section **34A-6-307** is amended to read:

23534 **34A-6-307. Civil and criminal penalties.**

23535 (1) The commission may assess civil penalties against any employer who has received a
23536 citation under Section 34A-6-302 as follows:

23537 (a) Except as provided in Subsections (1)(b) through (d), the commission may assess up
23538 to \$7,000 for each cited violation.

23539 (b) The commission may not assess less than \$250 nor more than \$7,000 for each cited
23540 serious violation. A violation is serious only if:

23541 (i) it arises from a condition, practice, method, operation, or process in the workplace
23542 of which the employer knows or should know through the exercise of reasonable diligence; and

23543 (ii) there is a substantial possibility that the condition, practice, method, operation, or
23544 process could result in death or serious physical harm.

23545 (c) The commission may not assess less than \$5,000 nor more than \$70,000 for each
23546 cited willful violation.

23547 (d) The commission may assess up to \$70,000 for each cited violation if the employer
23548 has previously been found to have violated the same standards, code, rule, or order.

23549 (e) After the expiration of the time permitted to an employer to correct a cited

23550 violation, the commission may assess up to \$7,000 for each day the violation continues
23551 uncorrected.

23552 (2) The commission may assess a civil penalty of up to \$7,000 for each violation of any
23553 posting requirement under this chapter.

23554 (3) In deciding the amount to assess for a civil penalty, the commission shall consider all
23555 relevant factors, including:

23556 (a) the size of the employer's business;

23557 (b) the nature of the violation;

23558 (c) the employer's good faith or lack of good faith; and

23559 (d) the employer's previous record of compliance or noncompliance with this chapter.

23560 (4) Any civil penalty collected under this chapter shall be paid into the General Fund.

23561 (5) Criminal penalties under this chapter are as follows:

23562 (a) Any employer who willfully violates any standard, code, rule, or order issued under
23563 Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if
23564 the violation caused the death of an employee. If the violation causes the death of more than
23565 one employee, each death is considered a separate offense.

23566 (b) Any person who gives advance notice of any inspection conducted under this
23567 chapter without authority from the administrator or the administrator's representatives is guilty
23568 of a class A misdemeanor.

23569 (c) Any person who knowingly makes a false statement, representation, or certification
23570 in any application, record, report, plan, or other document filed or required to be maintained
23571 under this chapter is guilty of a class A misdemeanor.

23572 (6) After a citation issued under this chapter and an opportunity for a hearing under
23573 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, the division may
23574 file an abstract for any uncollected citation penalty in the district court. The filed abstract shall
23575 have the effect of a judgment of that court. The abstract shall state the amount of the
23576 uncollected citation penalty, reasonable attorneys' fees as set by commission rule, and court
23577 costs.

23578 Section 471. Section **34A-7-104** is amended to read:

23579 **34A-7-104. Fees.**

23580 The owner or user of a boiler required by this part to be inspected shall pay to the
23581 commission fees for inspection or for permits to operate in amounts set by the commission
23582 pursuant to Section [~~63-38-3.2~~] 63J-1-303.

23583 Section 472. Section **34A-7-203** is amended to read:

23584 **34A-7-203. Requirements for operating an elevator or escalator -- Inspection --**
23585 **Division duties.**

23586 (1) An elevator or escalator may not operate in this state unless:

23587 (a) the owner or operator of the elevator or escalator obtains an inspection certificate
23588 under Subsection (3); and

23589 (b) the inspection certificate described in Subsection (1)(a) has not:

23590 (i) expired under Subsection (3); or

23591 (ii) been suspended under Section 34A-7-204.

23592 (2) An elevator or escalator used or proposed to be used in this state shall be inspected
23593 as to its safety to operate in accordance with the safety code:

23594 (a) every two years; or

23595 (b) more frequently than every two years if the division determines that more frequent
23596 inspections are necessary.

23597 (3) (a) If upon inspection an elevator or escalator is safe to operate in accordance with
23598 the safety code, the inspector shall issue to the owner or operator an inspection certificate.

23599 (b) An inspection certificate issued under Subsection (3)(a) shall expire two years from
23600 the date the inspection certificate is issued.

23601 (4) An inspector employed by the division under this part shall at all times meet
23602 nationally recognized standards of qualifications for inspectors of elevators and escalators, as
23603 defined by rule by the division.

23604 (5) The owner or operator of an elevator or escalator that is used in the state shall pay
23605 to the commission a fee in amounts set by the commission pursuant to Section [~~63-38-3.2~~]

23606 63J-1-303:

23607 (a) for inspection; and

23608 (b) for an inspection certificate.

23609 (6) The division:

23610 (a) shall provide for the inspection of elevators and escalators in accordance with this
23611 section;

23612 (b) shall adopt by rule one or more nationally recognized standards or other safety
23613 codes to be used in inspecting elevators or escalators; and

23614 (c) may adopt amendments to the safety code adopted under Subsection (6)(b).

23615 Section 473. Section **34A-8-111** is amended to read:

23616 **34A-8-111. Rulemaking authority.**

23617 The commission may provide for the administration of this chapter by rule in accordance
23618 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

23619 Section 474. Section **34A-8-112** is amended to read:

23620 **34A-8-112. Administrative review.**

23621 The employer and the injured worker may apply to the Division of Adjudication for
23622 resolution of any issue of law or fact arising under this chapter in accordance with [~~Title 63,~~
23623 ~~Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

23624 Section 475. Section **35A-1-104** is amended to read:

23625 **35A-1-104. Department authority.**

23626 Within all other authority or responsibility granted to it by law, the department may:

23627 (1) adopt rules when authorized by this title, in accordance with the procedures of

23628 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

23629 (2) purchase, as authorized or required by law, services that the department is
23630 responsible to provide for legally eligible persons;

23631 (3) conduct adjudicative proceedings in accordance with the procedures of [~~Title 63,~~

23632 ~~Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;

23633 (4) establish eligibility standards for its programs, not inconsistent with state or federal

- 23634 law or regulations;
- 23635 (5) take necessary steps, including legal action, to recover money or the monetary value
23636 of services provided to a recipient who is not eligible;
- 23637 (6) administer oaths, certify to official acts, issue subpoenas to compel witnesses and
23638 the production of books, accounts, documents, and other records necessary as evidence;
- 23639 (7) acquire, manage, and dispose of any real or personal property needed or owned by
23640 the department, not inconsistent with state law;
- 23641 (8) receive gifts, grants, devises, and donations or their proceeds, crediting the program
23642 designated by the donor, and using the gift, grant, devise, or donation for the purposes
23643 requested by the donor, as long as the request conforms to state and federal policy;
- 23644 (9) accept and employ volunteer labor or services;
- 23645 (10) reimburse volunteers for necessary expenses, when the department considers that
23646 reimbursement to be appropriate;
- 23647 (11) carry out the responsibility assigned by the State Workforce Services Plan
23648 developed by the State Council on Workforce Services;
- 23649 (12) provide training and educational opportunities for its staff;
- 23650 (13) examine and audit the expenditures of any public funds provided to a local
23651 authority, agency, or organization that contracts with or receives funds from those authorities or
23652 agencies;
- 23653 (14) accept and administer grants from the federal government and from other sources,
23654 public or private;
- 23655 (15) employ and determine the compensation of clerical, legal, technical, investigative,
23656 and other employees necessary to carry out its policymaking, regulatory, and enforcement
23657 powers, rights, duties, and responsibilities under this title;
- 23658 (16) establish and conduct free employment agencies, and bring together employers
23659 seeking employees and working people seeking employment, and make known the opportunities
23660 for employment in this state;
- 23661 (17) collect, collate, and publish statistical and other information relating to employees,

23662 employers, employments, and places of employment, and other statistics as it considers proper;

23663 (18) encourage the expansion and use of apprenticeship programs meeting state or
23664 federal standards for apprenticeship programs;

23665 (19) develop processes to ensure that the department responds to the full range of
23666 employee and employer clients; and

23667 (20) carry out the responsibilities assigned to it by statute.

23668 Section 476. Section **35A-1-106** is amended to read:

23669 **35A-1-106. Fees.**

23670 (1) Unless otherwise provided by statute, the department may adopt a schedule of fees
23671 assessed for services provided by the department by following the procedures and requirements
23672 of Section [~~63-38-3.2~~] 63J-1-303.

23673 (2) The department shall submit each fee established under this section to the
23674 Legislature for its approval as part of the department's annual appropriations request.

23675 Section 477. Section **35A-1-301** is amended to read:

23676 **35A-1-301. Presiding officers for adjudicative proceedings -- Subpoenas --**
23677 **Independent judgment -- Consolidation -- Record -- Notice of order.**

23678 (1) (a) The executive director shall authorize the Division of Adjudication to call, assign
23679 a presiding officer, and conduct hearings and adjudicative proceedings when an application for a
23680 proceeding is filed with the Division of Adjudication under this title.

23681 (b) The director of the Division of Adjudication or the director's designee may issue
23682 subpoenas. Failure to respond to a properly issued subpoena may result in a contempt citation
23683 and offenders may be punished as provided in Section 78-32-15.

23684 (c) Witnesses subpoenaed under this section are allowed fees as provided by law for
23685 witnesses in the district court of the state. The fees shall be paid as follows:

23686 (i) The witness fees shall be paid by the state unless the witness is subpoenaed at the
23687 instance of a party other than the department.

23688 (ii) Notwithstanding Subsection (1)(c)(i), if the subpoena is issued under Chapter 4,
23689 Employment Security Act, the fees are part of the expense of administering that chapter.

23690 (d) A presiding officer assigned under this section may not participate in any case in
23691 which the presiding officer is an interested party. Each decision of a presiding officer shall
23692 represent the presiding officer's independent judgment.

23693 (2) In the judgment of the presiding officer having jurisdiction of the proceedings the
23694 consolidation would not be prejudicial to any party, when the same or substantially similar
23695 evidence is relevant and material to the matters in issue in more than one proceeding:

23696 (a) the presiding officer may fix the same time and place for considering each matter;

23697 (b) jointly conduct hearings;

23698 (c) make a single record of the proceedings; and

23699 (d) consider evidence introduced with respect to one proceeding as introduced in the
23700 others.

23701 (3) (a) The director shall keep a full and complete record of all adjudicative proceedings
23702 in connection with a disputed matter.

23703 (b) All testimony at any hearing shall be recorded but need not be transcribed unless the
23704 disputed matter is appealed. If a party requests transcription, the transcription shall be provided
23705 at the party's expense.

23706 (c) All records on appeals shall be maintained in the offices of the Division of
23707 Adjudication. The records shall include an appeal docket showing the receipt and disposition of
23708 the appeals.

23709 (4) A party in interest shall be given notice of the entry of a presiding officer's order or
23710 any order or award of the department. The mailing of the copy of the order or award to the
23711 last-known address in the files of the department of a party in interest and to the attorneys or
23712 agents of record in the case, if any, is considered to be notice of the order.

23713 (5) In any formal adjudication proceeding, the presiding officer may take any action
23714 permitted under Section [~~63-46b-8~~] 63G-4-206.

23715 Section 478. Section **35A-1-303** is amended to read:

23716 **35A-1-303. Rulemaking.**

23717 (1) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

23718 Administrative Rulemaking Act, the department shall make rules governing adjudicative
23719 procedures including the forms of notices and the manner of serving notice in all claims.

23720 (b) Except as provided in this title and [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
23721 Administrative Procedures Act, the rules made under this section are not required to conform to
23722 common law or statutory rules of evidence or other technical rules of procedure.

23723 (2) The rules made under this section shall include procedures to dispose of cases
23724 informally, or to expedite claims adjudication, narrow issues, and simplify the methods of proof
23725 at hearings.

23726 (3) Any rule made concerning proceedings before the Workforce Appeals Board shall
23727 be made in consultation with the Workforce Appeals Board.

23728 Section 479. Section **35A-3-105** is amended to read:

23729 **35A-3-105. Determination of eligibility and responsibility -- Information from**
23730 **State Tax Commission.**

23731 (1) The division may have access to relevant information contained in the income tax
23732 returns of a client, applicant, or person who has a duty to support a client in determining:

- 23733 (a) eligibility for public assistance;
- 23734 (b) payment responsibilities for institutional care; or
- 23735 (c) any other administrative purpose consistent with this chapter.

23736 (2) The information requested by the division shall be:

- 23737 (a) provided by the State Tax Commission on forms furnished by the division; and
- 23738 (b) treated as a private record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,

23739 Government Records Access and Management Act, by the division.

23740 Section 480. Section **35A-3-111** is amended to read:

23741 **35A-3-111. Collection of overpayments.**

23742 (1) The department is responsible for the recovery of overpayments required in Section
23743 35A-3-603.

23744 (2) Excess property liens required in the various programs not transferred to the federal
23745 government shall remain a condition of eligibility in public assistance programs.

23746 (3) A client can appeal an initial department determination that there has been an
23747 overpayment under rules made by the department in accordance with [~~Title 63, Chapter 46a]~~
23748 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

23749 Section 481. Section **35A-3-207** is amended to read:

23750 **35A-3-207. Community-based prevention programs.**

23751 (1) As used in this section:

23752 (a) "political subdivision" means a town, city, county, or school district;

23753 (b) "qualified sponsor" means a:

23754 (i) political subdivision;

23755 (ii) community nonprofit, religious, or charitable organization;

23756 (iii) regional or statewide nonprofit organization; or

23757 (iv) private for profit or nonprofit child care organization with experience and expertise
23758 in operating community-based prevention programs described in Subsection (2) and that are
23759 licensed under Title 62A, Chapter 2.

23760 (2) Within appropriations from the Legislature, the department may provide grants to
23761 qualified sponsors for community-based prevention programs that:

23762 (a) support parents in their primary care giving role to children;

23763 (b) provide positive alternatives to idleness for school-aged children when school is not
23764 in session; and

23765 (c) support other community-based prevention programs.

23766 (3) In awarding grants under this section, the department shall:

23767 (a) request proposals for funding from potential qualified sponsors; and

23768 (b) comply with the requirements of Subsection (4).

23769 (4) In awarding these grants, the department shall ensure that each dollar of funds from
23770 political subdivisions or private funds is matched for each dollar received from the department.

23771 The value of in-kind contributions such as materials, supplies, paid labor, volunteer labor, and
23772 the incremental increase in building maintenance and operation expenses incurred attributable to
23773 the prevention program may be considered in meeting this match requirement.

23774 (5) In awarding a grant under this section, the department shall consider:
23775 (a) the cash portion of the proposed match in relation to the financial resources of the
23776 qualified sponsor; and
23777 (b) the extent to which the qualified sponsor has:
23778 (i) consulted and collaborated with parents of children who are likely to participate,
23779 local parent-teacher organizations, other parent organizations, and the appropriate local
23780 interagency council established under Section [~~63-75-5.7~~] 63M-9-301;
23781 (ii) identified at risk factors that will be ameliorated through the proposed prevention
23782 program;
23783 (iii) identified protective factors and developmental assets that will be supported and
23784 strengthened through the proposed prevention program; and
23785 (iv) the financial support of parents and the organizations specified in Subsection
23786 (5)(b)(i).
23787 (6) At least 50 percent of the grants awarded under this section shall be awarded to
23788 organizations described in Subsection (1)(b)(iv).
23789 (7) No federal funds shall be used as matching funds under this act.
23790 Section 482. Section **35A-3-302** is amended to read:
23791 **35A-3-302. Eligibility requirements.**
23792 (1) The program of cash assistance provided under this part is known as the Family
23793 Employment Program.
23794 (2) (a) The division shall submit a state plan to the Secretary of the United States
23795 Department of Health and Human Services to obtain federal funding under the Temporary
23796 Assistance for Needy Families Block Grant.
23797 (b) The division shall make the plan consistent with this part and federal law.
23798 (c) If a discrepancy arises between a provision of the state plan and this part, this part
23799 supersedes the provision in the state plan.
23800 (3) The services and supports under this part are for both one-parent and two-parent
23801 families.

23802 (4) To be eligible for cash assistance under this part, a family shall:
23803 (a) have at least one minor dependent child; or
23804 (b) have a parent who is in the third trimester of a pregnancy.
23805 (5) (a) In an appropriations act, the Legislature shall determine annually the maximum
23806 monthly dollar amount of cash assistance for families based on family size.
23807 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
23808 Administrative Rulemaking Act, the department shall establish rules for eligibility and the
23809 amount of cash assistance a family is eligible to receive under this part based on:
23810 (i) family size;
23811 (ii) family income;
23812 (iii) income disregards; and
23813 (iv) other relevant factors.
23814 (6) The division shall disregard money on deposit in an Individual Development
23815 Account established under Section 35A-3-312 in determining eligibility.
23816 (7) The department shall provide for an appeal of a determination of eligibility in
23817 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
23818 Section 483. Section **35A-3-310** is amended to read:
23819 **35A-3-310. Child care services.**
23820 (1) A parent client may receive assistance for child care under this part for a minor child
23821 in the care and custody of the parent client, unless the other parent in a two-parent family:
23822 (a) is capable of caring for the family's child;
23823 (b) is not employed; and
23824 (c) has not entered into an employment plan with the division.
23825 (2) The division shall encourage a parent client to obtain child care at no cost from a
23826 parent, sibling, relative, or other suitable provider.
23827 (3) Within appropriations from the Legislature and in accordance with [~~Title 63,~~
23828 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department may
23829 make rules governing eligibility for child care services for a minor child in the care and custody

23830 of a parent who does not receive cash assistance under this part.

23831 Section 484. Section **35A-3-602** is amended to read:

23832 **35A-3-602. Definitions.**

23833 As used in this part:

23834 (1) "Adjudicative proceeding" means an action or proceeding of the department
23835 described in Section [~~63-46b-1~~] 63G-4-102.

23836 (2) "Administrative order" means an order issued by the department involving an
23837 overpayment of public assistance.

23838 (3) "Court order" means a judgment or order of any court of this state, another state, or
23839 the federal government that involves an overpayment of public assistance.

23840 (4) "Department" means the Department of Workforce Services.

23841 (5) "Notice of agency action" means the notice required to commence an adjudicative
23842 proceeding as described in Section [~~63-46b-3~~] 63G-4-201.

23843 (6) "Obligor" means an individual who is liable to the state under Section 35A-3-603
23844 and applicable federal statutes and regulations, or an individual against whom an administrative
23845 or judicial order determining overpayment has been obtained.

23846 (7) (a) "Overpayment" means money, public assistance, or any other thing of value
23847 provided under a state or federally funded benefit program to the extent that the person
23848 receiving the thing of value is not entitled to receive it or is not entitled to receive it at the level
23849 provided.

23850 (b) It includes money paid to a provider under this title in connection with public
23851 assistance or any other publicly funded assistance program to the extent that the provider
23852 receives payment:

23853 (i) for goods or services not provided; or

23854 (ii) in excess of the amount to which the provider is entitled.

23855 Section 485. Section **35A-3-604** is amended to read:

23856 **35A-3-604. Obligor presumed to have notice of department's rights -- Authority**
23857 **to administer oaths, issue subpoenas, and compel witnesses and production of documents**

23858 -- Recovery of attorney fees, costs, and interest -- Rulemaking authority -- Administrative
23859 procedures.

23860 (1) An obligor is presumed to have received notice of the rights of the department
23861 under this part upon engaging in this state in any of the acts described in Subsections
23862 35A-3-603(4) and (5) or Section 76-8-1203, 76-8-1204, or 76-8-1205.

23863 (2) For the purposes of this part, the department may administer oaths and certify
23864 official acts, issue subpoenas, and compel witnesses and the production of business records,
23865 documents, and evidence.

23866 (3) (a) Except when an overpayment results from administrative error, the department
23867 may recover from the obligor:

23868 (i) reasonable attorneys' fees;

23869 (ii) costs incurred in pursuing administrative remedies under this part; and

23870 (iii) interest at the rate of 1% a month accruing from the date an administrative or
23871 judicial order is issued determining the amount due under this part.

23872 (b) The department may recover interest, attorneys' fees, and costs, if notice of the
23873 assessment has been included in a notice of agency action issued in conformity with [~~Title 63,~~
23874 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

23875 (4) In accordance with [~~Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
23876 Administrative Rulemaking Act, the department may make, amend, and enforce rules to carry
23877 out the provisions of this part.

23878 (5) Service of all notices and orders under this part shall comply with [~~Title 63, Chapter~~
23879 ~~46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of Civil Procedure,
23880 or rules made by the department that meet standards required by due process.

23881 Section 486. Section **35A-4-202** is amended to read:

23882 **35A-4-202. Employing units.**

23883 As used in this chapter:

23884 (1) (a) "Employing unit" means:

23885 (i) any individual or type of organization that has or subsequent to January 1, 1935, had

- 23886 one or more individuals performing services for it within the state including any:
- 23887 (A) partnership;
 - 23888 (B) association;
 - 23889 (C) trust;
 - 23890 (D) estate;
 - 23891 (E) joint stock company;
 - 23892 (F) insurance company;
 - 23893 (G) limited liability company;
 - 23894 (H) limited liability partnership;
 - 23895 (I) joint venture;
 - 23896 (J) corporation, whether domestic or foreign;
 - 23897 (K) the receiver, trustee in bankruptcy, trustee or successor of any entity listed in
- 23898 Subsections (1)(a)(i)(A) through (J);
- 23899 (L) the legal representative of a deceased person; or
 - 23900 (M) a tribal unit; or
- 23901 (ii) any properly and legally registered professional employer organization, commonly
- 23902 known as an employee leasing company, as defined by Section 58-59-102.
- 23903 (b) The department may adopt rules specific to a professional employer organization
- 23904 pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 23905 (c) All individuals performing services within this state for any employing unit that
- 23906 maintains two or more separate establishments within this state are considered to be performing
- 23907 services for a single employing unit for all the purposes of this chapter.
- 23908 (d) Each individual employed to perform or to assist in performing the work of any
- 23909 person in the service of an employing unit is considered to be engaged by the employing unit for
- 23910 all the purposes of this chapter whether the individual was hired or paid directly by the
- 23911 employing unit or by the person, provided the employing unit had actual or constructive
- 23912 knowledge of the work.
- 23913 (2) "Hospital" means an institution that is licensed, certified, or approved by the

23914 Department of Health as a hospital.

23915 (3) "Institution of higher education," for the purposes of this section, means an
23916 educational institution that:

23917 (a) (i) admits, as regular students only, individuals having a certificate of graduation
23918 from a high school or the recognized equivalent of a certificate;

23919 (ii) is legally authorized in this state to provide a program of education beyond high
23920 school;

23921 (iii) provides:

23922 (A) an educational program for which it awards a bachelor's or higher degree;

23923 (B) a program that is acceptable for full credit toward a bachelor's or higher degree;

23924 (C) a program of postgraduate or postdoctoral studies; or

23925 (D) a program of training to prepare students for gainful employment in a recognized
23926 occupation; and

23927 (iv) is a public or other nonprofit institution.

23928 (b) All colleges and universities in this state are institutions of higher education for
23929 purposes of this section.

23930 Section 487. Section **35A-4-304** is amended to read:

23931 **35A-4-304. Special provisions regarding transfers of unemployment experience**
23932 **and assignment rates.**

23933 (1) As used in this section:

23934 (a) "Knowingly" means having actual knowledge of or acting with deliberate ignorance
23935 or reckless disregard for the prohibition involved.

23936 (b) "Person" has the meaning given that term by Section 7701(a)(1) of the Internal
23937 Revenue Code of 1986.

23938 (c) "Trade or business" includes the employer's workforce.

23939 (d) "Violate or attempt to violate" includes intent to evade, misrepresentation, or willful
23940 nondisclosure.

23941 (2) Notwithstanding any other provision of this chapter, Subsections (3) and (4) shall

23942 apply regarding assignment of rates and transfers of unemployment experience.

23943 (3) (a) If an employer transfers its trade or business, or a portion of its trade or
23944 business, to another employer and, at the time of the transfer, there is common ownership,
23945 management, or control of the employers, then the unemployment experience attributable to
23946 each employer shall be combined into a common experience rate calculation.

23947 (b) The contribution rates of the employers shall be recalculated and made effective
23948 upon the date of the transfer of trade or business as determined by division rule in accordance
23949 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

23950 (c) (i) If one or more of the employers is a qualified employer at the time of the transfer,
23951 then all employing units that are party to a transfer described in Subsection (3)(a) of this section
23952 shall be assigned an overall contribution rate under Subsection 35A-4-303(4)(d), using
23953 combined unemployment experience rating factors, for the rate year during which the transfer
23954 occurred and for the subsequent three rate years.

23955 (ii) If none of the employing units is a qualified employer at the time of the transfer,
23956 then all employing units that are party to the transfer described in Subsection (3)(a) shall be
23957 assigned the highest overall contribution rate applicable at the time of the transfer to any
23958 employer who is party to the acquisition for the rate year during which the transfer occurred and
23959 for subsequent rate years until the time when one or more of the employing units is a qualified
23960 employer.

23961 (iii) Once one or more employing units described in Subsection (3)(c)(ii) is a qualified
23962 employer, all the employing units shall be assigned an overall rate under Subsection
23963 35A-4-303(4)(d), using combined unemployment experience rating factors for subsequent rate
23964 years, not to exceed three years following the year of the transfer.

23965 (d) The transfer of some or all of an employer's workforce to another employer shall be
23966 considered a transfer of its trade or business when, as the result of the transfer, the transferring
23967 employer no longer performs trade or business with respect to the transferred workforce, and
23968 the trade or business is now performed by the employer to whom the workforce is transferred.

23969 (4) (a) Whenever a person is not an employer under this chapter at the time it acquires

23970 the trade or business of an employer, the unemployment experience of the acquired business
23971 shall not be transferred to that person if the division finds that the person acquired the business
23972 solely or primarily for the purpose of obtaining a lower rate of contributions.

23973 (b) The person shall be assigned the applicable new employer rate under Subsection
23974 35A-4-303(5).

23975 (c) In determining whether the business was acquired solely or primarily for the purpose
23976 of obtaining a lower rate of contributions, the division shall use objective factors which may
23977 include:

- 23978 (i) the cost of acquiring the business;
- 23979 (ii) whether the person continued the business enterprise of the acquired business;
- 23980 (iii) how long the business enterprise was continued; or
- 23981 (iv) whether a substantial number of new employees were hired for performance of
23982 duties unrelated to the business activity conducted prior to acquisition.

23983 (5) (a) If a person knowingly violates or attempts to violate Subsection (3) or (4) or any
23984 other provision of this chapter related to determining the assignment of a contribution rate, or if
23985 a person knowingly advises another person in a way that results in a violation of any of those
23986 subsections or provisions, the person is subject to the following penalties:

23987 (i) (A) If the person is an employer, then the employer shall be assigned an overall
23988 contribution rate of 5.4% for the rate year during which the violation or attempted violation
23989 occurred and for the subsequent rate year.

23990 (B) If the person's business is already at 5.4% for any year, or if the amount of increase
23991 in the person's rate would be less than 2% for that year, then a penalty surcharge of
23992 contributions of 2% of taxable wages shall be imposed for the rate year during which the
23993 violation or attempted violation occurred and for the subsequent rate year.

23994 (ii) (A) If the person is not an employer, the person shall be subject to a civil penalty of
23995 not more than \$5,000.

23996 (B) The fine shall be deposited in the penalty and interest account established under
23997 Section 35A-4-506.

23998 (b) (i) In addition to the penalty imposed by Subsection (5)(a), a violation of this
23999 section may be prosecuted as unemployment insurance fraud.

24000 (ii) The determination of the degree of an offense shall be measured by the total value
24001 of all contributions avoided or reduced or contributions sought to be avoided or reduced by the
24002 unlawful conduct as applied to the degrees listed under Subsection 76-8-1301(2)(a).

24003 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
24004 Administrative Rulemaking Act, the division shall make rules to identify the transfer or
24005 acquisition of a business for purposes of this section.

24006 (7) This section shall be interpreted and applied in a manner that meets the minimum
24007 requirements contained in any guidance or regulations issued by the United States Department
24008 of Labor.

24009 Section 488. Section **35A-4-312** is amended to read:

24010 **35A-4-312. Records.**

24011 (1) (a) Each employing unit shall keep true and accurate work records containing any
24012 information the department may prescribe by rule.

24013 (b) The records shall be open to inspection and subject to being copied by the division
24014 or its authorized representatives at a reasonable time and as often as may be necessary.

24015 (c) The employing unit shall make the records available in the state for three years after
24016 the calendar year in which the services were rendered.

24017 (2) The division may require from an employing unit any sworn or unsworn reports
24018 with respect to persons employed by it that the division considers necessary for the effective
24019 administration of this chapter.

24020 (3) Except as provided in this section or in Sections 35A-4-103 and 35A-4-106,
24021 information obtained under this chapter or obtained from an individual may not be published or
24022 open to public inspection in any manner revealing the employing unit's or individual's identity.

24023 (4) (a) The information obtained by the division under this section may not be used in
24024 court or admitted into evidence in an action or proceeding, except:

24025 (i) in an action or proceeding arising out of this chapter;

24026 (ii) in an action or proceeding by the Labor Commission to enforce the provisions of
24027 Title 34, Chapter 23, Employment of Minors, Chapter 28, Payment of Wages, Chapter 40, Utah
24028 Minimum Wage Act, or Title 34A, Utah Labor Code, provided the Labor Commission enters
24029 into a written agreement with the division under Subsection (6)(b); or

24030 (iii) under the terms of a court order obtained under Subsection [~~63-2-202~~]
24031 63G-2-202(7) and Section [~~63-2-207~~] 63G-2-207 of the Government Records Access and
24032 Management Act.

24033 (b) The information obtained by the division under this section shall be disclosed to:

24034 (i) a party to an unemployment insurance hearing before an administrative law judge of
24035 the department or a review by the Workforce Appeals Board to the extent necessary for the
24036 proper presentation of the party's case; or

24037 (ii) an employer, upon request in writing for any information concerning claims for
24038 benefits with respect to the employer's former employees.

24039 (5) The information obtained by the division under this section may be disclosed to:

24040 (a) an employee of the department in the performance of the employee's duties in
24041 administering this chapter or other programs of the department;

24042 (b) an employee of the Labor Commission for the purpose of carrying out the programs
24043 administered by the Labor Commission;

24044 (c) an employee of the governor's office and other state governmental agencies
24045 administratively responsible for statewide economic development, to the extent necessary for
24046 economic development policy analysis and formulation;

24047 (d) an employee of other governmental agencies that are specifically identified and
24048 authorized by federal or state law to receive the information for the purposes stated in the law
24049 authorizing the employee of the agency to receive the information;

24050 (e) an employee of a governmental agency or workers' compensation insurer to the
24051 extent the information will aid in the detection or avoidance of duplicate, inconsistent, or
24052 fraudulent claims against a workers' compensation program, public assistance funds, or the
24053 recovery of overpayments of workers' compensation or public assistance funds;

24054 (f) an employee of a law enforcement agency to the extent the disclosure is necessary to
24055 avoid a significant risk to public safety or in aid of a felony criminal investigation;

24056 (g) an employee of the State Tax Commission or the Internal Revenue Service for the
24057 purposes of audit verification or simplification, state or federal tax compliance, verification of
24058 Standard Industry Codes, and statistics;

24059 (h) an employee or contractor of the department or an educational institution, or other
24060 governmental entity engaged in workforce investment and development activities under the
24061 Workforce Investment Act of 1998 for the purpose of coordinating services with the
24062 department, evaluating the effectiveness of those activities, and measuring performance;

24063 (i) an employee of the Governor's Office of Economic Development, for the purpose of
24064 periodically publishing in the Directory of Business and Industry, the name, address, telephone
24065 number, number of employees by range, Standard Industrial Code, and type of ownership of
24066 Utah employers;

24067 (j) the public for any purpose following a written waiver by all interested parties of their
24068 rights to nondisclosure; or

24069 (k) an individual whose wage data has been submitted to the department by an
24070 employer, so long as no information other than the individual's wage data and the identity of the
24071 party who submitted the information is provided to the individual.

24072 (6) Disclosure of private information under Subsection (4)(a)(ii) or Subsection (5), with
24073 the exception of Subsections (5)(a) and (f), shall be made only if:

24074 (a) the division determines that the disclosure will not have a negative effect on the
24075 willingness of employers to report wage and employment information or on the willingness of
24076 individuals to file claims for unemployment benefits; and

24077 (b) the agency enters into a written agreement with the division in accordance with rules
24078 made by the department.

24079 (7) (a) The employees of a division of the department other than the Workforce
24080 Development and Information Division and the Unemployment Insurance Division or an agency
24081 receiving private information from the division under this chapter are subject to the same

24082 requirements of privacy and confidentiality and to the same penalties for misuse or improper
24083 disclosure of the information as employees of the division.

24084 (b) Use of private information obtained from the department by a person, or for a
24085 purpose other than one authorized in Subsection (4) or (5) violates Subsection 76-8-1301(4).

24086 Section 489. Section **35A-4-401** is amended to read:

24087 **35A-4-401. Benefits -- Weekly benefit amount -- Computation of benefits --**
24088 **Department to prescribe rules -- Notification of benefits -- Bonuses.**

24089 (1) (a) Benefits are payable from the fund to an individual who is or becomes
24090 unemployed and eligible for benefits.

24091 (b) All benefits shall be paid through the employment offices or other agencies
24092 designated by the division in accordance with rules the department may prescribe in accordance
24093 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

24094 (2) (a) An individual's "weekly benefit amount" is an amount equal to 1/26th,
24095 disregarding any fraction of \$1, of the individual's total wages for insured work paid during that
24096 quarter of the base period in which the total wages were highest.

24097 (b) The weekly benefit amount may not exceed the amount determined as follows:

24098 (i) With respect to an individual whose benefit year commences on or after January 1,
24099 2001, 65% of the "insured average fiscal year weekly wage" during the preceding fiscal year,
24100 e.g., fiscal year 2000 for individuals establishing benefit years in 2001, disregarding any fraction
24101 of \$1, constitutes the maximum "weekly benefit amount" payable.

24102 (ii) With respect to an individual who files a claim for benefits on or after July 4, 2004,
24103 62.5% of the insured average fiscal year weekly wage during the preceding fiscal year,
24104 disregarding any fraction of \$1, constitutes the maximum weekly benefit amount payable.

24105 (c) (i) Except as otherwise provided in Subsection (2)(c)(ii), the "weekly benefit
24106 amount" of an individual who is receiving, or who is eligible to receive, based upon the
24107 individual's previous employment, a pension, which includes a governmental, social security, or
24108 other pension, retirement or disability retirement pay, under a plan maintained or contributed to
24109 by a base-period employer is the "weekly benefit amount" which is computed under this section

24110 less 100% of the retirement benefits, that are attributable to a week, disregarding any fraction of
24111 \$1.

24112 (ii) With respect to an individual whose benefit year begins after July 1, 2004, and ends
24113 on or before July 1, 2011, the "weekly benefit amount" of that individual, who is receiving or
24114 who is eligible to receive Social Security benefits based upon the individual's previous
24115 employment, is the "weekly benefit amount" which is computed under this section less 50% of
24116 the individual's Social Security benefits that are attributable to the week, but not below zero.

24117 (d) (i) (A) The weekly benefit amount and the potential benefits payable to an individual
24118 who, subsequent to the commencement of the individual's benefit year, becomes or is
24119 determined to be eligible to receive retirement benefits or increased retirement benefits, shall be
24120 recomputed effective with the first calendar week during the individual's benefit year with
24121 respect to which the individual is eligible to receive retirement benefits or increased retirement
24122 benefits.

24123 (B) The new weekly benefit amount shall be determined under this Subsection (2).

24124 (ii) As recomputed the total benefits potentially payable, commencing with the effective
24125 date of the recomputation, shall be equal to the recomputed weekly benefit amount times the
24126 quotient obtained by dividing the potential benefits unpaid prior to the recomputation by the
24127 initial weekly benefit amount, disregarding fractions.

24128 (3) (a) An eligible individual who is unemployed in any week shall be paid with respect
24129 to that week a benefit in an amount equal to the individual's weekly benefit amount less that part
24130 of the individual's wage payable to the individual with respect to that week that is in excess of
24131 30% of the individual's weekly benefit amount.

24132 (b) The resulting benefit payable shall disregard any fraction of \$1.

24133 (c) For the purpose of this Subsection (3) "wages" does not include a grant paid to the
24134 individual as public assistance.

24135 (4) (a) An otherwise eligible individual is entitled during a benefit year to a total amount
24136 of benefits determined by multiplying the individual's weekly benefit amount times the
24137 individual's potential duration.

24138 (b) To determine an individual's potential duration, the individual's total wages for
 24139 insured work paid during the base period is multiplied by 27%, disregarding any fraction of \$1,
 24140 and divided by the individual's weekly benefit amount, disregarding any fraction, but not less
 24141 than ten nor more than 26.

24142 (5) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 24143 Administrative Rulemaking Act, the department may by rule prescribe:

24144 (i) that the existence of unemployment, eligibility for benefits, and the amount of
 24145 benefits payable shall be determined in the case of an otherwise eligible individual who, within a
 24146 week or other period of unemployment, is separated from or secures work on a regular
 24147 attachment basis for that portion of the week or other period of unemployment occurring before
 24148 or after separation from or securing of work; and

24149 (ii) in the case of an individual working on a regular attachment basis, eligibility for
 24150 benefits and the amount of benefits payable for periods of unemployment longer than a week.

24151 (b) The rules made shall be reasonably calculated to secure general results substantially
 24152 similar to those provided by this chapter with respect to weeks of unemployment.

24153 (6) The division shall, in all cases involving actual or potential disqualifying issues and
 24154 prior to the payment of benefits to an eligible individual, notify the individual's most recent
 24155 employer of the eligibility determination.

24156 (7) Upon written request of an individual made under rules of the department in
 24157 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
 24158 Act, all remuneration for insured work paid to the individual during the individual's period in the
 24159 form of a bonus or lump-sum payment shall, for benefit purposes, be apportioned to the
 24160 calendar quarters in which the remuneration was earned.

24161 Section 490. Section **35A-4-502** is amended to read:

24162 **35A-4-502. Administration of Employment Security Act.**

24163 (1) (a) The department shall administer this chapter through the division.

24164 (b) The department may make, amend, or rescind any rules and special orders
 24165 necessary for the administration of this chapter.

- 24166 (c) The division may:
- 24167 (i) employ persons;
- 24168 (ii) make expenditures;
- 24169 (iii) require reports;
- 24170 (iv) make investigations;
- 24171 (v) make audits of any or all funds provided for under this chapter when necessary; and
- 24172 (vi) take any other action it considers necessary or suitable to that end.
- 24173 (d) No later than the first day of October of each year, the department shall submit to
- 24174 the governor a report covering the administration and operation of this chapter during the
- 24175 preceding calendar year and shall make any recommendations for amendments to this chapter as
- 24176 the department considers proper.
- 24177 (e) (i) The report required under Subsection (1)(d) shall include a balance sheet of the
- 24178 moneys in the fund in which there shall be provided, if possible, a reserve against liability in
- 24179 future years to pay benefits in excess of the then current contributions, which reserve shall be
- 24180 set up by the division in accordance with accepted actuarial principles on the basis of statistics
- 24181 of employment, business activity, and other relevant factors for the longest possible period.
- 24182 (ii) Whenever the department believes that a change in contribution or benefit rates will
- 24183 become necessary to protect the solvency of the fund, it shall promptly inform the governor and
- 24184 the Legislature and make appropriate recommendations.
- 24185 (2) (a) The department may make, amend, or rescind rules in accordance with [~~Title 63;~~
- 24186 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 24187 (b) The director of the division or the director's designee may adopt, amend, or rescind
- 24188 special orders after appropriate notice and opportunity to be heard. Special orders become
- 24189 effective ten days after notification or mailing to the last-known address of the individuals or
- 24190 concerns affected thereby.
- 24191 (3) The director of the division or the director's designee shall cause to be printed for
- 24192 distribution to the public:
- 24193 (a) the text of this chapter;

24194 (b) the department's rules pertaining to this chapter;
24195 (c) the department's annual reports to the governor required by Subsection (1)(e); and
24196 (d) any other material the director of the division or the director's designee considers
24197 relevant and suitable and shall furnish them to any person upon application.

24198 (4) (a) The division may delegate to any person so appointed the power and authority it
24199 considers reasonable and proper for the effective administration of this chapter and may bond
24200 any person handling moneys or signing checks under this authority.

24201 (b) The department may, when permissible under federal and state law, make
24202 arrangements to voluntarily elect coverage under the United States Civil Service Retirement
24203 System or a comparable private retirement plan with respect to past as well as future services of
24204 individuals employed under this chapter who:

24205 (i) were hired prior to October 1, 1980; and
24206 (ii) have been retained by the department without significant interruption in the
24207 employees' services for the department.

24208 (c) An employee of the department who no longer may participate in a federal or other
24209 retirement system as a result of a change in status or appropriation under this chapter may
24210 purchase credit in a retirement system created under Title 49, Chapter 13, Public Employees'
24211 Noncontributory Retirement Act, with the employee's assets from the federal or other
24212 retirement system in which the employee may no longer participate.

24213 (5) There is created an Employment Advisory Council composed of the members listed
24214 in Subsections (5)(a) and (b).

24215 (a) The executive director shall appoint:

24216 (i) not less than five employer representatives chosen from individuals recommended by
24217 employers, employer associations, or employer groups;

24218 (ii) not less than five employee representatives chosen from individuals recommended
24219 by employees, employee associations, or employee groups; and

24220 (iii) five public representatives chosen at large.

24221 (b) The executive director or the executive director's designee shall serve as a

24222 nonvoting member of the council.

24223 (c) The employee representatives shall include both union and nonunion employees who
24224 fairly represent the percentage in the labor force of the state.

24225 (d) Employers and employees shall consider nominating members of groups who
24226 historically may have been excluded from the council, such as women, minorities, and
24227 individuals with disabilities.

24228 (e) (i) Except as required by Subsection (5)(e)(ii), as terms of current council members
24229 expire, the executive director shall appoint each new member or reappointed member to a
24230 four-year term.

24231 (ii) Notwithstanding the requirements of Subsection (5)(e)(i), the executive director
24232 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
24233 terms of council members are staggered so that approximately half of the council is appointed
24234 every two years.

24235 (f) When a vacancy occurs in the membership for any reason, the replacement shall be
24236 appointed for the unexpired term.

24237 (g) The executive director shall terminate the term of any council member who ceases
24238 to be representative as designated by the council member's original appointment.

24239 (h) The council shall advise the department and the Legislature in formulating policies
24240 and discussing problems related to the administration of this chapter including:

24241 (i) reducing and preventing unemployment;

24242 (ii) encouraging the adoption of practical methods of vocational training, retraining, and
24243 vocational guidance;

24244 (iii) monitoring the implementation of the Wagner-Peyser Act;

24245 (iv) promoting the creation and development of job opportunities and the reemployment
24246 of unemployed workers throughout the state in every possible way; and

24247 (v) appraising the industrial potential of the state.

24248 (i) The council shall assure impartiality and freedom from political influence in the
24249 solution of the problems listed in Subsection (5)(h).

24250 (j) The executive director or the executive director's designee shall serve as chair of the
24251 council and call the necessary meetings.

24252 (k) (i) A member shall receive no compensation or benefits for the member's services,
24253 but may receive per diem and expenses incurred in the performance of the member's official
24254 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
24255 63A-3-107.

24256 (ii) A member may decline to receive per diem and expenses for the member's service.

24257 (l) The department shall provide staff support to the council.

24258 (6) In the discharge of the duties imposed by this chapter, the division director or the
24259 director's designee as designated by department rule, may in connection with a disputed matter
24260 or the administration of this chapter:

24261 (a) administer oaths and affirmations;

24262 (b) take depositions;

24263 (c) certify to official acts; and

24264 (d) issue subpoenas to compel the attendance of witnesses and the production of books,
24265 papers, correspondence, memoranda, and other records necessary as evidence.

24266 (7) (a) In case of contumacy by or refusal to obey a subpoena issued to any person, any
24267 court of this state within the jurisdiction of which the inquiry is carried on or within the
24268 jurisdiction of which the person guilty of contumacy or refusal to obey is found or resides or
24269 transacts business, upon application by the director of the division or the director's designee
24270 shall have jurisdiction to issue to that person an order requiring the person to appear before the
24271 director or the director's designee to produce evidence, if so ordered, or give testimony
24272 regarding the matter under investigation or in question. Any failure to obey that order of the
24273 court may be punished by the court as contempt.

24274 (b) Any person who, without just cause, fails or refuses to attend and testify or to
24275 answer any lawful inquiry or to produce books, papers, correspondence, memoranda, and other
24276 records, if it is in that person's power to do so, in obedience to a subpoena of the director or the
24277 director's designee shall be punished as provided in Subsection 35A-1-301(1)(b). Each day the

24278 violation continues is a separate offense.

24279 (c) In the event a witness asserts a privilege against self-incrimination, testimony and
24280 evidence from the witness may be compelled pursuant to Title 77, Chapter 22b, Grants of
24281 Immunity.

24282 (8) (a) In the administration of this chapter, the division shall cooperate with the United
24283 States Department of Labor to the fullest extent consistent with the provisions of this chapter
24284 and shall take action, through the adoption of appropriate rules by the department and
24285 administrative methods and standards, as necessary to secure to this state and its citizens all
24286 advantages available under the provisions of:

24287 (i) the Social Security Act that relate to unemployment compensation;

24288 (ii) the Federal Unemployment Tax Act; and

24289 (iii) the Federal-State Extended Unemployment Compensation Act of 1970.

24290 (b) In the administration of Section 35A-4-402, which is enacted to conform with the
24291 requirements of the Federal-State Extended Unemployment Compensation Act of 1970, 26
24292 U.S.C. 3304, the division shall take any action necessary to ensure that the section is
24293 interpreted and applied to meet the requirements of the federal act, as interpreted by the United
24294 States Department of Labor and to secure to this state the full reimbursement of the federal
24295 share of extended and regular benefits paid under this chapter that are reimbursable under the
24296 federal act.

24297 Section 491. Section **35A-4-503** is amended to read:

24298 **35A-4-503. Destruction or disposal of records or reports by division -- Procedure.**

24299 The division may destroy or dispose of reports or records as have been properly
24300 recorded or summarized in the payment records of the division, or that are deemed no longer
24301 necessary in the proper administration of this chapter in accordance with the requirements of the
24302 state records committee pursuant to Section [~~63-2-502~~] 63G-2-502.

24303 Section 492. Section **35A-5-102** is amended to read:

24304 **35A-5-102. Federal grants for retraining.**

24305 (1) By following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,

24306 Chapter 5, Federal Funds Procedures, the state, through the Employment Development Division
24307 may and is encouraged to apply for retraining, community assistance, or technology transfer
24308 funds available through:

- 24309 (a) the United States Department of Defense;
- 24310 (b) United States Department of Labor; or
- 24311 (c) other appropriate federal offices or departments.

24312 (2) In applying for federal funds, the state through its Employment Development
24313 Division or other appropriate office may inform the federal government of state matching or
24314 enhancement funds if those funds are available under Section 67-1-12.

24315 Section 493. Section **35A-5-202** is amended to read:

24316 **35A-5-202. Contracts with providers.**

24317 (1) In compliance with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
24318 Code, the department shall enter into a contract with one or more qualified providers to
24319 implement the workforce improvement plan created under Section 35A-5-201.

24320 (2) A contract entered into under this section shall be:

- 24321 (a) performance based; and
- 24322 (b) structured so that the provider receives reimbursement based on:
 - 24323 (i) job development;
 - 24324 (ii) participant placement in jobs;
 - 24325 (iii) wages and benefits provided; and
 - 24326 (iv) participant retention in jobs over at least a 12-month period.

24327 (3) If the department determines through the procurement process that there are no
24328 qualified providers to implement the workforce improvement plan, the department may
24329 implement the plan.

24330 Section 494. Section **35A-7-106** is amended to read:

24331 **35A-7-106. Penalties for failure to report.**

24332 (1) An employer who fails to timely report the hiring or rehiring of an employee as
24333 required by this chapter is subject to a civil penalty of:

24334 (a) \$25 for each such failure; or
24335 (b) \$500 if the failure to report is intentional and is the result of an agreement between
24336 the employer and the employee to not supply the required information, or to supply false or
24337 incomplete information.

24338 (2) The department may assess the penalty by following the procedures and
24339 requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
24340 The department shall collect any unpaid civil penalty in the same manner as provided for other
24341 penalties under Subsections 35A-4-305(3) and (5).

24342 Section 495. Section **35A-7-107** is amended to read:

24343 **35A-7-107. Use and access to the registry records.**

24344 (1) (a) The records of the registry shall be maintained as private records under Section
24345 [~~63-2-202~~] 63G-2-202.

24346 (b) In addition to those persons granted access to private records under Sections
24347 [~~63-2-202~~] 63G-2-202 and [~~63-2-206~~] 63G-2-206, state or federal agencies may access data
24348 from the registry for the following purposes:

24349 (i) the Office of Recovery Services for use related to locating, establishing, and
24350 enforcing child, medical, and spousal support obligations and other services;

24351 (ii) state agencies which use financial information in determining eligibility for public
24352 assistance programs; and

24353 (iii) federal agencies responsible for periodic matches of new hire registry information
24354 with federal data bases.

24355 (2) Information that is received under this chapter shall be kept by the department for at
24356 least six months.

24357 Section 496. Section **36-11-102** is amended to read:

24358 **36-11-102. Definitions.**

24359 As used in this chapter:

24360 (1) "Aggregate daily expenditures" means:

24361 (a) for a single lobbyist, principal, or government officer, the total of all expenditures

24362 made within a calendar day by the lobbyist, principal, or government officer for the benefit of an
24363 individual public official;

24364 (b) when an expenditure is made by a member of a lobbyist group, the total of all
24365 expenditures made within a calendar day by every member of the lobbyist group for the benefit
24366 of an individual public official; or

24367 (c) for a multiclient lobbyist, the total of all expenditures made by the multiclient
24368 lobbyist within a calendar day for the benefit of an individual public official, regardless of
24369 whether expenditures were attributed to different clients.

24370 (2) "Executive action" means:

24371 (a) nominations and appointments by the governor;

24372 (b) the proposal, drafting, amendment, enactment, or defeat by a state agency of any
24373 rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
24374 Rulemaking Act; and

24375 (c) agency ratemaking proceedings.

24376 (3) (a) "Expenditure" means any of the items listed in this Subsection (3)(a) when given
24377 to or for the benefit of a public official:

24378 (i) a purchase, payment, distribution, loan, gift, advance, deposit, subscription,
24379 forbearance, services, or goods, unless consideration of equal or greater value is received; and

24380 (ii) a contract, promise, or agreement, whether or not legally enforceable, to provide
24381 any of the items listed in Subsection (3)(a)(i).

24382 (b) "Expenditure" does not mean:

24383 (i) a commercially reasonable loan made in the ordinary course of business;

24384 (ii) a campaign contribution reported in accordance with Title 20A, Chapter 11,
24385 Campaign and Financial Reporting Requirements;

24386 (iii) printed informational material that is related to the performance of the recipient's
24387 official duties;

24388 (iv) a devise or inheritance;

24389 (v) any item listed in Subsection (3)(a) if given by a relative;

24390 (vi) a modest item of food or refreshment such as a beverage or pastry offered other
24391 than as part of a meal, the value of which does not exceed \$5;

24392 (vii) a greeting card or other item of little intrinsic value that is intended solely for
24393 presentation; or

24394 (viii) plaques, commendations, or awards presented in public and having a cash value
24395 not exceeding \$50.

24396 (4) (a) "Government officer" means:

24397 (i) an individual elected to a position in state or local government, when acting within
24398 [his] the government officer's official capacity; or

24399 (ii) an individual appointed to or employed in a full-time position by state or local
24400 government, when acting within the scope of [his] the individual's employment.

24401 (b) "Government officer" does not mean a member of the legislative branch of state
24402 government.

24403 (5) "Immediate family" means:

24404 (a) a spouse;

24405 (b) a child residing in the household; or

24406 (c) an individual claimed as a dependent for tax purposes.

24407 (6) "Interested person" means an individual defined in Subsections (9)(b)(iii) and (viii).

24408 (7) "Legislative action" means:

24409 (a) bills, resolutions, amendments, nominations, and other matters pending or proposed
24410 in either house of the Legislature or its committees or requested by a legislator; and

24411 (b) the action of the governor in approving or vetoing legislation.

24412 (8) "Lobbying" means communicating with a public official for the purpose of
24413 influencing the passage, defeat, amendment, or postponement of legislative or executive action.

24414 (9) (a) "Lobbyist" means:

24415 (i) an individual who is employed by a principal; or

24416 (ii) an individual who contracts for economic consideration, other than reimbursement
24417 for reasonable travel expenses, with a principal to lobby a public official.

- 24418 (b) "Lobbyist" does not include:
- 24419 (i) a government officer;
- 24420 (ii) a member or employee of the legislative branch of government;
- 24421 (iii) any person appearing at, or providing written comments to, a hearing conducted in
- 24422 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
- 24423 Act or [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;
- 24424 (iv) any person participating on or appearing before an advisory or study task force,
- 24425 commission, board, or committee, constituted by the Legislature or any agency or department
- 24426 of state government, except legislative standing, appropriation, or interim committees;
- 24427 (v) a representative of a political party;
- 24428 (vi) an individual representing a bona fide church solely for the purpose of protecting
- 24429 the right to practice the religious doctrines of the church unless the individual or church makes
- 24430 an expenditure that confers a benefit on a public official;
- 24431 (vii) a newspaper, television station or network, radio station or network, periodical of
- 24432 general circulation, or book publisher for the purpose of publishing news items, editorials, other
- 24433 comments, or paid advertisements that directly or indirectly urge legislative or executive action;
- 24434 or
- 24435 (viii) an individual who appears on [~~his~~] the individual's own behalf before a committee
- 24436 of the Legislature or an executive branch agency solely for the purpose of testifying in support
- 24437 of or in opposition to legislative or executive action.
- 24438 (10) "Lobbyist group" means two or more lobbyists, principals, government officers,
- 24439 and any combination of lobbyists, principals, and officers who each contribute a portion of an
- 24440 expenditure made to benefit a public official or member of the public official's immediate family.
- 24441 (11) "Multiclient lobbyist" means a single lobbyist, principal, or government officer who
- 24442 represents two or more clients and divides the aggregate daily expenditure made to benefit a
- 24443 public official or member of the public official's immediate family between two or more of those
- 24444 clients.
- 24445 (12) "Person" includes individuals, bodies politic and corporate, partnerships,

24446 associations, and companies.

24447 (13) "Principal" means a person that employs an individual to perform lobbying either as
24448 an employee or as an independent contractor.

24449 (14) "Public official" means:

24450 (a) (i) a member of the Legislature;

24451 (ii) an individual elected to a position in the executive branch; or

24452 (iii) an individual appointed to or employed in the executive or legislative branch if that
24453 individual:

24454 (A) occupies a policymaking position or makes purchasing or contracting decisions;

24455 (B) drafts legislation or makes rules;

24456 (C) determines rates or fees; or

24457 (D) makes adjudicative decisions; or

24458 (b) an immediate family member of a person described in Subsection (14)(a).

24459 (15) "Public official type" means a notation to identify whether a public official is:

24460 (a) (i) a member of the Legislature;

24461 (ii) an individual elected to a position in the executive branch;

24462 (iii) an individual appointed to or employed in a position in the legislative branch who
24463 meets the definition of public official under Subsection (14)(a)(iii); or

24464 (iv) an individual appointed to or employed in a position in the executive branch who
24465 meets the definition of public official under Subsection (14)(a)(iii); or

24466 (b) an immediate family member of a person described in Subsection (14)(b).

24467 (16) "Quarterly reporting period" means the three-month period covered by each
24468 financial report required under Subsection 36-11-201(2)(a).

24469 (17) "Related person" means any person, or agent or employee of a person, who
24470 knowingly and intentionally assists a lobbyist, principal, or government officer in lobbying.

24471 (18) "Relative" means a spouse, child, parent, grandparent, grandchild, brother, sister,
24472 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt, uncle, first cousin, or spouse
24473 of any of these individuals.

24474 (19) (a) "Tangible personal property" means an item having a description that is
24475 consistent with the meaning of tangible personal property found in the Utah Constitution,
24476 Article XIII.

24477 (b) "Tangible personal property" does not include the admission price or cost for
24478 events, meals, recreation, outings, or functions.

24479 Section 497. Section **36-11-103** is amended to read:

24480 **36-11-103. Licensing requirements.**

24481 (1) (a) Before engaging in any lobbying, a lobbyist shall obtain a license from the
24482 lieutenant governor by completing the form required by this section.

24483 (b) The lieutenant governor shall issue licenses to qualified lobbyists.

24484 (c) The lieutenant governor shall prepare a Lobbyist License Application Form that
24485 includes:

24486 (i) a place for the lobbyist's name and business address;

24487 (ii) a place for the name and business address of each principal for whom the lobbyist
24488 works or is hired as an independent contractor;

24489 (iii) a place for the name and address of the person who paid or will pay the lobbyist's
24490 registration fee, if the fee is not paid by the lobbyist;

24491 (iv) a place for the lobbyist to disclose any elected or appointed position that the
24492 lobbyist holds in state or local government, if any;

24493 (v) a place for the lobbyist to disclose the types of expenditures for which the lobbyist
24494 will be reimbursed; and

24495 (vi) a certification to be signed by the lobbyist that certifies that the information
24496 provided in the form is true, accurate, and complete to the best of the lobbyist's knowledge and
24497 belief.

24498 (2) Each lobbyist who obtains a license under this section shall update the licensure
24499 information when the lobbyist accepts employment for lobbying by a new client.

24500 (3) (a) Except as provided in Subsection (4), the lieutenant governor shall grant a
24501 lobbying license to an applicant who:

- 24502 (i) files an application with the lieutenant governor that contains the information
24503 required by this section; and
- 24504 (ii) pays a \$25 filing fee.
- 24505 (b) A license entitles a person to serve as a lobbyist on behalf of one or more principals
24506 and expires on December 31 of each even-numbered year.
- 24507 (4) (a) The lieutenant governor may disapprove an application for a lobbying license:
24508 (i) if the applicant has been convicted of violating Section 76-8-103, 76-8-107,
24509 76-8-108, or 76-8-303 within five years before the date of the lobbying license application;
24510 (ii) if the applicant has been convicted of violating Section 76-8-104 or 76-8-304 within
24511 one year before the date of the lobbying license application;
- 24512 (iii) for the term of any suspension imposed under Section 36-11-401; or
24513 (iv) if, within one year before the date of the lobbying license application, the applicant
24514 has been found to have willingly and knowingly:
- 24515 (A) violated Section 36-11-103, 36-11-201, 36-11-301, 36-11-302, 36-11-303,
24516 36-11-304, 36-11-305, or 36-11-403; or
- 24517 (B) filed a document required by this chapter that the lobbyist knew contained
24518 materially false information or omitted material information.
- 24519 (b) An applicant may appeal the disapproval in accordance with the procedures
24520 established by the lieutenant governor under this chapter and [~~Title 63, Chapter 46b~~] Title 63G,
24521 Chapter 4, Administrative Procedures Act.
- 24522 (5) The lieutenant governor shall deposit license fees in the General Fund.
- 24523 (6) A principal need not obtain a license under this section, but if the principal makes
24524 expenditures to benefit a public official without using a lobbyist as an agent to confer those
24525 benefits, the principal shall disclose those expenditures as required by Sections 36-11-201.
- 24526 (7) Government officers need not obtain a license under this section, but shall disclose
24527 any expenditures made to benefit public officials as required by Sections 36-11-201.
- 24528 (8) Surrender, cancellation, or expiration of a lobbyist license does not absolve the
24529 lobbyist of the duty to file the financial reports if the lobbyist is otherwise required to file the

24530 reports by Section 36-11-201.

24531 Section 498. Section **36-11-404** is amended to read:

24532 **36-11-404. Lieutenant governor's procedures.**

24533 (1) The lieutenant governor shall make rules that provide:

24534 (a) for the appointment of an administrative law judge to adjudicate alleged violations
24535 of this section and to impose penalties under this section;

24536 (b) procedures for license applications, disapprovals, suspensions, revocations, and
24537 reinstatements that comply with the procedures and requirements of [~~Title 63, Chapter 46b~~]
24538 Title 63G, Chapter 4, Administrative Procedures Act.

24539 (2) The lieutenant governor shall develop forms needed for the registration and
24540 disclosure provisions of this chapter.

24541 Section 499. Section **36-12-13** is amended to read:

24542 **36-12-13. Office of Legislative Fiscal Analyst established -- Powers, functions,**
24543 **and duties -- Qualifications.**

24544 (1) There is established an Office of Legislative Fiscal Analyst as a permanent staff
24545 office for the Legislature.

24546 (2) The powers, functions, and duties of the Office of Legislative Fiscal Analyst under
24547 the supervision of the fiscal analyst are:

24548 (a) to analyze in detail the executive budget before the convening of each legislative
24549 session and make recommendations to the Legislature on each item or program appearing in the
24550 executive budget;

24551 (b) to prepare cost estimates on all proposed bills that anticipate state government
24552 expenditures;

24553 (c) to prepare cost estimates on all proposed bills that anticipate expenditures by
24554 county, municipal, local district, or special service district governments;

24555 (d) to prepare cost estimates on all proposed bills that anticipate direct expenditures by
24556 any Utah resident, and the cost to the overall impacted Utah resident population;

24557 (e) to prepare a review and analysis of revenue estimates for existing and proposed

24558 revenue acts;

24559 (f) to report instances in which the administration may be failing to carry out the
24560 expressed intent of the Legislature;

24561 (g) to direct attention to each new proposed service contained in the governor's budget;

24562 (h) to direct attention to each budget item previously denied by the Legislature;

24563 (i) to propose and analyze statutory changes for more effective operational economies
24564 or more effective administration;

24565 (j) to prepare, after each session of the Legislature, a summary showing the effect of the
24566 final legislative program on the financial condition of the state;

24567 (k) to conduct organizational and management improvement studies;

24568 (l) to prepare and deliver upon request of any interim committee or the Legislative
24569 Management Committee, reports on the finances of the state and on anticipated or proposed
24570 requests for appropriations;

24571 (m) to recommend areas for research studies by the executive department or the interim
24572 committees;

24573 (n) to assist in prescribing the format for the presentation of the governor's budget to
24574 facilitate program and in-depth review of state expenditures in accordance with Sections
24575 ~~[63-38-14]~~ 63J-1-501 and ~~[63-38-15]~~ 63J-1-502;

24576 (o) to recommend to the appropriations subcommittees the agencies or programs for
24577 which an in-depth budget review should be requested, and to recommend to the Legislative
24578 Management Committee the priority in which the request should be made;

24579 (p) to appoint and develop a professional staff within budget limitations; and

24580 (q) to prepare and submit the annual budget request for the office.

24581 (3) (a) In accordance with Subsection (3)(b) and subject to Subsection (3)(c), the
24582 Office of Legislative Fiscal Analyst shall submit an annual report to the Executive
24583 Appropriations Committee of the Legislature, at the committee's November meeting, on funds
24584 expended by the state during the preceding state fiscal year to provide financial assistance or
24585 services to low-income individuals and families.

- 24586 (b) The report described in Subsection (3)(a) shall:
- 24587 (i) separate the funds expended into categories by program, service, or population
- 24588 served;
- 24589 (ii) indicate whether the expended funds described in Subsection (3)(a) are state or
- 24590 federal funds; and
- 24591 (iii) include a total of all state funds and federal funds expended by the state in the
- 24592 preceding fiscal year to provide financial assistance or services to low-income individuals and
- 24593 families.
- 24594 (c) If the Executive Appropriations Committee of the Legislature does not meet in
- 24595 November, the Office of Legislative Fiscal Analyst shall submit the report described in
- 24596 Subsection (3)(a) at the committee's next meeting.
- 24597 (4) The legislative fiscal analyst shall have a master's degree in public administration,
- 24598 political science, economics, accounting, or the equivalent in academic or practical experience.
- 24599 (5) In carrying out the duties provided for in this section, the legislative fiscal analyst
- 24600 may obtain access to all records, documents, and reports necessary to the scope of [his] the
- 24601 legislative fiscal analyst's duties according to the procedures contained in Title 36, Chapter 14,
- 24602 Legislative Subpoena Powers.
- 24603 Section 500. Section **36-12-15** is amended to read:
- 24604 **36-12-15. Office of Legislative Auditor General established -- Qualifications --**
- 24605 **Powers, functions, and duties.**
- 24606 (1) There is created an Office of Legislative Auditor General as a permanent staff office
- 24607 for the Legislature.
- 24608 (2) The legislative auditor general shall be a licensed certified public accountant or
- 24609 certified internal auditor with at least five years experience in the auditing or public accounting
- 24610 profession, or the equivalent, prior to appointment.
- 24611 (3) The legislative auditor general shall appoint and develop a professional staff within
- 24612 budget limitations.
- 24613 (4) (a) The Office of the Legislative Auditor General shall exercise the constitutional

24614 authority provided in Article VI, Sec. 33, Utah Constitution.

24615 (b) Under the direction of the legislative auditor general, the office shall:

24616 (i) conduct comprehensive and special purpose audits, examinations, and reviews of any
24617 entity that receives public funds;

24618 (ii) prepare and submit a written report on each audit, examination, or review to the
24619 Legislative Management Committee, the audit subcommittee, and to all members of the
24620 Legislature within 75 days after the audit or examination is completed; and

24621 (iii) as provided in Section 36-24-101:

24622 (A) monitor all new programs and agencies created during each Annual General Session
24623 or Special Session of the Legislature;

24624 (B) provide each new program and agency created with a list of best practices in setting
24625 up their program or agency, including:

24626 (I) policies;

24627 (II) performance measures; and

24628 (III) data collection;

24629 (C) send each new program and agency:

24630 (I) within one year after its creation, a survey instrument requesting a self evaluation
24631 that includes policies, performance measures, and data collection; and

24632 (II) within two years after its creation, a survey instrument requesting a self evaluation
24633 that includes policies, performance measures, and data collection; and

24634 (D) (I) using the new program or agency's response to the self evaluation survey
24635 instruments, recommend to the legislative audit subcommittee that the office conduct an audit of
24636 those new programs and agencies created on which questions have arisen as a result of the
24637 response to the survey instrument and provide a limited scope audit report on those new
24638 programs or agencies on which it receives direction to audit to the legislative interim committee
24639 and to the legislative appropriations subcommittee with oversight responsibility for that
24640 program or agency on or before the November interim meeting; and

24641 (II) include within this limited scope audit report a recommendation as to whether the

24642 program or agency is fulfilling its statutory guidelines and directives.

24643 (5) The audit, examination, or review of any entity that receives public funds may
24644 include a determination of any or all of the following:

24645 (a) the honesty and integrity of all its fiscal affairs;

24646 (b) the accuracy and reliability of its financial statements and reports;

24647 (c) whether or not its financial controls are adequate and effective to properly record
24648 and safeguard its acquisition, custody, use, and accounting of public funds;

24649 (d) whether or not its administrators have faithfully adhered to legislative intent;

24650 (e) whether or not its operations have been conducted in an efficient, effective, and
24651 cost efficient manner;

24652 (f) whether or not its programs have been effective in accomplishing intended
24653 objectives; and

24654 (g) whether or not its management control and information systems are adequate and
24655 effective.

24656 (6) The Office of Legislative Auditor General may:

24657 (a) (i) notwithstanding any other provision of law, obtain access to all records,
24658 documents, and reports of any entity that receives public funds that are necessary to the scope
24659 of its duties; and

24660 (ii) if necessary, issue a subpoena to obtain access as provided in Subsection (6)(a)(i)
24661 using the procedures contained in Title 36, Chapter 14, Legislative Subpoena Powers;

24662 (b) establish policies, procedures, methods, and standards of audit work for the office
24663 and staff;

24664 (c) prepare and submit each audit report without interference from any source relative
24665 to the content of the report, the conclusions reached in the report, or the manner of disclosing
24666 the results of ~~his~~ the legislative auditor general's findings; and

24667 (d) prepare and submit the annual budget request for the office.

24668 (7) To preserve the professional integrity and independence of the office:

24669 (a) no legislator or public official may urge the appointment of any person to the office;

24670 and

24671 (b) the legislative auditor general may not be appointed to serve on any board,
24672 authority, commission, or other agency of the state during [his] the legislative auditor general's
24673 term as legislative auditor general.

24674 (8) The following records in the custody or control of the legislative auditor general
24675 shall be protected records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
24676 Records Access and Management Act:

24677 (a) Records that would disclose information relating to allegations of personal
24678 misconduct, gross mismanagement, or illegal activity of a past or present governmental
24679 employee if the information or allegation cannot be corroborated by the legislative auditor
24680 general through other documents or evidence, and the records relating to the allegation are not
24681 relied upon by the legislative auditor general in preparing a final audit report.

24682 (b) Records and audit workpapers to the extent they would disclose the identity of a
24683 person who during the course of a legislative audit, communicated the existence of any waste of
24684 public funds, property, or manpower, or a violation or suspected violation of a law, rule, or
24685 regulation adopted under the laws of this state, a political subdivision of the state, or any
24686 recognized entity of the United States, if the information was disclosed on the condition that the
24687 identity of the person be protected.

24688 (c) Prior to the time that an audit is completed and the final audit report is released,
24689 records or drafts circulated to a person who is not an employee or head of a governmental
24690 entity for their response or information.

24691 (d) Records that would disclose an outline or part of any audit survey plans or audit
24692 program.

24693 (e) Requests for audits, if disclosure would risk circumvention of an audit.

24694 (f) The provisions of Subsections (8)(a), (b), and (c) do not prohibit the disclosure of
24695 records or information that relate to a violation of the law by a governmental entity or employee
24696 to a government prosecutor or peace officer.

24697 (g) The provisions of this section do not limit the authority otherwise given to the

24698 legislative auditor general to classify a document as public, private, controlled, or protected
24699 under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
24700 Management Act.

24701 (9) The legislative auditor general shall:

24702 (a) be available to the Legislature and to its committees for consultation on matters
24703 relevant to areas of [~~his~~] the legislative auditor general's professional competence and shall
24704 perform, or otherwise assist in the performance of, a health insurance provision review as
24705 provided in Section 36-12-5;

24706 (b) conduct special audits as requested by the Legislative Management Committee;

24707 (c) report immediately in writing to the Legislative Management Committee through its
24708 audit subcommittee any apparent violation of penal statutes disclosed by the audit of a state
24709 agency and furnish to the Legislative Management Committee all information relative to the
24710 apparent violation;

24711 (d) report immediately in writing to the Legislative Management Committee through its
24712 audit subcommittee any apparent instances of malfeasance or nonfeasance by a state officer or
24713 employee disclosed by the audit of a state agency; and

24714 (e) make any recommendations to the Legislative Management Committee through its
24715 audit subcommittee with respect to the alteration or improvement of the accounting system used
24716 by any entity that receives public funds.

24717 (10) (a) Prior to each annual general session, the legislative auditor general shall
24718 prepare a summary of the audits conducted and of actions taken based upon them during the
24719 preceding year.

24720 (b) This report shall also set forth any items and recommendations that are important
24721 for consideration in the forthcoming session, together with a brief statement or rationale for
24722 each item or recommendation.

24723 (c) The legislative auditor general shall deliver the report to the Legislature and to the
24724 appropriate committees of the Legislature.

24725 (11) (a) No person or entity may:

24726 (i) interfere with a legislative audit, examination, or review of any entity conducted by
24727 the office; or

24728 (ii) interfere with the office relative to the content of the report, the conclusions reached
24729 in the report, or the manner of disclosing the results and findings of the office.

24730 (b) Any person or entity that violates the provisions of this Subsection (11) is guilty of a
24731 class B misdemeanor.

24732 Section 501. Section **36-23-106** is amended to read:

24733 **36-23-106. Duties -- Reporting.**

24734 (1) The committee shall:

24735 (a) conduct a sunrise review in accordance with Section 36-23-107 for all applications
24736 submitted in accordance with Section 36-23-105;

24737 (b) conduct a sunset review for an occupational or professional license classification
24738 that is referred to the committee by any other legislative committee by applying:

24739 (i) the criteria in Section 36-23-107;

24740 (ii) the criteria in [~~Title 63, Chapter 55~~] Title 63I, Chapter 1, Legislative Oversight and
24741 Sunset Act; and

24742 (iii) any other appropriate criteria; and

24743 (c) submit a written report by no later than December 31 of each calendar year to:

24744 (i) the speaker of the House of Representatives;

24745 (ii) the president of the Senate;

24746 (iii) the chair of the House Rules Committee;

24747 (iv) the chair of the Senate Rules Committee; and

24748 (v) the chairs of the Commerce and Revenue Appropriations Subcommittee.

24749 (2) The written report required by Subsection (1)(c) shall include:

24750 (a) all findings and recommendations made by the committee under Subsection (1) or

24751 (3) in that calendar year; and

24752 (b) a summary report for each sunrise review conducted by the committee stating:

24753 (i) whether the sunrise review was conducted under Subsection (1) or (3);

24754 (ii) whether or not the sunrise review included a review of specific proposed statutory
24755 language;

24756 (iii) any action taken by the committee as a result of the sunrise review; and

24757 (iv) the number of legislative members that voted in favor of the action described in
24758 Subsection (2)(b)(iii).

24759 (3) The committee may:

24760 (a) conduct a sunrise review of any proposal to newly regulate an occupation or
24761 profession;

24762 (b) conduct any other review referred to it by the Legislature, the Legislative
24763 Management Committee, or other legislative committee; or

24764 (c) conduct any other study related to regulation of an occupation or profession under
24765 Title 58, Occupations and Professions.

24766 Section 502. Section **38-1-11** is amended to read:

24767 **38-1-11. Enforcement -- Time for -- Lis pendens -- Action for debt not affected --**
24768 **Instructions and form affidavit and motion.**

24769 (1) As used in this section:

24770 (a) "Owner" is as defined in Section 38-11-102.

24771 (b) "Residence" is as defined in Section 38-11-102.

24772 (2) A lien claimant shall file an action to enforce the lien filed under this chapter within
24773 180 days from the day on which the lien claimant filed a notice of claim under Section 38-1-7.

24774 (3) (a) Within the time period provided for filing in Subsection (2) the lien claimant
24775 shall file for record with the county recorder of each county in which the lien is recorded a
24776 notice of the pendency of the action, in the manner provided in actions affecting the title or right
24777 to possession of real property, or the lien shall be void, except as to persons who have been
24778 made parties to the action and persons having actual knowledge of the commencement of the
24779 action.

24780 (b) The burden of proof is upon the lien claimant and those claiming under the lien
24781 claimant to show actual knowledge under Subsection (3)(a).

24782 (4) (a) A lien filed under this chapter is automatically and immediately void if an action
24783 to enforce the lien is not filed within the time required by this section.

24784 (b) Notwithstanding Section 78-12-40, a court has no subject matter jurisdiction to
24785 adjudicate a lien that becomes void under Subsection (4)(a).

24786 (5) This section may not be interpreted to impair or affect the right of any person to
24787 whom a debt may be due for any work done or materials furnished to maintain a personal action
24788 to recover the debt.

24789 (6) (a) If a lien claimant files an action to enforce a lien filed under this chapter
24790 involving a residence, the lien claimant shall include with the service of the complaint on the
24791 owner of the residence:

24792 (i) instructions to the owner of the residence relating to the owner's rights under Title
24793 38, Chapter 11, Residence Lien Restriction and Lien Recovery Fund Act; and

24794 (ii) a form to enable the owner of the residence to specify the grounds upon which the
24795 owner may exercise available rights under Title 38, Chapter 11, Residence Lien Restriction and
24796 Lien Recovery Fund Act.

24797 (b) The instructions and form required by Subsection (6)(a) shall meet the requirements
24798 established by rule by the Division of Occupational and Professional Licensing in accordance
24799 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

24800 (c) If a lien claimant fails to provide to the owner of the residence the instructions and
24801 form required by Subsection (6)(a), the lien claimant shall be barred from maintaining or
24802 enforcing the lien upon the residence.

24803 (d) Judicial determination of the rights and liabilities of the owner of the residence
24804 under this chapter and Title 38, Chapter 11, Residence Lien Restriction and Lien Recovery
24805 Fund Act, and Title 14, Chapter 2, Private Contracts, shall be stayed until after the owner is
24806 given a reasonable period of time to establish compliance with Subsections 38-11-204(4)(a) and
24807 (4)(b) through an informal proceeding, as set forth in [~~Title 63, Chapter 46b~~] Title 63G,
24808 Chapter 4, Administrative Procedures Act, commenced within 30 days of the owner being
24809 served summons in the foreclosure action, at the Division of Occupational and Professional

24810 Licensing and obtain a certificate of compliance or denial of certificate of compliance, as defined
24811 in Section 38-11-102.

24812 (e) An owner applying for a certificate of compliance under Subsection (6)(d) shall send
24813 by certified mail to all lien claimants:

24814 (i) a copy of the application for a certificate of compliance; and

24815 (ii) all materials filed in connection with the application.

24816 (f) The Division of Occupational and Professional Licensing shall notify all lien
24817 claimants listed in an owner's application for a certificate of compliance under Subsection (6)(d)
24818 of the issuance or denial of a certificate of compliance.

24819 (7) The written notice requirement applies to liens filed on or after July 1, 2004.

24820 Section 503. Section **38-1-27** is amended to read:

24821 **38-1-27. State Construction Registry -- Form and contents of notice of**
24822 **commencement, preliminary notice, and notice of completion.**

24823 (1) As used in this section and Sections 38-1-30 through 38-1-37:

24824 (a) "Alternate filing" means a legible and complete filing made in a manner established
24825 by the division under Subsection (2)(e) other than an electronic filing.

24826 (b) "Cancel" means to indicate that a filing is no longer given effect.

24827 (c) "Construction project," "project," or "improvement" means all labor, equipment, and
24828 materials provided:

24829 (i) under an original contract; or

24830 (ii) by, or under contracts with, an owner-builder.

24831 (d) "Database" means the State Construction Registry created in this section.

24832 (e) (i) "Designated agent" means the third party the Division of Occupational and
24833 Professional Licensing contracts with to create and maintain the State Construction Registry.

24834 (ii) The designated agent is not an agency, instrumentality, or a political subdivision of
24835 the state.

24836 (f) "Division" means the Division of Occupational and Professional Licensing.

24837 (g) "Interested person" means a person who may be affected by a construction project.

24838 (h) "Program" means the State Construction Registry Program created in this section.

24839 (2) Subject to receiving adequate funding through a legislative appropriation and

24840 contracting with an approved third party vendor who meets the requirements of Sections

24841 38-1-30 through 38-1-37, there is created the State Construction Registry Program that shall:

24842 (a) (i) assist in protecting public health, safety, and welfare; and

24843 (ii) promote a fair working environment;

24844 (b) be overseen by the division with the assistance of the designated agent;

24845 (c) provide a central repository for notices of commencement, preliminary notices, and

24846 notices of completion filed in connection with all privately owned construction projects as well

24847 as all state and local government owned construction projects throughout Utah;

24848 (d) be accessible for filing and review by way of the program Internet website of:

24849 (i) notices of commencement;

24850 (ii) preliminary notices; and

24851 (iii) notices of completion;

24852 (e) accommodate:

24853 (i) electronic filing of the notices described in Subsection (2)(d); and

24854 (ii) alternate filing of the notices described in Subsection (2)(d) by U.S. mail, telefax, or

24855 any other alternate method as provided by rule made by the division in accordance with [Title

24856 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

24857 (f) (i) provide electronic notification for up to three e-mail addresses for each interested

24858 person or company who requests notice from the construction notice registry; and

24859 (ii) provide alternate means of notification for a person who makes an alternate filing,

24860 including U.S. mail, telefax, or any other method as prescribed by rule made by the division in

24861 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking

24862 Act; and

24863 (g) provide hard-copy printing of electronic receipts for an individual filing evidencing

24864 the date and time of the individual filing and the content of the individual filing.

24865 (3) (a) The designated agent shall provide notice of all other filings for a project to any

24866 person who files a notice of commencement, preliminary notice, or notice of completion for that
24867 project, unless the person:

24868 (i) requests that the person not receive notice of other filings; or
24869 (ii) does not provide the designated agent with the person's contact information in a
24870 manner that adequately informs the designated agent.

24871 (b) An interested person may request notice of filings related to a project.

24872 (c) The database shall be indexed by:

24873 (i) owner name;

24874 (ii) original contractor name;

24875 (iii) subdivision, development, or other project name, if any;

24876 (iv) project address;

24877 (v) lot or parcel number;

24878 (vi) unique project number assigned by the designated agent; and

24879 (vii) any other identifier that the division considers reasonably appropriate in
24880 collaboration with the designated agent.

24881 (4) (a) In accordance with the process required by Section [~~63-38-3.2~~] 63J-1-303, the
24882 division shall establish the fees for:

24883 (i) a notice of commencement;

24884 (ii) a preliminary notice;

24885 (iii) a notice of completion;

24886 (iv) a request for notice;

24887 (v) providing a required notice by an alternate method of delivery;

24888 (vi) a duplicate receipt of a filing; and

24889 (vii) account setup for a person who wishes to be billed periodically for filings with the
24890 database.

24891 (b) The fees allowed under Subsection (4)(a) may not exceed the amount reasonably
24892 necessary to create and maintain the database.

24893 (c) The fees established by the division may vary by method of filing if one form of

24894 filing is more costly to process than another form of filing.

24895 (d) The division may provide by contract that the designated agent may retain all fees
24896 collected by the designated agent except that the designated agent shall remit to the division the
24897 cost of the division's oversight under Subsection (2)(b).

24898 (5) (a) The database is classified as a public record under [~~Title 63, Chapter 2~~] Title
24899 63G, Chapter 2, Government Records Access and Management Act, unless otherwise classified
24900 by the division.

24901 (b) A request for information submitted to the designated agent is not subject to [~~Title~~
24902 ~~63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

24903 (c) Information contained in a public record contained in the database shall be requested
24904 from the designated agent.

24905 (d) The designated agent may charge a commercially reasonable fee allowed by the
24906 designated agent's contract with the division for providing information under Subsection (5)(c).

24907 (e) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
24908 Access and Management Act, if information is available in a public record contained in the
24909 database, a person may not request the information from the division.

24910 (f) (i) A person may request information that is not a public record contained in the
24911 database from the division in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
24912 Government Records Access and Management Act.

24913 (ii) The division shall inform the designated agent of how to direct inquiries made to the
24914 designated agent for information that is not a public record contained in the database.

24915 (6) The following are not an adjudicative proceeding under [~~Title 63, Chapter 46b~~]
24916 Title 63G, Chapter 4, Administrative Procedures Act:

24917 (a) the filing of a notice permitted by this chapter;

24918 (b) the rejection of a filing permitted by this chapter; or

24919 (c) other action by the designated agent in connection with a filing of any notice
24920 permitted by this chapter.

24921 (7) The division and the designated agent need not determine the timeliness of any

24922 notice before filing the notice in the database.

24923 (8) (a) A person who is delinquent on the payment of a fee established under Subsection
24924 (4) may not file a notice with the database.

24925 (b) A determination that a person is delinquent on the payment of a fee for filing
24926 established under Subsection (4) shall be made in accordance with [~~Title 63, Chapter 46b~~] Title
24927 63G, Chapter 4, Administrative Procedures Act.

24928 (c) Any order issued in a proceeding described in Subsection (8)(b) may prescribe the
24929 method of that person's payment of fees for filing notices with the database after issuance of the
24930 order.

24931 (9) If a notice is filed by a third party on behalf of another, the notice is considered to
24932 be filed by the person on whose behalf the notice is filed.

24933 (10) A person filing a notice of commencement, preliminary notice, or notice of
24934 completion is responsible for verifying the accuracy of information entered into the database,
24935 whether the person files electronically or by alternate or third party filing.

24936 Section 504. Section **38-1-28** is amended to read:

24937 **38-1-28. Notice of release of lien and substitution of alternate security.**

24938 (1) The owner of any interest in real property that is subject to a mechanics' lien
24939 recorded under this chapter, or any original contractor or subcontractor affected by the lien,
24940 who disputes the correctness or validity of the lien may record a notice of release of lien and
24941 substitution of alternate security:

24942 (a) that meets the requirements of Subsection (2);

24943 (b) in the office of the county recorder where the lien was recorded; and

24944 (c) at any time before the expiration of 90 days after the day on which the person filing
24945 a notice of release of lien and substitution of alternate security is served with a summons and
24946 lien foreclosure complaint.

24947 (2) A notice of release of lien and substitution of alternate security recorded under
24948 Subsection (1) shall:

24949 (a) meet the requirements for the recording of documents in Title 57, Chapter 3,

24950 Recording of Documents;

24951 (b) reference the lien sought to be released, including an entry number, book number,
24952 and page number; and

24953 (c) have as an attachment a surety bond or evidence of a cash deposit that:

24954 (i) (A) if a surety bond, is executed by a surety company that is treasury listed, A-rated
24955 by AM Best Company, and authorized to issue surety bonds in this state; or

24956 (B) if evidence of a cash deposit, meets the requirements established by rule by the
24957 Department of Commerce in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
24958 Utah Administrative Rulemaking Act;

24959 (ii) is in an amount equal to:

24960 (A) 150% of the amount claimed by the lien claimant on a notice of lien or determined
24961 under Subsection (7), if the lien claim is for \$25,000 or more;

24962 (B) 175% of the amount claimed by the lien claimant on a notice of lien or determined
24963 under Subsection (7), if the lien claim is for at least \$15,000 but less than \$25,000; or

24964 (C) 200% of the amount claimed by the lien claimant on a notice of lien or determined
24965 under Subsection (7), if the lien claim is for less than \$15,000;

24966 (iii) is made payable to the lien claimant;

24967 (iv) is conditioned for the payment of:

24968 (A) the judgment that would have been rendered, or has been rendered against the
24969 property in the action to enforce the lien; and

24970 (B) any costs and attorneys' fees awarded by the court; and

24971 (v) has as principal:

24972 (A) the owner of the interest in the real property; or

24973 (B) the original contractor or subcontractor affected by the lien.

24974 (3) (a) Upon the recording of the notice of release of lien and substitution of alternate
24975 security under Subsection (1), the real property described in the notice shall be released from
24976 the mechanics' lien to which the notice applies.

24977 (b) A recorded notice of release of lien and substitution of alternate security is effective

24978 as to any amendment to the lien being released if the bond amount remains enough to satisfy the
24979 requirements of Subsection (2)(c)(ii).

24980 (4) (a) Upon the recording of a notice of release of lien and substitution of alternate
24981 security under Subsection (1), the person recording the notice shall serve a copy of the notice,
24982 together with any attachments, within 30 days upon the lien claimant.

24983 (b) If a suit is pending to foreclose the lien at the time the notice is served upon the lien
24984 claimant under Subsection (4)(a), the lien claimant shall, within 90 days from the receipt of the
24985 notice, institute proceedings to add the alternate security as a party to the lien foreclosure suit.

24986 (5) The alternate security attached to a notice of release of lien shall be discharged and
24987 released upon:

24988 (a) the failure of the lien claimant to commence a suit against the alternate security
24989 within the same time as an action to enforce the lien under Section 38-1-11;

24990 (b) the failure of the lien claimant to institute proceedings to add the alternate security
24991 as a party to a lien foreclosure suit within the time required by Subsection (4)(b);

24992 (c) the dismissal with prejudice of the lien foreclosure suit or suit against the alternate
24993 security as to the lien claimant; or

24994 (d) the entry of judgment against the lien claimant in:

24995 (i) a lien foreclosure suit; or

24996 (ii) suit against the alternate security.

24997 (6) If a copy of the notice of release of lien and substitution of alternate security is not
24998 served upon the lien claimant as provided in Subsection (4)(a), the lien claimant shall have six
24999 months after the discovery of the notice to commence an action against the alternate security,
25000 except that no action may be commenced against the alternate security after two years from the
25001 date the notice was recorded.

25002 (7) (a) The owner of any interest in real property that is subject to a mechanics' lien
25003 recorded under this chapter or an original contractor or subcontractor affected by a mechanics'
25004 lien recorded under this chapter who disputes the amount claimed in a notice of lien may
25005 petition the district court in the county in which the notice of lien is recorded for a summary

25006 determination of the correct amount of a lien claim for the sole purpose of providing alternate
25007 security.

25008 (b) A petition under this Subsection (7) shall:

25009 (i) state with specificity the factual and legal bases for disputing the amount of the lien
25010 claim; and

25011 (ii) be supported by a sworn affidavit and any other evidence supporting the petition.

25012 (c) A petitioner under Subsection (7)(a) shall, under Utah Rules of Civil Procedure,
25013 Rule 4, serve on the lien claimant:

25014 (i) a copy of the petition; and

25015 (ii) a notice of hearing if a hearing is scheduled.

25016 (d) If a court finds a petition under Subsection (7)(a) insufficient, the court may dismiss
25017 the petition without a hearing.

25018 (e) If a court finds a petition under Subsection (7)(a) sufficient, the court shall schedule
25019 a hearing within ten days to determine the correct amount of the lien claim for the sole purpose
25020 of providing alternate security.

25021 (f) A lien claimant may:

25022 (i) attend a hearing held under this Subsection (7); and

25023 (ii) contest the petition.

25024 (g) A determination under this section is limited to a determination of the amount of the
25025 lien claim for the sole purpose of providing alternate security and does not conclusively
25026 establish:

25027 (i) the amount to which the lien claimant is entitled;

25028 (ii) the validity of the lien claim; or

25029 (iii) any person's right to any other legal remedy.

25030 (h) If a court, in a proceeding under this Subsection (7), determines that the amount
25031 claimed in a notice of claim is excessive, the court shall set the amount of the lien claim for the
25032 sole purpose of providing alternate security.

25033 (i) In an order under Subsection (7)(h), the court shall include a legal description of the

25034 property.

25035 (j) A petitioner under this Subsection (7) may record a certified copy of any order
25036 issued under this Subsection (7) in the county in which the lien is recorded.

25037 (k) Attorneys' fees may not be awarded for a proceeding under this Subsection (7), but
25038 shall be considered in any award of attorneys' fees under any other provision of this chapter.

25039 Section 505. Section **38-1-30** is amended to read:

25040 **38-1-30. Third-party contract -- Designated agent.**

25041 (1) The division shall contract in accordance with [~~Title 63, Chapter 56~~] Title 63G,
25042 Chapter 6, Utah Procurement Code, with a third party to establish and maintain the database for
25043 the purposes established under this section, Section 38-1-27, and Sections 38-1-31 through
25044 38-1-37.

25045 (2) (a) The third party under contract under this section is the division's designated
25046 agent, and shall develop and maintain a database from the information provided by:

25047 (i) local government entities issuing building permits;

25048 (ii) original contractors;

25049 (iii) subcontractors; and

25050 (iv) other interested persons.

25051 (b) The database shall accommodate filings by third parties on behalf of clients.

25052 (c) The division and the designated agent shall design, develop, and test the database
25053 for full implementation on May 1, 2005.

25054 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
25055 Administrative Rulemaking Act, the division shall make rules and develop procedures for:

25056 (a) the division to oversee and enforce this section, Section 38-1-27, and Sections
25057 38-1-31 through 38-1-37;

25058 (b) the designated agent to administer this section, Section 38-1-27, and Sections
25059 38-1-31 through 38-1-37; and

25060 (c) the form of submission of an alternate filing, which may include procedures for
25061 rejecting an illegible or incomplete filing.

25062 (4) (a) The designated agent shall archive computer data files at least semiannually for
25063 auditing purposes.

25064 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
25065 Administrative Rulemaking Act, the division shall make rules to allow the designated agent to
25066 periodically archive projects from the database.

25067 (c) A project shall be archived no earlier than:

25068 (i) one year after the day on which a notice of completion is filed for a project;

25069 (ii) if no notice of completion is filed, two years after the last filing activity for a project;

25070 or

25071 (iii) one year after the day on which a filing is cancelled under Subsection 38-1-32(3)(c)
25072 or 38-1-33(2)(c).

25073 (d) The division may audit the designated agent's administration of the database as often
25074 as the division considers necessary.

25075 (5) The designated agent shall carry errors and omissions insurance in the amounts
25076 established by rule made by the division in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
25077 Chapter 3, Utah Administrative Rulemaking Act.

25078 (6) (a) The designated agent shall make reasonable efforts to assure the accurate entry
25079 into the database of information provided in alternate filings.

25080 (b) The designated agent shall meet or exceed standards established by the division for
25081 the accuracy of data entry for alternate filings.

25082 (7) The designated agent is not liable for the correctness of the information contained in
25083 an alternate filing it enters into the database.

25084 Section 506. Section **38-1-31** is amended to read:

25085 **38-1-31. Building permit -- Construction -- Notice registry -- Notice of**
25086 **commencement of work.**

25087 (1) (a) (i) (A) For a construction project where a building permit is issued to an original
25088 contractor or owner-builder, within 15 days after the issuance of the building permit:

25089 (I) the local government entity issuing that building permit shall input the building

25090 permit application and transmit the building permit information to the database electronically by
25091 way of the Internet or computer modem or by any other means; and

25092 (II) the original contractor or owner-builder may file a notice of commencement based
25093 on the building permit issued by the local government entity.

25094 (B) The information submitted under Subsection (1)(a)(i)(A) forms the basis of a notice
25095 of commencement.

25096 (ii) The person to whom a building permit, filed under Subsection (1)(a)(i), is issued is
25097 responsible for the accuracy of the information in the building permit.

25098 (iii) For the purposes of classifying a record under [~~Title 63, Chapter 2~~] Title 63G,
25099 Chapter 2, Government Records Access and Management Act, building permit information
25100 transmitted from a local governmental entity to the database shall be classified in the database
25101 by the division notwithstanding the local governmental entity's classification of the building
25102 permit information.

25103 (b) Within 15 days after commencement of physical construction work at the project
25104 site, the original contractor or owner-builder may file a notice of commencement with the
25105 database whether or not a building permit is issued or a notice of commencement is filed under
25106 Subsection (1)(a).

25107 (c) An owner of construction or an original contractor may file a notice of
25108 commencement with the designated agent within the time prescribed by Subsections (1)(a) and
25109 (b).

25110 (d) (i) If duplicate notices of commencement are filed, they shall be combined into one
25111 notice for each project and any notices filed relate back to the date of the earliest-filed notice of
25112 commencement for the project.

25113 (ii) A duplicate notice of commencement that is untimely filed relates back under
25114 Subsection (1)(d)(i) if the earlier filed notice of commencement is timely filed.

25115 (iii) Duplicate notices of commencement shall be automatically linked by the designated
25116 agent.

25117 (e) The designated agent shall assign each construction project a unique project number

25118 that:

25119 (i) identifies each construction project; and

25120 (ii) can be associated with all notices of commencement, preliminary notices, and
25121 notices of completion.

25122 (f) A notice of commencement is effective only as to any labor, service, equipment, and
25123 material furnished to the construction project that is furnished subsequent to the filing of the
25124 notice of commencement.

25125 (2) (a) A notice of commencement shall include the following:

25126 (i) the name and address of the owner of the project;

25127 (ii) the name and address of the:

25128 (A) original contractor; and

25129 (B) surety providing any payment bond for the project, or if none exists, a statement
25130 that a payment bond was not required for the work being performed; and

25131 (iii) (A) the project address if the project can be reasonably identified by an address; or

25132 (B) the name and general description of the location of the project if the project cannot
25133 be reasonably identified by an address.

25134 (b) A notice of commencement may include:

25135 (i) a general description of the project; or

25136 (ii) the lot or parcel number, and any subdivision, development, or other project name,
25137 of the real property upon which the project is to be constructed if the project is subject to
25138 mechanics' liens.

25139 (c) A notice of commencement need not include all of the items listed in Subsection
25140 (2)(a) if:

25141 (i) a building permit is issued for the project; and

25142 (ii) all items listed in Subsection (2)(a) that are available on the building permit are
25143 included in the notice of commencement.

25144 (3) If a notice of commencement for a construction project is not filed within the time
25145 set forth in Subsections(1)(a) and (b), the following do not apply:

25146 (a) Section 38-1-32; and

25147 (b) Section 38-1-33.

25148 (4) (a) Unless a person indicates to the division or designated agent that the person
25149 does not wish to receive a notice under this section, electronic notice of the filing of a notice of
25150 commencement or alternate notice as prescribed in Subsection (1), shall be provided to:

25151 (i) all persons who have filed notices of commencement for the project; and

25152 (ii) all interested persons who have requested notices concerning the project.

25153 (b) (i) A person to whom notice is required under Subsection (4)(a) is responsible for:

25154 (A) providing an e-mail address, mailing address, or telefax number to which a notice
25155 required by Subsection (4)(a) is to be sent; and

25156 (B) the accuracy of any e-mail address, mailing address, or telefax number to which
25157 notice is to be sent.

25158 (ii) The designated agent fulfills the notice requirement of Subsection (4)(a) when it
25159 sends the notice to the e-mail address, mailing address, or telefax number provided to the
25160 designated agent whether or not the notice is actually received.

25161 (5) (a) The burden is upon any person seeking to enforce a notice of commencement to
25162 verify the accuracy of information in the notice of commencement and prove that the notice of
25163 commencement is filed timely and meets all of the requirements in this section.

25164 (b) A substantial inaccuracy in a notice of commencement renders the notice of
25165 commencement unenforceable.

25166 (c) A person filing a notice of commencement by alternate filing is responsible for
25167 verifying and changing any incorrect information in the notice of commencement before the
25168 expiration of the time period during which the notice is required to be filed.

25169 (6) At the time a building permit is obtained, each original contractor shall
25170 conspicuously post at the project site a copy of the building permit obtained for the project.

25171 Section 507. Section **38-1-39** is amended to read:

25172 **38-1-39. Waiver or impairment of a lien right -- Forms -- Scope.**

25173 (1) As used in this section:

- 25174 (a) "Check" means a payment instrument on a depository institution including:
- 25175 (i) a check;
- 25176 (ii) a draft;
- 25177 (iii) an order; or
- 25178 (iv) other instrument.
- 25179 (b) "Depository institution" is as defined in Section 7-1-103.
- 25180 (c) "Lien claimant" means a person that claims a lien under this chapter.
- 25181 (d) "Receives payment" means, in the case of a restrictive endorsement, a payee has
- 25182 endorsed a check and the check is presented to and paid by the depository institution on which
- 25183 it is drawn.
- 25184 (2) Notwithstanding Section 38-1-29, a written consent given by a lien claimant that
- 25185 waives or limits the lien claimant's lien rights is enforceable only if the lien claimant:
- 25186 (a) (i) executes a waiver and release that is signed by the lien claimant or the lien
- 25187 claimant's authorized agent; or
- 25188 (ii) for a restrictive endorsement on a check, includes a restrictive endorsement on a
- 25189 check that is:
- 25190 (A) signed by the lien claimant or the lien claimant's authorized agent; and
- 25191 (B) in substantially the same form set forth in Subsection (4)(d); and
- 25192 (b) receives payment of the amount identified in the waiver and release or check that
- 25193 includes the restrictive endorsement:
- 25194 (i) including payment by a joint payee check; and
- 25195 (ii) for a progress payment, only to the extent of the payment.
- 25196 (3) (a) Notwithstanding the language of a waiver and release described in Subsection
- 25197 (2), Subsection (3)(b) applies if:
- 25198 (i) the payment given in exchange for any waiver and release of lien is made by check;
- 25199 and
- 25200 (ii) the check fails to clear the depository institution on which it is drawn for any reason.
- 25201 (b) If the conditions of Subsection (3)(a) are met:

25202 (i) the waiver and release described in Subsection (3)(a) is null, void, and of no legal
25203 effect; and

25204 (ii) the following will not be affected by the lien claimant's execution of the waiver and
25205 release:

25206 (A) any lien;

25207 (B) any lien right;

25208 (C) any bond right;

25209 (D) any contract right; or

25210 (E) any other right to recover payment afforded to the lien claimant in law or equity.

25211 (4) (a) A waiver and release given by a lien claimant meets the requirements of this
25212 section if it is in substantially the form provided in this Subsection (4) for the circumstance
25213 provided in this Subsection (4).

25214 (b) A waiver and release may be in substantially the following form if the lien claimant is
25215 required to execute a waiver and release in exchange for or to induce the payment of a progress
25216 billing:

25217 "UTAH CONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

25218 Property Name: _____

25219 Property Location: _____

25220 Undersigned's Customer: _____

25221 Invoice/Payment Application Number: _____

25222 Payment Amount: _____

25223 Payment Period: _____

25224 To the extent provided below, this document becomes effective to release and the
25225 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
25226 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
25227 Bonds, or Section [~~63-56-504~~] 63G-6-505 related to payment rights the undersigned has on the
25228 above described Property once:

25229 (1) the undersigned endorses a check in the above referenced Payment Amount payable

25230 to the undersigned; and

25231 (2) the check is paid by the depository institution on which it is drawn.

25232 This waiver and release applies to a progress payment for the work, materials,
25233 equipment, or a combination of work, materials, and equipment furnished by the undersigned to
25234 the Property or to the Undersigned's Customer which are the subject of the Invoice or Payment
25235 Application, but only to the extent of the Payment Amount. This waiver and release does not
25236 apply to any retention withheld; any items, modifications, or changes pending approval;
25237 disputed items and claims; or items furnished or invoiced after the Payment Period.

25238 The undersigned warrants that the undersigned either has already paid or will use the
25239 money the undersigned receives from this progress payment promptly to pay in full all the
25240 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
25241 equipment, or combination of work, materials, and equipment that are the subject of this waiver
25242 and release.

25243 Dated: _____

25244 _____ (Company Name)

25245 _____ By: _____

25246 _____ Its: _____ "

25247 (c) A waiver and release may be in substantially the following form if the lien claimant is
25248 required to execute a waiver and release in exchange for or to induce the payment of a final
25249 billing:

"UTAH WAIVER AND RELEASE UPON FINAL PAYMENT

25251 Property Name: _____

25252 Property Location: _____

25253 Undersigned's Customer: _____

25254 Invoice/Payment Application Number: _____

25255 Payment Amount: _____

25256

25257 To the extent provided below, this document becomes effective to release and the

25258 undersigned is considered to waive any notice of lien or right under Utah Code Ann., Title 38,
25259 Chapter 1, Mechanics' Liens, or any bond right under Utah Code Ann., Title 14, Contractors'
25260 Bonds, or Section [~~63-56-504~~] 63G-6-505 related to payment rights the undersigned has on the
25261 above described Property once:

25262 (1) the undersigned endorses a check in the above referenced Payment Amount payable
25263 to the undersigned; and

25264 (2) the check is paid by the depository institution on which it is drawn.

25265 This waiver and release applies to the final payment for the work, materials, equipment,
25266 or combination of work, materials, and equipment furnished by the undersigned to the Property
25267 or to the Undersigned's Customer.

25268 The undersigned warrants that the undersigned either has already paid or will use the
25269 money the undersigned receives from the final payment promptly to pay in full all the
25270 undersigned's laborers, subcontractors, materialmen, and suppliers for all work, materials,
25271 equipment, or combination of work, materials, and equipment that are the subject of this waiver
25272 and release.

25273 Dated: _____

25274 _____(Company Name)

25275 _____By:_____

25276 _____Its:_____"

25277 (d) A restrictive endorsement placed on a check to effectuate a waiver and release
25278 described in this Subsection (4) meets the requirements of this section if it is in substantially the
25279 following form:

25280 "This check is a progress/ final payment for property described on this check sufficient
25281 for identification. Endorsement of this check is an acknowledgment by the endorser that the
25282 waiver and release to which the payment applies is effective to the extent provided in Utah
25283 Code Ann. Subsection 38-1-39(4)(b) or (c) respectively."

25284 (e) (i) If using a restrictive endorsement under Subsection (4)(d), the person preparing
25285 the check shall indicate whether the check is for a progress payment or a final payment by

25286 circling the word "progress" if the check is for a progress payment, or the word "final" if the
25287 check is for a final payment.

25288 (ii) If a restrictive endorsement does not indicate whether the check is for a progress
25289 payment or a final payment, it is considered to be for a progress payment.

25290 (5) (a) If the conditions of Subsection (5)(b) are met, this section does not affect the
25291 enforcement of:

25292 (i) an accord and satisfaction regarding a bona fide dispute; or

25293 (ii) an agreement made in settlement of an action pending in any court or arbitration.

25294 (b) Pursuant to Subsection (5)(a), this section does not affect enforcement of an accord
25295 and satisfaction or settlement described in Subsection (5)(a) if the accord and satisfaction or
25296 settlement:

25297 (i) is in a writing signed by the lien claimant; and

25298 (ii) specifically references the lien rights waived or impaired.

25299 Section 508. Section **38-11-105** is amended to read:

25300 **38-11-105. Procedures established by rule.**

25301 In compliance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
25302 Procedures Act, the division shall establish procedures by rule by which claims for
25303 compensation from the fund and requests for certificates of compliance shall be adjudicated and
25304 by which assessments shall be collected.

25305 Section 509. Section **38-11-108** is amended to read:

25306 **38-11-108. Notification of rights under chapter.**

25307 (1) Beginning July 1, 1995, the original contractor or real estate developer shall state in
25308 the written contract with the owner what actions are necessary for the owner to be protected
25309 under Section 38-11-107 from the maintaining of a mechanic's lien or other civil action against
25310 the owner or the owner-occupied residence to recover monies owed for qualified services.

25311 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
25312 Administrative Rulemaking Act, the division may issue rules providing for the form and content
25313 of the information required by Subsection (1).

25314 Section 510. Section **38-11-110** is amended to read:

25315 **38-11-110. Issuance of certificates of compliance.**

25316 The director shall have authority to issue or deny a certificate of compliance only after
25317 determining through an informal proceeding, as set forth in [~~Title 63, Chapter 46b~~] Title 63G,
25318 Chapter 4, Administrative Procedures Act, that the owner is in compliance with Subsections
25319 38-11-204(4)(a) and (4)(b).

25320 Section 511. Section **38-11-201** is amended to read:

25321 **38-11-201. Residence Lien Recovery Fund.**

25322 (1) There is created a restricted special revenue fund called the "Residence Lien
25323 Recovery Fund."

25324 (2) (a) The fund consists of all amounts collected by the division in accordance with
25325 Section 38-11-202.

25326 (b) (i) The division shall deposit the funds in an account with the state treasurer.

25327 (ii) The division shall record the funds in the Residence Lien Recovery Fund.

25328 (c) The fund shall earn interest.

25329 (3) The division shall employ personnel and resources necessary to administer the fund
25330 and shall use fund monies in accordance with Sections 38-11-203 and 38-11-204 and to pay the
25331 costs charged to the fund by the attorney general.

25332 (4) Costs incurred by the division for administering the fund shall be paid out of fund
25333 monies.

25334 (5) The Division of Finance shall report annually to the Legislature, the division, and the
25335 board. The report shall state:

25336 (a) amounts received by the fund;

25337 (b) disbursements from the fund;

25338 (c) interest earned and credited to the fund; and

25339 (d) the fund balance.

25340 (6) (a) For purposes of establishing and assessing regulatory fees under Subsection

25341 [~~63-38-3.2~~] 63J-1-303(5), the provisions of this chapter are considered a new program for fiscal

25342 year 1995-96.

25343 (b) The department shall submit its fee schedule to the Legislature for its approval at
25344 the 1996 Annual General Session.

25345 Section 512. Section **38-11-202** is amended to read:

25346 **38-11-202. Payments to the fund.**

25347 The Residence Lien Recovery Fund shall be supported solely from:

25348 (1) initial and special assessments collected by the division from licensed contractors
25349 registered as qualified beneficiaries in accordance with Subsections 38-11-301(1) and (2) and
25350 Section 38-11-206;

25351 (2) initial and special assessments collected by the division from other qualified
25352 beneficiaries registering with the division in accordance with Subsection 38-11-301(3) and
25353 Section 38-11-206;

25354 (3) fees determined by the division under Section [~~63-38-3.2~~] 63J-1-303 collected from
25355 laborers under Subsection 38-11-204(8) when the laborers obtain a recovery from the fund;

25356 (4) amounts collected by subrogation under Section 38-11-205 on behalf of the fund
25357 following a payment from the fund;

25358 (5) application fees determined by the division under Section [~~63-38-3.2~~] 63J-1-303
25359 collected from:

25360 (a) qualified beneficiaries or laborers under Subsection 38-11-204(1)(b) when qualified
25361 beneficiaries or laborers make a claim against the fund; or

25362 (b) owners or agents of the owners seeking to obtain a certificate of compliance for the
25363 owner;

25364 (6) registration fees determined by the division under Section [~~63-38-3.2~~] 63J-1-303
25365 collected from other qualified beneficiaries registering with the department in accordance with
25366 Subsection 38-11-301(3)(a)(iii);

25367 (7) reinstatement fees determined by the division under Section [~~63-38-3.2~~] 63J-1-303
25368 collected from registrants in accordance with Subsection 38-11-302(5)(b);

25369 (8) civil fines authorized under Subsection 38-11-205(2) collected by the attorney

25370 general for failure to reimburse the fund; and

25371 (9) any interest earned by the fund.

25372 Section 513. Section **38-11-204** is amended to read:

25373 **38-11-204. Claims against the fund -- Requirement to make a claim --**

25374 **Qualifications to receive compensation -- Qualifications to receive a certificate of**
25375 **compliance.**

25376 (1) To claim recovery from the fund a person shall:

25377 (a) meet the requirements of either Subsection (4) or (7);

25378 (b) pay an application fee determined by the division under Section [~~63-38-3.2~~]

25379 63J-1-303; and

25380 (c) file with the division a completed application on a form provided by the division
25381 accompanied by supporting documents establishing:

25382 (i) that the person meets the requirements of either Subsection (4) or (7);

25383 (ii) that the person was a qualified beneficiary or laborer during the construction on the
25384 owner-occupied residence; and

25385 (iii) the basis for the claim.

25386 (2) To recover from the fund, the application required by Subsection (1) shall be filed
25387 no later than one year:

25388 (a) from the date the judgment required by Subsection (4)(d) is entered;

25389 (b) from the date the nonpaying party filed bankruptcy, if the claimant is precluded from
25390 obtaining a judgment or from satisfying the requirements of Subsection (4)(d) because the
25391 nonpaying party filed bankruptcy within one year after the entry of judgment; or

25392 (c) from the date the laborer, trying to recover from the fund, completed the laborer's
25393 qualified services.

25394 (3) To obtain a certificate of compliance an owner or agent of the owner shall establish
25395 with the division that the owner meets the requirements of Subsections (4)(a) and (4)(b).

25396 (4) To recover from the fund, regardless of whether the residence is occupied by the
25397 owner, a subsequent owner, or the owner or subsequent owner's tenant or lessee, a qualified

25398 beneficiary shall establish that:

25399 (a) (i) the owner of the owner-occupied residence or the owner's agent entered into a
25400 written contract with an original contractor licensed or exempt from licensure under Title 58,
25401 Chapter 55, Utah Construction Trades Licensing Act:

25402 (A) for the performance of qualified services;

25403 (B) to obtain the performance of qualified services by others; or

25404 (C) for the supervision of the performance by others of qualified services in
25405 construction on that residence;

25406 (ii) the owner of the owner-occupied residence or the owner's agent entered into a
25407 written contract with a real estate developer for the purchase of an owner-occupied residence;
25408 or

25409 (iii) the owner of the owner-occupied residence or the owner's agent entered into a
25410 written contract with a factory built housing retailer for the purchase of an owner-occupied
25411 residence;

25412 (b) the owner has paid in full the original contractor, licensed or exempt from licensure
25413 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, real estate developer, or
25414 factory built housing retailer under Subsection (4)(a) with whom the owner has a written
25415 contract in accordance with the written contract and any amendments to the contract;

25416 (c) (i) the original contractor, licensed or exempt from licensure under Title 58, Chapter
25417 55, Utah Construction Trades Licensing Act, the real estate developer, or the factory built
25418 housing retailer subsequently failed to pay a qualified beneficiary who is entitled to payment
25419 under an agreement with that original contractor or real estate developer licensed or exempt
25420 from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, for services
25421 performed or materials supplied by the qualified beneficiary;

25422 (ii) a subcontractor who contracts with the original contractor, licensed or exempt from
25423 licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act, the real estate
25424 developer, or the factory built housing retailer failed to pay a qualified beneficiary who is
25425 entitled to payment under an agreement with that subcontractor or supplier; or

25426 (iii) a subcontractor who contracts with a subcontractor or supplier failed to pay a
25427 qualified beneficiary who is entitled to payment under an agreement with that subcontractor or
25428 supplier;

25429 (d) (i) unless precluded from doing so by the nonpaying party's bankruptcy filing within
25430 the applicable time, the qualified beneficiary filed an action against the nonpaying party to
25431 recover monies owed to the qualified beneficiary within the earlier of:

25432 (A) 180 days from the date the qualified beneficiary filed a notice of claim under
25433 Section 38-1-7; or

25434 (B) 270 days from the completion of the original contract pursuant to Subsection
25435 38-1-7(1);

25436 (ii) the qualified beneficiary has obtained a judgment against the nonpaying party who
25437 failed to pay the qualified beneficiary under an agreement to provide qualified services for
25438 construction of that owner-occupied residence;

25439 (iii) (A) the qualified beneficiary has:

25440 (I) obtained from a court of competent jurisdiction the issuance of an order requiring
25441 the judgment debtor, or if a corporation any officer of the corporation, to appear before the
25442 court at a specified time and place to answer concerning the debtor's or corporation's property;

25443 (II) received return of service of the order from a person qualified to serve documents
25444 under the Utah Rules of Civil Procedure, Rule 4(b); and

25445 (III) made reasonable efforts to obtain asset information from the supplemental
25446 proceedings; and

25447 (B) if assets subject to execution are discovered as a result of the order required under
25448 Subsection (4)(d)(iii)(A) or for any other reason, to obtain the issuance of a writ of execution
25449 from a court of competent jurisdiction; or

25450 (iv) the qualified beneficiary timely filed a proof of claim where permitted in the
25451 bankruptcy action, if the nonpaying party has filed bankruptcy;

25452 (e) the qualified beneficiary is not entitled to reimbursement from any other person; and

25453 (f) the qualified beneficiary provided qualified services to a contractor, licensed or

25454 exempt from licensure under Title 58, Chapter 55, Utah Construction Trades Licensing Act.

25455 (5) The requirements of Subsections (4)(d) (ii) and (iii) need not be met if the qualified
25456 beneficiary is prevented from compliance because the nonpaying party files bankruptcy.

25457 (6) To recover from the fund a laborer shall:

25458 (a) establish that the laborer has not been paid wages due for the work performed at the
25459 site of a construction on an owner-occupied residence; and

25460 (b) provide any supporting documents or information required by rule by the division.

25461 (7) A fee determined by the division under Section [~~63-38-3.2~~] 63J-1-303 shall be
25462 deducted from any recovery from the fund received by a laborer.

25463 (8) The requirements of Subsections (4)(a) and (4)(b) may be satisfied if an owner or
25464 agent of the owner establishes to the satisfaction of the director that the owner of the
25465 owner-occupied residence or the owner's agent entered into a written contract with an original
25466 contractor who:

25467 (a) was a business entity that was not licensed under Title 58, Chapter 55, Utah
25468 Construction Trades Licensing Act, but was solely or partly owned by an individual who was
25469 licensed under Title 58, Chapter 55, Utah Construction Trades Licensing Act; or

25470 (b) was a natural person who was not licensed under Title 58, Chapter 55, Utah
25471 Construction Trades Licensing Act, but who was the sole or partial owner and qualifier of a
25472 business entity that was licensed under Title 58, Chapter 55, Utah Construction Trades
25473 Licensing Act.

25474 (9) The director shall have equitable power to determine if the requirements of
25475 Subsections (4)(a) and (4)(b) have been met, but any decision by the director under this chapter
25476 shall not alter or have any effect on any other decision by the division under Title 58,
25477 Occupations and Professions.

25478 Section 514. Section **38-11-206** is amended to read:

25479 **38-11-206. Limitations on fund balance -- Payment of special assessments.**

25480 (1) (a) If on December 31 of any year the balance in the fund is less than \$1,500,000,
25481 the division shall make a special assessment against all qualified beneficiaries in an amount that

25482 will restore the unencumbered fund balance to not less than \$2,000,000 or more than
25483 \$2,500,000.

25484 (b) The amount of the special assessment shall be determined by the division under
25485 Subsection [~~63-38-3.2~~] 63J-1-303(5) after consultation with the board.

25486 (2) Special assessments made under this section shall be due and payable on May 1
25487 following assessment.

25488 (3) The fund balance limitations set forth in Subsection (1)(a) shall be used by the
25489 division only for the purpose of determining the amount of any special assessment and do not
25490 prohibit the fund balance from exceeding \$2,500,000 or falling below \$2,000,000.

25491 Section 515. Section **38-11-207** is amended to read:

25492 **38-11-207. Reimbursement to the fund.**

25493 (1) If the director disburses monies from the fund as a result of a person licensed under
25494 Title 58, Chapter 55, Utah Construction Trades Licensing Act, or a qualified beneficiary failing
25495 to pay qualified beneficiaries:

25496 (a) the division shall issue a notice of the disbursement from the fund and the obligation
25497 to reimburse the fund to the licensee or qualified beneficiary; and

25498 (b) the licensee or qualified beneficiary shall reimburse the fund within 20 days from the
25499 issuance of the notice required by Subsection (1)(a).

25500 (2) The notice required by Subsection (1)(a) shall meet the requirements established by
25501 rule by the division in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
25502 Administrative Rulemaking Act.

25503 (3) (a) A finding of fact in an administrative action that a payment of any amount has
25504 been made from the fund in settlement of a claim arising from the act, representation,
25505 transaction, or conduct of a person licensed under Title 58, Chapter 55, Utah Construction
25506 Trades Licensing Act, in violation of Section 58-55-603 shall result in the immediate suspension
25507 of that person's license without further compliance with [~~Title 63, Chapter 46b~~] Title 63G,
25508 Chapter 4, Administrative Procedures Act.

25509 (b) The finding of fact for Subsection (3)(a) may be made in the same administrative

25510 action as the related claim and may be included in the findings required by Section 38-11-203.

25511 (c) The suspension required by Subsection (3)(a) shall remain in effect until the person
25512 applies for reinstatement and is issued a license in accordance with Sections 58-1-308 and
25513 58-55-303.

25514 Section 516. Section **38-11-301** is amended to read:

25515 **38-11-301. Registration as a qualified beneficiary -- Initial regular assessment --**
25516 **Affidavit.**

25517 (1) A person licensed as of July 1, 1995, as a contractor under the provisions of Title
25518 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly
25519 engage in providing qualified services shall be automatically registered as a qualified beneficiary
25520 upon payment of the initial assessment.

25521 (2) A person applying for licensure as a contractor after July 1, 1995, in license
25522 classifications that regularly engage in providing qualified services shall be automatically
25523 registered as a qualified beneficiary upon issuance of a license and payment of the initial
25524 assessment.

25525 (3) (a) After July 1, 1995, any person providing qualified services as other than a
25526 contractor as provided in Subsection (1) or any person exempt from licensure under the
25527 provisions of Title 58, Chapter 55, Utah Construction Trades Licensing Act, may register as a
25528 qualified beneficiary by:

25529 (i) submitting an application in a form prescribed by the division;

25530 (ii) demonstrating registration with the Division of Corporations and Commercial Code
25531 as required by state law;

25532 (iii) paying a registration fee determined by the division under Section [~~63-38-3.2~~]
25533 63J-1-303; and

25534 (iv) paying the initial assessment established under Subsection (4), and any special
25535 assessment determined by the division under Subsection 38-11-206(1).

25536 (b) A person who does not register under Subsection (1), (2), or (3)(a) shall be
25537 prohibited from recovering under the fund as a qualified beneficiary for work performed as

25538 qualified services while not registered with the fund.

25539 (4) (a) An applicant shall pay an initial assessment determined by the division under
25540 Section ~~[63-38-3.2]~~ 63J-1-303.

25541 (b) The initial assessment to qualified registrants under Subsection (1) shall be made not
25542 later than July 15, 1995, and shall be paid no later than November 1, 1995.

25543 (c) The initial assessment to qualified registrants under Subsections (2) and (3) shall be
25544 paid at the time of application for license or registration, however, beginning on May 1, 1996,
25545 only one initial assessment or special assessments thereafter shall be required for persons having
25546 multiple licenses under this section.

25547 (5) A person shall be considered to have been registered as a qualified beneficiary on
25548 January 1, 1995, for purposes of meeting the requirements of Subsection 38-11-204(1)(c)(ii) if
25549 the person:

25550 (a) (i) is licensed on or before July 1, 1995, as a contractor under the provisions of Title
25551 58, Chapter 55, Utah Construction Trades Licensing Act, in license classifications that regularly
25552 engage in providing qualified services; or

25553 (ii) provides qualified services after July 1, 1995, as other than a contractor as provided
25554 in Subsection (5)(a)(i) or is exempt from licensure under the provisions of Title 58, Chapter 55,
25555 Utah Construction Trades Licensing Act; and

25556 (b) registers as a qualified beneficiary under Subsection (1) or (3) on or before
25557 November 1, 1995.

25558 Section 517. Section **38-11-302** is amended to read:

25559 **38-11-302. Effective date and term of registration -- Penalty for failure to pay**
25560 **assessments -- Reinstatement.**

25561 (1) (a) A registration as a qualified beneficiary under this chapter is effective on the date
25562 the division receives the initial assessment of the qualified beneficiary.

25563 (b) A registrant shall be required to renew ~~[his]~~ the registrant's registration upon
25564 imposition of a special assessment under Subsection 38-11-206(1).

25565 (2) A registration automatically expires if a registrant fails to renew ~~[his]~~ the registrant's

25566 registration as required under Subsection (1).

25567 (3) The division shall notify a qualified beneficiary in accordance with procedures
25568 established by rule when renewal of registration is required in connection with a special
25569 assessment.

25570 (4) The license renewal notice to a contractor shall notify the licensee that failure to
25571 renew ~~his~~ the license will result in automatic expiration of ~~his~~ the licensee's registration as a
25572 qualified beneficiary and of the limitations set forth in Subsection (6) on qualified beneficiaries
25573 whose registration has expired to make a claim upon the fund.

25574 (5) Registration may be reinstated by:

25575 (a) submitting an application for reinstatement in a form prescribed by the division;

25576 (b) paying a reinstatement fee determined by the division under Section ~~[63-38-3.2]~~
25577 63J-1-303; and

25578 (c) paying all unpaid assessments that were assessed during the period of the person's
25579 registration and all assessments made upon qualified beneficiaries during the period the
25580 applicant's registration was expired.

25581 (6) (a) A qualified beneficiary whose registration expires loses all rights to make a claim
25582 upon the fund or receive compensation from the fund resulting from providing qualified service
25583 during the period of expiration.

25584 (b) Except as provided by Section 58-55-401, a qualified beneficiary whose registration
25585 expires may make a claim upon the fund or receive compensation from the fund for qualified
25586 services provided during the period the qualified beneficiary was part of the fund.

25587 Section 518. Section **39-5-2** is amended to read:

25588 **39-5-2. Form of compact.**

25589 The compact shall be in substantially the following form:

25590 The contracting states solemnly agree:

25591

25592 Article 1

25593

25594 PURPOSE OF ACT -- UTILIZATION OF RESOURCES --
25595 DIRECTORS ACT AS COMMITTEE

25596
25597 The purpose of this compact is to provide mutual aid among the States in meeting any
25598 emergency or disaster as defined in Section [~~63-5-2~~] 63K-3-102, from enemy attack or other
25599 cause, natural or otherwise, including sabotage and subversive acts and direct attacks by bombs,
25600 shellfire, and atomic, radiological, chemical, bacteriological means, and other weapons. The
25601 prompt, full, and effective utilization of the resources of the respective States, including
25602 resources available from the United States Government or any other source, are essential to the
25603 safety, care, and welfare of the people in the event of an emergency, and any other resources,
25604 including personnel, equipment, or supplies, shall be incorporated into a plan or plans of mutual
25605 aid to be developed among the Civil Defense agencies or similar bodies of the States that are
25606 parties to this compact. The Directors of Civil Defense of all party States shall constitute a
25607 committee to formulate plans and take all necessary steps for the implementation of this
25608 compact.

25609 Article 2
25610 CIVIL DEFENSE PLANS -- CONSULTATIONS --
25611 UNIFORMITY OF ACTION

25612 It is the duty of each party State to formulate civil defense plans and programs for
25613 application within each State. There shall be frequent consultation between the representatives
25614 of the States and with the United States Government and the free exchange of information and
25615 plans, including inventories of any materials and equipment available for civil defense. In
25616 carrying out these civil defense plans and programs, the party States shall, if possible, provide
25617 and follow uniform standards, practices, and rules and regulations including:

- 25618 (1) insignia, arm bands, and other distinctive articles to designate and distinguish the
25619 different civil defense services;
- 25620 (2) blackouts and practice blackouts, air raid drills, mobilization of civil defense forces,
25621 and other tests and exercises;

- 25622 (3) warnings and signals for drills or attacks and the mechanical devices to be used in
- 25623 connection with them;
- 25624 (4) the effective screening or extinguishing of all lights, lighting devices, and appliances;
- 25625 (5) shutting off water mains, gas mains, electric power connections, and the suspension
- 25626 of all other utility services;
- 25627 (6) all materials or equipment used or to be used for civil defense purposes in order to
- 25628 assure that the materials and equipment will be easily and freely interchangeable when used in or
- 25629 by any other party State;
- 25630 (7) the conduct of civilians and the movement and cessation of movement of
- 25631 pedestrians and vehicular traffic, prior, during, and subsequent to drills or attacks;
- 25632 (8) the safety of public meetings or gatherings; and
- 25633 (9) mobile support units.

Article 3

DUTIES OF MEMBER STATES

25636 Any party State requested to render mutual aid shall take any action necessary to

25637 provide and make available the resources covered by this compact in accordance with its terms;

25638 provided that it is understood that the State rendering aid may withhold resources to the extent

25639 necessary to provide reasonable protection for itself. Each party State shall extend to the civil

25640 defense forces of any other party State, while operating within its State limits under the terms

25641 and conditions of this compact, the same powers, except that of arrest unless specifically

25642 authorized by the receiving State, duties, rights, privileges, and immunities as if they were

25643 performing their duties in the State in which normally employed or rendering services. Civil

25644 defense forces will continue under the command and control of their regular leaders but the

25645 organizational units will come under the operational control of the civil defense authorities of

25646 the State receiving assistance.

Article 4

EFFECT OF STATE LICENSE, CERTIFICATE

OR PERMIT IN OTHER STATES

25650 Any person holding a license, certificate, or other permit issued by any State evidencing
25651 the meeting of qualifications for professional, mechanical, or other skills, may render aid
25652 involving the skill in any party State to meet an emergency or disaster and that State shall
25653 recognize the license, certificate, or other permit as if issued in the State in which aid is
25654 rendered.

25655 Article 5

25656 RESTRICTION ON LIABILITY

25657 No party State or its officers or employees rendering aid in another State pursuant to
25658 this compact shall be liable on account of any act or omission in good faith on the part of its
25659 forces while engaged, or on account of the maintenance or use of any equipment or supplies in
25660 connection with giving aid.

25661 Article 6

25662 BASIC CONSIDERATIONS AND AUXILIARY ACTION

25663 (1) Since it is probable that the pattern and detail of the machinery for mutual aid
25664 among two or more States may differ from that appropriate among other States party to this
25665 compact, this instrument contains elements of a broad base common to all States, and nothing
25666 contained in it shall preclude any State from entering into supplementary agreements with
25667 another State or States. Any supplementary agreements may comprehend, but shall not be
25668 limited to provisions for evacuation and reception of injured and other persons, and the
25669 exchange of medical, fire, police, public utility, reconnaissance, welfare, transportation and
25670 communications personnel, equipment, and supplies.

25671 (2) Any supplementary agreement made to implement this Article may not be construed
25672 to abridge, impair, or supersede any other provision of this compact or any obligation
25673 undertaken by a State pursuant to the terms of this compact. A supplementary agreement
25674 implementing this Article may modify, expand, or add to any obligation among the parties to the
25675 supplementary agreement.

25676 Article 7

25677 COMPENSATION AND BENEFITS

25678 Each party State shall provide for the payment of compensation and death benefits to
 25679 injured members of the civil defense forces of that State and the representatives of deceased
 25680 members of the forces of that State in case the members sustain injuries or are killed while
 25681 rendering aid pursuant to this compact, in the same manner and on the same terms as if the
 25682 injury or death were sustained within that State.

Article 8

CONTRIBUTIONS AND REIMBURSEMENTS

25685 Any party State rendering aid in another State pursuant to this compact shall be
 25686 reimbursed by the party State receiving aid for any loss or damage to or expense incurred in the
 25687 operation of any equipment answering a request for aid, and for the cost incurred in connection
 25688 with the requests; provided that any aiding party State may assume in whole or in part any loss,
 25689 damage, expense, or other cost, or may loan any equipment or donate any services to the
 25690 receiving party State without charge or cost; and provided further that any two or more party
 25691 States may enter into supplementary agreements establishing a different allocation of costs as
 25692 among those States. The United States Government may relieve the party States receiving aid
 25693 from any liability and reimburse the party State supplying civil defense forces for the
 25694 compensation paid to and the transportation, subsistence, and maintenance expenses of its
 25695 forces during the time of the rendition of aid or assistance outside the State and may also pay
 25696 fair and reasonable compensation for the use or utilization of the supplies, materials, equipment,
 25697 or facilities so utilized or consumed.

Article 9

PLANS FOR EVACUATION AND RECEPTION OF POPULATIONS

25700 Plans for the orderly evacuation and reception of the civilian population as the result of
 25701 an emergency or disaster shall be worked out from time to time between representatives of the
 25702 party States and the various local civil defense areas. Any plans shall include the manner of
 25703 transporting evacuees, the number of evacuees to be received in different areas, the manner in
 25704 which food, clothing, housing, and medical care will be provided, the registration of the
 25705 evacuees, the providing of facilities for the notification of relatives or friends and the forwarding

25706 of evacuees to other areas or the bringing in of additional materials, supplies, and all other
25707 relevant factors. Any plans shall provide that the party State receiving evacuees shall be
25708 reimbursed generally for the out-of-pocket expenses incurred in receiving and caring for the
25709 evacuees, for expenditures for transportation, food, clothing, medicines and medical care, and
25710 like items. Any expenditures shall be reimbursed by the party State of which the evacuees are
25711 residents, or by the United States Government under plans approved by it. After the
25712 termination of the emergency or disaster, the party State of which the evacuees are residents
25713 shall assume the responsibility for the ultimate support or repatriation of the evacuees.

25714 Article 10

25715 MEMBER STATES

25716 This compact shall be available to any state of the United States and the District of
25717 Columbia.

25718 Article 11

25719 COMMITTEE ACTION AND REQUESTS

25720 The committee established pursuant to Article 1 of this compact may request the Civil
25721 Defense Agency of the United States Government to act as an informational and coordinating
25722 body under this compact, and representatives of that agency of the United States Government
25723 may attend meetings of the committee.

25724 Article 12

25725 WHEN COMPACT EFFECTIVE

25726 This compact shall become operative immediately upon its ratification by any of the
25727 States and Territories enumerated in Article 10 of this compact as between it and the State of
25728 Utah and any other of the States or Territories ratifying it and shall be subject to approval by
25729 Congress unless prior Congressional approval has been given. Duly authenticated copies of this
25730 compact and of any supplementary agreements entered into shall, at the time of their approval,
25731 be deposited with each of the party States and with the Civil Defense Agency and other
25732 appropriate agencies of the United States Government.

25733 Article 13

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DURATION OF COMPACT

This compact shall continue in force and remain binding on each party State until the Legislature or the Governor of the party State takes action to withdraw from it. Any action to withdraw shall not be effective until 30 days after notice of the action has been sent by the Governor of the party State desiring to withdraw to the Governors of all other party States.

Article 14

CONSTRUCTION OF COMPACT -- CONSTITUTIONALITY

This compact shall be construed to effectuate the purposes stated in Article 1. If any provision of this compact is declared unconstitutional, or the applicability to any person or circumstance is held invalid, the constitutionality of the remainder of this compact and the applicability to other persons and circumstances shall not be affected.

Article 15

SCOPE OF COMPACT

(1) In addition to the situations in Article 1, this compact shall apply to:

- (a) searches for and rescue of persons who are lost, marooned, or otherwise in danger;
- (b) actions useful in coping with any disasters or designed to increase the capability to

cope with any disasters;

(c) incidents, or the threat of incidents, which endanger the health or safety of the public and which require the use of special equipment, trained personnel, or personnel in larger numbers than are locally available in order to reduce, counteract, or remove the danger;

(d) giving and receiving aid between political subdivisions of party States; and

(e) exercises, drills, or other training or practice activities designed to aid personnel to prepare for, cope with, or prevent any disaster or other emergency to which this compact applies.

(2) Except as expressly limited by this compact or a supplementary agreement, any aid authorized by this compact or a supplementary agreement may be furnished by any agency of a party State, a political subdivision of the State, or by a joint agency of any two or more party States or of their subdivisions. Any joint agency providing aid shall be entitled to

25762 reimbursement to the same extent and in the same manner as a state. The personnel of a joint
25763 agency, when rendering aid under this compact shall have the same rights, authority, and
25764 immunity as personnel of party States.

25765 (3) Nothing in this Article shall be construed to exclude from coverage under Articles 1
25766 through 14 of this compact any matter which, in the absence of this Article, could reasonably be
25767 construed to be covered.

25768 Section 519. Section **39-7-119** is amended to read:

25769 **39-7-119. Rulemaking authority.**

25770 The Adjutant General may make rules in accordance with [~~Title 63, Chapter 46a~~] Title
25771 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.

25772 Section 520. Section **40-2-1.1** is amended to read:

25773 **40-2-1.1. Rulemaking authority.**

25774 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
25775 Rulemaking Act, the Labor Commission may make rules necessary to implement this chapter.

25776 Section 521. Section **40-2-15** is amended to read:

25777 **40-2-15. Certification requirements -- Fees.**

25778 (1) The Labor Commission shall collect a fee for:

25779 (a) certification tests; or

25780 (b) sections of the test that must be retaken.

25781 (2) (a) The Labor Commission shall establish fees by following the procedures and
25782 requirements of Section [~~63-38-3.2~~] 63J-1-303.

25783 (b) Notwithstanding Subsection [~~63-38-3.2~~] 63J-1-303(2)(e), the Labor Commission
25784 shall retain the fees as dedicated credits and may only use the fees to administer the certification
25785 test.

25786 (3) An applicant who fails any section of the certification test may retake that section of
25787 the test.

25788 (4) (a) An applicant who wishes to obtain a mine foreman certificate shall have at least
25789 four years varied underground coal mining experience, of which:

25790 (i) two years' experience may be credited to a mining engineering graduate of an
25791 approved four-year college; or

25792 (ii) one year's experience may be credited to a graduate of a two-year course in mining
25793 technology.

25794 (b) (i) An applicant who wishes to obtain a surface foreman certificate shall have at
25795 least three years of varied surface experience.

25796 (ii) The Labor Commission may grant a surface foreman certificate applicant credit for
25797 surface experience in any other industry that has substantially equivalent surface facilities.

25798 (c) An applicant who wishes to obtain a fire boss certificate shall have at least two years
25799 of underground coal mining experience, of which:

25800 (i) one year's experience may be credited to a mining engineering graduate of an
25801 approved four-year college; or

25802 (ii) six months' experience may be credited to a graduate of a two-year course in mining
25803 technology.

25804 (d) An applicant who wishes to obtain an underground mine electrician certificate shall
25805 have at least one year of varied electrical experience as specified in 30 C.F.R. Sec. 75.153.

25806 (e) An applicant who wishes to obtain a surface mine electrician certificate shall have at
25807 least one year of varied surface electrical experience as specified in 30 C.F.R. Sec. 77.103.

25808 (5) A certificate issued under Section 40-2-14 and this section shall expire if the
25809 certificate holder ceases to work in the mining industry or a mine related industry for more than
25810 five consecutive years.

25811 Section 522. Section **40-2-16** is amended to read:

25812 **40-2-16. Necessity of certificate -- Temporary certificates -- Surface foreman**
25813 **certificate -- Fee -- Employment of uncertified persons prohibited.**

25814 (1) A person may not work in any occupation referred to in Section 40-2-15 unless
25815 granted a certificate by the Labor Commission.

25816 (2) (a) (i) The Labor Commission may issue a temporary mine foreman certificate or a
25817 temporary surface foreman certificate to an applicant who is:

- 25818 (A) recommended by a mine; and
- 25819 (B) interviewed and found competent by two panel members.
- 25820 (ii) A certificate issued under Subsection (2)(a)(i) shall remain in effect until:
- 25821 (A) the next scheduled certification test;
- 25822 (B) retest; or
- 25823 (C) terminated by the Labor Commission.
- 25824 (b) (i) The Labor Commission may issue a surface foreman certificate to a current
- 25825 holder of an underground mine foreman certificate, if the applicant has three years of varied
- 25826 surface mining experience.
- 25827 (ii) A surface foreman certificate applicant may receive credit for surface experience in
- 25828 any other industry that has substantially equivalent surface facilities, if the applicant has
- 25829 performed or is presently performing the duties normally required of a surface foreman.
- 25830 (3) (a) The Labor Commission shall collect a fee for each temporary certificate.
- 25831 (b) The Labor Commission shall establish the fee by following the procedures and
- 25832 requirements of Section [~~63-38-3.2~~] 63J-1-303.
- 25833 (4) (a) An owner, operator, contractor, lessee, or agent may not employ a worker in
- 25834 any occupation referred to in Section 40-2-15 who is uncertified.
- 25835 (b) The certificate shall be on file and available for inspection to interested persons in
- 25836 the office of the mine.
- 25837 Section 523. Section **40-6-10** is amended to read:
- 25838 **40-6-10. Procedures -- Adjudicative proceedings -- Emergency orders -- Hearing**
- 25839 **examiners.**
- 25840 (1) (a) The Board of Oil, Gas, and Mining and the Division of Oil, Gas, and Mining
- 25841 shall comply with the procedures and requirements of [~~Title 63, Chapter 46b,~~] Title 63G,
- 25842 Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.
- 25843 (b) The board shall enact rules governing its practice and procedure that are not
- 25844 inconsistent with [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act.
- 25845 (2) When an emergency requiring immediate action is found by the division director or

25846 any board member to exist, ~~he~~ the division director or board member may issue an emergency
25847 order according to the requirements and procedures of ~~[Title 63, Chapter 46b]~~ Title 63G,
25848 Chapter 4, Administrative Procedures Act.

25849 (3) Any notice required by this chapter, except as otherwise provided, shall be given at
25850 the election of the board either by personal service or by one publication in a daily newspaper of
25851 general circulation in the city of Salt Lake and county of Salt Lake, Utah, and in all newspapers
25852 of general circulation published in the county where the land is affected, or some part of the
25853 land is situated.

25854 (4) (a) Any order made by the board is effective on issuance.

25855 (b) All rules and orders issued by the board shall be:

25856 (i) in writing;

25857 (ii) entered in full in books to be kept by the board for that purpose;

25858 (iii) indexed; and

25859 (iv) public records open for inspection at all times during reasonable office hours.

25860 (c) A copy of any rule, finding of fact, or order, certified by the board or by the division
25861 director, shall be received in evidence in all courts of this state with the same effect as the
25862 original.

25863 (5) The board may act upon its own motion or upon the petition of any interested
25864 person.

25865 (6) (a) The board may appoint a hearing examiner to take evidence and to recommend
25866 findings of fact and conclusions of law to the board.

25867 (b) Any member of the board, division staff, or any other person designated by the
25868 board may serve as a hearing examiner.

25869 (c) The board may enter an order based on the recommendations of the examiner.

25870 Section 524. Section **40-6-14.5** is amended to read:

25871 **40-6-14.5. Oil and Gas Conservation Account created -- Contents -- Use of**
25872 **account monies.**

25873 (1) There is created within the General Fund a restricted account known as the Oil and

25874 Gas Conservation Account.

25875 (2) The contents of the account shall consist of:

25876 (a) revenues from the fee levied under Section 40-6-14, including any penalties or

25877 interest charged for delinquent payments; and

25878 (b) interest and earnings on account monies.

25879 (3) Account monies shall be used to pay for the:

25880 (a) administration of this chapter; and

25881 (b) plugging and reclamation of abandoned oil or gas wells or bore, core, or exploratory

25882 holes for which:

25883 (i) there is no reclamation surety; or

25884 (ii) the forfeited surety is insufficient for plugging and reclamation.

25885 (4) Priority in the use of the monies shall be given to paying for the administration of

25886 this chapter.

25887 (5) Appropriations for plugging and reclamation of abandoned oil or gas wells or bore,

25888 core, or exploratory holes shall be nonlapsing.

25889 (6) The balance of the Oil and Gas Conservation Account at the end of a fiscal year may

25890 not exceed \$750,000. Any excess monies shall be transferred to the General Fund.

25891 (7) (a) As used in this Subsection (7), "excess fee revenue" means revenue collected in

25892 fiscal year 1999-2000 from the fee levied under Section 40-6-14 that exceeds the fee revenue

25893 appropriated to the Division of Oil, Gas, and Mining in fiscal year 1999-2000.

25894 (b) If there is a General Fund surplus for fiscal year 1999-2000, the Division of Finance

25895 shall transfer General Fund surplus monies to the Oil and Gas Conservation Account in an

25896 amount up to the excess fee revenue.

25897 (c) The transfer provided in Subsection (7)(b) shall be made after General Fund surplus

25898 monies are transferred to the General Fund Budget Reserve Account pursuant to Section

25899 [~~63-38-2.5~~] 63J-1-202.

25900 Section 525. Section **40-8-4** is amended to read:

25901 **40-8-4. Definitions.**

25902 As used in this chapter:

25903 (1) "Adjudicative proceeding" means:

25904 (a) a division or board action or proceeding determining the legal rights, duties,
25905 privileges, immunities, or other legal interests of one or more identifiable persons, including
25906 actions to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right,
25907 permit, or license; or

25908 (b) judicial review of a division or board action or proceeding specified in Subsection
25909 (1)(a).

25910 (2) "Applicant" means a person who has filed a notice of intent to commence mining
25911 operations, or who has applied to the board for a review of a notice or order.

25912 (3) (a) "Approved notice of intention" means a formally filed notice of intention to
25913 commence mining operations, including revisions to it, which has been approved under Section
25914 40-8-13.

25915 (b) An approved notice of intention is not required for small mining operations.

25916 (4) "Board" means the Board of Oil, Gas and Mining.

25917 (5) "Conference" means an informal adjudicative proceeding conducted by the division
25918 or board.

25919 (6) (a) "Deposit" or "mineral deposit" means an accumulation of mineral matter in the
25920 form of consolidated rock, unconsolidated material, solutions, or occurring on the surface,
25921 beneath the surface, or in the waters of the land from which any product useful to man may be
25922 produced, extracted, or obtained or which is extracted by underground mining methods for
25923 underground storage.

25924 (b) "Deposit" or "mineral deposit" excludes sand, gravel, rock aggregate, water,
25925 geothermal steam, and oil and gas as defined in Title 40, Chapter 6, Board and Division of Oil,
25926 Gas and Mining, but includes oil shale and bituminous sands extracted by mining operations.

25927 (7) "Development" means the work performed in relation to a deposit following its
25928 discovery but prior to and in contemplation of production mining operations, aimed at, but not
25929 limited to, preparing the site for mining operations, defining further the ore deposit by drilling or

25930 other means, conducting pilot plant operations, constructing roads or ancillary facilities, and
25931 other related activities.

25932 (8) "Division" means the Division of Oil, Gas and Mining.

25933 (9) "Emergency order" means an order issued by the board in accordance with the
25934 provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

25935 (10) (a) "Exploration" means surface-disturbing activities conducted for the purpose of
25936 discovering a deposit or mineral deposit, delineating the boundaries of a deposit or mineral
25937 deposit, and identifying regions or specific areas in which deposits or mineral deposits are most
25938 likely to exist.

25939 (b) "Exploration" includes, but is not limited to: sinking shafts; tunneling; drilling holes
25940 and digging pits or cuts; building of roads, and other access ways; and constructing and
25941 operating other facilities related to these activities.

25942 (11) "Hearing" means a formal adjudicative proceeding conducted by the board under
25943 its procedural rules.

25944 (12) (a) "Imminent danger to the health and safety of the public" means the existence of
25945 a condition or practice, or a violation of a permit requirement or other requirement of this
25946 chapter in a mining operation, which condition, practice, or violation could reasonably be
25947 expected to cause substantial physical harm to persons outside the permit area before the
25948 condition, practice, or violation can be abated.

25949 (b) A reasonable expectation of death or serious injury before abatement exists if a
25950 rational person, subjected to the same conditions or practices giving rise to the peril, would not
25951 expose himself or herself to the danger during the time necessary for abatement.

25952 (13) (a) "Land affected" means the surface and subsurface of an area within the state
25953 where mining operations are being or will be conducted, including, but not limited to:

25954 (i) on-site private ways, roads, and railroads;

25955 (ii) land excavations;

25956 (iii) exploration sites;

25957 (iv) drill sites or workings;

- 25958 (v) refuse banks or spoil piles;
- 25959 (vi) evaporation or settling ponds;
- 25960 (vii) stockpiles;
- 25961 (viii) leaching dumps;
- 25962 (ix) placer areas;
- 25963 (x) tailings ponds or dumps; and
- 25964 (xi) work, parking, storage, or waste discharge areas, structures, and facilities.
- 25965 (b) All lands shall be excluded from the provisions of Subsection (13)(a) that would:
- 25966 (i) be includable as land affected, but which have been reclaimed in accordance with an
- 25967 approved plan, as may be approved by the board; and
- 25968 (ii) lands in which mining operations have ceased prior to July 1, 1977.
- 25969 (14) (a) "Mining operation" means activities conducted on the surface of the land for
- 25970 the exploration for, development of, or extraction of a mineral deposit, including, but not
- 25971 limited to, surface mining and the surface effects of underground and in situ mining, on-site
- 25972 transportation, concentrating, milling, evaporation, and other primary processing.
- 25973 (b) "Mining operation" does not include:
- 25974 (i) the extraction of sand, gravel, and rock aggregate;
- 25975 (ii) the extraction of oil and gas as defined in Title 40, Chapter 6, Board and Division of
- 25976 Oil, Gas and Mining;
- 25977 (iii) the extraction of geothermal steam;
- 25978 (iv) smelting or refining operations;
- 25979 (v) off-site operations and transportation;
- 25980 (vi) reconnaissance activities; or
- 25981 (vii) activities which will not cause significant surface resource disturbance or involve
- 25982 the use of mechanized earth-moving equipment, such as bulldozers or backhoes.
- 25983 (15) "Notice" means:
- 25984 (a) notice of intention, as defined in this chapter; or
- 25985 (b) written information given to an operator by the division describing compliance

25986 conditions at a mining operation.

25987 (16) "Notice of intention" means a notice to commence mining operations, including
25988 revisions to the notice.

25989 (17) "Off-site" means the land areas that are outside of or beyond the on-site land.

25990 (18) (a) "On-site" means the surface lands on or under which surface or underground
25991 mining operations are conducted.

25992 (b) A series of related properties under the control of a single operator, but separated
25993 by small parcels of land controlled by others, will be considered to be a single site unless an
25994 exception is made by the division.

25995 (19) "Operator" means a natural person, corporation, association, partnership, receiver,
25996 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
25997 representative, either public or private, owning, controlling, or managing a mining operation or
25998 proposed mining operation.

25999 (20) "Order" means written information provided by the division or board to an
26000 operator or other parties, describing the compliance status of a permit or mining operation.

26001 (21) "Owner" means a natural person, corporation, association, partnership, receiver,
26002 trustee, executor, administrator, guardian, fiduciary, agent, or other organization or
26003 representative, either public or private, owning, controlling, or managing a mineral deposit or
26004 the surface of lands employed in mining operations.

26005 (22) "Permit area" means the area of land indicated on the approved map submitted by
26006 the operator with the application or notice to conduct mining operations.

26007 (23) "Permit" means a permit or notice to conduct mining operations issued by the
26008 division.

26009 (24) "Permittee" means a person holding, or who is required by Utah law to hold, a
26010 valid permit or notice to conduct mining operations.

26011 (25) "Person" means an individual, partnership, association, society, joint stock
26012 company, firm, company, corporation, or other governmental or business organization.

26013 (26) "Reclamation" means actions performed during or after mining operations to

26014 shape, stabilize, revegetate, or treat the land affected in order to achieve a safe, stable,
26015 ecological condition and use which will be consistent with local environmental conditions.

26016 (27) "Small mining operations" means mining operations which disturb or will disturb
26017 five or less surface acres at any given time.

26018 (28) "Unwarranted failure to comply" means the failure of a permittee to prevent the
26019 occurrence of a violation of the permit or a requirement of this chapter due to indifference, lack
26020 of diligence, or lack of reasonable care, or the failure to abate a violation of the permit or this
26021 chapter due to indifference, lack of diligence, or lack of reasonable care.

26022 Section 526. Section **40-8-6** is amended to read:

26023 **40-8-6. Board -- Powers, functions, and duties.**

26024 In addition to those provided in Title 40, Chapter 6, Board and Division of Oil, Gas and
26025 Mining, the board has the following powers, functions, and duties:

26026 (1) To enact rules according to the procedures and requirements of [~~Title 63, Chapter~~
26027 ~~46a,~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that are reasonably necessary
26028 to carry out the purposes of this chapter.

26029 (2) To hold hearings and to issue orders or other appropriate instruments based upon
26030 the results of those hearings.

26031 (3) To issue emergency orders according to the requirements and provisions of [~~Title~~
26032 ~~63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act.

26033 (4) To do all other things and take such other actions within the purposes of this act as
26034 may be necessary to enforce its provisions.

26035 Section 527. Section **40-8-7** is amended to read:

26036 **40-8-7. Board and division -- Authority.**

26037 (1) The board and the division may require:

26038 (a) that a notice of intention for all mining operations be filed with, and approved by,
26039 the division, before the mining operation commences or continues pursuant to Sections 40-8-13
26040 and 40-8-23;

26041 (b) the reclamation of lands affected by mining operations after the effective date of this

26042 chapter having due regard for innate differences in mineral deposits;

26043 (c) for mining operations, including small mining operations, the furnishing and
26044 maintenance of reasonable surety to guarantee that the land affected is reclaimed according to
26045 approved plans consistent with on-site conditions;

26046 (d) that the operator rehabilitate, close, or mitigate the impacts of each drill hole, shaft,
26047 or tunnel as required under Section 40-8-13;

26048 (e) that the operator pay legally determined public liability and property damage claims
26049 resulting from mining operations;

26050 (f) that every operator who conducts mining operations in the state maintain suitable
26051 records and make periodic reports to the division as required under this chapter;

26052 (g) that with respect to all mining operations, a notice of intention is filed with and, if
26053 required by this chapter, approved by the division before any such mining operations are
26054 commenced or continued pursuant to Section 40-8-23;

26055 (h) the suspension of mining operations in an emergency situation;

26056 (i) the payment of fixed, uniform, and nonescalating permit fees; or

26057 (j) that mining operations be conducted to minimize or prevent hazards to public health
26058 and safety.

26059 (2) No rule established by the board with respect to mined land reclamation shall have
26060 retroactive effect on existing reclamation plans included as a part of an approved notice of
26061 intention to commence mining operations which was approved prior to the effective date of the
26062 rule.

26063 (3) The board may promulgate rules relating to the surety for mining operations in
26064 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
26065 Act.

26066 Section 528. Section **40-10-6** is amended to read:

26067 **40-10-6. Powers, functions, and duties of board and division.**

26068 In addition to those provided in Title 40, Chapter 8, the board and division have the
26069 following powers, functions, and duties:

26070 (1) to make and promulgate in accordance with [~~Title 63, Chapter 46a, the~~] Title 63G,
26071 Chapter 3, Utah Administrative Rulemaking Act, [~~such~~] the rules as are specifically necessary
26072 for the regulation of coal mining operations and reclamation operations;

26073 (2) to authorize its employees, agents, or contractors to enter upon any property for the
26074 purpose of carrying out the provisions of this chapter and Title 40, Chapter 8;

26075 (3) to establish specific reclamation and performance standards for new and existing
26076 coal mining operations and to effectuate these standards retroactively;

26077 (4) to prohibit mining and exploration operations without a permit and to establish
26078 procedures and requirements for the preparation, submission, approval, denial, termination, and
26079 modification of applications for coal mining and reclamation permits and for coal exploration
26080 permits;

26081 (5) to set and assess an application fee based on no more than the actual cost of review
26082 and processing of the application, this fee to accompany each application for a surface coal
26083 mining and reclamation permit and each application for an exploration permit;

26084 (6) to establish procedures and detailed requirements for all reclamation plans submitted
26085 as part of a permit application;

26086 (7) to condition the issuance of a permit to commence or continue surface mining
26087 operations upon the posting of performance bonds, deposits, or sureties and to make provision
26088 for the release of same in compliance with the requirements of this chapter;

26089 (8) to appoint or employ technical support, legal services, or independent consultants in
26090 furtherance of the objectives of this chapter and shall be responsible for coordination with other
26091 agencies in matters relating to mined land reclamation and the application of related law; and

26092 (9) to do all other things and take such other actions retroactively or otherwise within
26093 the purposes of this chapter as may be necessary to enforce its provisions.

26094 Section 529. Section **40-10-6.5** is amended to read:

26095 **40-10-6.5. Rulemaking authority and procedure.**

26096 (1) The board shall promulgate rules under this chapter in accordance with [~~Title 63,~~
26097 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

26098 (2) Except as provided in Subsection (3), no rule which the board adopts for the
 26099 purpose of the state administering a program under the federal Surface Mining Control and
 26100 Reclamation Act may be more stringent than the corresponding federal regulations which
 26101 address the same circumstances. In adopting such rules, the board may incorporate by reference
 26102 corresponding federal regulations.

26103 (3) The board may adopt rules more stringent than corresponding federal regulations
 26104 for the purpose described in Subsection (2), only if it makes a written finding after public
 26105 comment and hearing, and based on evidence in the record, that the corresponding federal
 26106 regulation is not adequate to protect public safety and the environment of the state. Those
 26107 findings shall be accompanied by an opinion referring to and evaluating the public safety and
 26108 environmental information and studies contained in the record which form the basis for the
 26109 board's conclusion.

26110 Section 530. Section **40-10-6.7** is amended to read:

26111 **40-10-6.7. Administrative procedures.**

26112 (1) (a) Informal adjudicative proceedings shall be conducted by the division under this
 26113 chapter and shall be referred to as conferences or informal conferences.

26114 (b) The conduct of conferences shall be governed by rules adopted by the board which
 26115 are in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
 26116 Act.

26117 (2) (a) (i) Formal adjudicative proceedings shall be conducted by the division or board
 26118 under this chapter and shall be referred to as hearings or public hearings.

26119 (ii) The conduct of hearings shall be governed by rules adopted by the board which are
 26120 in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
 26121 Act.

26122 (b) Hearings under this chapter shall be conducted in a manner which guarantees the
 26123 parties' due process rights. This includes:

26124 (i) the right to examine any evidence presented to the board;

26125 (ii) the right to cross-examine any witness; and

26126 (iii) a prohibition of ex parte communication between any party and a member of the
26127 board.

26128 (c) A verbatim record of each public hearing required by this chapter shall be made, and
26129 a transcript made available on the motion of any party or by order of the board.

26130 Section 531. Section **40-10-13** is amended to read:

26131 **40-10-13. Advertisement of ownership, location, and boundaries -- Notice to**
26132 **interested agencies or bodies -- Objections -- Conference.**

26133 (1) At the time of submission of an application for a surface coal mining and
26134 reclamation permit, or revision of an existing permit pursuant to the provisions of this chapter,
26135 the applicant shall submit to the division a copy of [~~his~~] the applicant's advertisement of the
26136 ownership, precise location, and boundaries of the land to be affected. At the time of
26137 submission the advertisement shall be placed by the applicant in a local newspaper of general
26138 circulation in the locality of the proposed surface mine at least once a week for four consecutive
26139 weeks. The division shall notify various local governmental bodies, planning agencies, and
26140 sewage and water treatment authorities of water companies in the locality in which the
26141 proposed surface mining will take place, notifying them of the operator's intention to surface
26142 mine a particularly described tract of land and indicating the application's permit number and
26143 where a copy of the proposed mining and reclamation plan may be inspected. These local
26144 bodies, agencies, authorities, or companies may submit written comments within a reasonable
26145 period established by the division on the mining applications with respect to the effects of the
26146 proposed operation on the environment which are within their area of responsibility. These
26147 comments shall immediately be transmitted to the applicant by the division and shall be made
26148 available to the public at the same locations as are the mining applications.

26149 (2) (a) Any person having an interest which is or may be adversely affected or the
26150 officer or head of any federal, state, or local governmental agency or authority shall have the
26151 right to file written objections to the proposed initial or revised application for a permit for
26152 surface coal mining and reclamation operations with the division within 30 days after the last
26153 publication of the notice. These objections shall immediately be transmitted to the applicant by

26154 the division and shall be made available to the public.

26155 (b) If written objections are filed and a conference requested, the division shall then
26156 hold a conference within a reasonable time of the receipt of the objections or request. The
26157 conference shall be informal and shall be conducted in accordance with the procedures
26158 described in this Subsection (2)(b), irrespective of the requirements of Section [~~63-46b-5~~]
26159 63G-4-203, Administrative Procedures Act. The conference shall be held in the locality of the
26160 coal mining and reclamation operation if requested within a reasonable time after written
26161 objections or the request for an informal conference are received by the division. The date,
26162 time, and location of the conference shall be advertised by the division in a newspaper of general
26163 circulation in the locality at least two weeks prior to the scheduled conference date. The
26164 division may arrange with the applicant upon request by any party to the administrative
26165 proceeding access to the proposed mining area for the purpose of gathering information
26166 relevant to the proceeding. An electronic or stenographic record shall be made of the
26167 conference proceeding unless waived by all parties. This record shall be maintained and shall be
26168 accessible to the parties until final release of the applicant's performance bond. In the event all
26169 parties requesting the conference stipulate agreement prior to the requested conference and
26170 withdraw their request, the conference need not be held.

26171 Section 532. Section **40-10-14** is amended to read:

26172 **40-10-14. Division's findings issued to applicant and parties to conference --**
26173 **Notice to applicant of approval or disapproval of application -- Hearing -- Temporary**
26174 **relief -- Appeal to district court -- Further review.**

26175 (1) If a conference has been held under Subsection 40-10-13(2), the division shall issue
26176 and furnish the applicant for a permit and persons who are parties to the proceedings with the
26177 written finding of the division granting or denying the permit in whole or in part and stating the
26178 reasons, within the 60 days after the conference.

26179 (2) If there has been no conference held under Subsection 40-10-13(2), the division
26180 shall notify the applicant for a permit within a reasonable time as set forth in rules, taking into
26181 account the time needed for proper investigation of the site, the complexity of the permit

26182 application, and whether or not written objection to the application has been filed, whether the
26183 application has been approved or disapproved in whole or part.

26184 (3) Upon approval of the application, the permit shall be issued. If the application is
26185 disapproved, specific reasons shall be set forth in the notification. Within 30 days after the
26186 applicant is notified of the final decision of the division on the permit application, the applicant
26187 or any person with an interest which is or may be adversely affected may request a hearing on
26188 the reasons for the final determination. The board shall hold a hearing pursuant to the rules of
26189 practice and procedure of the board within 30 days of this request and provide notification to all
26190 interested parties at the time that the applicant is notified. Within 30 days after the hearing the
26191 board shall issue and furnish the applicant, and all persons who participated in the hearing, with
26192 the written decision of the board granting or denying the permit in whole or in part and stating
26193 the reasons.

26194 (4) Where a hearing is requested pursuant to Subsection (3), the board may, under
26195 conditions it prescribes, grant temporary relief it deems appropriate pending final determination
26196 of the proceedings if:

26197 (a) all parties to the proceedings have been notified and given an opportunity to be
26198 heard on a request for temporary relief;

26199 (b) the person requesting the relief shows that there is a substantial likelihood that ~~he~~
26200 the person will prevail on the merits of the final determination of the proceedings; and

26201 (c) the relief will not adversely affect the public health or safety or cause significant
26202 imminent environmental harm to land, air, or water resources.

26203 (5) For the purpose of the hearing, the board may administer oaths, subpoena witnesses
26204 or written or printed materials, compel attendance of the witnesses or production of the
26205 materials, and take evidence, including, but not limited to, site inspections of the land to be
26206 affected and other surface coal mining operations carried on by the applicant in the general
26207 vicinity of the proposed operation. A verbatim record of each public hearing required by this
26208 chapter shall be made, and a transcript made available on the motion of any party or by order of
26209 the board.

26210 (6) (a) An applicant or person with an interest which is or may be adversely affected
26211 who has participated in the proceedings as an objector, and who is aggrieved by the decision of
26212 the board, may appeal the decision of the board directly to the Utah Supreme Court.

26213 (b) If the board fails to act within the time limits specified in this chapter, the applicant
26214 or any person with an interest which is or may be adversely affected, who has requested a
26215 hearing in accordance with Subsection (3), may bring an action in the district court for the
26216 county in which the proposed operation is located.

26217 (c) Any party to the action in district court may appeal from the final judgment, order,
26218 or decree of the district court.

26219 (d) Time frames for appeals under Subsections (6)(a) through (c) shall be consistent
26220 with applicable provisions in Section [~~63-46b-14, Administrative Procedures Act~~] 63G-4-401.

26221 Section 533. Section **40-10-16** is amended to read:

26222 **40-10-16. Release of performance bond, surety, or deposit -- Inspection and**
26223 **evaluation of reclamation work -- Action on application for release of bond -- Objections**
26224 **-- Formal hearing or informal conference.**

26225 (1) The division shall adopt and promulgate rules providing for the release of all or part
26226 of a performance bond, surety, or deposit which will include the following requirements:

26227 (a) filing of a request with the division by the operator; and

26228 (b) advertisement by the operator designed to give public notice of the release and the
26229 reclamation steps taken by the operator.

26230 (2) Upon receipt of the notification and request, the division shall within 30 days
26231 conduct an inspection and evaluation of the reclamation work involved. The evaluation shall
26232 consider, among other things, the degree of difficulty to complete any remaining reclamation,
26233 whether pollution of surface and subsurface water is occurring, the probability of continuance of
26234 future occurrence of the pollution, and the estimated cost of abating the pollution. The division
26235 shall notify the operator in writing of its decision to release or not to release all or part of the
26236 performance bond or deposit within 60 days from the filing of the request, if no public hearing is
26237 held pursuant to Subsection (6), and if there has been a public hearing held pursuant to

26238 Subsection (6), within 30 days thereafter.

26239 (3) The division may release in whole or in part the bond or deposit if the division is
26240 satisfied the reclamation covered by the bond or deposit or portion of them has been
26241 accomplished as required by this chapter according to the schedule set forth in the division's
26242 rules, but no bond shall be fully released until all reclamation requirements of this chapter are
26243 finally met.

26244 (4) If the division disapproves the application for release of the bond or portion of it,
26245 the division shall notify the permittee in writing, stating the reasons for disapproval and
26246 recommending corrective actions necessary to secure the release and allowing opportunity for a
26247 public hearing.

26248 (5) When any application for total or partial bond release is filed with the division, the
26249 division shall notify the municipality in which a surface coal mining operation is located by
26250 certified mail at least 30 days prior to the release of all or a portion of the bond.

26251 (6) (a) Any person with a valid legal interest which may be adversely affected by release
26252 of the bond or the responsible officer or head of any federal, state, or local governmental agency
26253 which has jurisdiction by law or special expertise with respect to any environmental, social, or
26254 economic impact involved in the operation, or is authorized to develop and enforce
26255 environmental standards with respect to these operations shall have the right to file written
26256 objections to the proposed release from bond with the division within 30 days after the last
26257 publication of the above notice.

26258 (b) If written objections are filed and a conference is requested, the division shall inform
26259 all the interested parties of the time and place of the conference and hold an informal conference
26260 within 30 days after the request is filed with the division.

26261 (c) The conference officer may convert the conference to a formal proceeding under the
26262 standards set forth by Section [~~63-46b-4~~] 63G-4-202. The matter shall be scheduled for hearing
26263 before the board and a hearing shall be held in accordance with the rules of practice and
26264 procedure of the board.

26265 (d) A decision from the informal conference (d) may be appealed to the board. The board

26266 shall hold a hearing pursuant to the rules of practice and procedure of the board.

26267 Section 534. Section **40-10-21** is amended to read:

26268 **40-10-21. Civil action to compel compliance with chapter -- Jurisdiction -- Venue**
26269 **-- Division and board as parties -- Court costs -- Security when temporary restraining**
26270 **order or injunction sought -- Other rights not affected -- Action for damages.**

26271 (1) (a) Except as provided in Subsection (2), any person having an interest which is or
26272 may be adversely affected may commence a civil action on [~~his~~] the person's own behalf to
26273 compel compliance with this chapter against:

26274 (i) the state or any other governmental instrumentality or agency to the extent permitted
26275 by the 11th Amendment to the United States Constitution or [~~Title 63, Chapter 30d~~] Title 63G,
26276 Chapter 7, Governmental Immunity Act of Utah, which is alleged to be in violation of the
26277 provisions of this chapter or of any rule, order, or permit issued pursuant to it;

26278 (ii) any person who is alleged to be in violation of any rule, order, or permit issued
26279 pursuant to this chapter; or

26280 (iii) the division or board where there is alleged a failure of the division or board to
26281 perform any act or duty under this chapter which is not discretionary with the division or with
26282 the board.

26283 (b) The district courts shall have jurisdiction without regard to the amount in
26284 controversy or the citizenship of the parties.

26285 (2) No action may be commenced:

26286 (a) under Subsection (1)(a)(i) or (ii):

26287 (i) prior to 60 days after the plaintiff has given notice in writing of the violation to the
26288 division and to any alleged violator; or

26289 (ii) if the attorney general has commenced and is diligently prosecuting a civil action in
26290 a court of the state to require compliance with the provisions of this chapter, or any rule, order,
26291 or permit issued pursuant to this chapter; or

26292 (b) under Subsection (1)(a)(iii) prior to 60 days after the plaintiff has given notice in
26293 writing of the action to the board, in the manner as the board prescribes by rule, except that the

26294 action may be brought immediately after the notification in the case where the violation or order
26295 complained of constitutes an imminent threat to the health or safety of the plaintiff or would
26296 immediately affect a legal interest of the plaintiff.

26297 (3) (a) Any action concerning a violation of this chapter or the rules promulgated under
26298 it may be brought only in the judicial district in which the surface coal mining operation
26299 complained of is located.

26300 (b) In the action, the division and board, if not a party, may intervene as a matter of
26301 right.

26302 (4) (a) The court, in issuing any final order in any action brought pursuant to
26303 Subsection (1), may award costs of litigation, including attorney and expert witness fees, to any
26304 party whenever the court determines that award is appropriate.

26305 (b) The court may, if a temporary restraining order or preliminary injunction is sought,
26306 require the filing of a bond or equivalent security in accordance with the Utah Rules of Civil
26307 Procedure.

26308 (5) Nothing in this section may restrict any right which any person, or class of persons,
26309 has under any statute or common law to seek enforcement of any of the provisions of this
26310 chapter and the rules promulgated under it, or to seek any other relief, including relief against
26311 the division and board.

26312 (6) Any person who is injured in his person or property through the violation by an
26313 operator of any rule, order, or permit issued pursuant to this chapter may bring an action for
26314 damages, including reasonable attorney and expert witness fees, only in the judicial district in
26315 which the surface coal mining operation complained of is located. Nothing in this Subsection
26316 (6) shall affect the rights established by or limits imposed under Utah workmen's compensation
26317 laws.

26318 Section 535. Section **40-10-30** is amended to read:

26319 **40-10-30. Judicial review of rules or orders.**

26320 (1) Judicial review of adjudicative proceedings under this chapter is governed by [~~Title~~
26321 ~~63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, and provisions of this

26322 chapter consistent with the Administrative Procedures Act.

26323 (2) Judicial review of the board's rulemaking procedures and rules adopted under this
26324 chapter is governed by [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
26325 Rulemaking Act.

26326 (3) An appeal from an order of the board shall be directly to the Utah Supreme Court
26327 and is not a trial de novo. The court shall set aside the board action if it is found to be:

- 26328 (a) unreasonable, unjust, arbitrary, capricious, or an abuse of discretion;
- 26329 (b) contrary to constitutional right, power, privilege, or immunity;
- 26330 (c) in excess of statutory jurisdiction, authority, or limitations;
- 26331 (d) not in compliance with procedure required by law;
- 26332 (e) based upon a clearly erroneous interpretation or application of the law; or
- 26333 (f) as to an adjudicative proceeding, unsupported by substantial evidence on the record.

26334 (4) An action or appeal involving an order of the board shall be determined as
26335 expeditiously as feasible and in accordance with Section 78-2-2. The Utah Supreme Court shall
26336 determine the issues on both questions of law and fact and shall affirm or set aside the rule or
26337 order, enjoin or stay the effective date of agency action, or remand the cause to the board for
26338 further proceedings. Judicial review of disputed issues of fact shall be confined to the agency
26339 record. The court may, in its discretion, receive additional evidence for good cause shown.

26340 (5) If the board fails to perform any act or duty under this chapter which is not
26341 discretionary, the aggrieved person may bring an action in the district court of the county in
26342 which the operation or proposed operation is located.

26343 Section 536. Section **41-1a-115** is amended to read:

26344 **41-1a-115. Division records -- Copies.**

- 26345 (1) The division shall file each application received.
- 26346 (2) The division shall keep a record of each registration on a calendar year basis as
26347 follows:
 - 26348 (a) under a distinctive registration number assigned to the vehicle, vessel, or outboard
26349 motor;

26350 (b) alphabetically, under the name of the owner of the vehicle, vessel, or outboard
26351 motor;

26352 (c) under the identification number of the vehicle, vessel, or outboard motor; and
26353 (d) in any manner the division finds desirable for compiling statistical information or of
26354 comparative value for use in determining registration fees in future years.

26355 (3) (a) The division shall maintain a current record of each certificate of title it issues.
26356 (b) (i) The division shall file and retain every surrendered certificate of title and every
26357 application for title to permit the tracing of title of the vehicles designated in them.
26358 (ii) The retention period for division records shall be set by the Division of Archives and
26359 Records Service in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
26360 Records Access and Management Act.

26361 (4) (a) The commission and officers of the division the commission designates may
26362 prepare under the seal of the division and deliver upon request a certified copy of any record of
26363 the division, including microfilmed records, charging a fee, determined by the commission
26364 pursuant to Section [~~63-38-3.2~~] 63J-1-303, for each document authenticated.

26365 (b) The application shall include the requested information to identify the applicant.
26366 (c) Each certified copy is admissible in any proceeding in any court in the same manner
26367 as the original.

26368 (5) The division shall comply with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
26369 Government Records Access and Management Act.

26370 Section 537. Section **41-1a-116** is amended to read:
26371 **41-1a-116. Records -- Access to records -- Fees.**
26372 (1) (a) All motor vehicle title and registration records of the division are protected
26373 unless the division determines based upon a written request by the subject of the record that the
26374 record is public.
26375 (b) In addition to the provisions of this section, access to all division records is
26376 permitted for all purposes described in the federal Driver's Privacy Protection Act of 1994, 18
26377 U.S.C. Chapter 123.

26378 (2) (a) Access to public records is determined by Section [~~63-2-201~~] 63G-2-201.

26379 (b) A record designated as public under Subsection (1)(a) may be used for advertising
26380 or solicitation purposes.

26381 (3) Access to protected records, except as provided in Subsection (4), is determined by
26382 Section [~~63-2-202~~] 63G-2-202.

26383 (4) In addition to those persons granted access to protected records under Section
26384 [~~63-2-202~~] 63G-2-202, the division may disclose a protected record to a licensed private
26385 investigator, holding a valid agency or registrant license, with a legitimate business need, a
26386 person with a bona fide security interest, or the owner of a mobile home park subject to
26387 Subsection (5), only upon receipt of a signed acknowledgment that the person receiving that
26388 protected record may not:

26389 (a) resell or disclose information from that record to any other person except as
26390 permitted in the federal Driver's Privacy Protection Act of 1994; or

26391 (b) use information from that record for advertising or solicitation purposes.

26392 (5) The division may disclose the name or address, or both, of the lienholder or mobile
26393 home owner of record, or both of them, to the owner of a mobile home park, if all of the
26394 following conditions are met:

26395 (a) a mobile home located within the mobile home park owner's park has been
26396 abandoned under Section 57-16-13 or the resident is in default under the resident's lease;

26397 (b) the mobile home park owner has conducted a reasonable search, but is unable to
26398 determine the name or address, or both, of the lienholder or mobile home owner of record; and

26399 (c) the mobile home park owner has submitted a written statement to the division
26400 explaining the mobile home park owner's efforts to determine the name or address, or both, of
26401 the lienholder or mobile home owner of record before the mobile home park owner contacted
26402 the division.

26403 (6) The division may provide protected information to a statistic gathering entity under
26404 Subsection (4) only in summary form.

26405 (7) A person allowed access to protected records under Subsection (4) may request

26406 motor vehicle title or registration information from the division regarding any person, entity, or
26407 motor vehicle by submitting a written application on a form provided by the division.

26408 (8) If a person regularly requests information for business purposes, the division may by
26409 rule allow the information requests to be made by telephone and fees as required under
26410 Subsection (9) charged to a division billing account to facilitate division service. The rules shall
26411 require that the:

26412 (a) division determine if the nature of the business and the volume of requests merit the
26413 dissemination of the information by telephone;

26414 (b) division determine if the credit rating of the requesting party justifies providing a
26415 billing account; and

26416 (c) requestor submit to the division an application that includes names and signatures of
26417 persons authorized to request information by telephone and charge the fees to the billing
26418 account.

26419 (9) (a) The division shall charge a reasonable search fee determined under Section
26420 ~~[63-38-3.2]~~ 63J-1-303 for the research of each record requested.

26421 (b) Fees may not be charged for furnishing information to persons necessary for their
26422 compliance with this chapter.

26423 (c) Law enforcement agencies have access to division records free of charge.

26424 Section 538. Section **41-1a-117** is amended to read:

26425 **41-1a-117. Adjudicative proceedings.**

26426 The commission and the division shall comply with the procedures and requirements of
26427 ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in all adjudicative
26428 proceedings conducted under this chapter.

26429 Section 539. Section **41-1a-119** is amended to read:

26430 **41-1a-119. Emergency procedures for collection of fees.**

26431 (1) If the commission finds that the owner or operator of a vehicle who is liable for the
26432 payment of any registration fee required by this chapter plans to depart quickly from the state,
26433 to remove ~~[his]~~ the owner or operator's property from the state, to conceal ~~[himself]~~ the owner

26434 or operator's person or [his] property, or do any other act tending to prejudice or render wholly
26435 or partially ineffectual proceedings to collect the registration fees, the commission shall follow
26436 the emergency procedures set forth in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
26437 Administrative Procedures Act, and declare that the registration fees are immediately due and
26438 payable.

26439 (2) When the commission issues its emergency order, the registration fees are
26440 immediately due and payable after notice is given to the owner or operator of the vehicle.

26441 Section 540. Section **41-1a-231** is amended to read:

26442 **41-1a-231. Special mobile equipment status.**

26443 (1) "Special mobile equipment" status as defined under Section 41-1a-102 shall be
26444 approved by the Department of Transportation in consultation with the Motor Carrier Advisory
26445 Board created under Section 72-9-201.

26446 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
26447 Administrative Rulemaking Act, the Department of Transportation in consultation with the
26448 State Tax Commission shall make rules establishing procedures for application, identification,
26449 approval, denial, and appeal of special mobile equipment status.

26450 Section 541. Section **41-1a-301** is amended to read:

26451 **41-1a-301. Apportioned registration and licensing of interstate vehicles.**

26452 (1) (a) An owner or operator of a fleet of commercial vehicles based in this state and
26453 operating in two or more jurisdictions may register commercial vehicles for operation under the
26454 International Registration Plan or the Uniform Vehicle Registration Proration and Reciprocity
26455 Agreement by filing an application with the division.

26456 (b) The application shall include information that identifies the vehicle owner, the
26457 vehicle, the miles traveled in each jurisdiction, and other information pertinent to the registration
26458 of apportioned vehicles.

26459 (c) Vehicles operated exclusively in this state may not be apportioned.

26460 (2) (a) If no operations were conducted during the preceding year, the application shall
26461 contain a statement of the proposed operations and an estimate of annual mileage for each

26462 jurisdiction.

26463 (b) The division may adjust the estimate if the division is not satisfied with its
26464 correctness.

26465 (c) At renewal, the registrant shall use the actual mileage from the preceding year in
26466 computing fees due each jurisdiction.

26467 (3) The registration fee for apportioned vehicles shall be determined as follows:

26468 (a) divide the in-jurisdiction miles by the total miles generated during the preceding
26469 year;

26470 (b) total the fees for each vehicle based on the fees prescribed in Section 41-1a-1206;
26471 and

26472 (c) multiply the sum obtained under Subsection (3)(b) by the quotient obtained under
26473 Subsection (3)(a).

26474 (4) Trailers or semitrailers of apportioned fleets may be listed separately as "trailer
26475 fleets" with the fees paid according to the total distance those trailers were towed in all
26476 jurisdictions during the preceding year mileage reporting period.

26477 (5) (a) (i) When the proper fees have been paid and the property tax or in lieu fee has
26478 been cleared under Section 41-1a-206 or 41-1a-207, a registration card, annual decal, and
26479 where necessary, license plate, will be issued for each unit listed on the application.

26480 (ii) An original registration must be carried in each vehicle at all times.

26481 (b) Original registration cards for trailers or semitrailers may be carried in the power
26482 unit.

26483 (c) (i) In lieu of a permanent registration card or license plate, the division may issue
26484 one temporary permit authorizing operation of new or unlicensed vehicles until the permanent
26485 registration is completed.

26486 (ii) Once a temporary permit is issued, the registration process may not be cancelled.
26487 Registration must be completed and the fees and any property tax or in lieu fee due must be
26488 paid for the vehicle for which the permit was issued.

26489 (iii) Temporary permits may not be issued for renewals.

26490 (d) (i) The division shall issue one distinctive license plate that displays the letters APP
26491 for apportioned vehicles.

26492 (ii) The plate shall be displayed on the front of an apportioned truck tractor or power
26493 unit or on the rear of any apportioned vehicle.

26494 (iii) Distinctive decals displaying the word "apportioned" and the month and year of
26495 expiration shall be issued for each apportioned vehicle.

26496 (e) A nonrefundable administrative fee, determined by the commission pursuant to
26497 Section [~~63-38-3.2~~] 63J-1-303, shall be charged for each temporary permit, registration, or
26498 both.

26499 (6) Vehicles that are apportionally registered are fully registered for intrastate and
26500 interstate movements, providing the proper interstate and intrastate authority has been secured.

26501 (7) (a) Vehicles added to an apportioned fleet after the beginning of the registration
26502 year shall be registered by applying the quotient under Subsection (3)(a) for the original
26503 application to the fees due for the remainder of the registration year.

26504 (b) (i) The owner shall maintain and submit complete annual mileage for each vehicle in
26505 each jurisdiction, showing all miles operated by the lessor and lessee.

26506 (ii) The fiscal mileage reporting period begins July 1, and continues through June 30 of
26507 the year immediately preceding the calendar year in which the registration year begins.

26508 (c) (i) An owner-operator, who is a lessor, may be the registrant and the vehicle may be
26509 registered in the name of the owner-operator.

26510 (ii) The identification plates and registration card shall be the property of the lessor and
26511 may reflect both the owner-operator's name and that of the carrier as lessee.

26512 (iii) The allocation of fees shall be according to the operational records of the
26513 owner-operator.

26514 (d) (i) The lessee may be the registrant of a leased vehicle at the option of the lessor.

26515 (ii) If a lessee is the registrant of a leased vehicle, both the lessor's and lessee's name
26516 shall appear on the registration.

26517 (iii) The allocation of fees shall be according to the records of the carrier.

26518 (8) (a) Any registrant whose application for apportioned registration has been accepted
26519 shall preserve the records on which the application is based for a period of three years after the
26520 close of the registration year.

26521 (b) The records shall be made available to the division upon request for audit as to
26522 accuracy of computations, payments, and assessments for deficiencies, or allowances for credits.

26523 (c) An assessment for deficiency or claim for credit may not be made for any period for
26524 which records are no longer required.

26525 (d) Interest in the amount prescribed by Section 59-1-402 shall be assessed or paid from
26526 the date due until paid on deficiencies found due after audit.

26527 (e) Registrants with deficiencies are subject to the penalties under Section 59-1-401.

26528 (f) The division may enter into agreements with other International Registration Plan
26529 jurisdictions for joint audits.

26530 (9) (a) Except as provided in Subsection (9)(b), all state fees collected under this
26531 section shall be deposited in the Transportation Fund.

26532 (b) The following fees may be used by the commission as a dedicated credit to cover
26533 the costs of electronic credentialing as provided in Section 41-1a-303:

26534 (i) \$5 of each temporary registration permit fee paid under Subsection (12)(a)(i) for a
26535 single unit; and

26536 (ii) \$10 of each temporary registration permit fee paid under Subsection (12)(a)(ii) for
26537 multiple units.

26538 (10) If registration is for less than a full year, fees for apportioned registration shall be
26539 assessed according to Section 41-1a-1207.

26540 (a) (i) If the registrant is replacing a vehicle for one withdrawn from the fleet and the
26541 new vehicle is of the same weight category as the replaced vehicle, the registrant must file a
26542 supplemental application.

26543 (ii) A registration card that transfers the license plate to the new vehicle shall be issued.

26544 (iii) When a replacement vehicle is of greater weight than the replaced vehicle,
26545 additional registration fees are due.

26546 (b) If a vehicle is withdrawn from an apportioned fleet during the period for which it is
 26547 registered, the registrant shall notify the division and surrender the registration card and license
 26548 plate of the withdrawn vehicle.

26549 (11) (a) An out-of-state carrier with an apportionally registered vehicle who has not
 26550 presented a certificate of property tax or in lieu fee as required by Section 41-1a-206 or
 26551 41-1a-207, shall pay, at the time of registration, a proportional part of an equalized highway use
 26552 tax computed as follows:

26553 (i) Multiply the number of vehicles or combination vehicles registered in each weight
 26554 class by the equivalent tax figure from the following tables:

26555 Vehicle or Combination

| 26556 Registered Weight | Age of Vehicle | Equivalent Tax |
|-----------------------------|--|----------------|
| 26557 12,000 pounds or less | 12 or more years | \$10 |
| 26558 12,000 pounds or less | 9 or more years but less than 12 years | \$50 |
| 26559 12,000 pounds or less | 6 or more years but less than 9 years | \$80 |
| 26560 12,000 pounds or less | 3 or more years but less than 6 years | \$110 |
| 26561 12,000 pounds or less | Less than 3 years | \$150 |

| 26562 Vehicle or Combination | Equivalent |
|------------------------------|------------|
| 26563 Registered Weight | Tax |
| 26564 12,001 - 18,000 pounds | \$150 |
| 26565 18,001 - 34,000 pounds | 200 |
| 26566 34,001 - 48,000 pounds | 300 |
| 26567 48,001 - 64,000 pounds | 450 |
| 26568 64,001 pounds and over | 600 |

26569 (ii) Multiply the equivalent tax value for the total fleet determined under Subsection
 26570 (11)(a)(i) by the fraction computed under Subsection (3) for the apportioned fleet for the
 26571 registration year.

26572 (b) Fees shall be assessed as provided in Section 41-1a-1207.

26573 (12) (a) Commercial vehicles meeting the registration requirements of another

26574 jurisdiction may, as an alternative to full or apportioned registration, secure a temporary
26575 registration permit for a period not to exceed 96 hours or until they leave the state, whichever is
26576 less, for a fee of:

26577 (i) \$25 for a single unit; and

26578 (ii) \$50 for multiple units.

26579 (b) A state temporary permit or registration fee is not required from nonresident owners
26580 or operators of vehicles or combination of vehicles having a gross laden weight of 26,000
26581 pounds or less for each single unit or combination.

26582 Section 542. Section **41-1a-407** is amended to read:

26583 **41-1a-407. Plates issued to political subdivisions or state -- Use of "EX" letters --**
26584 **Confidential information.**

26585 (1) Except as provided in Subsection (2), each municipality, board of education, school
26586 district, state institution of learning, county, other governmental division, subdivision, or
26587 district, and the state shall:

26588 (a) place a license plate displaying the letters, "EX" on every vehicle owned and
26589 operated by it or leased for its exclusive use; and

26590 (b) display an identification mark designating the vehicle as the property of the entity in
26591 a conspicuous place on both sides of the vehicle.

26592 (2) The entity need not display the "EX" license plate or the identification mark
26593 required by Subsection (1) if:

26594 (a) the vehicle is in the direct service of the governor, lieutenant governor, attorney
26595 general, state auditor, or state treasurer of Utah;

26596 (b) the vehicle is used in official investigative work where secrecy is essential;

26597 (c) the vehicle is used in an organized Utah Highway Patrol operation that is:

26598 (i) conducted within a county of the first or second class as defined under Section
26599 17-50-501, unless no more than one unmarked vehicle is used for the operation;

26600 (ii) approved by the Commissioner of Public Safety;

26601 (iii) of a duration of 14 consecutive days or less; and

- 26602 (iv) targeted toward careless driving, aggressive driving, and accidents involving:
- 26603 (A) violations of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless
- 26604 Driving;
- 26605 (B) speeding violations for exceeding the posted speed limit by 21 or more miles per
- 26606 hour;
- 26607 (C) speeding violations in a reduced speed school zone under Section 41-6a-604;
- 26608 (D) violations of Section 41-6a-1002 related to pedestrian crosswalks; or
- 26609 (E) violations of Section 41-6a-702 related to lane restrictions;
- 26610 (d) the vehicle is provided to an official of the entity as part of a compensation package
- 26611 allowing unlimited personal use of that vehicle;
- 26612 (e) the personal security of the occupants of the vehicle would be jeopardized if the
- 26613 "EX" license plate were in place; or
- 26614 (f) the vehicle is used in routine enforcement on a state highway with four or more lanes
- 26615 involving:
- 26616 (i) violations of Section 41-6a-701 related to operating a vehicle on the right side of a
- 26617 roadway;
- 26618 (ii) violations of Section 41-6a-702 related to left lane restrictions;
- 26619 (iii) violations of Section 41-6a-704 related to overtaking and passing vehicles
- 26620 proceeding in the same direction;
- 26621 (iv) violations of Section 41-6a-711 related to following a vehicle at a safe distance; and
- 26622 (v) violations of Section 41-6a-804 related to turning and changing lanes.
- 26623 (3) Plates issued to Utah Highway Patrol vehicles may bear the capital letters "UHP," a
- 26624 beehive logo, and the call number of the trooper to whom the vehicle is issued.
- 26625 (4) (a) The commission shall issue "EX" and "UHP" plates.
- 26626 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 26627 Administrative Rulemaking Act, the commission shall make rules establishing the procedure for
- 26628 application for and distribution of the plates.
- 26629 (5) For a vehicle that qualifies for "EX" or "UHP" license plates, the entity is not

26630 required to display an annual registration decal.

26631 (6) (a) Information shall be confidential for vehicles that are not required to display the
26632 "EX" license plate or the identification mark under Subsections (2)(a), (b), (d), and (e).

26633 (b) (i) If a law enforcement officer's identity must be kept secret, [~~his~~] the law
26634 enforcement officer's agency head may request in writing that the division remove the license
26635 plate information of the officer's personal vehicles from all public access files and place it in a
26636 confidential file until the assignment is completed.

26637 (ii) The agency head shall notify the division when the assignment is completed.

26638 (7) A peace officer engaged in an organized operation under Subsection (2)(c) shall be
26639 in a uniform clearly identifying the law enforcement agency the peace officer is representing
26640 during the operation.

26641 Section 543. Section **41-1a-416** is amended to read:

26642 **41-1a-416. Original issue license plates -- Alternative stickers -- Rulemaking.**

26643 (1) The owner of a motor vehicle that is a model year 1973 or older may apply to the
26644 division for permission to display an original issue license plate of a format and type issued by
26645 the state in the same year as the model year of the vehicle.

26646 (2) The owner of a motor vehicle who desires to display original issue license plates
26647 instead of license plates issued under Section 41-1a-401 shall:

26648 (a) complete an application on a form provided by the division;

26649 (b) supply and submit the original license plates that the owner desires to display to the
26650 division for approval; and

26651 (c) pay the fees prescribed in Sections 41-1a-1206 and 41-1a-1211.

26652 (3) The division, prior to approval of an application under this section, shall determine
26653 that the original issue license plates:

26654 (a) are of a format and type issued by the state for use on a motor vehicle in this state;

26655 (b) have numbers and characters that are unique and do not conflict with existing
26656 license plate series in this state;

26657 (c) are legible, durable, and otherwise in a condition that serves the purposes of this

26658 chapter, except that original issue license plates are exempt from the provision of Section
26659 41-1a-401 regarding reflectorization and Section 41-1a-403 regarding legibility from 100 feet;
26660 and

26661 (d) are from the same year of issue as the model year of the motor vehicle on which
26662 they are to be displayed.

26663 (4) An owner of a motor vehicle displaying original issue license plates approved under
26664 this section is not exempt from any other requirement of this chapter except as specified under
26665 this section.

26666 (5) (a) An owner of a motor vehicle currently registered in this state whose original
26667 issue license plates are not approved by the division because of the requirement in Subsection
26668 (3)(b) may apply to the division for a sticker to allow the temporary display of the original issue
26669 license plates if:

26670 (i) the plates otherwise comply with this section;

26671 (ii) the plates are only displayed when the motor vehicle is used for participating in
26672 motor vehicle club activities, exhibitions, tours, parades, and similar activities and are not used
26673 for general daily transportation;

26674 (iii) the license plates and registration issued under this chapter for normal use of the
26675 motor vehicle on the highways of this state are kept in the motor vehicle and shown to a peace
26676 officer on request; and

26677 (iv) the sticker issued by the division under this subsection is properly affixed to the
26678 face of the original issue license plate.

26679 (b) The sticker issued under this section shall be the size and form customarily furnished
26680 by the division.

26681 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
26682 Administrative Rulemaking Act, the division may make rules for the implementation of this
26683 section.

26684 Section 544. Section **41-1a-418** is amended to read:

26685 **41-1a-418. Authorized special group license plates.**

- 26686 (1) The division shall only issue special group license plates in accordance with this
26687 section through Section 41-1a-422 to a person who is specified under this section within the
26688 categories listed as follows:
- 26689 (a) disability special group license plates issued in accordance with Section 41-1a-420;
 - 26690 (b) honor special group license plates, as in a war hero, which plates are issued for a:
 - 26691 (i) survivor of the Japanese attack on Pearl Harbor;
 - 26692 (ii) former prisoner of war;
 - 26693 (iii) recipient of a Purple Heart;
 - 26694 (iv) disabled veteran; or
 - 26695 (v) recipient of a gold star award issued by the United States Secretary of Defense if the
26696 recipient is the spouse, parent, or sibling of a servicemember killed;
 - 26697 (c) unique vehicle type special group license plates, as for historical, collectors value, or
26698 other unique vehicle type, which plates are issued for a:
 - 26699 (i) special interest vehicle;
 - 26700 (ii) vintage vehicle;
 - 26701 (iii) farm truck; or
 - 26702 (iv) vehicle powered by clean fuel and for which a current clean special fuel certificate is
26703 maintained as provided in Section 59-13-304;
 - 26704 (d) recognition special group license plates, as in a public official or an emergency
26705 service giver, which plates are issued for a:
 - 26706 (i) current member of the Legislature;
 - 26707 (ii) current member of the United States Congress;
 - 26708 (iii) current member of the National Guard;
 - 26709 (iv) licensed amateur radio operator;
 - 26710 (v) currently employed, volunteer, or retired firefighter;
 - 26711 (vi) emergency medical technician;
 - 26712 (vii) current member of a search and rescue team; or
 - 26713 (viii) current honorary consulate designated by the United States Department of State;

26714 and

26715 (e) support special group license plates, as for a contributor to an institution or cause,
26716 which plates are issued for a contributor to:

- 26717 (i) an institution's scholastic scholarship fund;
- 26718 (ii) the Division of Wildlife Resources;
- 26719 (iii) the Department of Veterans' Affairs;
- 26720 (iv) the Division of Parks and Recreation;
- 26721 (v) the Department of Agriculture and Food;
- 26722 (vi) the Guardian Ad Litem Services Account and the Children's Museum of Utah;
- 26723 (vii) the Boy Scouts of America;
- 26724 (viii) spay and neuter programs through No More Homeless Pets in Utah;
- 26725 (ix) the Boys and Girls Clubs of America;
- 26726 (x) Utah public education; or
- 26727 (xi) programs that provide support to organizations that create affordable housing for
26728 those in severe need through the Division of Real Estate.

26729 (2) Beginning January 1, 2003, the division may not issue a new type of special group
26730 license plate unless the division receives:

- 26731 (a) a start-up fee established under Section [~~63-38-3.2~~] 63J-1-303 for production and
26732 administrative costs for providing the new special group license plates; or
- 26733 (b) a legislative appropriation for the start-up fee provided under Subsection (2)(a).

26734 (3) (a) A sponsoring organization that qualifies for tax-exempt status under Internal
26735 Revenue Code Section 501(c)(3) may request the commission to authorize a new type of special
26736 group license plate for the sponsoring organization. The sponsoring organization shall:

- 26737 (i) collect a minimum of 200 applications; and
- 26738 (ii) pay a start-up fee established under Section [~~63-38-3.2~~] 63J-1-303 for production
26739 and administrative costs for providing the new type of special group license plates.

26740 (b) If the provisions of Subsection (3)(a) are met, the commission shall approve the
26741 request and the division shall:

26742 (i) design a license plate in accordance with Section 41-1a-419; and

26743 (ii) issue the new type of special group license plates.

26744 Section 545. Section **41-1a-419** is amended to read:

26745 **41-1a-419. Plate design -- Vintage vehicle certification and registration --**

26746 **Personalized special group license plates -- Rulemaking.**

26747 (1) (a) The design and maximum number of numerals or characters on special group
26748 license plates shall be determined by the division in accordance with the requirements under
26749 Subsection (1)(b).

26750 (b) Each special group license plate shall display:

26751 (i) the word Utah;

26752 (ii) the name or identifying slogan of the special group;

26753 (iii) a symbol decal not exceeding two positions in size representing the special group;

26754 and

26755 (iv) the combination of letters, numbers, or both uniquely identifying the registered
26756 vehicle.

26757 (2) (a) The division shall, after consultation with a representative designated by the
26758 special group, specify the word or words comprising the special group name and the symbol
26759 decal to be displayed upon the special group license plates.

26760 (b) A special group license plate symbol decal may not be redesigned:

26761 (i) unless the division receives a redesign fee established by the division under Section
26762 [~~63-38-3.2~~] 63J-1-303; and

26763 (ii) more frequently than every five years.

26764 (c) (i) Except as provided in Subsection (2)(c)(ii), a special group license plate symbol
26765 decal may not be reordered unless the division receives a symbol decal reorder fee established
26766 by the division under Section [~~63-38-3.2~~] 63J-1-303.

26767 (ii) A recognition special group license plate symbol decal for a currently employed,
26768 volunteer, or retired firefighter issued in accordance with Subsection 41-1a-418(1)(d)(v) that is
26769 reordered on or after July 1, 2007, but on or before June 30, 2008, is exempt from the symbol

26770 decal reorder fee authorized under Subsection (2)(c)(i).

26771 (3) The license plates issued for horseless carriages prior to July 1, 1992, are valid
26772 without renewal as long as the vehicle is owned by the registered owner and the license plates
26773 may not be recalled by the division.

26774 (4) A person who meets the criteria established under Sections 41-1a-418 through
26775 41-1a-422 for issuance of special group license plates may make application in the same manner
26776 provided in Sections 41-1a-410 and 41-1a-411 for personalized special group license plates.

26777 (5) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
26778 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

26779 (a) establish qualifying criteria for persons to receive, renew, or surrender special group
26780 license plates; and

26781 (b) establish the maximum number of numerals or characters for special group license
26782 plates.

26783 Section 546. Section **41-1a-420** is amended to read:

26784 **41-1a-420. Disability special group license plates -- Application and qualifications**
26785 **-- Rulemaking.**

26786 (1) The division shall issue a disability special group license plate, a temporary
26787 removable windshield placard, or a removable windshield placard to:

26788 (a) a qualifying person with a disability; or

26789 (b) the registered owner of a vehicle that an organization uses primarily for the
26790 transportation of persons with disabilities that limit or impair the ability to walk.

26791 (2) (a) The initial application of a person with a disability shall be accompanied by the
26792 certification of a licensed physician:

26793 (i) that the applicant meets the definition of a person with a disability that limits or
26794 impairs the ability to walk as defined in the federal Uniform System for Parking for Persons with
26795 Disabilities, 23 C.F.R. Ch. 11, Subch. B, Pt. 1235.2 (1991); and

26796 (ii) containing the period of time that the physician determines the applicant will have
26797 the disability, not to exceed six months in the case of a temporary disability.

26798 (b) The division shall issue a person with a disability special group license plate or a
26799 removable windshield placard to a person with a permanent disability.

26800 (c) The issuance of a person with a disability special group license plate does not
26801 preclude the issuance to the same applicant of a removable windshield placard.

26802 (d) On request of an applicant with a disability special group license plate, temporary
26803 removable windshield placard, or a removable windshield placard the division shall issue one
26804 additional placard.

26805 (e) A disability special group license plate, temporary removable windshield placard, or
26806 removable windshield placard may be used to allow one motorcycle to share a parking space
26807 reserved for persons with a disability if:

26808 (i) the person with a disability:

26809 (A) is using a motorcycle; and

26810 (B) displays on the motorcycle a disability special group license plate, temporary
26811 removable windshield placard, or a removable windshield placard;

26812 (ii) the person who shares the parking space assists the person with a disability with the
26813 parking accommodation; and

26814 (iii) the parking space is sufficient size to accommodate both motorcycles without
26815 interfering with other parking spaces or traffic movement.

26816 (3) (a) The temporary removable windshield placard or removable windshield placard
26817 shall be hung from the front windshield rearview mirror when the vehicle is parked in a parking
26818 space reserved for persons with disabilities so that it is visible from the front and rear of the
26819 vehicle.

26820 (b) If a motorcycle is being used, the temporary removable windshield placard or
26821 removable windshield placard shall be displayed in plain sight on or near the handle bars of the
26822 motorcycle.

26823 (4) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
26824 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

26825 (a) establish qualifying criteria for persons to receive, renew, or surrender special group

26826 license plates, a temporary removable windshield placard, or a removable windshield placard in
26827 accordance with this section;

26828 (b) establish the maximum number of numerals or characters for disability special group
26829 license plates; and

26830 (c) require all temporary removable windshield placards and removable windshield
26831 placards to include:

26832 (i) an identification number;

26833 (ii) an expiration date not to exceed:

26834 (A) six months for a temporary removable windshield placard; and

26835 (B) two years for a removable windshield placard; and

26836 (iii) the seal or other identifying mark of the division.

26837 Section 547. Section **41-1a-422** is amended to read:

26838 **41-1a-422. Support special group license plates -- Contributor -- Voluntary**
26839 **contribution collection procedures.**

26840 (1) As used in this section:

26841 (a) (i) Except as provided in Subsection (1)(a)(ii), "contributor" means a person who
26842 has donated or in whose name at least \$25 has been donated to:

26843 (A) a scholastic scholarship fund of a single named institution;

26844 (B) the Department of Veterans' Affairs for veterans' programs;

26845 (C) the Division of Wildlife Resources for the Wildlife Resources Account created in
26846 Section 23-14-13, for conservation of wildlife and the enhancement, preservation, protection,
26847 access, and management of wildlife habitat;

26848 (D) the Department of Agriculture and Food for the benefit of conservation districts;

26849 (E) the Division of Parks and Recreation for the benefit of snowmobile programs;

26850 (F) the Guardian Ad Litem Services Account and the Children's Museum of Utah, with
26851 the donation evenly divided between the two;

26852 (G) the Boy Scouts of America for the benefit of a Utah Boy Scouts of America council
26853 as specified by the contributor;

26854 (H) No More Homeless Pets in Utah for distribution to organizations or individuals that
26855 provide spay and neuter programs that subsidize the sterilization of domestic animals;

26856 (I) the Utah Alliance of Boys and Girls Clubs, Inc. to provide and enhance youth
26857 development programs;

26858 (J) the Utah Association of Public School Foundations to support public education; or

26859 (K) the Utah Housing Opportunity Restricted Account created in Section 61-2-28 to
26860 assist people who have severe housing needs.

26861 (ii) (A) For a veterans' special group license plate, "contributor" means a person who
26862 has donated or in whose name at least a \$25 donation at the time of application and \$10 annual
26863 donation thereafter has been made.

26864 (B) For a Utah Housing Opportunity special group license plate, "contributor" means a
26865 person who:

26866 (I) has donated or in whose name at least \$30 has been donated at the time of
26867 application and annually after the time of application; and

26868 (II) is a member of a trade organization for real estate licensees that has more than
26869 15,000 Utah members.

26870 (b) "Institution" means a state institution of higher education as defined under Section
26871 53B-3-102 or a private institution of higher education in the state accredited by a regional or
26872 national accrediting agency recognized by the United States Department of Education.

26873 (2) (a) An applicant for original or renewal collegiate special group license plates under
26874 Subsection (1)(a)(i) must be a contributor to the institution named in the application and present
26875 the original contribution verification form under Subsection (2)(b) or make a contribution to the
26876 division at the time of application under Subsection (3).

26877 (b) An institution with a support special group license plate shall issue to a contributor a
26878 verification form designed by the commission containing:

26879 (i) the name of the contributor;

26880 (ii) the institution to which a donation was made;

26881 (iii) the date of the donation; and

26882 (iv) an attestation that the donation was for a scholastic scholarship.

26883 (c) The state auditor may audit each institution to verify that the moneys collected by
26884 the institutions from contributors are used for scholastic scholarships.

26885 (d) After an applicant has been issued collegiate license plates or renewal decals, the
26886 commission shall charge the institution whose plate was issued, a fee determined in accordance
26887 with Section [~~63-38-3.2~~] 63J-1-303 for management and administrative expenses incurred in
26888 issuing and renewing the collegiate license plates.

26889 (e) If the contribution is made at the time of application, the contribution shall be
26890 collected, treated, and deposited as provided under Subsection (3).

26891 (3) (a) An applicant for original or renewal support special group license plates under
26892 this section must be a contributor to the sponsoring organization associated with the license
26893 plate.

26894 (b) This contribution shall be:

26895 (i) unless collected by the named institution under Subsection (2), collected by the
26896 division;

26897 (ii) considered a voluntary contribution for the funding of the activities specified under
26898 this section and not a motor vehicle registration fee; and

26899 (iii) deposited into the appropriate account less actual administrative costs associated
26900 with issuing the license plates.

26901 (c) The donation described in Subsection (1)(a) must be made in the 12 months prior to
26902 registration or renewal of registration.

26903 (d) The donation described in Subsection (1)(a) shall be a one-time donation made to
26904 the division when issuing original:

26905 (i) snowmobile license plates; or

26906 (ii) conservation license plates.

26907 (4) Veterans' license plates shall display one of the symbols representing the Army,
26908 Navy, Air Force, Marines, Coast Guard, or American Legion.

26909 Section 548. Section **41-1a-522** is amended to read:

26910 **41-1a-522. Record of nonconforming vehicle -- Access -- Brand -- Unbranding.**

26911 (1) The definitions in Section 41-3-407 apply to this section.

26912 (2) Upon receipt of a copy of an original certificate of title, Manufacturer's Statement of
26913 Origin, or other evidence of ownership of a nonconforming vehicle in accordance with Section
26914 41-3-409, the division shall:

26915 (a) establish a record of the reported nonconforming vehicle;

26916 (b) consider the record a public record with public access under Sections 41-1a-116 and
26917 ~~[63-2-201]~~ 63G-2-201;

26918 (c) allow access to the record upon written application to the division; and

26919 (d) upon request for a new certificate of title for a nonconforming vehicle, brand the
26920 certificate of title with the words "MANUFACTURER BUYBACK NONCONFORMING
26921 VEHICLE" clearly and conspicuously on the face of the new certificate of title.

26922 (3) Upon receipt of the branded certificate of title, the division shall:

26923 (a) follow the procedures established in Subsection (2); or

26924 (b) if the record of the nonconforming vehicle contains an application for an unbranded
26925 certificate of title that meets the requirements of Section 41-3-409.5:

26926 (i) update the record to show that all nonconformities have been cured;

26927 (ii) consider the record a public record with public access under Sections 41-1a-116 and
26928 ~~[63-2-201]~~ 63G-2-201;

26929 (iii) allow access to the complete record upon written application to the division; and

26930 (iv) upon request for a new certificate of title, issue an unbranded certificate of title.

26931 Section 549. Section **41-1a-712** is amended to read:

26932 **41-1a-712. Foreign vehicle disclosure requirements -- Penalties -- Civil damages.**

26933 (1) A person may not knowingly sell or offer for sale in this state any vehicle that was
26934 initially delivered for disposition or sale in a country other than the United States of America
26935 unless, prior to the sale, the person provides written notice to the purchaser on a separate form
26936 furnished by the Motor Vehicle Enforcement Division that indicates:

26937 (a) that the vehicle was initially delivered for disposition or sale in a country outside of

26938 the United States as indicated on the Manufacturer's Statement of Origin or similar ownership
26939 document;

26940 (b) the country where the vehicle was initially delivered for the disposition or sale; and

26941 (c) any other information required by the commission under rules made by the

26942 commission in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

26943 Administrative Rulemaking Act.

26944 (2) A person who violates this section is guilty of a class B misdemeanor.

26945 (3) (a) In addition to any other penalties, a purchaser may bring a civil action to recover
26946 damages resulting from a seller's failure to provide notice as required under this section.

26947 (b) The amount of damages that may be recovered in a civil action are the actual
26948 damages or \$1,500, whichever is greater.

26949 Section 550. Section **41-1a-1007** is amended to read:

26950 **41-1a-1007. Fees.**

26951 (1) A certified vehicle inspector may charge a fee in accordance with Section

26952 [~~63-38-3.2~~] 63J-1-303 for each inspection under Subsection 41-1a-1002(1).

26953 (2) To cover the costs of inspection and to defray the cost of certification, the fee
26954 charged under this section by a certified vehicle inspector shall be retained by the Motor Vehicle
26955 Enforcement Division as a dedicated credit.

26956 Section 551. Section **41-1a-1010** is amended to read:

26957 **41-1a-1010. Permit required to dismantle vehicle -- Duties upon receiving the**
26958 **permit -- Exceptions.**

26959 (1) (a) A person may not scrap, dismantle, destroy, or otherwise change any vehicle so
26960 that it loses its character, until the person submits to the division:

26961 (i) the certificate of title for the vehicle for cancellation; and

26962 (ii) an application for a permit to dismantle the vehicle.

26963 (b) Upon approval of the application, the division shall issue a permit to dismantle the
26964 vehicle.

26965 (2) Except as provided in Subsection (3), if a permit to dismantle is issued under this

26966 section, the vehicle shall be destroyed and may not be rebuilt or reconstructed and may not be
26967 retitled or registered.

26968 (3) A vehicle for which a permit to dismantle has been issued by the division may be
26969 retitled and the permit to dismantle rescinded if:

26970 (a) prior to receiving a dismantling permit the vehicle had a Utah certificate of title;

26971 (b) the vehicle has not been dismantled;

26972 (c) an investigator for the Motor Vehicle Enforcement Division of the commission
26973 determines after a physical inspection of the vehicle that it is the same vehicle for which the
26974 permit to dismantle was issued; and

26975 (d) the applicant pays the fee under Subsection (4).

26976 (4) The commission may collect a fee established in accordance with Section
26977 [~~63-38-3.2~~] 63J-1-303 to cover the expenses of an inspection under Subsection (3).

26978 Section 552. Section **41-1a-1101** is amended to read:

26979 **41-1a-1101. Seizure -- Circumstances where permitted -- Impound lot standards.**

26980 (1) The division or any peace officer, without a warrant, may seize and take possession
26981 of any vehicle, vessel, or outboard motor:

26982 (a) that the division or the peace officer has reason to believe has been stolen;

26983 (b) on which any identification number has been defaced, altered, or obliterated;

26984 (c) that has been abandoned in accordance with Section 41-6a-1408;

26985 (d) for which the applicant has written a check for registration or title fees that has not
26986 been honored by the applicant's bank and that is not paid within 30 days;

26987 (e) that is placed on the water with improper registration; or

26988 (f) that is being operated on a highway:

26989 (i) with registration that has been expired for more than three months;

26990 (ii) having never been properly registered by the current owner; or

26991 (iii) with registration that is suspended or revoked.

26992 (2) If necessary for the transportation of a seized vessel, the vessel's trailer may be
26993 seized to transport and store the vessel.

26994 (3) Any peace officer seizing or taking possession of a vehicle, vessel, or outboard
26995 motor under this section shall comply with the provisions of Section 41-6a-1406.

26996 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
26997 Administrative Rulemaking Act, the commission shall make rules setting standards for public
26998 garages, impound lots, and impound yards that may be used by peace officers and the division.

26999 (b) The standards shall be equitable, reasonable, and unrestrictive as to the number of
27000 public garages, impound lots, or impound yards per geographical area.

27001 (5) (a) Except as provided under Subsection (5)(b), a person may not operate or allow
27002 to be operated a vehicle stored in a public garage, impound lot, or impound yard regulated
27003 under this part without prior written permission of the owner of the vehicle.

27004 (b) Incidental and necessary operation of a vehicle to move the vehicle from one
27005 parking space to another within the facility and that is necessary for the normal management of
27006 the facility is not prohibited under this Subsection (5)(a).

27007 (6) A person who violates the provisions of Subsection (5) is guilty of a class C
27008 misdemeanor.

27009 (7) The division or the peace officer who seizes a vehicle shall record the mileage
27010 shown on the vehicle's odometer at the time of seizure, if:

27011 (a) the vehicle is equipped with an odometer; and

27012 (b) the odometer reading is accessible to the division or the peace officer.

27013 Section 553. Section **41-1a-1211** is amended to read:

27014 **41-1a-1211. License plate fees -- Application fees for issuance and renewal of**
27015 **personalized and special group license plates -- Replacement fee for license plates --**
27016 **Postage fees.**

27017 (1) Except as provided in Subsection (11), a license plate fee of \$5 per set shall be paid
27018 to the division for the issuance of any new license plate under Part 4, License Plates and
27019 Registration Indicia. The license plate fee shall be deposited as follows:

27020 (a) \$4 as provided in Section 41-1a-1201; and

27021 (b) \$1 in the Transportation Fund.

27022 (2) An applicant for original issuance of personalized license plates issued under Section
27023 41-1a-410 shall pay a \$50 per set license plate application fee in addition to the fee required in
27024 Subsection (1).

27025 (3) Beginning July 1, 2003, a person who applies for a special group license plate shall
27026 pay a \$5 fee for the original set of license plates in addition to the fee required under Subsection
27027 (1).

27028 (4) An applicant for original issuance of personalized special group license plates shall
27029 pay the license plate application fees required in Subsection (2) in addition to the license plate
27030 fees and license plate application fees established under Subsections (1) and (3).

27031 (5) An applicant for renewal of personalized license plates issued under Section
27032 41-1a-410 shall pay a \$10 per set application fee.

27033 (6) A fee of \$5 shall be paid to the division for the replacement of any license plate
27034 issued under Part 4, License Plates and Registration Indicia. The license plate fee shall be
27035 deposited as follows:

27036 (a) \$4 as provided in Section 41-1a-1201; and

27037 (b) \$1 in the Transportation Fund.

27038 (7) The division may charge a fee established under Section [~~63-38-3.2~~] 63J-1-303 to
27039 recover its costs for the replacement of decals issued under Section 41-1a-418.

27040 (8) The division may charge a fee established under Section [~~63-38-3.2~~] 63J-1-303 to
27041 recover the cost of issuing stickers under Section 41-1a-416.

27042 (9) In addition to any other fees required by this section, the division shall assess a fee
27043 established under Section [~~63-38-3.2~~] 63J-1-303 to cover postage expenses if new or
27044 replacement license plates are mailed to the applicant.

27045 (10) The fees required under this section are separate from and in addition to
27046 registration fees required under Section 41-1a-1206.

27047 (11) (a) An applicant for a license plate issued under Section 41-1a-407 is not subject to
27048 the license plate fee under Subsection (1).

27049 (b) An applicant for a Purple Heart special group license plate issued in accordance

27050 with Section 41-1a-421 is exempt from the fees under Subsections (1), (3), and (7).

27051 Section 554. Section **41-1a-1212** is amended to read:

27052 **41-1a-1212. Fee for replacement of license plate decals.**

27053 A fee established in accordance with Section [~~63-38-3.2~~] 63J-1-303 shall be paid to the
27054 division for the replacement of a license plate decal required by Section 41-1a-402.

27055 Section 555. Section **41-1a-1221** is amended to read:

27056 **41-1a-1221. Fees to cover the cost of electronic payments.**

27057 (1) As used in this section:

27058 (a) "Electronic payment" means use of any form of payment processed through
27059 electronic means, including credit cards, debit cards, and automatic clearinghouse transactions.

27060 (b) "Electronic payment fee" means the fee assessed to defray:

27061 (i) the charge, discount fee, or processing fee charged by credit card companies or
27062 processing agents to process an electronic payment; or

27063 (ii) costs associated with the purchase of equipment necessary for processing electronic
27064 payments.

27065 (2) (a) The Motor Vehicle Division may collect an electronic payment fee on all
27066 registrations and renewals of registration under Subsections 41-1a-1206(1)(a), (1)(b), and (2).

27067 (b) The fee described in Subsection (2)(a):

27068 (i) shall be imposed regardless of the method of payment for a particular transaction;

27069 and

27070 (ii) need not be separately identified from the fees imposed for registration and renewals
27071 of registration under Subsections 41-1a-1206(1)(a), (1)(b), and (2).

27072 (3) The division shall establish the fee according to the procedures and requirements of
27073 Section [~~63-38-3.2~~] 63J-1-303.

27074 (4) A fee imposed under this section:

27075 (a) shall be used by the division as a dedicated credit to cover the costs of electronic
27076 payments;

27077 (b) is nonlapsing; and

27078 (c) is not subject to Subsection [~~63-38a-104~~] 63J-2-202(2).

27079 Section 556. Section **41-3-105** is amended to read:

27080 **41-3-105. Administrator's powers and duties -- Administrator and investigators**
27081 **to be law enforcement officers.**

27082 (1) The administrator may make rules to carry out the purposes of this chapter and
27083 Sections 41-1a-1001 through 41-1a-1007 according to the procedures and requirements of
27084 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

27085 (2) (a) The administrator may employ clerks, deputies, and assistants necessary to
27086 discharge the duties under this chapter and may designate the duties of those clerks, deputies,
27087 and assistants.

27088 (b) The administrator, assistant administrator, and all investigators shall be law
27089 enforcement officers certified by peace officer standards and training as required by Section
27090 53-13-103.

27091 (3) (a) The administrator may investigate any suspected or alleged violation of:

- 27092 (i) this chapter;
- 27093 (ii) Title 41, Chapter 1a, Motor Vehicle Act;
- 27094 (iii) any law concerning motor vehicle fraud; or
- 27095 (iv) any rule made by the administrator.

27096 (b) The administrator may bring an action in the name of the state against any person to
27097 enjoin a violation found under Subsection (3)(a).

27098 (4) (a) The administrator may prescribe forms to be used for applications for licenses.

27099 (b) The administrator may require information from the applicant concerning the
27100 applicant's fitness to be licensed.

27101 (c) Each application for a license shall contain:

27102 (i) if the applicant is an individual, the name and residence address of the applicant and
27103 the trade name, if any, under which [~~he~~] the applicant intends to conduct business;

27104 (ii) if the applicant is a partnership, the name and residence address of each partner,
27105 whether limited or general, and the name under which the partnership business will be

27106 conducted;

27107 (iii) if the applicant is a corporation, the name of the corporation, and the name and
27108 residence address of each of its principal officers and directors;

27109 (iv) a complete description of the principal place of business, including:

27110 (A) the municipality, with the street and number, if any;

27111 (B) if located outside of any municipality, a general description so that the location can
27112 be determined; and

27113 (C) any other places of business operated and maintained by the applicant in
27114 conjunction with the principal place of business; and

27115 (v) if the application is for a new motor vehicle dealer's license, the name of each motor
27116 vehicle the applicant has been enfranchised to sell or exchange, the name and address of the
27117 manufacturer or distributor who has enfranchised the applicant, and the names and addresses of
27118 the individuals who will act as salespersons under authority of the license.

27119 (5) The administrator may adopt a seal with the words "Motor Vehicle Enforcement
27120 Administrator, State of Utah," to authenticate the acts of ~~[his]~~ the administrator's office.

27121 (6) (a) The administrator may require that the licensee erect or post signs or devices on
27122 ~~[his]~~ the licensee's principal place of business and any other sites, equipment, or locations
27123 operated and maintained by the licensee in conjunction with ~~[his]~~ the licensee's business.

27124 (b) The signs or devices shall state the licensee's name, principal place of business, type
27125 and number of licenses, and any other information that the administrator considers necessary to
27126 identify the licensee.

27127 (c) The administrator may make rules in accordance with ~~[Title 63, Chapter 46a]~~ Title
27128 63G, Chapter 3, Utah Administrative Rulemaking Act, determining allowable size and shape of
27129 signs or devices, their lettering and other details, and their location.

27130 (7) (a) The administrator shall provide for quarterly meetings of the advisory board and
27131 may call special meetings.

27132 (b) Notices of all meetings shall be sent to each member not fewer than five days prior
27133 to the meeting.

27134 (8) The administrator, the officers and inspectors of the division designated by the
27135 commission, and peace officers shall:

27136 (a) make arrests upon view and without warrant for any violation committed in their
27137 presence of any of the provisions of this chapter, or Title 41, Chapter 1a, Motor Vehicle Act;

27138 (b) when on duty, upon reasonable belief that a motor vehicle, trailer, or semitrailer is
27139 being operated in violation of any provision of Title 41, Chapter 1a, Motor Vehicle Act, require
27140 the driver of the vehicle to stop, exhibit [~~his driver's~~] the person's driver license and the
27141 registration card issued for the vehicle and submit to an inspection of the vehicle, the license
27142 plates, and registration card;

27143 (c) serve all warrants relating to the enforcement of the laws regulating the operation of
27144 motor vehicles, trailers, and semitrailers;

27145 (d) investigate traffic accidents and secure testimony of witnesses or persons involved;
27146 and

27147 (e) investigate reported thefts of motor vehicles, trailers, and semitrailers.

27148 (9) The administrator may contract with a public prosecutor to provide additional
27149 prosecution of this chapter.

27150 Section 557. Section **41-3-109** is amended to read:

27151 **41-3-109. Adjudicative proceedings -- Hearings.**

27152 (1) The commission, the division, the board, and the administrator shall comply with the
27153 procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
27154 Procedures Act, in all adjudicative proceedings conducted under the authority of this chapter
27155 and Sections 41-1a-1001 through 41-1a-1008.

27156 (2) The administrator may request the attendance of the board at any hearing, or [~~he~~]
27157 the administrator may direct that any hearing be held before the board.

27158 Section 558. Section **41-3-202** is amended to read:

27159 **41-3-202. Licenses -- Classes and scope.**

27160 (1) A new motor vehicle dealer's license permits the licensee to:

27161 (a) offer for sale, sell, or exchange new motor vehicles if the licensee possesses a

27162 franchise from the manufacturer of the motor vehicle offered for sale, sold, or exchanged by the
27163 licensee;

27164 (b) offer for sale, sell, or exchange used motor vehicles;

27165 (c) operate as a body shop; and

27166 (d) dismantle motor vehicles.

27167 (2) A used motor vehicle dealer's license permits the licensee to:

27168 (a) offer for sale, sell, or exchange used motor vehicles;

27169 (b) operate as a body shop; and

27170 (c) dismantle motor vehicles.

27171 (3) A new motorcycle, off-highway vehicle, and small trailer dealer's license permits the
27172 licensee to:

27173 (a) offer for sale, sell, or exchange new motorcycles, off-highway vehicles, or small
27174 trailers if the licensee possesses a franchise from the manufacturer of the motorcycle,
27175 off-highway vehicle, or small trailer offered for sale, sold, or exchanged by the licensee;

27176 (b) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, or small
27177 trailers; and

27178 (c) dismantle motorcycles, off-highway vehicles, or small trailers.

27179 (4) A used motorcycle, off-highway vehicle, and small trailer dealer's license permits
27180 the licensee to:

27181 (a) offer for sale, sell, or exchange used motorcycles, off-highway vehicles, and small
27182 trailers; and

27183 (b) dismantle motorcycles, off-highway vehicles, or small trailers.

27184 (5) A salesperson's license permits the licensee to act as a motor vehicle salesperson and
27185 is valid for employment with only one dealer at a time.

27186 (6) (a) A manufacturer's license permits the licensee to construct or assemble motor
27187 vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, at an established
27188 place of business and to remanufacture motor vehicles.

27189 (b) Under rules made by the administrator, the licensee may issue and install vehicle

27190 identification numbers on manufactured motor vehicles.

27191 (c) The licensee may franchise and appoint dealers to sell manufactured motor vehicles
27192 by notifying the division of the franchise or appointment.

27193 (7) A transporter's license permits the licensee to transport or deliver motor vehicles
27194 subject to registration under Title 41, Chapter 1a, Motor Vehicle Act, from a manufacturing,
27195 assembling, or distributing point or from a dealer, to dealers, distributors, or sales agents of a
27196 manufacturer or remanufacturer, to or from detail or repair shops, and to financial institutions
27197 or places of storage from points of repossession.

27198 (8) A dismantler's license permits the licensee to dismantle motor vehicles subject to
27199 registration under Title 41, Chapter 1a, Motor Vehicle Act, for the purpose of reselling parts or
27200 for salvage, or selling dismantled or salvage vehicles to a crusher or other dismantler.

27201 (9) A distributor or factory branch and distributor branch's license permits the licensee
27202 to sell and distribute new motor vehicles, parts, and accessories to their franchised dealers.

27203 (10) A representative's license, for factory representatives or distributor representatives
27204 permits the licensee to contact [~~his~~] the licensee's authorized dealers for the purpose of making
27205 or promoting the sale of motor vehicles, parts, and accessories.

27206 (11) (a) (i) A remanufacturer's license permits the licensee to construct, reconstruct,
27207 assemble, or reassemble motor vehicles subject to registration under Title 41, Chapter 1a,
27208 Motor Vehicle Act, from used or new motor vehicles or parts.

27209 (ii) Evidence of ownership of parts and motor vehicles used in remanufacture shall be
27210 available to the division upon demand.

27211 (b) Under rules made by the administrator, the licensee may issue and install vehicle
27212 identification numbers on remanufactured motor vehicles.

27213 (12) A crusher's license permits the licensee to engage in the business of crushing or
27214 shredding motor vehicles subject to registration under Title 41, Chapter 1a, Motor Vehicle Act,
27215 for the purpose of reducing the useable materials and metals to a more compact size for
27216 recycling.

27217 (13) A body shop's license permits the licensee to rebuild, restore, repair, or paint

27218 primarily the body of motor vehicles damaged by collision or natural disaster, and to dismantle
27219 motor vehicles.

27220 (14) A special equipment dealer's license permits the licensee to:

27221 (a) buy incomplete new motor vehicles with a gross vehicle weight of 12,000 or more
27222 pounds from a new motor vehicle dealer and sell the new vehicle with the special equipment
27223 installed without a franchise from the manufacturer;

27224 (b) offer for sale, sell, or exchange used motor vehicles;

27225 (c) operate as a body shop; and

27226 (d) dismantle motor vehicles.

27227 (15) (a) A salvage vehicle buyer license permits the licensee to bid on or purchase a
27228 vehicle with a salvage certificate as defined in Section 41-1a-1001 at any motor vehicle auction.

27229 (b) A salvage vehicle buyer license may only be issued to a motor vehicle dealer,
27230 dismantler, or body shop who qualifies under rules made by the division and is licensed in any
27231 state as a motor vehicle dealer, dismantler, or body shop.

27232 (c) The division may not issue more than two salvage vehicle buyer licenses to any one
27233 dealer, dismantler, or body shop.

27234 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27235 Administrative Rulemaking Act, the administrator shall make rules establishing qualifications of
27236 an applicant for a salvage vehicle buyer license. The criteria shall include:

27237 (i) business history;

27238 (ii) salvage vehicle qualifications;

27239 (iii) ability to properly handle and dispose of environmental hazardous materials
27240 associated with salvage vehicles; and

27241 (iv) record in demonstrating compliance with the provisions of this chapter.

27242 Section 559. Section **41-3-209** is amended to read:

27243 **41-3-209. Administrator's findings -- Suspension and revocation of license.**

27244 (1) If the administrator finds that an applicant is not qualified to receive a license, a
27245 license may not be granted.

27246 (2) (a) If the administrator finds that there is reasonable cause to deny, suspend, or
27247 revoke a license issued under this chapter, the administrator shall deny, suspend, or revoke the
27248 license.

27249 (b) Reasonable cause for denial, suspension, or revocation of a license includes, in
27250 relation to the applicant or license holder or any of its partners, officers, or directors:

27251 (i) lack of a principal place of business;

27252 (ii) lack of a sales tax license required under Title 59, Chapter 12, Sales and Use Tax
27253 Act;

27254 (iii) lack of a bond in effect as required by this chapter;

27255 (iv) current revocation or suspension of a dealer, dismantler, auction, or salesperson
27256 license issued in another state;

27257 (v) nonpayment of required fees;

27258 (vi) making a false statement on any application for a license under this chapter or for
27259 special license plates;

27260 (vii) a violation of any state or federal law involving motor vehicles;

27261 (viii) a violation of any state or federal law involving controlled substances;

27262 (ix) charges filed with any county attorney, district attorney, or U.S. attorney in any
27263 court of competent jurisdiction for a violation of any state or federal law involving motor
27264 vehicles;

27265 (x) a violation of any state or federal law involving fraud; or

27266 (xi) a violation of any state or federal law involving a registerable sex offense under
27267 Section 77-27-21.5.

27268 (c) Any action taken by the administrator under Subsection (2)(b)(ix) shall remain in
27269 effect until a final resolution is reached by the court involved or the charges are dropped.

27270 (3) If the administrator finds that the license holder has been convicted by a court of
27271 competent jurisdiction of violating any of the provisions of this chapter or any rules made by the
27272 administrator, or finds other reasonable cause, the administrator may, by complying with the
27273 emergency procedures of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative

27274 Procedures Act:

27275 (a) suspend the license on terms and for a period of time [~~he~~] the administrator finds
27276 reasonable; or

27277 (b) revoke the license.

27278 (4) (a) After suspending or revoking a license, the administrator may take reasonable
27279 action to:

27280 (i) notify the public that the licensee is no longer in business; and

27281 (ii) prevent the former licensee from violating the law by conducting business without a
27282 license.

27283 (b) Action under Subsection (4)(a) may include signs, banners, barriers, locks, bulletins,
27284 and notices.

27285 (c) Any business being conducted incidental to the business for which the former
27286 licensee was licensed may continue to operate subject to the preventive action taken under this
27287 subsection.

27288 Section 560. Section **41-3-301** is amended to read:

27289 **41-3-301. Sale by dealer, sale by auction -- Temporary permit -- Delivery of**
27290 **certificate of title or origin -- Notice to division.**

27291 (1) (a) Each dealer licensed under Part 2, Licensing, upon the sale and delivery of any
27292 motor vehicle for which a temporary permit is issued under Section 41-3-302 shall within 45
27293 days submit a certificate of title or manufacturer's certificate of origin for that motor vehicle,
27294 endorsed according to law, to the Motor Vehicle Division, accompanied by all documents
27295 required to obtain a new certificate of title and registration in the new owner's name.

27296 (b) If a temporary permit is not issued, the certificate of title or manufacturer's
27297 certificate of origin shall be delivered to the vendee, endorsed according to law, within 48
27298 hours, unless the vendee is a dealer or dismantler in which case the title or manufacturer's
27299 certificate of origin shall be delivered within 21 days.

27300 (c) (i) A motor vehicle consigned to an auction and sold is considered sold by the
27301 consignor to the auction and then sold by the auction to the consignee.

27302 (ii) Both the consignor and auction are subject to this section.

27303 (d) (i) (A) A motor vehicle consigned to a wholesale motor vehicle auction and sold to
27304 a licensed dealer or dismantler is considered sold by the consignor to the licensed dealer or
27305 dismantler.

27306 (B) Both the consignor and the wholesale motor vehicle auction are subject to the title
27307 delivery requirements of Subsection (1)(b).

27308 (C) The consignor, or the wholesale motor vehicle auction as the consignor's agent,
27309 shall endorse the certificate of title according to law. By endorsing the certificate of title as
27310 agent of the consignor, the wholesale motor vehicle auction does not become the owner, seller,
27311 or assignor of title.

27312 (ii) (A) A wholesale motor vehicle auction may purchase or sell motor vehicles in its
27313 own name.

27314 (B) If a wholesale motor vehicle auction purchases or sells a motor vehicle in its own
27315 name, the wholesale motor vehicle auction is subject to Subsections (1)(a) and (1)(b).

27316 (2) (a) (i) Each dealer licensed under Part 2, Licensing, upon the sale and delivery of a
27317 motor vehicle for which a temporary permit is issued under Section 41-3-302, shall within 45
27318 days give written notice of the sale to the Motor Vehicle Division upon a form provided by the
27319 Motor Vehicle Division.

27320 (ii) The notice shall contain:

27321 (A) the date of the sale;

27322 (B) the names and addresses of the dealer and the purchaser;

27323 (C) a description of the motor vehicle;

27324 (D) the motor vehicle's odometer reading at the time of the sale; and

27325 (E) other information required by the division.

27326 (b) If no temporary permit is issued, the notice shall be filed with the division within 45
27327 days after the sale, and a duplicate copy shall be given to the purchaser at the time of sale,
27328 unless the purchaser is a dealer or dismantler.

27329 (c) The administrator may make rules in accordance with [~~Title 63, Chapter 46a~~] Title

27330 63G, Chapter 3, Utah Administrative Rulemaking Act, providing that the notice required under
27331 Subsections (2)(a) and (2)(b) may be filed in electronic form or on magnetic media.

27332 Section 561. Section **41-3-302** is amended to read:

27333 **41-3-302. Temporary permits -- Purchasers of motor vehicles -- Penalty for use**
27334 **after expiration -- Sale and rescission.**

27335 (1) (a) (i) A dealer or the division may issue a temporary permit.

27336 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27337 Administrative Rulemaking Act, the administrator shall makes rules for the issuance of a
27338 temporary permit under Subsection (1)(a)(i).

27339 (iii) The division shall furnish the forms for temporary permits issued by dealers under
27340 Subsection (1)(a)(i).

27341 (b) A dealer may issue a temporary permit to a bona fide purchaser of a motor vehicle
27342 for a period not to exceed 45 days on a motor vehicle sold to the purchaser by the dealer.

27343 (c) The dealer is responsible and liable for the registration fee of each motor vehicle for
27344 which the permit is issued.

27345 (d) All issued temporary permits that are outstanding after 45 days from the date they
27346 are issued are delinquent and a penalty equal to the registration fee shall be collected from the
27347 issuing dealer.

27348 (2) If a temporary permit is issued by a dealer under this section and the sale of the
27349 motor vehicle is subsequently rescinded, the temporary permit may be voided and the issuing
27350 dealer is not liable for the registration fee or penalty.

27351 Section 562. Section **41-3-304** is amended to read:

27352 **41-3-304. Temporary permits -- Temporary sports event registration certificate --**
27353 **Suspension or revocation of dealer's authority to issue -- Return of temporary permits to**
27354 **division -- Refunds -- Appeal.**

27355 (1) The division may suspend or revoke a dealer's authority to issue a temporary permit
27356 or a temporary sports event registration certificate under this part if the division determines the
27357 dealer has failed to comply with this chapter or with any rules made by the commission under

27358 this part.

27359 (2) (a) Suspension or revocation of authority to issue a temporary permit or a
27360 temporary sports event registration certificate takes effect immediately upon written notification
27361 to the dealer by the division.

27362 (b) Upon notification, the dealer shall immediately return all temporary permits to the
27363 division.

27364 (c) Subject to Subsection (2)(d), if the authority to issue a temporary permit under
27365 Section 41-3-302 is revoked or suspended for more than 30 days, the dealer may apply for a
27366 refund of the money paid to the division only for temporary permits described in Section
27367 41-3-302 that are returned prior to issuance.

27368 (d) Temporary permits being returned may not have ever been issued, written on, or
27369 separated from their stubs, and shall be in useable condition.

27370 (3) If the division suspends or revokes a dealer's authority to issue a temporary permit
27371 or a temporary sports event registration certificate as provided in this section, each of the
27372 following is a violation of this chapter and grounds for automatic suspension of the dealer's
27373 license:

27374 (a) failure to return a temporary permit to the division as provided in this section; or

27375 (b) issuing a:

27376 (i) temporary permit; or

27377 (ii) temporary sports event registration certificate.

27378 (4) (a) A dealer may appeal the division's suspension or revocation by filing a written
27379 appeal with the administrator within ten days of the suspension or revocation.

27380 (b) Upon receiving the dealer's written appeal, the administrator shall set a hearing for
27381 not more than 20 days from the date the written appeal is received.

27382 (c) A hearing or appeal under this section shall be conducted in accordance with [Title
27383 ~~63, Chapter 46b~~ Title 63G, Chapter 4, Administrative Procedures Act.

27384 Section 563. Section **41-3-306** is amended to read:

27385 **41-3-306. Temporary sports event registration -- Definitions -- Issuance -- Fees --**

27386 **Expiration -- Rulemaking authority.**

27387 (1) As used in this section:

27388 (a) "Distributor-provided vehicle" means a motor vehicle:

27389 (i) that has never been titled or registered in any state; and

27390 (ii) the use of which is donated by a distributor licensed under Part 2, Licensing,
27391 through a dealer licensed under Part 2, Licensing.

27392 (b) (i) "Event period" means a time period:

27393 (A) during which a sports event takes place;

27394 (B) not to exceed 180 consecutive calendar days; and

27395 (C) specified by the division on a temporary sports event registration certificate.

27396 (ii) "Event period" may include one or more of the following time periods if the division
27397 determines that good cause exists for including the time period within the event period:

27398 (A) a reasonable time period before a sports event as determined by the division; or

27399 (B) a reasonable time period after a sports event as determined by the division.

27400 (c) (i) Notwithstanding Section 41-3-102 and except as provided in Subsection

27401 (1)(c)(ii), "motor vehicle" means a motor vehicle that is subject to the uniform fee imposed by
27402 Section 59-2-405.1.

27403 (ii) "Motor vehicle" does not include a state-assessed commercial vehicle as defined in
27404 Section 59-2-102.

27405 (d) (i) "Sports event" means an amateur or professional:

27406 (A) sports:

27407 (I) game;

27408 (II) race; or

27409 (III) contest; or

27410 (B) athletic:

27411 (I) game;

27412 (II) race; or

27413 (III) contest.

27414 (ii) "Sports event" includes a game, race, or contest described in Subsection (1)(d)(i)

27415 that is:

27416 (A) an independent game, race, or contest; or

27417 (B) a part of another event or activity regardless of whether the other event or activity
27418 is an event or activity relating to sports or athletics.

27419 (e) "Temporary sports event registration certificate" means a motor vehicle certificate
27420 of registration issued by the division to a dealer in accordance with this section.

27421 (2) Beginning on September 1, 2001, the division may register a motor vehicle for an
27422 event period by issuing to a dealer licensed under Part 2, Licensing, a temporary sports event
27423 registration certificate if the division determines that:

27424 (a) the motor vehicle is a distributor-provided vehicle;

27425 (b) the motor vehicle will be used for a sports event within the state during the event
27426 period; and

27427 (c) the dealer provides the division an application stating:

27428 (i) the person to whom the distributor is donating use of the motor vehicle;

27429 (ii) the motor vehicle identification number;

27430 (iii) the motor vehicle:

27431 (A) make;

27432 (B) model; and

27433 (C) year;

27434 (iv) the name of the sports event;

27435 (v) the beginning date and ending date of the sports event; and

27436 (vi) any other information the division requires.

27437 (3) If the division issues a temporary sports event registration certificate to a dealer
27438 licensed under Part 2, Licensing:

27439 (a) the division:

27440 (i) shall specify the event period on the temporary sports event registration certificate;

27441 and

27442 (ii) may specify any other information on the temporary sports event registration
27443 certificate as determined by the division; and

27444 (b) the dealer shall for each motor vehicle for which the division issues a temporary
27445 sports event registration certificate:

27446 (i) pay the:

27447 (A) registration fees required by Chapter 1a, Part 12, Fee and Tax Requirements; and

27448 (B) uniform fee required by Section 59-2-405.1; and

27449 (ii) place the temporary sports event registration certificate in the rear license plate
27450 holder of the motor vehicle.

27451 (4) A temporary sports event registration certificate issued by the division under this
27452 section is valid for the event period specified on the temporary sports event registration
27453 certificate.

27454 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27455 Administrative Rulemaking Act, the commission may make rules:

27456 (a) specifying the information to be provided to the division by a dealer or a person
27457 using a distributor-provided vehicle in connection with the issuance of a temporary sports event
27458 registration certificate;

27459 (b) specifying the form for a temporary sports event registration certificate; or

27460 (c) defining the terms:

27461 (i) "reasonable time period before a sports event"; and

27462 (ii) "reasonable time period after a sports event."

27463 Section 564. Section **41-3-601** is amended to read:

27464 **41-3-601. Fees.**

27465 (1) To pay for administering and enforcing this chapter, the administrator shall collect
27466 fees determined by the commission under Section [~~63-38-3.2~~] 63J-1-303 for each of the
27467 following:

27468 (a) new motor vehicle dealer's license;

27469 (b) used motor vehicle dealer's license;

- 27470 (c) new motorcycle, off-highway vehicle, and small trailer dealer;
- 27471 (d) used motorcycle, off-highway vehicle, and small trailer dealer;
- 27472 (e) motor vehicle salesperson's license;
- 27473 (f) motor vehicle salesperson's transfer or reissue fee;
- 27474 (g) motor vehicle manufacturer's license;
- 27475 (h) motor vehicle transporter's license;
- 27476 (i) motor vehicle dismantler's license;
- 27477 (j) motor vehicle crusher's license;
- 27478 (k) motor vehicle remanufacturer's license;
- 27479 (l) body shop's license;
- 27480 (m) distributor or factory branch and distributor branch's license;
- 27481 (n) representative's license;
- 27482 (o) dealer plates;
- 27483 (p) dismantler plates;
- 27484 (q) manufacturer plates;
- 27485 (r) transporter plates;
- 27486 (s) damaged plate replacement;
- 27487 (t) in-transit permits;
- 27488 (u) loaded demonstration permits;
- 27489 (v) additional place of business;
- 27490 (w) special equipment dealer's license;
- 27491 (x) temporary permits; and
- 27492 (y) temporary sports event registration certificates.
- 27493 (2) (a) To pay for training certified vehicle inspectors and enforcement under Sections
- 27494 41-1a-1001 through 41-1a-1008, the State Tax Commission shall establish and the
- 27495 administrator shall collect inspection fees determined by the commission under Section
- 27496 ~~[63-38-3.2]~~ 63J-1-303.
- 27497 (b) The division shall use fees collected under Subsection (2)(a) as nonlapsing dedicated

27498 credits to be used toward the costs of the division.

27499 (3) (a) At the time of application, the administrator shall collect a fee of \$200 for each
 27500 salvage vehicle buyer license.

27501 (b) The administrator may retain a portion of the fee under Subsection (3)(a) to offset
 27502 the administrator's actual costs of administering and enforcing salvage vehicle buyer licenses.

27503 (4) The division shall use fees collected under Subsections (1)(x) and (y) as nonlapsing
 27504 dedicated credits to be used toward the costs of the division.

27505 Section 565. Section **41-3-604** is amended to read:

27506 **41-3-604. Fee to cover the cost of electronic payments.**

27507 (1) As used in this section:

27508 (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

27509 (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

27510 (2) (a) The division may collect a fee to cover the cost of electronic payments on the
 27511 following transactions:

27512 (i) each purchase or renewal of a license under Section 41-3-202;

27513 (ii) each purchase of a book of temporary permits under Section 41-3-302;

27514 (iii) each penalty issued for a delinquent temporary permit under Section 41-3-302;

27515 (iv) each purchase of an in-transit permit under Section 41-3-305;

27516 (v) each purchase of a loaded demonstration permit under Section 41-3-502;

27517 (vi) each purchase of a license plate under Section 41-3-503; and

27518 (vii) each purchase of a salvage vehicle buyer license under Section 41-3-202.

27519 (b) The fee described in Subsection (2)(a):

27520 (i) shall be imposed regardless of the method of payment for a particular transaction;

27521 and

27522 (ii) need not be separately identified from the fees and penalty described in Subsections

27523 (2)(a)(i) through (vii).

27524 (3) The division shall establish the fee under Subsection (2)(a) according to the
 27525 procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303.

- 27526 (4) A fee imposed under this section:
- 27527 (a) shall be used by the division as a dedicated credit to cover the costs of electronic
- 27528 payments;
- 27529 (b) is nonlapsing; and
- 27530 (c) is not subject to Subsection [~~63-38a-104~~] 63J-2-202(2).

27531 Section 566. Section **41-6a-212** is amended to read:

27532 **41-6a-212. Emergency vehicles -- Policy regarding vehicle pursuits --**

27533 **Applicability of traffic law to highway work vehicles -- Exemptions.**

27534 (1) Subject to Subsections (2) through (5), the operator of an authorized emergency
27535 vehicle may exercise the privileges granted under this section when:

- 27536 (a) responding to an emergency call;
- 27537 (b) in the pursuit of an actual or suspected violator of the law; or
- 27538 (c) responding to but not upon returning from a fire alarm.

27539 (2) The operator of an authorized emergency vehicle may:

- 27540 (a) park or stand, irrespective of the provisions of this chapter;
- 27541 (b) proceed past a red or stop signal or stop sign, but only after slowing down as may
27542 be necessary for safe operation;
- 27543 (c) exceed the maximum speed limits, unless prohibited by a local highway authority
27544 under Section 41-6a-208; or

27545 (d) disregard regulations governing direction of movement or turning in specified
27546 directions.

27547 (3) (a) Except as provided in Subsection (3)(b), privileges granted under this section to
27548 the operator of an authorized emergency vehicle, who is not involved in a vehicle pursuit, apply
27549 only when:

- 27550 (i) the operator of the vehicle sounds an audible signal under Section 41-6a-1625; or
- 27551 (ii) uses a visual signal with emergency lights in accordance with rules made under
27552 Section 41-6a-1601, which is visible from in front of the vehicle.

27553 (b) An operator of an authorized emergency vehicle may exceed the maximum speed

27554 limit when engaged in normal patrolling activities with the purpose of identifying and
27555 apprehending violators.

27556 (4) Privileges granted under this section to the operator of an authorized emergency
27557 vehicle involved in any vehicle pursuit apply only when:

27558 (a) the operator of the vehicle:

27559 (i) sounds an audible signal under Section 41-6a-1625; and

27560 (ii) uses a visual signal with emergency lights in accordance with rules made under
27561 Section 41-6a-1601, which is visible from in front of the vehicle;

27562 (b) the public agency employing the operator of the vehicle has, in effect, a written
27563 policy which describes the manner and circumstances in which any vehicle pursuit should be
27564 conducted and terminated;

27565 (c) the operator of the vehicle has been trained in accordance with the written policy
27566 described in Subsection (4)(b); and

27567 (d) the pursuit policy of the public agency is in conformance with standards established
27568 under Subsection (5).

27569 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27570 Administrative Rulemaking Act, the Department of Public Safety shall make rules providing
27571 minimum standards for all emergency pursuit policies that are adopted by public agencies
27572 authorized to operate emergency pursuit vehicles.

27573 (6) The privileges granted under this section do not relieve the operator of an
27574 authorized emergency vehicle of the duty to act as a reasonably prudent emergency vehicle
27575 operator in like circumstances.

27576 (7) Except for Sections 41-6a-210, 41-6a-502, and 41-6a-528, this chapter does not
27577 apply to persons, motor vehicles, and other equipment while actually engaged in work on the
27578 surface of a highway.

27579 Section 567. Section **41-6a-301** is amended to read:

27580 **41-6a-301. Standards and specifications for uniform system of traffic-control**
27581 **devices and school crossing guards.**

27582 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 27583 Administrative Rulemaking Act, the Department of Transportation shall make rules consistent
 27584 with this chapter adopting standards and establishing specifications for a uniform system of
 27585 traffic-control devices used on a highway.

27586 (2) The standards and specifications adopted under Subsection (1) shall:
 27587 (a) include provisions for school crossing zones and use of school crossing guards; and
 27588 (b) correlate with, and where possible conform to, the system set forth in the most
 27589 recent edition of the "Manual on Uniform Traffic Control Devices for Streets and Highways"
 27590 and other standards issued or endorsed by the federal highway administrator.

27591 Section 568. Section **41-6a-303** is amended to read:

27592 **41-6a-303. Definition of reduced speed school zone -- Operation of warning lights**
 27593 **-- School crossing guard requirements -- Responsibility provisions -- Rulemaking**
 27594 **authority.**

27595 (1) As used in this section "reduced speed school zone" means a designated length of a
 27596 highway extending from a school zone speed limit sign with warning lights operating to an end
 27597 school zone sign.

27598 (2) The Department of Transportation for state highways and local highway authorities
 27599 for highways under their jurisdiction:

27600 (a) shall establish reduced speed school zones at elementary schools after written
 27601 assurance by a local highway authority that the local highway authority complies with
 27602 Subsections (3) and (4); and

27603 (b) may establish reduced speed school zones for secondary schools at the request of
 27604 the local highway authority.

27605 (3) For all reduced speed school zones on highways, including state highways within the
 27606 jurisdictional boundaries of a local highway authority, the local highway authority shall:

27607 (a) (i) provide shuttle service across highways for school children; or
 27608 (ii) provide, train, and supervise school crossing guards in accordance with this section;
 27609 (b) provide for the:

27610 (i) operation of reduced speed school zones, including providing power to warning
27611 lights and turning on and off the warning lights as required under Subsections (4) and (5); and
27612 (ii) maintenance of reduced speed school zones except on state highways as provided in
27613 Section 41-6a-302; and
27614 (c) notify the Department of Transportation of reduced speed school zones on state
27615 highways that are in need of maintenance.

27616 (4) While children are going to or leaving school during opening and closing hours all
27617 reduced speed school zones shall have:

27618 (a) the warning lights operating on each school zone speed limit sign; and
27619 (b) a school crossing guard present if the reduced speed school zone is for an
27620 elementary school.

27621 (5) The warning lights on a school zone speed limit sign may not be operating except as
27622 provided under Subsection (4).

27623 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27624 Administrative Rulemaking Act, the Department of Transportation shall make rules establishing
27625 criteria and specifications for the:

27626 (a) establishment, location, and operation of school crosswalks, school zones, and
27627 reduced speed school zones;
27628 (b) training, use, and supervision of school crossing guards at elementary schools and
27629 secondary schools; and
27630 (c) content and implementation of child access routing plans under Section 53A-3-402.

27631 (7) Each local highway authority shall pay for providing, training, and supervising
27632 school crossing guards in accordance with this section.

27633 Section 569. Section **41-6a-403 (Superseded 07/01/08)** is amended to read:
27634 **41-6a-403 (Superseded 07/01/08). Vehicle accidents -- Investigation and report of**
27635 **operator security -- Agency action if no security -- Surrender of plates -- Penalties.**

27636 (1) (a) Upon request of a peace officer investigating an accident involving a motor
27637 vehicle, the operator of the motor vehicle shall provide evidence of the owner's or operator's

27638 security required under Section 41-12a-301.

27639 (b) The evidence of owner's or operator's security includes information specified under
27640 Section 41-12a-303.2.

27641 (2) The peace officer shall record on a form approved by the department:

27642 (a) the information provided by the operator;

27643 (b) whether the operator provided insufficient or no information;

27644 (c) whether the officer finds reasonable cause to believe that any information given is not
27645 correct; and

27646 (d) whether other information available to the peace officer indicates that owner's or
27647 operator's security is in effect.

27648 (3) The peace officer shall deposit all completed forms with the peace officer's law
27649 enforcement agency, which shall forward the forms to the department no later than ten days
27650 after receipt.

27651 (4) (a) The department shall within ten days of receipt of the forms from the law
27652 enforcement agency take action as follows:

27653 (i) if the operator provided no information under Subsection (1) and other information
27654 available to the peace officer does not indicate that owner's or operator's security is in effect, the
27655 department shall take direct action under Subsection 53-3-221(12); or

27656 (ii) if the peace officer noted or the department determines that there is reasonable
27657 cause to believe that the information given under Subsection (1) is not correct, the department
27658 shall contact directly the insurance company or other provider of security as described in
27659 Section 41-12a-303.2 and request verification of the accuracy of the information submitted as of
27660 the date of the accident.

27661 (b) The department may require the verification under Subsection (4)(a)(ii) to be in a
27662 form specified by the department.

27663 (c) The insurance company or other provider of security shall return the verification to
27664 the department within 30 days of receipt of the request.

27665 (d) If the department does not receive verification within 35 days after sending the

27666 request, or within the 35 days receives notice that the information was not correct, the
27667 department shall take action under Subsection 53-3-221(12).

27668 (5) (a) The owner of a vehicle with unexpired license plates for which security is not
27669 provided as required under this chapter shall return the plates for the vehicle to the Motor
27670 Vehicle Division unless specifically permitted by statute to retain them.

27671 (b) If the owner fails to return the plates as required, the plates shall be confiscated
27672 under Section 53-3-226.

27673 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27674 Administrative Rulemaking Act, the department may make rules for the enforcement of this
27675 section.

27676 (7) A person is guilty of a class B misdemeanor, and shall be fined not less than \$100,
27677 who:

27678 (a) when requested to provide security information under Subsection (1), or Section
27679 41-12a-303.2, provides false information;

27680 (b) falsely represents to the department that security required under this chapter is in
27681 effect; or

27682 (c) sells a vehicle to avoid the penalties of this section as applicable either to himself or
27683 a third party.

27684 Section 570. Section **41-6a-403 (Effective 07/01/08)** is amended to read:

27685 **41-6a-403 (Effective 07/01/08). Vehicle accidents -- Investigation and report of**
27686 **operator security -- Agency action if no security -- Surrender of plates -- Penalties.**

27687 (1) (a) Upon request of a peace officer investigating an accident involving a motor
27688 vehicle, the operator of the motor vehicle shall provide evidence of the owner's or operator's
27689 security required under Section 41-12a-301.

27690 (b) The evidence of owner's or operator's security includes information specified under
27691 Section 41-12a-303.2.

27692 (2) The peace officer shall record on a form approved by the department:

27693 (a) the information provided by the operator;

27694 (b) whether the operator provided insufficient or no information;

27695 (c) whether the officer finds reasonable cause to believe that any information given is
27696 not correct; and

27697 (d) whether other information available to the peace officer indicates that owner's or
27698 operator's security is in effect.

27699 (3) The peace officer shall deposit all completed forms with the peace officer's law
27700 enforcement agency, which shall forward the forms to the department no later than ten days
27701 after receipt.

27702 (4) (a) The department shall within ten days of receipt of the forms from the law
27703 enforcement agency take action as follows:

27704 (i) if the operator provided no information under Subsection (1) and other information
27705 available to the peace officer does not indicate that owner's or operator's security is in effect, the
27706 department shall take direct action under Subsection 53-3-221(13); or

27707 (ii) if the peace officer noted or the department determines that there is reasonable
27708 cause to believe that the information given under Subsection (1) is not correct, the department
27709 shall contact directly the insurance company or other provider of security as described in
27710 Section 41-12a-303.2 and request verification of the accuracy of the information submitted as of
27711 the date of the accident.

27712 (b) The department may require the verification under Subsection (4)(a)(ii) to be in a
27713 form specified by the department.

27714 (c) The insurance company or other provider of security shall return the verification to
27715 the department within 30 days of receipt of the request.

27716 (d) If the department does not receive verification within 35 days after sending the
27717 request, or within the 35 days receives notice that the information was not correct, the
27718 department shall take action under Subsection 53-3-221(13).

27719 (5) (a) The owner of a vehicle with unexpired license plates for which security is not
27720 provided as required under this chapter shall return the plates for the vehicle to the Motor
27721 Vehicle Division unless specifically permitted by statute to retain them.

27722 (b) If the owner fails to return the plates as required, the plates shall be confiscated
27723 under Section 53-3-226.

27724 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27725 Administrative Rulemaking Act, the department may make rules for the enforcement of this
27726 section.

27727 (7) A person is guilty of a class B misdemeanor, and shall be fined not less than \$100,
27728 who:

27729 (a) when requested to provide security information under Subsection (1), or Section
27730 41-12a-303.2, provides false information;

27731 (b) falsely represents to the department that security required under this chapter is in
27732 effect; or

27733 (c) sells a vehicle to avoid the penalties of this section as applicable either to himself or
27734 a third party.

27735 Section 571. Section ~~41-6a-404~~ is amended to read:

27736 **41-6a-404. Accident reports -- When confidential -- Insurance policy information**
27737 **-- Use as evidence -- Penalty for false information.**

27738 (1) As used in this section:

27739 (a) "Agent" means:

27740 (i) a person's attorney;

27741 (ii) a person's insurer;

27742 (iii) a general acute hospital, as defined in Section 26-21-2, that:

27743 (A) has an emergency room; and

27744 (B) is providing or has provided emergency services to the person in relation to the
27745 accident; or

27746 (iv) any other individual or entity with signed permission from the person to receive the
27747 person's accident report.

27748 (b) "Accompanying data" means all materials gathered by the investigating peace officer
27749 in an accident investigation including:

- 27750 (i) the identity of witnesses and, if known, contact information;
- 27751 (ii) witness statements;
- 27752 (iii) photographs and videotapes;
- 27753 (iv) diagrams; and
- 27754 (v) field notes.
- 27755 (2) Except as provided in Subsection (3), all accident reports required in this part to be
- 27756 filed with the department:
- 27757 (a) are without prejudice to the reporting individual;
- 27758 (b) are protected and for the confidential use of the department or other state, local, or
- 27759 federal agencies having use for the records for official governmental statistical, investigative,
- 27760 and accident prevention purposes; and
- 27761 (c) may be disclosed only in a statistical form that protects the privacy of any person
- 27762 involved in the accident.
- 27763 (3) (a) Subject to the provisions of this section, the department or the responsible law
- 27764 enforcement agency employing the peace officer that investigated the accident shall disclose an
- 27765 accident report to:
- 27766 (i) a person involved in the accident, excluding a witness to the accident;
- 27767 (ii) a person suffering loss or injury in the accident;
- 27768 (iii) an agent, parent, or legal guardian of a person described in Subsections (3)(a)(i)
- 27769 and (ii);
- 27770 (iv) subject to Subsection (3)(d), a member of the press or broadcast news media;
- 27771 (v) a state, local, or federal agency that uses the records for official governmental,
- 27772 investigative, or accident prevention purposes;
- 27773 (vi) law enforcement personnel when acting in their official governmental capacity; and
- 27774 (vii) a licensed private investigator.
- 27775 (b) The responsible law enforcement agency employing the peace officer that
- 27776 investigated the accident:
- 27777 (i) shall in compliance with Subsection (3)(a):

27778 (A) disclose an accident report; or
27779 (B) upon written request disclose an accident report and its accompanying data within
27780 ten business days from receipt of a written request for disclosure; or
27781 (ii) may withhold an accident report, and any of its accompanying data if disclosure
27782 would jeopardize an ongoing criminal investigation or criminal prosecution.
27783 (c) In accordance with Subsection (3)(a), the department or the responsible law
27784 enforcement agency employing the investigating peace officer shall disclose whether any person
27785 or vehicle involved in an accident reported under this section was covered by a vehicle
27786 insurance policy, and the name of the insurer.
27787 (d) Information provided to a member of the press or broadcast news media under
27788 Subsection (3)(a)(iv) may only include:
27789 (i) the name, age, sex, and city of residence of each person involved in the accident;
27790 (ii) the make and model year of each vehicle involved in the accident;
27791 (iii) whether or not each person involved in the accident was covered by a vehicle
27792 insurance policy;
27793 (iv) the location of the accident; and
27794 (v) a description of the accident that excludes personal identifying information not listed
27795 in Subsection (3)(d)(i).
27796 (e) The department shall disclose to any requesting person the following vehicle
27797 accident history information, excluding personal identifying information, in bulk electronic form:
27798 (i) any vehicle identifying information that is electronically available, including the
27799 make, model year, and vehicle identification number of each vehicle involved in an accident;
27800 (ii) the date of the accident; and
27801 (iii) any electronically available data which describes the accident, including a
27802 description of any physical damage to the vehicle.
27803 (f) The department may establish a fee under Section [~~63-38-3.2~~] 63J-1-303 based on
27804 the fair market value of the information for providing bulk vehicle accident history information
27805 under Subsection (3)(e).

27806 (4) (a) Except as provided in Subsection (4)(b), accident reports filed under this section
27807 may not be used as evidence in any civil or criminal trial arising out of an accident.

27808 (b) (i) Upon demand of any party to the trial or upon demand of any court, the
27809 department shall furnish a certificate showing that a specified accident report has or has not
27810 been made to the department in compliance with law.

27811 (ii) If the report has been made, the certificate furnished by the department shall show:

27812 (A) the date, time, and location of the accident;

27813 (B) the names and addresses of the drivers;

27814 (C) the owners of the vehicles involved; and

27815 (D) the investigating peace officers.

27816 (iii) The reports may be used as evidence when necessary to prosecute charges filed in
27817 connection with a violation of Subsection (5).

27818 (5) A person who gives information in reports as required in this part knowing or
27819 having reason to believe that the information is false is guilty of a class A misdemeanor.

27820 (6) The department and the responsible law enforcement agency employing the
27821 investigating peace officer may charge a reasonable fee determined by the department under
27822 Section [~~63-38-3.2~~] 63J-1-303 for the cost incurred in disclosing an accident report or an
27823 accident report and any of its accompanying data under Subsections (3)(a) and (b).

27824 Section 572. Section **41-6a-514** is amended to read:

27825 **41-6a-514. Procedures -- Adjudicative proceedings.**

27826 The department shall comply with the procedures and requirements of [~~Title 63, Chapter~~
27827 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

27828 Section 573. Section **41-6a-518** is amended to read:

27829 **41-6a-518. Ignition interlock devices -- Use -- Probationer to pay cost --**

27830 **Impecuniosity -- Fee.**

27831 (1) As used in this section:

27832 (a) "Commissioner" means the commissioner of the Department of Public Safety.

27833 (b) "Ignition interlock system" or "system" means a constant monitoring device or any

27834 similar device certified by the commissioner that prevents a motor vehicle from being started or
27835 continuously operated without first determining the driver's breath alcohol concentration.

27836 (c) "Probation provider" means the supervisor and monitor of the ignition interlock
27837 system required as a condition of probation who contracts with the court in accordance with
27838 Subsections 41-6a-507(2) and (3).

27839 (2) (a) In addition to any other penalties imposed under Sections 41-6a-503 and
27840 41-6a-505, and in addition to any requirements imposed as a condition of probation, the court
27841 may require that any person who is convicted of violating Section 41-6a-502 and who is granted
27842 probation may not operate a motor vehicle during the period of probation unless that motor
27843 vehicle is equipped with a functioning, certified ignition interlock system installed and calibrated
27844 so that the motor vehicle will not start or continuously operate if the operator's blood alcohol
27845 concentration exceeds a level ordered by the court.

27846 (b) If a person convicted of violating Section 41-6a-502 was under the age of 21 when
27847 the violation occurred, the court shall order the installation of the ignition interlock system as a
27848 condition of probation.

27849 (c) The division shall post the ignition interlock restriction on the electronic record
27850 available to law enforcement.

27851 (d) This section does not apply to a person convicted of a violation of Section
27852 41-6a-502 whose violation involves drugs other than alcohol.

27853 (3) If the court imposes the use of an ignition interlock system as a condition of
27854 probation, the court shall:

27855 (a) stipulate on the record the requirement for and the period of the use of an ignition
27856 interlock system;

27857 (b) order that an ignition interlock system be installed on each motor vehicle owned or
27858 operated by the probationer, at the probationer's expense;

27859 (c) immediately notify the Driver License Division and the person's probation provider
27860 of the order; and

27861 (d) require the probationer to provide proof of compliance with the court's order to the

27862 probation provider within 30 days of the order.

27863 (4) (a) The probationer shall provide timely proof of installation within 30 days of an
27864 order imposing the use of a system or show cause why the order was not complied with to the
27865 court or to the probationer's probation provider.

27866 (b) The probation provider shall notify the court of failure to comply under Subsection
27867 (4)(a).

27868 (c) For failure to comply under Subsection (4)(a) or upon receiving the notification
27869 under Subsection (4)(b), the court shall order the Driver License Division to suspend the
27870 probationer's driving privileges for the remaining period during which the compliance was
27871 imposed.

27872 (d) Cause for failure to comply means any reason the court finds sufficiently justifiable
27873 to excuse the probationer's failure to comply with the court's order.

27874 (5) (a) Any probationer required to install an ignition interlock system shall have the
27875 system monitored by the manufacturer or dealer of the system for proper use and accuracy at
27876 least semiannually and more frequently as the court may order.

27877 (b) (i) A report of the monitoring shall be issued by the manufacturer or dealer to the
27878 court or the person's probation provider.

27879 (ii) The report shall be issued within 14 days following each monitoring.

27880 (6) (a) If an ignition interlock system is ordered installed, the probationer shall pay the
27881 reasonable costs of leasing or buying and installing and maintaining the system.

27882 (b) A probationer may not be excluded from this section for inability to pay the costs,
27883 unless:

27884 (i) the probationer files an affidavit of impecuniosity; and

27885 (ii) the court enters a finding that the probationer is impecunious.

27886 (c) In lieu of waiver of the entire amount of the cost, the court may direct the
27887 probationer to make partial or installment payments of costs when appropriate.

27888 (d) The ignition interlock provider shall cover the costs of waivers by the court under
27889 this Subsection (6).

27890 (7) (a) If a probationer is required in the course and scope of employment to operate a
27891 motor vehicle owned by the probationer's employer, the probationer may operate that motor
27892 vehicle without installation of an ignition interlock system only if:

- 27893 (i) the motor vehicle is used in the course and scope of employment;
- 27894 (ii) the employer has been notified that the employee is restricted; and
- 27895 (iii) the employee has proof of the notification in ~~his~~ the employee's possession while
27896 operating the employer's motor vehicle.

27897 (b) (i) To the extent that an employer-owned motor vehicle is made available to a
27898 probationer subject to this section for personal use, no exemption under this section shall apply.

27899 (ii) A probationer intending to operate an employer-owned motor vehicle for personal
27900 use and who is restricted to the operation of a motor vehicle equipped with an ignition interlock
27901 system shall notify the employer and obtain consent in writing from the employer to install a
27902 system in the employer-owned motor vehicle.

27903 (c) A motor vehicle owned by a business entity that is all or partly owned or controlled
27904 by a probationer subject to this section is not a motor vehicle owned by the employer and does
27905 not qualify for an exemption under this Subsection (7).

27906 (8) (a) In accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
27907 Administrative Rulemaking Act, the commissioner shall make rules setting standards for the
27908 certification of ignition interlock systems.

27909 (b) The standards under Subsection (8)(a) shall require that the system:

- 27910 (i) not impede the safe operation of the motor vehicle;
- 27911 (ii) have features that make circumventing difficult and that do not interfere with the
27912 normal use of the motor vehicle;
- 27913 (iii) require a deep lung breath sample as a measure of breath alcohol concentration;
- 27914 (iv) prevent the motor vehicle from being started if the driver's breath alcohol
27915 concentration exceeds a specified level;
- 27916 (v) work accurately and reliably in an unsupervised environment;
- 27917 (vi) resist tampering and give evidence if tampering is attempted;

27918 (vii) operate reliably over the range of motor vehicle environments; and
27919 (viii) be manufactured by a party who will provide liability insurance.
27920 (c) The commissioner may adopt in whole or in part, the guidelines, rules, studies, or
27921 independent laboratory tests relied upon in certification of ignition interlock systems by other
27922 states.

27923 (d) A list of certified systems shall be published by the commissioner and the cost of
27924 certification shall be borne by the manufacturers or dealers of ignition interlock systems seeking
27925 to sell, offer for sale, or lease the systems.

27926 (e) (i) In accordance with Section [~~63-38-3.2~~] 63J-1-303, the commissioner may
27927 establish an annual dollar assessment against the manufacturers of ignition interlock systems
27928 distributed in the state for the costs incurred in certifying.

27929 (ii) The assessment under Subsection (8)(e)(i) shall be apportioned among the
27930 manufacturers on a fair and reasonable basis.

27931 (9) There shall be no liability on the part of, and no cause of action of any nature shall
27932 arise against, the state or its employees in connection with the installation, use, operation,
27933 maintenance, or supervision of an interlock ignition system as required under this section.

27934 Section 574. Section **41-6a-702** is amended to read:

27935 **41-6a-702. Left lane restrictions -- Exceptions -- Other lane restrictions --**
27936 **Penalties.**

27937 (1) As used in this section and Section 41-6a-704, "general purpose lane" means a
27938 highway lane open to vehicular traffic but does not include a designated:

- 27939 (a) high occupancy vehicle (HOV) lane; or
- 27940 (b) auxiliary lane that begins as a freeway on-ramp and ends as part of the next freeway
27941 off-ramp.

27942 (2) On a freeway or section of a freeway which has three or more general purpose lanes
27943 in the same direction, a person may not operate a vehicle in the left most general purpose lane if
27944 the person's:

- 27945 (a) vehicle is drawing a trailer or semitrailer regardless of size; or

27946 (b) vehicle or combination of vehicles has a gross vehicle weight of 12,001 or more
27947 pounds.

27948 (3) Subsection (2) does not apply to a person operating a vehicle who is:

27949 (a) preparing to turn left or taking a different highway split or an exit on the left;

27950 (b) responding to emergency conditions;

27951 (c) avoiding actual or potential traffic moving onto the highway from an acceleration or
27952 merging lane; or

27953 (d) following direction signs that direct use of a designated lane.

27954 (4) (a) A highway authority may designate a specific lane or lanes of travel for any type
27955 of vehicle on a highway or portion of a highway under its jurisdiction for the:

27956 (i) safety of the public;

27957 (ii) efficient maintenance of a highway; or

27958 (iii) use of high occupancy vehicles.

27959 (b) The lane designation under Subsection (4)(a) is effective when appropriate signs
27960 giving notice are erected on the highway or portion of the highway.

27961 (5) (a) Subject to Subsection (5)(b), the lane designation under Subsection (4)(a) shall
27962 allow a vehicle with clean fuel special group license plates issued in accordance with Section
27963 41-1a-418 to travel in lanes designated for the use of high occupancy vehicles regardless of the
27964 number of occupants to the extent authorized or permitted by federal law or federal regulation.

27965 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
27966 Administrative Rulemaking Act, the Department of Transportation may make rules to allow a
27967 vehicle with clean fuel special group license plates issued in accordance with Section 41-1a-418
27968 to travel in lanes designated for the use of high occupancy vehicles regardless of the number of
27969 occupants to the extent authorized or permitted by federal law or federal regulation.

27970 (6) A person who operates a vehicle in violation of Subsection (2) or in violation of the
27971 restrictions made under Subsection (4) is guilty of a class C misdemeanor.

27972 Section 575. Section **41-6a-1304** is amended to read:

27973 **41-6a-1304. School buses -- Rules regarding design and operation.**

27974 (1) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 27975 Administrative Rulemaking Act, the Department of Transportation by and with the advice of the
 27976 State Board of Education and the Department of Public Safety shall adopt and enforce rules,
 27977 not inconsistent with this chapter, to govern the design and operation of all school buses in this
 27978 state when:

- 27979 (i) owned and operated by any school district;
 - 27980 (ii) privately owned and operated under contract with a school district; or
 - 27981 (iii) privately owned for use by a private school.
- 27982 (b) The rules under this Subsection (1) shall by reference be made a part of any contract
 27983 with a school district or private school to operate a school bus.

27984 (2) Every school district or private school, its officers and employees, and every person
 27985 employed under contract by a school district or private school shall be subject to the rules under
 27986 Subsection (1).

27987 Section 576. Section **41-6a-1307** is amended to read:

27988 **41-6a-1307. School bus parking zones -- Establishment -- Uniform markings --**
 27989 **Penalty.**

27990 (1) As used in this section, "school bus parking zone" means a parking space that is
 27991 clearly identified as reserved for use by a school bus.

27992 (2) A highway authority for highways under its jurisdiction and school boards for
 27993 roadways located on school property may establish and locate school bus parking zones in
 27994 accordance with specifications established under Subsection (3).

27995 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 27996 Administrative Rulemaking Act, the Department of Transportation, after consultation with local
 27997 highway authorities and school boards which may include input from school traffic safety
 27998 committees established under Section 53A-3-402, shall make rules establishing specifications
 27999 for uniform signage or markings to clearly identify school bus parking zones.

28000 (4) A person may not stop, stand, or park a vehicle other than a school bus, whether
 28001 occupied or not, in a clearly identified school bus parking zone.

28002 (5) A person who violates Subsection (4) shall pay a minimum fine of \$75.

28003 Section 577. Section **41-6a-1406** is amended to read:

28004 **41-6a-1406. Removal and impoundment of vehicles -- Reporting and notification**
28005 **requirements -- Administrative impound fee -- Refunds -- Possessory lien -- Rulemaking.**

28006 (1) If a vehicle, vessel, or outboard motor is removed or impounded as provided under
28007 Section 41-1a-1101, 41-6a-527, 41-6a-1405, 41-6a-1408, or 73-18-20.1 by an order of a peace
28008 officer or by an order of a person acting on behalf of a law enforcement agency or highway
28009 authority, the removal or impoundment of the vehicle, vessel, or outboard motor shall be at the
28010 expense of the owner.

28011 (2) The vehicle, vessel, or outboard motor under Subsection (1) shall be removed or
28012 impounded to:

28013 (a) a state impound yard; or

28014 (b) if none, a garage, docking area, or other place of safety.

28015 (3) The peace officer may move a vehicle, vessel, or outboard motor or cause it to be
28016 removed by a tow truck motor carrier that meets standards established:

28017 (a) under Title 72, Chapter 9, Motor Carrier Safety Act; and

28018 (b) by the department under Subsection (10).

28019 (4) (a) Immediately after the removal of the vehicle, vessel, or outboard motor, a report
28020 of the removal shall be sent to the Motor Vehicle Division by:

28021 (i) the peace officer or agency by whom the peace officer is employed; and

28022 (ii) the tow truck operator or the tow truck motor carrier by whom the tow truck
28023 operator is employed.

28024 (b) The report shall be in a form specified by the Motor Vehicle Division and shall
28025 include:

28026 (i) the operator's name, if known;

28027 (ii) a description of the vehicle, vessel, or outboard motor;

28028 (iii) the vehicle identification number or vessel or outboard motor identification number;

28029 (iv) the license number or other identification number issued by a state agency;

- 28030 (v) the date, time, and place of impoundment;
- 28031 (vi) the reason for removal or impoundment;
- 28032 (vii) the name of the tow truck motor carrier who removed the vehicle, vessel, or
- 28033 outboard motor; and
- 28034 (viii) the place where the vehicle, vessel, or outboard motor is stored.
- 28035 (c) Until the tow truck operator or tow truck motor carrier reports the removal as
- 28036 required under this Subsection (4), a tow truck motor carrier or impound yard may not:
- 28037 (i) collect any fee associated with the removal; and
- 28038 (ii) begin charging storage fees.
- 28039 (5) (a) Upon receipt of the report, the Motor Vehicle Division shall give notice to the
- 28040 registered owner of the vehicle, vessel, or outboard motor and any lien holder in the manner
- 28041 prescribed by Section 41-1a-114.
- 28042 (b) The notice shall:
- 28043 (i) state the date, time, and place of removal, the name, if applicable, of the person
- 28044 operating the vehicle, vessel, or outboard motor at the time of removal, the reason for removal,
- 28045 and the place where the vehicle, vessel, or outboard motor is stored;
- 28046 (ii) state that the registered owner is responsible for payment of towing, impound, and
- 28047 storage fees charged against the vehicle, vessel, or outboard motor;
- 28048 (iii) inform the registered owner of the vehicle, vessel, or outboard motor of the
- 28049 conditions that must be satisfied before the vehicle, vessel, or outboard motor is released; and
- 28050 (iv) inform the registered owner and lienholder of the division's intent to sell the vehicle,
- 28051 vessel, or outboard motor, if within 30 days from the date of the removal or impoundment
- 28052 under this section, the owner, lien holder, or the owner's agent fails to make a claim for release
- 28053 of the vehicle, vessel, or outboard motor.
- 28054 (c) If the vehicle, vessel, or outboard motor is not registered in this state, the Motor
- 28055 Vehicle Division shall make a reasonable effort to notify the registered owner and any lien
- 28056 holder of the removal and the place where the vehicle, vessel, or outboard motor is stored.
- 28057 (d) The Motor Vehicle Division shall forward a copy of the notice to the place where

28058 the vehicle, vessel, or outboard motor is stored.

28059 (6) (a) The vehicle, vessel, or outboard motor shall be released after the registered
28060 owner, lien holder, or the owner's agent:

28061 (i) makes a claim for release of the vehicle, vessel, or outboard motor at any office of
28062 the State Tax Commission;

28063 (ii) presents identification sufficient to prove ownership of the impounded vehicle,
28064 vessel, or outboard motor;

28065 (iii) completes the registration, if needed, and pays the appropriate fees;

28066 (iv) if the impoundment was made under Section 41-6a-527, pays an administrative
28067 impound fee of \$230; and

28068 (v) pays all towing and storage fees to the place where the vehicle, vessel, or outboard
28069 motor is stored.

28070 (b) (i) Twenty-nine dollars of the administrative impound fee assessed under Subsection
28071 (6)(a)(iv) shall be dedicated credits to the Motor Vehicle Division;

28072 (ii) \$97 of the administrative impound fee assessed under Subsection (6)(a)(iv) shall be
28073 deposited in the Department of Public Safety Restricted Account created in Section 53-3-106;
28074 and

28075 (iii) the remainder of the administrative impound fee assessed under Subsection
28076 (6)(a)(iv) shall be deposited in the General Fund.

28077 (c) The administrative impound fee assessed under Subsection (6)(a)(iv) shall be waived
28078 or refunded by the State Tax Commission if the registered owner, lien holder, or owner's agent
28079 presents written evidence to the State Tax Commission that:

28080 (i) the Driver License Division determined that the arrested person's driver license
28081 should not be suspended or revoked under Section 53-3-223 or 41-6a-521 as shown by a letter
28082 or other report from the Driver License Division presented within 30 days of the final
28083 notification from the Driver License Division; or

28084 (ii) the vehicle was stolen at the time of the impoundment as shown by a copy of the
28085 stolen vehicle report presented within 30 days of the impoundment.

28086 (7) (a) An impounded vehicle, vessel, or outboard motor not claimed by the registered
28087 owner or the owner's agent within the time prescribed by Section 41-1a-1103 shall be sold in
28088 accordance with that section and the proceeds, if any, shall be disposed of as provided under
28089 Section 41-1a-1104.

28090 (b) The date of impoundment is considered the date of seizure for computing the time
28091 period provided under Section 41-1a-1103.

28092 (8) The registered owner who pays all fees and charges incurred in the impoundment of
28093 the owner's vehicle, vessel, or outboard motor, has a cause of action for all the fees and charges,
28094 together with damages, court costs, and attorney fees, against the operator of the vehicle,
28095 vessel, or outboard motor whose actions caused the removal or impoundment.

28096 (9) Towing, impound fees, and storage fees are a possessory lien on the vehicle, vessel,
28097 or outboard motor.

28098 (10) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28099 Administrative Rulemaking Act, the department shall make rules setting the performance
28100 standards for towing companies to be used by the department.

28101 (11) (a) The Motor Vehicle Division may specify that a report required under
28102 Subsection (4) be submitted in electronic form utilizing a database for submission, storage, and
28103 retrieval of the information.

28104 (b) (i) Unless otherwise provided by statute, the Motor Vehicle Division or the
28105 administrator of the database may adopt a schedule of fees assessed for utilizing the database.

28106 (ii) The fees under this Subsection (11)(b) shall:

28107 (A) be reasonable and fair; and

28108 (B) reflect the cost of administering the database.

28109 Section 578. Section **41-6a-1601** is amended to read:

28110 **41-6a-1601. Operation of unsafe or improperly equipped vehicles on public**
28111 **highways -- Exceptions.**

28112 (1) (a) A person may not operate or move and an owner may not cause or knowingly
28113 permit to be operated or moved on a highway a vehicle or combination of vehicles which:

28114 (i) is in an unsafe condition that may endanger any person;

28115 (ii) does not contain those parts or is not at all times equipped with lamps and other
28116 equipment in proper condition and adjustment as required in this chapter;

28117 (iii) is equipped in any manner in violation of this chapter; or

28118 (iv) emits pollutants in excess of the limits allowed under the rules of the Air Quality
28119 Board created under Title 19, Chapter 2, Air Conservation Act, or under rules made by local
28120 health departments.

28121 (b) A person may not do any act forbidden or fail to perform any act required under this
28122 chapter.

28123 (2) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28124 Administrative Rulemaking Act, and in coordination with the rules made under Section
28125 53-8-204, the department shall make rules setting minimum standards covering the design,
28126 construction, condition, and operation of vehicle equipment for safely operating a motor vehicle
28127 on the highway as required under this part.

28128 (b) The rules under Subsection (2)(a):

28129 (i) shall conform as nearly as practical to Federal Motor Vehicle Safety Standards and
28130 Regulations;

28131 (ii) may incorporate by reference, in whole or in part, the federal standards under
28132 Subsection (2)(b)(i) and nationally recognized and readily available standards and codes on
28133 motor vehicle safety;

28134 (iii) shall include provisions for the issuance of a permit under Section 41-6a-1602;

28135 (iv) shall include standards for the emergency lights of authorized emergency vehicles;

28136 (v) may provide standards and specifications applicable to lighting equipment on school
28137 buses consistent with:

28138 (A) this part;

28139 (B) federal motor vehicle safety standards; and

28140 (C) current specifications of the Society of Automotive Engineers;

28141 (vi) shall provide procedures for the submission, review, approval, disapproval, issuance

28142 of an approval certificate, and expiration or renewal of approval of any part as required under
28143 Section 41-6a-1620;

28144 (vii) shall establish specifications for the display or etching of a vehicle identification
28145 number on a vehicle;

28146 (viii) shall establish specifications in compliance with this part for a flare, fusee, electric
28147 lantern, warning flag, or portable reflector used in compliance with this part;

28148 (ix) shall establish approved safety and law enforcement purposes when video display is
28149 visible to the motor vehicle operator; and

28150 (x) shall include standards and specifications for both original equipment and parts
28151 included when a vehicle is manufactured and aftermarket equipment and parts included after the
28152 original manufacture of a vehicle.

28153 (c) The following standards and specifications for vehicle equipment are adopted:

28154 (i) 49 C.F.R. 571.209 related to safety belts;

28155 (ii) 49 C.F.R. 571.213 related to child restraint devices;

28156 (iii) 49 C.F.R. 393, 396, and 396 Appendix G related to commercial motor vehicles and
28157 trailers operated in interstate commerce;

28158 (iv) 49 C.F.R. 571 Standard 108 related to lights and illuminating devices; and

28159 (v) 40 C.F.R. 82.30 through 82.42 and Part 82, Subpart B, Appendix A and B related
28160 to air conditioning equipment.

28161 (3) Nothing in this chapter or the rules made by the department prohibit:

28162 (a) equipment required by the United States Department of Transportation; or

28163 (b) the use of additional parts and accessories on a vehicle not inconsistent with the
28164 provisions of this chapter or the rules made by the department.

28165 (4) Except as specifically made applicable, the provisions of this chapter and rules of the
28166 department with respect to equipment required on vehicles do not apply to:

28167 (a) implements of husbandry;

28168 (b) road machinery;

28169 (c) road rollers;

- 28170 (d) farm tractors;
- 28171 (e) motorcycles;
- 28172 (f) motor-driven cycles;
- 28173 (g) vehicles moved solely by human power;
- 28174 (h) off-highway vehicles registered under Section 41-22-3 either:
- 28175 (i) on a highway designated as open for off-highway vehicle use; or
- 28176 (ii) in the manner prescribed by Section 41-22-10.3; or
- 28177 (i) off-highway implements of husbandry when operated in the manner prescribed by
- 28178 Subsections 41-22-5.5 (3) through (5).

28179 (5) The vehicles referred to in Subsections (4)(h) and (i) are subject to the equipment
28180 requirements of Title 41, Chapter 22, Off-highway Vehicles, and the rules made under that
28181 chapter.

28182 (6) (a) A federal motor vehicle safety standard supersedes any conflicting provision of
28183 this chapter.

28184 (b) The department:

28185 (i) shall report any conflict found under Subsection (6)(a) to the appropriate committees
28186 or officials of the Legislature; and

28187 (ii) may adopt a rule to replace the superseded provision.

28188 Section 579. Section **41-6a-1617** is amended to read:

28189 **41-6a-1617. Highway construction and maintenance vehicles -- Transportation**
28190 **department to adopt rules for lighting.**

28191 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28192 Administrative Rulemaking Act, the Department of Transportation shall make rules providing
28193 specifications governing the design and use of special flashing lights on vehicles engaged in
28194 highway construction or maintenance operations.

28195 (2) The standards and specifications adopted under Subsection (1) shall correlate with,
28196 and where possible conform to, the standards set forth in the most recent edition of the "Manual
28197 on Uniform Traffic Control Devices for Streets and Highways" and other standards issued or

28198 endorsed by the federal highway administrator.

28199 (3) The operator of a vehicle engaged in highway construction or maintenance
28200 operations shall comply with rules adopted under this section.

28201 Section 580. Section **41-6a-1636** is amended to read:

28202 **41-6a-1636. Tires which are prohibited -- Regulatory powers of state**
28203 **transportation department -- Winter use of studs -- Special permits -- Tread depth.**

28204 (1) A solid rubber tire on a vehicle shall have rubber on its entire traction surface at
28205 least one inch thick above the edge of the flange of the entire periphery.

28206 (2) A person may not operate or move on a highway a motor vehicle, trailer, or
28207 semitrailer having a metal tire in contact with the roadway.

28208 (3) Except as otherwise provided in this section, a person may not have a tire on a
28209 vehicle that is moved on a highway that has on the tire's periphery a block, stud, flange, cleat, or
28210 spike or any other protuberances of any material other than rubber which projects beyond the
28211 tread of the traction surface of the tire.

28212 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28213 Administrative Rulemaking Act, the Department of Transportation may make rules to permit
28214 the use of tires on a vehicle having protuberances other than rubber, if the department concludes
28215 that protuberances do not:

28216 (a) damage the highway significantly; or

28217 (b) constitute a hazard to life, health, or property.

28218 (5) Notwithstanding any other provision of this section, a person may use:

28219 (a) a tire with protuberances consisting of tungsten carbide studs on a vehicle if the
28220 studs:

28221 (i) are only used during the winter periods of October fifteenth through December
28222 thirty-first and January first through March thirty-first of each year;

28223 (ii) do not project beyond the tread of the traction surface of the tire more than .050
28224 inches; and

28225 (iii) are not used on a vehicle with a maximum gross weight in excess of 9,000 pounds

28226 unless the vehicle is an emergency vehicle or school bus;

28227 (b) farm machinery with tires having protuberances which will not injure the highway;

28228 and

28229 (c) tire chains of reasonable proportions on a vehicle when required for safety because

28230 of snow, ice, or other conditions tending to cause a vehicle to skid.

28231 (6) Notwithstanding any other provision of this chapter, a highway authority, for a

28232 highway under its jurisdiction, may issue special permits authorizing the operation on a highway

28233 of:

28234 (a) farm tractors;

28235 (b) other farm machinery; or

28236 (c) traction engines or tractors having movable tracks with transverse corrugations on

28237 the periphery of the movable tracks.

28238 (7) (a) A person may not operate a vehicle if one or more of the tires in use on the

28239 vehicle:

28240 (i) is in an unsafe operating condition; or

28241 (ii) has a tread depth less than 2/32 inch measured in any two adjacent tread grooves at

28242 three equally spaced intervals around the circumference of the tire.

28243 (b) The measurement under Subsection (7)(a) may not be made at the location of any

28244 tread wear indicator, tie bar, hump, or fillet.

28245 (8) A person in the business of selling tires may not sell or offer for sale for highway use

28246 any tire prohibited for use under Subsection (7).

28247 Section 581. Section **41-6a-1639** is amended to read:

28248 **41-6a-1639. Hazardous materials -- Transportation regulations -- Fire**

28249 **extinguishers.**

28250 (1) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

28251 Administrative Rulemaking Act, the Department of Transportation shall make rules for the safe

28252 transportation of hazardous materials.

28253 (b) The rules shall adopt by reference or be consistent with current Hazardous Materials

28254 Regulations of the United States Department of Transportation.

28255 (c) An adoption by reference under Subsection (1)(b) shall be construed to incorporate
28256 amendments thereto as may be made from time to time.

28257 (2) A person operating a vehicle transporting any hazardous material as a cargo or part
28258 of a cargo on a highway shall at all times comply with rules made by the Department of
28259 Transportation under this section including being:

28260 (a) marked or placarded; and

28261 (b) equipped with fire extinguishers:

28262 (i) of a type, size, and number approved by rule; and

28263 (ii) that are filled, ready for immediate use, and placed at a convenient point on the
28264 vehicle.

28265 Section 582. Section **41-12a-201** is amended to read:

28266 **41-12a-201. Administration of laws under Title 41, Chapter 12a -- Compliance**
28267 **with Administrative Procedures Act.**

28268 (1) The department shall administer and enforce the provisions of this chapter and may
28269 adopt rules as necessary for its administration.

28270 (2) The department shall comply with the procedures and requirements of [~~Title 63,~~
28271 ~~Chapter 46b;~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
28272 proceedings.

28273 Section 583. Section **41-12a-202** is amended to read:

28274 **41-12a-202. Access to accident reports.**

28275 (1) Accident reports and supplemental information as required under this chapter are
28276 protected and are for the confidential use of the department and other state, local, or federal
28277 government agencies and may be disclosed only as provided in Section 41-6a-404.

28278 (2) (a) Any person entitled to the disclosure of an accident report, as provided in
28279 Section 41-6a-404, may obtain a photocopy by paying the department a fee established under
28280 Section [~~63-38-3.2~~] 63J-1-303.

28281 (b) These fees shall be deposited in the General Fund.

28282 Section 584. Section **41-12a-407** is amended to read:

28283 **41-12a-407. Certificate of self-funded coverage as proof of owner's or operator's**
28284 **security.**

28285 (1) The department may, upon the application of any person, issue a certificate of
28286 self-funded coverage when it is satisfied that the person has:

28287 (a) more than 24 motor vehicles; and

28288 (b) deposits, in a form approved by the department, securities in an amount of \$200,000
28289 plus \$100 for each motor vehicle up to and including 1,000 motor vehicles and \$50 for every
28290 motor vehicle over 1,000 motor vehicles.

28291 (2) Persons holding a certificate of self-funded coverage under this chapter shall pay
28292 benefits to persons injured from the self-funded person's operation, maintenance, and use of
28293 motor vehicles as would an insurer issuing a policy to the self-funded person containing the
28294 coverages under Section 31A-22-302.

28295 (3) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
28296 Procedures Act, the department may, upon reasonable grounds, cancel the certificate. Failure
28297 to pay any judgment up to the limit under Subsection 31A-22-304(2) within 30 days after the
28298 judgment is final is a reasonable ground to cancel the certificate.

28299 (4) Any government entity with self-funded coverage for government-owned motor
28300 vehicles under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of
28301 Utah, meets the requirements of this section.

28302 Section 585. Section **41-12a-803** is amended to read:

28303 **41-12a-803. Program creation -- Administration -- Selection of designated agent**
28304 **-- Duties -- Rulemaking -- Audits.**

28305 (1) There is created the Uninsured Motorist Identification Database Program to:

28306 (a) establish an Uninsured Motorist Identification Database to verify compliance with
28307 motor vehicle owner's or operator's security requirements under Section 41-12a-301 and other
28308 provisions under this part;

28309 (b) assist in reducing the number of uninsured motor vehicles on the highways of the

28310 state;

28311 (c) assist in increasing compliance with motor vehicle registration and sales and use tax
28312 laws; and

28313 (d) assist in protecting a financial institution's bona fide security interest in a motor
28314 vehicle.

28315 (2) The program shall be administered by the department with the assistance of the
28316 designated agent and the Motor Vehicle Division.

28317 (3) (a) The department shall contract in accordance with [~~Title 63, Chapter 56~~] Title
28318 63G, Chapter 6, Utah Procurement Code, with a third party to establish and maintain an
28319 Uninsured Motorist Identification Database for the purposes established under this part.

28320 (b) The contract may not obligate the department to pay the third party more monies
28321 than are available in the account.

28322 (4) (a) The third party under contract under this section is the department's designated
28323 agent, and shall develop and maintain a computer database from the information provided by:

28324 (i) insurers under Section 31A-22-315;

28325 (ii) the division under Subsection (6); and

28326 (iii) the Motor Vehicle Division under Section 41-1a-120.

28327 (b) (i) The database shall be developed and maintained in accordance with guidelines
28328 established by the department so that state and local law enforcement agencies and financial
28329 institutions as defined in Section 7-1-103 can efficiently access the records of the database,
28330 including reports useful for the implementation of the provisions of this part.

28331 (ii) (A) The reports shall be in a form and contain information approved by the
28332 department.

28333 (B) The reports may be made available through the Internet or through other electronic
28334 medium, if the department determines that sufficient security is provided to ensure compliance
28335 with Section 41-12a-805 regarding limitations on disclosure of information in the database.

28336 (5) With information provided by the department and the Motor Vehicle Division, the
28337 designated agent shall, at least monthly for submissions under Subsection 31A-22-315(2)(b) or

28338 at least twice a month for submissions under Subsection 31A-22-315(2)(a):

28339 (a) update the database with the motor vehicle insurance information provided by the
28340 insurers in accordance with Section 31A-22-315; and

28341 (b) compare all current motor vehicle registrations against the database.

28342 (6) The division shall provide the designated agent with the name, date of birth,
28343 address, and driver license number of all persons on the driver license database.

28344 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28345 Administrative Rulemaking Act, the department shall make rules and develop procedures in
28346 cooperation with the Motor Vehicle Division to use the database for the purpose of
28347 administering and enforcing this part.

28348 (8) (a) The designated agent shall archive computer data files at least semi-annually for
28349 auditing purposes.

28350 (b) The internal audit unit of the tax commission provided under Section 59-1-206 shall
28351 audit the program at least every three years.

28352 (c) The audit under Subsection (8)(b) shall include verification of:

28353 (i) billings made by the designated agent; and

28354 (ii) the accuracy of the designated agent's matching of vehicle registration with
28355 insurance data.

28356 Section 586. Section **41-12a-805** is amended to read:

28357 **41-12a-805. Disclosure of insurance information -- Penalty.**

28358 (1) Information in the database established under Section 41-12a-803 provided by a
28359 person to the designated agent is considered to be the property of the person providing the
28360 information. The information may not be disclosed from the database under [~~Title 63, Chapter~~
28361 2] Title 63G, Chapter 2, Government Records Access and Management Act, or otherwise,
28362 except as follows:

28363 (a) for the purpose of investigating, litigating, or enforcing the owner's or operator's
28364 security requirement under Section 41-12a-301, the designated agent shall verify insurance
28365 information through the state computer network for a state or local government agency or

28366 court;

28367 (b) for the purpose of investigating, litigating, or enforcing the owner's or operator's
28368 security requirement under Section 41-12a-301, the designated agent shall, upon request, issue
28369 to any state or local government agency or court a certificate documenting the insurance
28370 information, according to the database, of a specific individual or motor vehicle for the time
28371 period designated by the government agency;

28372 (c) upon request, the department or its designated agent shall disclose whether or not a
28373 person is an insured individual and the insurance company name to:

28374 (i) that individual or, if that individual is deceased, any interested person of that
28375 individual, as defined in Section 75-1-201;

28376 (ii) the parent or legal guardian of that individual if the individual is an unemancipated
28377 minor;

28378 (iii) the legal guardian of that individual if the individual is legally incapacitated;

28379 (iv) a person who has power of attorney from the insured individual;

28380 (v) a person who submits a notarized release from the insured individual dated no more
28381 than 90 days before the date the request is made; or

28382 (vi) a person suffering loss or injury in a motor vehicle accident in which the insured
28383 individual is involved, but only as part of an accident report as authorized in Section
28384 41-12a-202;

28385 (d) for the purpose of investigating, enforcing, or prosecuting laws or issuing citations
28386 by state or local law enforcement agencies related to the:

28387 (i) registration and renewal of registration of a motor vehicle under Title 41, Chapter
28388 1a, Motor Vehicle Act;

28389 (ii) purchase of a motor vehicle under Title 59, Chapter 12, Sales and Use Tax Act; and

28390 (iii) owner's or operator's security requirements under Section 41-12a-301;

28391 (e) upon request of a peace officer acting in an official capacity under the provisions of
28392 Subsection (1)(d), the department or the designated agent shall, upon request, disclose relevant
28393 information for investigation, enforcement, or prosecution;

28394 (f) for the purpose of the state auditor, the legislative auditor general, or other auditor
28395 of the state conducting audits of the program; and

28396 (g) upon request of a financial institution as defined under Section 7-1-103 for the
28397 purpose of protecting the financial institution's bona fide security interest in a motor vehicle.

28398 (2) (a) The department may allow the designated agent to prepare and deliver upon
28399 request, a report on the insurance information of a person or motor vehicle in accordance with
28400 this section.

28401 (b) The report may be in the form of:

28402 (i) a certified copy that is considered admissible in any court proceeding in the same
28403 manner as the original; or

28404 (ii) information accessible through the Internet or through other electronic medium if
28405 the department determines that sufficient security is provided to ensure compliance with this
28406 section.

28407 (c) The department may allow the designated agent to charge a fee established by the
28408 department under Section [~~63-38-3.2~~] 63J-1-303 for each:

28409 (i) document authenticated, including each certified copy;

28410 (ii) record accessed by the Internet or by other electronic medium; and

28411 (iii) record provided to a financial institution under Subsection (1)(g).

28412 (3) Any person who knowingly releases or discloses information from the database for a
28413 purpose other than those authorized in this section or to a person who is not entitled to it is
28414 guilty of a third degree felony.

28415 (4) An insurer is not liable to any person for complying with Section 31A-22-315 by
28416 providing information to the designated agent.

28417 (5) Neither the state nor the department's designated agent are liable to any person for
28418 gathering, managing, or using the information in the database as provided in Section
28419 31A-22-315 and this part.

28420 Section 587. Section **41-22-5.1** is amended to read:

28421 **41-22-5.1. Rules of board relating to display of registration stickers.**

28422 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
28423 Rulemaking Act, the board shall make rules for the display of a registration sticker on an
28424 off-highway vehicle in accordance with Section 41-22-3.

28425 Section 588. Section **41-22-10.7** is amended to read:

28426 **41-22-10.7. Vehicle equipment requirements -- Rulemaking -- Exceptions.**

28427 (1) Except as provided under Subsection (3), an off-highway vehicle shall be equipped
28428 with:

28429 (a) brakes adequate to control the movement of and to stop and hold the vehicle under
28430 normal operating conditions;

28431 (b) headlights and taillights when operated between sunset and sunrise;

28432 (c) a noise control device and except for a snowmobile, a spark arrestor device; and

28433 (d) a safety flag, red or orange in color and a minimum of six by 12 inches, attached to
28434 the off-highway vehicle at least eight feet above the surface of level ground, when operated on
28435 sand dunes designated by the board.

28436 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28437 Administrative Rulemaking Act, the board may make rules which set standards for the
28438 equipment and which designate sand dunes where safety flags are required under Subsection
28439 (1).

28440 (3) An off-highway implement of husbandry used only in agricultural operations and not
28441 operated on a highway, is exempt from the provisions of this section.

28442 Section 589. Section **41-22-19.5** is amended to read:

28443 **41-22-19.5. Off-highway Access and Education Restricted Account -- Creation --**
28444 **Funding -- Distribution of funds by the Board of Parks and Recreation.**

28445 (1) There is created in the General Fund a restricted account known as the Off-highway
28446 Access and Education Restricted Account.

28447 (2) The account shall be funded by:

28448 (a) contributions deposited into the Off-highway Access and Education Restricted
28449 Account in accordance with Section 41-1a-230.6;

28450 (b) private contributions;

28451 (c) donations or grants from public or private entities; or

28452 (d) interest and earnings on fund monies.

28453 (3) Funds in the account are nonlapsing.

28454 (4) The Legislature shall appropriate money in the account to the board.

28455 (5) The board may expend up to 10% of the monies appropriated under Subsection (4)

28456 to:

28457 (a) administer account distributions in accordance with Subsections (6) through (9); and

28458 (b) administer off-highway vehicle provisions under this chapter.

28459 (6) The board shall distribute the funds to a charitable organization that:

28460 (a) qualifies as being tax exempt under Section 501(c)(3) of the Internal Revenue Code;

28461 (b) has at least one full-time employee; and

28462 (c) has as a primary part of its mission to:

28463 (i) protect access to public lands by motor vehicle and off-highway vehicle operators;

28464 and

28465 (ii) educate the public about appropriate off-highway vehicle use.

28466 (7) The board may only consider proposals that are:

28467 (a) proposed by a charitable organization under Subsection (6); and

28468 (b) designed to:

28469 (i) protect access to public lands by motor vehicle and off-highway vehicle operators;

28470 and

28471 (ii) educate the public about appropriate off-highway vehicle use.

28472 (8) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

28473 Administrative Rulemaking Act, the board shall make rules providing procedures for an

28474 organization to apply to receive funds under this section.

28475 (9) The board may not:

28476 (a) require matching funds from a charitable organization as a condition of receiving

28477 funds; or

28478 (b) prohibit the use of funds to cover litigation expenses incurred in protecting access to
28479 public lands by motor vehicle and off-highway vehicle operators.

28480 Section 590. Section **41-22-29** is amended to read:

28481 **41-22-29. Operation by persons under eight years of age prohibited -- Definitions**
28482 **-- Exception -- Penalty.**

28483 (1) As used in this section:

28484 (a) "Organized practice" means a scheduled motorcycle practice held in an off-road
28485 vehicle facility designated by the division and conducted by an organization carrying liability
28486 insurance in at least the amounts specified by the division under Subsection (5) covering all
28487 activities associated with the practice.

28488 (b) "Sanctioned race" means a motorcycle race conducted on a closed course and
28489 sponsored and sanctioned by an organization carrying liability insurance in at least the amounts
28490 specified by the division under Subsection (5) covering all activities associated with the race.

28491 (2) Except as provided under Subsection (3), a person under eight years of age may not
28492 operate and an owner may not give another person who is under eight years of age permission
28493 to operate an off-highway vehicle on any public land, trail, street, or highway of this state.

28494 (3) A child under eight years of age may participate in a sanctioned race or organized
28495 practice if:

28496 (a) the child is under the immediate supervision of an adult;

28497 (b) emergency medical service personnel, as defined in Section 26-8a-102, are on the
28498 premises and immediately available to provide assistance at all times during the sanctioned race
28499 or organized practice; and

28500 (c) an ambulance provider, as defined in Section 26-8a-102, is on the premises and
28501 immediately available to provide assistance for a sanctioned race.

28502 (4) Any person convicted of a violation of this section is guilty of an infraction and shall
28503 be fined not more than \$50 per offense.

28504 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28505 Administrative Rulemaking Act, the division shall make rules specifying the minimum amounts

28506 of liability coverage for an organized practice or sanctioned race.

28507 Section 591. Section **41-22-31** is amended to read:

28508 **41-22-31. Board to set standards for safety program -- Safety certificates issued --**
28509 **Cooperation with public and private entities -- State immunity from suit.**

28510 (1) The board shall establish curriculum standards for a comprehensive off-highway
28511 vehicle safety education and training program and shall implement this program.

28512 (a) The program shall be designed to develop and instill the knowledge, attitudes,
28513 habits, and skills necessary for the safe operation of an off-highway vehicle.

28514 (b) Components of the program shall include the preparation and dissemination of
28515 off-highway vehicle information and safety advice to the public and the training of off-highway
28516 vehicle operators.

28517 (c) Off-highway vehicle safety certificates shall be issued to those who successfully
28518 complete training or pass the knowledge and skills test established under the program.

28519 (2) The division shall cooperate with appropriate private organizations and associations,
28520 private and public corporations, and local government units to implement the program
28521 established under this section.

28522 (3) In addition to the governmental immunity granted in [~~Title 63, Chapter 30d~~] Title
28523 63G, Chapter 7, Governmental Immunity Act of Utah, the state is immune from suit for any act,
28524 or failure to act, in any capacity relating to the off-highway vehicle safety education and training
28525 program. The state is also not responsible for any insufficiency or inadequacy in the quality of
28526 training provided by this program.

28527 Section 592. Section **41-22-35** is amended to read:

28528 **41-22-35. Off-highway vehicle user fee -- Decal -- Agents -- Penalty for fraudulent**
28529 **issuance of decal -- Deposit and use of fee revenue.**

28530 (1) (a) Except as provided in Subsection (1)(b), any nonresident owning an off-highway
28531 vehicle who operates or gives another person permission to operate the off-highway vehicle on
28532 any public land, trail, street, or highway in this state shall:

28533 (i) apply for an off-highway vehicle decal issued exclusively for an off-highway vehicle

28534 owned by a nonresident of the state;

28535 (ii) pay an annual off-highway vehicle user fee; and

28536 (iii) provide evidence that:

28537 (A) the person is a nonresident; and

28538 (B) the person is the owner of the off-highway vehicle.

28539 (b) The provisions of Subsection (1)(a) do not apply to an off-highway vehicle if the

28540 off-highway vehicle is:

28541 (i) registered in another state that offers reciprocal operating privileges to Utah

28542 residents under rules made by the board; or

28543 (ii) used exclusively for the purposes of a scheduled competitive event sponsored by a

28544 public or private entity or another event sponsored by a governmental entity under rules made

28545 by the board.

28546 (2) The off-highway vehicle user fee is \$30.

28547 (3) Upon compliance with the provisions of Subsection (1)(a), the nonresident shall:

28548 (a) receive a nonresident off-highway vehicle user decal indicating compliance with the

28549 provisions of Subsection (1)(a); and

28550 (b) display the decal on the off-highway vehicle in accordance with rules made by the

28551 board.

28552 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

28553 Administrative Rulemaking Act, the board shall make rules establishing:

28554 (a) procedures for:

28555 (i) the payment of off-highway vehicle user fees; and

28556 (ii) the display of a decal on an off-highway vehicle as required under Subsection (3)(b);

28557 (b) acceptable evidence indicating compliance with Subsection (1);

28558 (c) eligibility requirements for reciprocal operating privileges for nonresident users; and

28559 (d) eligibility for scheduled competitive events or other events under Subsection

28560 (1)(b)(ii).

28561 (5) (a) An off-highway vehicle user decal may be issued and the off-highway vehicle

28562 user fee may be collected by the division or agents of the division.

28563 (b) An agent shall retain 10% of all off-highway vehicle user fees collected.

28564 (c) The division may require agents to obtain a bond in a reasonable amount.

28565 (d) On or before the tenth day of each month, each agent shall:

28566 (i) report all sales to the division; and

28567 (ii) submit all off-highway vehicle user fees collected less the remuneration provided in

28568 Subsection (5)(b).

28569 (e) (i) If an agent fails to pay the amount due, the division may assess a penalty of 20%

28570 of the amount due.

28571 (ii) Delinquent payments shall bear interest at the rate of 1% per month.

28572 (iii) If the amount due is not paid because of bad faith or fraud, the division shall assess

28573 a penalty of 100% of the total amount due together with interest.

28574 (f) All fees collected by an agent, except the remuneration provided in Subsection

28575 (5)(b), shall:

28576 (i) be kept separate and apart from the private funds of the agent; and

28577 (ii) belong to the state.

28578 (g) An agent may not issue an off-highway vehicle user decal to any person unless the

28579 person furnishes evidence of compliance with the provisions of Subsection (1)(a).

28580 (h) A violation of any provision of this Subsection (5) is a class B misdemeanor and

28581 may be cause for revocation of the agent authorization.

28582 (6) Revenue generated by off-highway vehicle user fees shall be deposited in the

28583 Off-highway Vehicle Account created in Section 41-22-19.

28584 Section 593. Section **41-22-36** is amended to read:

28585 **41-22-36. Fees to cover the costs of electronic payments.**

28586 (1) As used in this section:

28587 (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

28588 (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

28589 (2) (a) The Motor Vehicle Division may collect an electronic payment fee on all

28590 registrations and renewals of registration under Section 41-22-8.

28591 (b) The fee described in Subsection (2)(a) shall be imposed regardless of the method of
28592 payment for a particular transaction.

28593 (3) The division shall establish the fee according to the procedures and requirements of
28594 Section [~~63-38-3.2~~] 63J-1-303.

28595 (4) A fee imposed under this section:

28596 (a) shall be used by the Motor Vehicle Division as a dedicated credit to cover the costs
28597 of electronic payments;

28598 (b) is nonlapsing;

28599 (c) is not subject to Subsection [~~63-38a-104~~] 63J-2-202(2); and

28600 (d) need not be separately identified from the fees imposed on registrations and
28601 renewals of registration under Section 41-22-8.

28602 Section 594. Section **42-2-10** is amended to read:

28603 **42-2-10. Penalties.**

28604 Any person who carries on, conducts, or transacts business under an assumed name
28605 without having complied with the provisions of this chapter, and until the provisions of this
28606 chapter are complied with:

28607 (1) shall not sue, prosecute, or maintain any action, suit, counterclaim, cross complaint,
28608 or proceeding in any of the courts of this state; and

28609 (2) may be subject to a penalty in the form of a late filing fee determined by the division
28610 director in an amount not to exceed three times the fees charged under Section 42-2-7 and
28611 established under Section [~~63-38-3.2~~] 63J-1-303.

28612 Section 595. Section **42-3-2** is amended to read:

28613 **42-3-2. Recording fee.**

28614 Any person having the name of [~~his~~] the person's farm so recorded shall first pay to the
28615 commissioner of agriculture and food a fee determined by the commissioner pursuant to Section
28616 [~~63-38-3.2~~] 63J-1-303. This fee shall be transmitted to the General Fund.

28617 Section 596. Section **42-3-4** is amended to read:

28618 **42-3-4. Cancellation by owner -- Fee.**

28619 When any owner of a registered farm desires to cancel its registered name, ~~[he]~~ the
28620 owner shall write on the back of the certificate the following: "This name is canceled, and I
28621 hereby release all rights thereunder," and shall sign such statement in the presence of a witness
28622 and file the same in the office of the commissioner of agriculture and food. For such filing the
28623 commissioner of agriculture and food shall charge a fee determined by the commissioner
28624 pursuant to Section ~~[63-38-3.2]~~ 63J-1-303, which shall be paid to the General Fund. The
28625 commissioner of agriculture and food shall, when such certificate so endorsed has been filed in
28626 ~~[his]~~ the commissioner's office, write on the margin of the register of such name the word
28627 "canceled."

28628 Section 597. Section **46-1-3** is amended to read:

28629 **46-1-3. Qualifications -- Commissioning -- Jurisdiction and term.**

28630 (1) Except as provided in Subsection (3), the lieutenant governor shall commission as a
28631 notary any qualified person who submits an application in accordance with this chapter.

28632 (2) A person qualified for a notarial commission shall:

28633 (a) be 18 years of age or older;

28634 (b) lawfully reside in this state 30 days immediately preceding the filing for a notarial
28635 commission and maintain permanent residency thereafter;

28636 (c) be able to read, write, and understand English;

28637 (d) submit an application to the lieutenant governor containing no significant
28638 misstatement or omission of fact and include at least:

28639 (i) a statement of the applicant's personal qualifications, the applicant's residence
28640 address, a business address in this state, and daytime telephone number;

28641 (ii) the applicant's age and date of birth;

28642 (iii) all criminal convictions of the applicant, including any pleas of admission and nolo
28643 contendere;

28644 (iv) all issuances, denials, revocations, suspensions, restrictions, and resignations of a
28645 notarial commission or other professional license involving the applicant in this or any other

28646 state;

28647 (v) the acknowledgment of a passing score by the applicant on a written examination

28648 administered under Subsection (5);

28649 (vi) a declaration by the applicant; and

28650 (vii) an application fee determined under Section [~~63-38-3.2~~] 63J-1-303;

28651 (e) be a Utah resident or have permanent resident status under Section 245 of the

28652 Immigration and Nationality Act; and

28653 (f) be endorsed by two residents of the state who are over the age of 18.

28654 (3) The lieutenant governor may deny an application based on:

28655 (a) the applicant's conviction for a crime involving dishonesty or moral turpitude;

28656 (b) any revocation, suspension, or restriction of a notarial commission or professional

28657 license issued to the applicant by this or any other state;

28658 (c) the applicant's official misconduct while acting in the capacity of a notary; or

28659 (d) the applicant's failure to pass the written examination.

28660 (4) A person commissioned as a notary by the lieutenant governor may perform notarial

28661 acts in any part of this state for a term of four years, unless the person resigned or the

28662 commission is revoked or suspended under Section 46-1-19.

28663 (5) Each applicant for a notarial commission shall take a written examination approved

28664 by the lieutenant governor and submit the examination to a testing center designated by the

28665 lieutenant governor for purposes of scoring the examination. The testing center designated by

28666 the lieutenant governor shall issue a written acknowledgment to the applicant indicating whether

28667 the applicant passed or failed the examination.

28668 Section 598. Section **46-4-501** is amended to read:

28669 **46-4-501. Creation and retention of electronic records and conversion of written**

28670 **records by governmental agencies.**

28671 (1) A state governmental agency may, by following the procedures and requirements of

28672 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules

28673 that:

- 28674 (a) identify specific transactions that the agency is willing to conduct by electronic
28675 means;
- 28676 (b) identify specific transactions that the agency will never conduct by electronic means;
- 28677 (c) specify the manner and format in which electronic records must be created,
28678 generated, sent, communicated, received, and stored, and the systems established for those
28679 purposes;
- 28680 (d) if law or rule requires that the electronic records must be signed by electronic
28681 means, specify the type of electronic signature required, the manner and format in which the
28682 electronic signature must be affixed to the electronic record, and the identity of, or criteria that
28683 must be met, by any third party used by a person filing a document to facilitate the process;
- 28684 (e) specify control processes and procedures as appropriate to ensure adequate
28685 preservation, disposition, integrity, security, confidentiality, and auditability of electronic
28686 records; and
- 28687 (f) identify any other required attributes for electronic records that are specified for
28688 corresponding nonelectronic records or that are reasonably necessary under the circumstances.
- 28689 (2) A state governmental agency that makes rules under this section shall submit copies
28690 of those rules, and any amendments to those rules, to:
- 28691 (a) the chief information officer established by Section 63F-1-201; and
28692 (b) the Utah Technology Commission established by Section 63D-1a-201.
- 28693 (3) (a) The chief information officer may prepare model rules and standards relating to
28694 electronic transactions that encourage and promote consistency and interoperability with similar
28695 requirements adopted by other Utah government agencies, other states, the federal government,
28696 and nongovernmental persons interacting with Utah governmental agencies.
- 28697 (b) In preparing those model rules and standards, the chief information officer may
28698 specify different levels of standards from which governmental agencies may choose in order to
28699 implement the most appropriate standard for a particular application.
- 28700 (c) Before submitting any model rules or standards to state governmental agencies for
28701 their adoption as permanent rules, the chief information officer shall submit the model rules and

28702 standards to the Utah Technology Commission for its review and suggestions.

28703 (d) Nothing in this Subsection (3) requires a state agency to use the model rules and
28704 standards prepared by the chief information officer when making rules under this section.

28705 (4) Except as provided in Subsection 46-4-301(6), nothing in this chapter requires any
28706 state governmental agency to:

28707 (a) conduct transactions by electronic means; or

28708 (b) use or permit the use of electronic records or electronic signatures.

28709 (5) Each state governmental agency shall:

28710 (a) establish record retention schedules for any electronic records created or received in
28711 an electronic transaction according to the standards developed by the Division of Archives
28712 under Subsection [~~63-2-901~~] 63A-12-101(2)(e); and

28713 (b) obtain approval of those schedules from the State Records Committee as required
28714 by Subsection [~~63-2-502~~] 63G-2-502(1)(b).

28715 Section 599. Section **46-4-503** is amended to read:

28716 **46-4-503. Government products and services provided electronically.**

28717 (1) Notwithstanding Section 46-4-501, a state governmental agency that administers
28718 one or more of the following transactions shall allow those transactions to be conducted
28719 electronically:

28720 (a) an application for or renewal of a professional or occupational license issued under
28721 Title 58, Occupations and Professions;

28722 (b) the renewal of a drivers license;

28723 (c) an application for a hunting or fishing license;

28724 (d) the filing of:

28725 (i) a return under Title 59, Chapter 10, Individual Income Tax Act or 12, Sales and Use
28726 Tax Act;

28727 (ii) a court document, as defined by the Judicial Council; or

28728 (iii) a document under Title 70A, Uniform Commercial Code;

28729 (e) a registration for:

- 28730 (i) a product; or
- 28731 (ii) a brand;
- 28732 (f) a renewal of a registration of a motor vehicle;
- 28733 (g) a registration under:
 - 28734 (i) Title 16, Corporations;
 - 28735 (ii) Title 42, Names; or
 - 28736 (iii) Title 48, Partnership; or
- 28737 (h) submission of an application for benefits:
 - 28738 (i) under Title 35A, Chapter 3, Employment Support Act;
 - 28739 (ii) under Title 35A, Chapter 4, Employment Security Act; or
 - 28740 (iii) related to accident and health insurance.
- 28741 (2) The state system of public education, in coordination with the Utah Education
- 28742 Network, shall make reasonable progress toward making the following services available
- 28743 electronically:
 - 28744 (a) secure access by parents and students to student grades and progress reports;
 - 28745 (b) e-mail communications with:
 - 28746 (i) teachers;
 - 28747 (ii) parent-teacher associations; and
 - 28748 (iii) school administrators;
 - 28749 (c) access to school calendars and schedules; and
 - 28750 (d) teaching resources that may include:
 - 28751 (i) teaching plans;
 - 28752 (ii) curriculum guides; and
 - 28753 (iii) media resources.
- 28754 (3) A state governmental agency shall:
 - 28755 (a) in carrying out the requirements of this section, take reasonable steps to ensure the
 - 28756 security and privacy of records that are private or controlled as defined by [~~Title 63, Chapter 2~~
 - 28757 Title 63G, Chapter 2, Government Records Access and Management Act;

28758 (b) in addition to those transactions listed in Subsections (1) and (2), determine any
28759 additional services that may be made available to the public through electronic means; and

28760 (c) as part of the agency's information technology plan required by Section 63F-1-204,
28761 report on the progress of compliance with Subsections (1) through (3).

28762 (4) Notwithstanding the other provisions of this part, a state governmental agency is
28763 not required by this part to conduct a transaction electronically if:

28764 (a) conducting the transaction electronically is not required by federal law; and

28765 (b) conducting the transaction electronically is:

28766 (i) impractical;

28767 (ii) unreasonable; or

28768 (iii) not permitted by laws pertaining to privacy or security.

28769 (5) (a) For purposes of this Subsection (5), "one-stop shop" means the consolidation of
28770 access to diverse services and agencies at one location including virtual colocation.

28771 (b) State agencies that provide services or offer direct assistance to the business
28772 community shall participate in the establishment, maintenance, and enhancement of an
28773 integrated Utah business web portal known as Business.utah.gov. The purpose of the business
28774 web portal is to provide "one-stop shop" assistance to businesses.

28775 (c) State agencies shall partner with other governmental and nonprofit agencies whose
28776 primary mission is to provide services or offer direct assistance to the business community in
28777 Utah in fulfilling the requirements of this section.

28778 (d) The following state entities shall comply with the provisions of this Subsection (5):

28779 (i) Governor's Office of Economic Development, which shall serve as the managing
28780 partner for the website;

28781 (ii) Department of Workforce Services;

28782 (iii) Department of Commerce;

28783 (iv) Tax Commission;

28784 (v) Department of Administrative Services - Division of Purchasing and General
28785 Services, including other state agencies operating under a grant of authority from the division to

28786 procure goods and services in excess of \$5,000;
28787 (vi) Department of Agriculture;
28788 (vii) Department of Natural Resources; and
28789 (viii) other state agencies that provide services or offer direct assistance to the business
28790 sector.

28791 (e) The business services available on the business web portal may include:

- 28792 (i) business life cycle information;
- 28793 (ii) business searches;
- 28794 (iii) employment needs and opportunities;
- 28795 (iv) motor vehicle registration;
- 28796 (v) permit applications and renewal;
- 28797 (vi) tax information;
- 28798 (vii) government procurement bid notifications;
- 28799 (viii) general business information;
- 28800 (ix) business directories; and
- 28801 (x) business news.

28802 Section 600. Section **48-1-42** is amended to read:

28803 **48-1-42. Registration of limited liability partnerships.**

28804 (1) (a) A partnership shall register with the Division of Corporations and Commercial
28805 Code by filing an application or a renewal statement:

- 28806 (i) to become and to continue as a limited liability partnership; or
- 28807 (ii) to do business in this state as a foreign limited liability partnership.

28808 (b) The application or renewal statement shall include:

- 28809 (i) the name of the limited liability partnership;
- 28810 (ii) the address of its principal office;
- 28811 (iii) if the principal office of the limited liability partnership is not located in this state,
28812 the address of a registered office and the name and address of a registered agent for service of
28813 process in this state;

28814 (iv) the number of partners;
28815 (v) a brief statement of the business in which the limited liability partnership engages;
28816 (vi) a brief statement that the partnership is applying for, or seeking to renew its status
28817 as a limited liability partnership; and

28818 (vii) if a foreign limited liability partnership, an original certificate of fact or good
28819 standing from the office of the lieutenant governor or other responsible authority of the state in
28820 which the limited liability partnership is formed.

28821 (2) The application or renewal statement required by Subsection (1) shall be executed
28822 by a majority in voting interest of the partners or by one or more partners authorized by the
28823 partnership to execute an application or renewal statement.

28824 (3) The application or renewal statement shall be accompanied by a filing fee
28825 established under Section [~~63-38-3.2~~] 63J-1-303.

28826 (4) The division shall register as a limited liability partnership any partnership that
28827 submits a completed application with the required fee.

28828 (5) (a) The registration expires one year after the date an application is filed unless the
28829 registration is voluntarily withdrawn by filing with the division a written withdrawal notice
28830 executed by a majority in voting interest of the partners or by one or more partners authorized
28831 to execute a withdrawal notice.

28832 (b) Registration of a partnership as a limited liability partnership shall be renewed if no
28833 earlier than 60 days before the date the registration expires and no later than the date of
28834 expiration, the limited liability partnership files with the division a renewal statement.

28835 (c) The division shall renew the registration as a limited liability partnership of any
28836 limited liability partnership that timely submits a completed renewal statement with the required
28837 fee.

28838 (d) If a renewal statement is timely filed, the registration is effective for one year after
28839 the date the registration would have expired but for the filing or the renewal statement.

28840 (6) The status of a partnership as a limited liability partnership is not affected by
28841 changes in the information stated in the application or renewal statement which take place after

28842 the filing of an application or a renewal statement.

28843 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
28844 Administrative Rulemaking Act, the division may issue rules providing for the form content and
28845 submittal of applications for registration or of renewal statements.

28846 Section 601. Section **48-2a-203.5** is amended to read:

28847 **48-2a-203.5. Involuntary dissolution of certificate.**

28848 (1) A certificate of limited partnership may be canceled involuntarily by a decree of a
28849 district court having competent jurisdiction upon petition by the director of the division, or by a
28850 party in interest who shall have standing to bring such an action, when it is established that:

28851 (a) the limited partnership procured the issuance of a stamped copy of its certificate of
28852 limited partnership or the execution of the certificate of limited partnership through fraud, in
28853 which case the certificate shall be canceled as of the date of its filing; or

28854 (b) the limited partnership has continually exceeded or abused the authority conferred
28855 upon it by law or by the partnership agreement.

28856 (2) A domestic limited partnership or a foreign limited partnership registered in this
28857 state is delinquent if:

28858 (a) it does not file an annual report within the time prescribed by this chapter; or

28859 (b) it fails to maintain a registered agent in this state for 60 consecutive days.

28860 (3) (a) The division shall mail a notice of delinquency of a delinquent limited partnership
28861 to:

28862 (i) the registered agent of the limited partnership; or

28863 (ii) if there is no registered agent of record, at least one general partner of the limited
28864 partnership.

28865 (b) The notice of delinquency required under Subsection (3)(a) shall state:

28866 (i) the nature of the delinquency; and

28867 (ii) that the limited partnership shall be dissolved unless within 60 days of the mailing of
28868 the notice of delinquency it corrects the delinquency.

28869 (c) The division shall include with the notice of delinquency any forms necessary to

28870 correct the delinquency.

28871 (4) (a) If the limited partnership does not remove the delinquency within 60 days from
28872 the date the division mails the notice of delinquency, the limited partnership's certificate or
28873 registration shall be dissolved involuntarily by the director of the division effective on the date
28874 specified in Subsection (4)(c).

28875 (b) If a limited partnership's certificate or registration is dissolved under Subsection
28876 (4)(a), the division shall mail a certificate of dissolution to:

28877 (i) the registered agent of the limited partnership; or

28878 (ii) if there is no registered agent of record, at least one partner of the limited
28879 partnership.

28880 (c) A limited partnership's date of dissolution is five days from the date the division
28881 mailed the certificate of dissolution under Subsection (4)(b).

28882 (d) A dissolved limited partnership may not be reinstated except as set forth in
28883 Subsection (5).

28884 (e) On the date of dissolution, any assumed names filed on behalf of the dissolved
28885 limited partnership under Title 42, Chapter 2, Conducting Business Under an Assumed Name,
28886 are canceled.

28887 (f) Notwithstanding Subsection (4)(e), the name of a dissolved limited partnership and
28888 any assumed names filed on its behalf are not available for two years from the date of
28889 dissolution for use by any other person:

28890 (i) transacting business in this state; or

28891 (ii) doing business under an assumed name under Title 42, Chapter 2, Conducting
28892 Business Under an Assumed Name.

28893 (g) Notwithstanding Subsection (4)(e), if the limited partnership that is dissolved is
28894 reinstated in accordance with this section, the registration of the name of the limited partnership
28895 and any assumed names filed on its behalf are reinstated back to the date of dissolution.

28896 (5) Any limited partnership whose certificate or registration has been dissolved under
28897 this section or Section 48-2a-203 may be reinstated within two years following the date of

28898 dissolution upon:

28899 (a) application; and

28900 (b) payment of:

28901 (i) all penalties; and

28902 (ii) all reinstatement fees.

28903 (6) A limited partner of a limited partnership is not liable as a general partner of the
28904 limited partnership solely by reason of the limited partnership having had its limited partnership
28905 certificate or registration dissolved.

28906 (7) A limited partnership that has had its certificate or registration dissolved may not
28907 maintain any action, suit, or proceeding in any court of this state until it has reinstated its
28908 certificate or registration following dissolution.

28909 (8) If the division denies a limited partnership's application for reinstatement following a
28910 dissolution under this section, the division shall mail the limited partnership written notice:

28911 (a) setting forth the reasons for denying the application; and

28912 (b) stating that the limited partnership has the right to appeal the division's
28913 determination to the executive director of the Department of Commerce in accordance with

28914 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

28915 (9) A notice or certificate mailed under this section shall be:

28916 (a) mailed first-class, postage prepaid; and

28917 (b) addressed to the most current mailing address appearing on the records of the
28918 division for:

28919 (i) the registered agent of the limited partnership corporation, if the notice is required to
28920 be mailed to the registered agent; or

28921 (ii) the partner of the limited partnership that is mailed the notice, if the notice is
28922 required to be mailed to a partner of the limited partnership.

28923 Section 602. Section **48-2a-206** is amended to read:

28924 **48-2a-206. Filing with the division.**

28925 (1) An original and one copy of the certificate of limited partnership, and of any

28926 certificates of amendment or cancellation, or of any judicial decree of amendment or
28927 cancellation, shall be delivered to the division. A person who executes a certificate as an
28928 attorney-in-fact or fiduciary need not exhibit evidence of ~~[his]~~ the person's authority as a
28929 prerequisite to filing. Unless the division finds that any certificate does not conform to law as to
28930 its form, upon receipt of all filing fees established under Section ~~[63-38-3.2]~~ 63J-1-303, it shall:

28931 (a) place on the original and the copy a stamp or seal indicating the time, day, month,
28932 and year of the filing, the director of the division's signature, and the division's seal, or facsimiles
28933 thereof, and the name of the division;

28934 (b) file the signed original in its office; and

28935 (c) return the stamped copy to the person who filed it or ~~[his]~~ the person's
28936 representative.

28937 (2) The stamped copy of the certificate of limited partnership and of any certificate of
28938 amendment or cancellation shall be conclusive evidence that all conditions precedent required
28939 for the formation, amendment, or cancellation of a limited partnership have been complied with
28940 and the limited partnership has been formed, amended, or canceled under this chapter, except
28941 with respect to an action for involuntary cancellation of the limited partnership's certificate for
28942 fraud under Subsection 48-2a-203.5 (1)(a).

28943 (3) Upon the filing of a certificate of amendment or judicial decree of amendment with
28944 the division, the certificate of limited partnership is amended as set forth in the certificate of
28945 amendment or judicial decree of amendment, and upon filing a certificate of cancellation, or of
28946 a judicial decree of cancellation, the division shall cancel the certificate of limited partnership
28947 effective as of the date the cancellation was filed or as of the date specified in the decree, unless
28948 a later effective date is specified in the cancellation.

28949 Section 603. Section **48-2a-1107** is amended to read:

28950 **48-2a-1107. Fees.**

28951 The division may charge and collect fees in accordance with the provisions of Section
28952 ~~[63-38-3.2]~~ 63J-1-303.

28953 Section 604. Section **48-2c-214** is amended to read:

28954 **48-2c-214. Fees.**

28955 Unless otherwise provided by statute, the division shall collect fees for its services in
28956 amounts determined by the department in accordance with the provisions of Section [~~63-38-3-2~~
28957 63J-1-303].

28958 Section 605. Section **48-2c-1209** is amended to read:

28959 **48-2c-1209. Appeal from denial of reinstatement.**

28960 If the division denies a company's application for reinstatement under Section
28961 48-2c-1208 following administrative dissolution, the division shall mail to the company in the
28962 manner provided in Subsection 48-2c-1207(6) written notice:

28963 (1) setting forth the reasons for denying the application; and

28964 (2) stating that the company has the right to appeal the division's determination to the
28965 executive director of the Department of Commerce in accordance with [~~Title 63, Chapter 46b~~]
28966 Title 63G, Chapter 4, Administrative Procedures Act.

28967 Section 606. Section **49-11-613** is amended to read:

28968 **49-11-613. Appeals procedure -- Right of appeal to hearing officer -- Board**
28969 **reconsideration -- Judicial review.**

28970 (1) (a) All members, retirees, participants, alternative payees, or covered individuals of
28971 a system, plan, or program under this title shall acquaint themselves with their rights and
28972 obligations under this title.

28973 (b) Any dispute regarding a benefit, right, obligation, or employment right under this
28974 title is subject to the procedures provided under this section.

28975 (c) A person who disputes a benefit, right, obligation, or employment right under this
28976 title shall request a ruling by the executive director who may delegate the decision to the deputy
28977 director.

28978 (d) A person who is dissatisfied by a ruling of the executive director or deputy director
28979 with respect to any benefit, right, obligation, or employment right under this title shall request a
28980 review of that claim by a hearing officer.

28981 (2) The hearing officer shall:

- 28982 (a) be hired by the executive director after consultation with the board;
- 28983 (b) follow the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
- 28984 Chapter 4, Administrative Procedures Act, except as specifically modified under this title;
- 28985 (c) hear and determine all facts pertaining to applications for benefits under any system,
- 28986 plan, or program under this title and all matters pertaining to the administration of the office;
- 28987 and
- 28988 (d) make conclusions of law in determining the person's rights under any system, plan,
- 28989 or program under this title and matters pertaining to the administration of the office.
- 28990 (3) The board shall review and approve or deny all decisions of the hearing officer in
- 28991 accordance with rules adopted by the board.
- 28992 (4) The moving party in any proceeding brought under this section shall bear the burden
- 28993 of proof.
- 28994 (5) A party may file an application for reconsideration by the board upon any of the
- 28995 following grounds:
- 28996 (a) that the board acted in excess of its powers;
- 28997 (b) that the order or award was procured by fraud;
- 28998 (c) that the evidence does not justify the determination of the hearing officer; or
- 28999 (d) that the party has discovered new material evidence that could not, with reasonable
- 29000 diligence, have been discovered or procured prior to the hearing.
- 29001 (6) The board shall affirm, reverse, or modify the decision of the hearing officer, or
- 29002 remand the application to the hearing officer for further consideration.
- 29003 (7) A party aggrieved by the board's decision may obtain judicial review by complying
- 29004 with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
- 29005 Administrative Procedures Act.
- 29006 (8) The board may make rules to implement this section.
- 29007 Section 607. Section **49-14-201** is amended to read:
- 29008 **49-14-201. System membership -- Eligibility.**
- 29009 (1) Except as provided in Section 49-15-201, a public safety service employee of a

29010 participating employer participating in this system is eligible for service credit in this system at
29011 the earliest of:

29012 (a) July 1, 1969, if the public safety service employee was employed by the participating
29013 employer on July 1, 1969, and the participating employer was participating in this system on
29014 that date;

29015 (b) the date the participating employer begins participating in this system if the public
29016 safety service employee was employed by the participating employer on that date; or

29017 (c) the date the public safety service employee is employed by the participating
29018 employer and is eligible to perform public safety service.

29019 (2) (a) (i) A participating employer that has public safety service and firefighter service
29020 employees that require cross-training and duty shall enroll those dual purpose employees in the
29021 system in which the greatest amount of time is actually worked.

29022 (ii) The employees shall either be full-time public safety service or full-time firefighter
29023 service employees of the participating employer.

29024 (b) (i) Prior to transferring a dual purpose employee from one system to another, the
29025 participating employer shall receive written permission from the office.

29026 (ii) The office may request documentation to verify the appropriateness of the transfer.

29027 (3) The board may combine or segregate the actuarial experience of participating
29028 employers in this system for the purpose of setting contribution rates.

29029 (4) (a) (i) Each participating employer participating in this system shall annually submit
29030 to the office a schedule indicating the positions to be covered under this system in accordance
29031 with this chapter.

29032 (ii) The office may require documentation to justify the inclusion of any position under
29033 this system.

29034 (b) If there is a dispute between the office and a participating employer or employee
29035 over any position to be covered, the disputed position shall be submitted to the Peace Officer
29036 Standards and Training Council established under Section 53-6-106 for determination.

29037 (c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility

29038 for public safety service credit is limited to claims for coverage under this system for time
29039 periods after July 1, 1989.

29040 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
29041 to service credit earned in another system prior to July 1, 1989.

29042 (iii) Except as provided under Subsection (4)(c)(iv), a decision of the Peace Officer
29043 Standards and Training Council granting a position coverage under this system may only be
29044 applied prospectively from the date of that decision.

29045 (iv) A decision of the Peace Officer Standards and Training Council granting a position
29046 coverage under this system may be applied retroactively only if:

29047 (A) the participating employer covered other similarly situated positions under this
29048 system during the time period in question; and

29049 (B) the position otherwise meets all eligibility requirements for receiving service credit
29050 in this system during the period for which service credit is to be granted.

29051 (5) The Peace Officer Standards and Training Council may use a subcommittee to
29052 provide a recommendation to the council in determining disputes between the office and a
29053 participating employer or employee over a position to be covered under this system.

29054 (6) The Peace Officer Standards and Training Council shall comply with [~~Title 63,~~
29055 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage
29056 disputes in this system.

29057 (7) A public safety employee who is transferred or promoted to an administration
29058 position not covered by this system shall continue to earn public safety service credit in this
29059 system as long as the employee remains employed in the same department.

29060 (8) Any employee who is reassigned to the Department of Technology Services or to
29061 the Department of Human Resource Management, and who was a member of this system, shall
29062 be entitled to remain a member of this system.

29063 (9) (a) To determine that a position is covered under this system, the office and, if a
29064 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
29065 position requires the employee to:

- 29066 (i) place the employee's life or personal safety at risk; and
- 29067 (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.
- 29068 (b) If a position satisfies the requirements of Subsection (9)(a), the office and the Peace
- 29069 Officer Standards and Training Council shall consider whether or not the position requires the
- 29070 employee to:
- 29071 (i) perform duties that consist primarily of actively preventing or detecting crime and
- 29072 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- 29073 (ii) perform duties that consist primarily of providing community protection; and
- 29074 (iii) respond to situations involving threats to public safety and make emergency
- 29075 decisions affecting the lives and health of others.
- 29076 (10) If a subcommittee is used to recommend the determination of disputes to the Peace
- 29077 Officer Standards and Training Council, the subcommittee shall comply with the requirements
- 29078 of Subsection (9) in making its recommendation.
- 29079 (11) A final order of the Peace Officer Standards and Training Council regarding a
- 29080 dispute is a final agency action for purposes of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
- 29081 Administrative Procedures Act.
- 29082 (12) Except as provided under Subsection (13), if a participating employer's public
- 29083 safety service employees are not covered by this system or under Chapter 15, Public Safety
- 29084 Noncontributory Retirement Act, as of January 1, 1998, those public safety service employees
- 29085 who may otherwise qualify for membership in this system shall, at the discretion of the
- 29086 participating employer, remain in their current retirement system.
- 29087 (13) (a) A public safety service employee employed by an airport police department,
- 29088 which elects to cover its public safety service employees under the Public Safety
- 29089 Noncontributory Retirement System under Subsection (12), may elect to remain in the public
- 29090 safety service employee's current retirement system.
- 29091 (b) The public safety service employee's election to remain in the current retirement
- 29092 system under Subsection (13)(a):
- 29093 (i) shall be made at the time the employer elects to move its public safety service

29094 employees to a public safety retirement system;

29095 (ii) documented by written notice to the participating employer; and

29096 (iii) is irrevocable.

29097 Section 608. Section **49-15-201** is amended to read:

29098 **49-15-201. System membership -- Eligibility.**

29099 (1) (a) A public safety service employee employed by the state after July 1, 1989, is
29100 eligible for service credit in this system.

29101 (b) A public safety service employee employed by the state prior to July 1, 1989, may
29102 either elect to receive service credit in this system or continue to receive service credit under the
29103 system established under Chapter 14, Public Safety Contributory Retirement Act, by following
29104 the procedures established by the board under this chapter.

29105 (2) (a) Public safety service employees of a participating employer other than the state
29106 that elected on or before July 1, 1989, to remain in the Public Safety Contributory Retirement
29107 System shall be eligible only for service credit in that system.

29108 (b) (i) A participating employer other than the state that elected on or before July 1,
29109 1989, to participate in this system shall, have allowed, prior to July 1, 1989, a public safety
29110 service employee to elect to participate in either this system or the Public Safety Contributory
29111 Retirement System.

29112 (ii) Except as expressly allowed by this title, the election of the public safety service
29113 employee is final and may not be changed.

29114 (c) A public safety service employee hired by a participating employer other than the
29115 state after July 1, 1989, shall become a member in this system.

29116 (d) A public safety service employee of a participating employer other than the state
29117 who began participation in this system after July 1, 1989, is only eligible for service credit in this
29118 system.

29119 (3) (a) (i) A participating employer that has public safety service and firefighter service
29120 employees that require cross-training and duty shall enroll those dual purpose employees in the
29121 system in which the greatest amount of time is actually worked.

29122 (ii) The employees shall either be full-time public safety service or full-time firefighter
29123 service employees of the participating employer.

29124 (b) (i) Prior to transferring a dual purpose employee from one system to another, the
29125 participating employer shall receive written permission from the office.

29126 (ii) The office may request documentation to verify the appropriateness of the transfer.

29127 (4) The board may combine or segregate the actuarial experience of participating
29128 employers in this system for the purpose of setting contribution rates.

29129 (5) (a) (i) Each participating employer participating in this system shall annually submit
29130 to the office a schedule indicating the positions to be covered under this system in accordance
29131 with this chapter.

29132 (ii) The office may require documentation to justify the inclusion of any position under
29133 this system.

29134 (b) If there is a dispute between the office and a participating employer or employee
29135 over any position to be covered, the disputed position shall be submitted to the Peace Officer
29136 Standards and Training Council established under Section 53-6-106 for determination.

29137 (c) (i) The Peace Officer Standards and Training Council's authority to decide eligibility
29138 for public safety service credit is limited to claims for coverage under this system for time
29139 periods after July 1, 1989.

29140 (ii) A decision of the Peace Officer Standards and Training Council may not be applied
29141 to service credit earned in another system prior to July 1, 1989.

29142 (iii) Except as provided under Subsection (5)(c)(iv), a decision of the Peace Officer
29143 Standards and Training Council granting a position coverage under this system may only be
29144 applied prospectively from the date of that decision.

29145 (iv) A decision of the Peace Officer Standards and Training Council granting a position
29146 coverage under this system may be applied retroactively only if:

29147 (A) the participating employer covered other similarly situated positions under this
29148 system during the time period in question; and

29149 (B) the position otherwise meets all eligibility requirements for receiving service credit

29150 in this system during the period for which service credit is to be granted.

29151 (6) The Peace Officer Standards and Training Council may use a subcommittee to
29152 provide a recommendation to the council in determining disputes between the office and a
29153 participating employer or employee over a position to be covered under this system.

29154 (7) The Peace Officer Standards and Training Council shall comply with [~~Title 63,~~
29155 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in resolving coverage
29156 disputes in this system.

29157 (8) A public safety service employee who is transferred or promoted to an
29158 administration position not covered by this system shall continue to earn public safety service
29159 credit in this system as long as the employee remains employed in the same department.

29160 (9) Any employee who is reassigned to the Department of Technology Services or to
29161 the Department of Human Resource Management, and who was a member in this system, shall
29162 be entitled to remain a member in this system.

29163 (10) (a) To determine that a position is covered under this system, the office and, if a
29164 coverage dispute arises, the Peace Officer Standards and Training Council shall find that the
29165 position requires the employee to:

- 29166 (i) place the employee's life or personal safety at risk; and
- 29167 (ii) complete training as provided in Section 53-13-103, 53-13-104, or 53-13-105.

29168 (b) If a position satisfies the requirements of Subsection (10)(a), the office and Peace
29169 Officer Standards and Training Council shall consider whether the position requires the
29170 employee to:

- 29171 (i) perform duties that consist primarily of actively preventing or detecting crime and
29172 enforcing criminal statutes or ordinances of this state or any of its political subdivisions;
- 29173 (ii) perform duties that consist primarily of providing community protection; and
- 29174 (iii) respond to situations involving threats to public safety and make emergency
29175 decisions affecting the lives and health of others.

29176 (11) If a subcommittee is used to recommend the determination of disputes to the Peace
29177 Officer Standards and Training Council, the subcommittee shall comply with the requirements

29178 of Subsection (10) in making its recommendation.

29179 (12) A final order of the Peace Officer Standards and Training Council regarding a
29180 dispute is a final agency action for purposes of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
29181 Administrative Procedures Act.

29182 (13) Except as provided under Subsection (14), if a participating employer's public
29183 safety service employees are not covered by this system under Chapter 14, Public Safety
29184 Contributory Retirement Act, as of January 1, 1998, those public safety service employees who
29185 may otherwise qualify for membership in this system shall, at the discretion of the participating
29186 employer, remain in their current retirement system.

29187 (14) (a) A public safety service employee employed by an airport police department,
29188 which elects to cover its public safety service employees under the Public Safety
29189 Noncontributory Retirement System under Subsection (13), may elect to remain in the public
29190 safety service employee's current retirement system.

29191 (b) The public safety service employee's election to remain in the current retirement
29192 system under Subsection (14)(a):

29193 (i) shall be made at the time the employer elects to move its public safety service
29194 employees to a public safety retirement system;

29195 (ii) documented by written notice to the participating employer; and

29196 (iii) is irrevocable.

29197 Section 609. Section **51-2a-301** is amended to read:

29198 **51-2a-301. State auditor responsibilities.**

29199 (1) Except for political subdivisions that do not receive or expend public funds, the
29200 state auditor shall adopt guidelines, qualifications criteria, and procurement procedures for use
29201 in the procurement of audit services for all entities that are required by Section 51-2a-201 to
29202 cause an accounting report to be made.

29203 (2) The state auditor shall follow the notice, hearing, and publication requirements of
29204 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

29205 (3) The state auditor shall:

29206 (a) review the accounting report submitted to him under Section 51-2a-201; and
29207 (b) if necessary, conduct additional inquiries or examinations of financial statements of
29208 the entity submitting that information.

29209 (4) The governing board of each entity required by Section 51-2a-201 to submit an
29210 accounting report to the state auditor's office shall comply with the guidelines, criteria, and
29211 procedures established by the state auditor.

29212 (5) Each fifth year, the state auditor shall:

29213 (a) review the dollar criteria established in Section 51-2a-201 to determine if they need
29214 to be increased or decreased; and

29215 (b) if the auditor determines that they need to be increased or decreased, notify the
29216 Legislature of that need.

29217 (6) (a) The state auditor may require a higher level of accounting report than is required
29218 under Section 51-2a-201.

29219 (b) The state auditor shall:

29220 (i) develop criteria under which a higher level of accounting report may be required;
29221 and

29222 (ii) provide copies of those criteria to entities required to analyze and report under
29223 Section 51-2a-201.

29224 Section 610. Section **51-5-7** is amended to read:

29225 **51-5-7. Expending plans and administrative expenses provided by legislative**
29226 **appropriation and included in governor's budget.**

29227 (1) (a) Except as provided in Subsection (1)(b), the revenues and other resources of the
29228 governmental funds are subject to legislative review and appropriation for each fiscal period.

29229 (b) Restricted Special Revenue Funds are subject to legislative review for each fiscal
29230 period.

29231 (2) Notwithstanding the source of the revenues and the restrictions imposed upon the
29232 expenditure of the revenues, the planned expenditures for the governmental funds, except
29233 Restricted Special Revenue Funds, shall be incorporated into the governor's budget and

29234 submitted to the Legislature according to Section [~~63-38-2~~] 63J-1-201.

29235 (3) Expenses required in the administrative activities of the Restricted Special Revenue
29236 Funds, the Enterprise Funds, the Internal Service Funds, and the Trust and Agency Funds are
29237 subject to legislative review each year.

29238 (a) Pro forma financial statements, including balance sheets, revenue and expenditure
29239 statements, statements of changes in financial position, and other statements that may be
29240 required for these funds shall be included in the governor's budget as information items and
29241 submitted to the Legislature according to Section [~~63-38-2~~] 63J-1-201.

29242 (b) If the operating results of any of these funds demonstrate that an appropriation is
29243 needed from any other fund or subfund, that appropriation shall be included in the governor's
29244 budget as a budget request.

29245 Section 611. Section **51-7-3.5**, which is renumbered from Section 63-13-1 is
29246 renumbered and amended to read:

29247 [~~63-13-1~~]. **51-7-3.5**. **Commences July 1st.**

29248 The fiscal year of the state of Utah shall commence on the first day of July of each year.

29249 Section 612. Section **51-9-101** is enacted to read:

29250 **CHAPTER 9. FUNDS AND ACCOUNTS ACT**

29251 **Part 1. General Provisions**

29252 **51-9-101**. **Title.**

29253 This chapter is known as the "Funds and Accounts Act."

29254 Section 613. Section **51-9-201**, which is renumbered from Section 63-97-201 is
29255 renumbered and amended to read:

29256 **Part 2. Tobacco Settlement Funds and Endowment**

29257 [~~63-97-201~~]. **51-9-201**. **Creation of Tobacco Settlement Restricted**
29258 **Account.**

29259 (1) There is created within the General Fund a restricted account known as the
29260 "Tobacco Settlement Restricted Account."

29261 (2) The account shall earn interest.

29262 (3) The account shall consist of:

29263 (a) until July 1, 2003, 50% of all funds of every kind that are received by the state that
29264 are related to the settlement agreement that the state entered into with leading tobacco
29265 manufacturers on November 23, 1998;

29266 (b) on and after July 1, 2003 and until July 1, 2004, 80% of all funds of every kind that
29267 are received by the state that are related to the settlement agreement that the state entered into
29268 with leading tobacco manufacturers on November 23, 1998;

29269 (c) on and after July 1, 2004 and until July 1, 2005, 70% of all funds of every kind that
29270 are received by the state that are related to the settlement agreement that the state entered into
29271 with leading tobacco manufacturers on November 23, 1998;

29272 (d) on and after July 1, 2005 and until July 1, 2007, 75% of all funds of every kind that
29273 are received by the state that are related to the settlement agreement that the state entered into
29274 with leading tobacco manufacturers on November 23, 1998;

29275 (e) on and after July 1, 2007, 60% of all funds of every kind that are received by the
29276 state that are related to the settlement agreement that the state entered into with leading tobacco
29277 manufacturers on November 23, 1998; and

29278 (f) interest earned on the account.

29279 (4) To the extent that funds will be available for appropriation in a given fiscal year,
29280 those funds shall be appropriated from the account in the following order:

29281 (a) \$10,300,000 to the Department of Health for the Children's Health Insurance
29282 Program created in Section 26-40-103 and for restoration of dental benefits in the Children's
29283 Health Insurance Program;

29284 (b) \$4,000,000 to the Department of Health for alcohol, tobacco, and other drug
29285 prevention, reduction, cessation, and control programs that promote unified messages and make
29286 use of media outlets, including radio, newspaper, billboards, and television, and with a
29287 preference in funding given to tobacco-related programs;

29288 (c) \$193,700 to the Administrative Office of the Courts and \$1,296,300 to the
29289 Department of Human Services for the statewide expansion of the drug court program;

29290 (d) \$77,400 to the Board of Pardons, \$81,700 to the Department of Corrections, and
29291 \$350,900 to the Department of Human Services for a drug board pilot program;

29292 (e) \$4,000,000 to the State Board of Regents for the University of Utah Health
29293 Sciences Center to benefit the health and well-being of Utah citizens through in-state research,
29294 treatment, and educational activities; and

29295 (f) any remaining funds as directed by the Legislature through appropriation.

29296 (5) (a) If tobacco funds in dispute for attorneys fees are received by the state, those
29297 funds shall be divided and deposited in accordance with Subsection (3) and Section [~~63-97-301~~]
29298 51-9-202.

29299 (b) The amount appropriated from the Tobacco Settlement Restricted Account to the
29300 Department of Health for alcohol, tobacco, and other drug programs described in Subsection
29301 (4)(b), including the funding preference for tobacco-related programs, shall be increased by up
29302 to \$2,000,000 in a given fiscal year to the extent that funds in dispute for attorneys fees are
29303 available to the state for appropriation from the account.

29304 (6) Each state agency identified in Subsection (4) shall provide an annual report on the
29305 program and activities funded under Subsection (4) to:

- 29306 (a) the Health and Human Services Interim Committee no later than September 1; and
- 29307 (b) the Health and Human Services Joint Appropriations Subcommittee.

29308 Section 614. Section **51-9-202**, which is renumbered from Section 63-97-301 is
29309 renumbered and amended to read:

29310 [~~63-97-301~~]. **51-9-202. Permanent state trust fund.**

29311 (1) Until July 1, 2003, 50% of all funds of every kind that are received by the state that
29312 are related to the settlement agreement that the state entered into with leading tobacco
29313 manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund
29314 created by and operated under Utah Constitution Article XXII, Section 4.

29315 (2) On and after July 1, 2003 and until July 1, 2004 20% of the funds of any kind
29316 received by the state that are related to the settlement agreement that the state entered into with
29317 leading tobacco manufacturers shall be deposited into the permanent state trust fund created by

29318 and operated under Utah Constitution Article XXII, Section 4.

29319 (3) On and after July 1, 2004 and until July 1, 2005, 30% of all funds of any kind
29320 received by the state that are related to the settlement agreement that the state entered into with
29321 leading tobacco manufacturers shall be deposited into the General Fund Budget Reserve
29322 Account created in Section [~~63-38-2.5~~] 63J-1-202.

29323 (4) On and after July 1, 2005 and until July 1, 2007, 25% of all funds of any kind
29324 received by the state that are related to the settlement agreement that the state entered into with
29325 leading tobacco manufacturers shall be deposited into the permanent state trust fund created by
29326 and operated under Utah Constitution Article XXII, Section 4.

29327 (5) On and after July 1, 2007, 40% of all funds of every kind that are received by the
29328 state that are related to the settlement agreement that the state entered into with leading tobacco
29329 manufacturers on November 23, 1998, shall be deposited into the permanent state trust fund
29330 created by and operated under Utah Constitution Article XXII, Section 4.

29331 (6) Funds in the permanent state trust fund shall be deposited or invested pursuant to
29332 Section 51-7-12.1.

29333 (7) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and
29334 dividends earned annually from the permanent state trust fund shall be deposited in the General
29335 Fund. There shall be transferred on an ongoing basis from the General Fund to the permanent
29336 state trust fund created under Utah Constitution Article XXII, Section 4, an amount equal to
29337 50% of the interest and dividends earned annually from the permanent state trust fund. The
29338 amount transferred into the fund under this Subsection (7)(a) shall be treated as principal.

29339 (b) Any annual interest or dividends earned from the permanent state trust fund that
29340 remain in the General Fund after Subsection (7)(a) may be appropriated by the Legislature.

29341 (c) Any realized or unrealized gains or losses on investments in the permanent state
29342 trust fund shall remain in the permanent state trust fund.

29343 (8) This section does not apply to funds deposited under Chapter 97a, Infrastructure
29344 and Economic Diversification Investment Account and Severance Tax Holding Account into the
29345 permanent state trust fund.

29346 Section 615. Section **51-9-203**, which is renumbered from Section 63-97-401 is
29347 renumbered and amended to read:

29348 ~~[63-97-401]~~. **51-9-203. Requirements for tobacco programs.**

29349 (1) To be eligible to receive funding under this ~~[chapter]~~ part for a tobacco prevention,
29350 reduction, cessation, or control program, an organization, whether private, governmental, or
29351 quasi-governmental, shall:

29352 (a) submit a request to the Department of Health containing the following information:

29353 (i) for media campaigns to prevent or reduce smoking, the request shall demonstrate
29354 sound management and periodic evaluation of the campaign's relevance to the intended
29355 audience, particularly in campaigns directed toward youth, including audience awareness of the
29356 campaign and recollection of the main message;

29357 (ii) for school-based education programs to prevent and reduce youth smoking, the
29358 request shall describe how the program will be effective in preventing and reducing youth
29359 smoking;

29360 (iii) for community-based programs to prevent and reduce smoking, the request shall
29361 demonstrate that the proposed program:

29362 (A) has a comprehensive strategy with a clear mission and goals;

29363 (B) provides for committed, caring, and professional leadership; and

29364 (C) if directed toward youth:

29365 (I) offers youth-centered activities in youth accessible facilities;

29366 (II) is culturally sensitive, inclusive, and diverse;

29367 (III) involves youth in the planning, delivery, and evaluation of services that affect
29368 them; and

29369 (IV) offers a positive focus that is inclusive of all youth; and

29370 (iv) for enforcement, control, and compliance program, the request shall demonstrate
29371 that the proposed program can reasonably be expected to reduce the extent to which tobacco
29372 products are available to individuals under the age of 19;

29373 (b) agree, by contract, to file an annual written report with the Department of Health.

29374 The report shall contain the following:

29375 (i) the amount funded;

29376 (ii) the amount expended;

29377 (iii) a description of the program or campaign and the number of adults and youth who

29378 participated;

29379 (iv) specific elements of the program or campaign meeting the applicable criteria set

29380 forth in Subsection (1)(a); and

29381 (v) a statement concerning the success and effectiveness of the program or campaign;

29382 (c) agree, by contract, to not use any funds received under this [chapter] part directly or

29383 indirectly, to:

29384 (i) engage in any lobbying or political activity, including the support of, or opposition

29385 to, candidates, ballot questions, referenda, or similar activities; or

29386 (ii) engage in litigation with any tobacco manufacturer, retailer, or distributor, except to

29387 enforce:

29388 (A) the provisions of the Master Settlement Agreement;

29389 (B) Title 26, Chapter 38, Utah Clean Air Act;

29390 (C) Title 26, Chapter 42, Civil Penalties for Tobacco Sales to Underaged Persons; and

29391 (D) Title 77, Chapter 39, Sale of Tobacco and Alcohol to Underaged Persons; and

29392 (d) agree, by contract, to repay the funds provided under this [chapter] part if the

29393 organization:

29394 (i) fails to file a timely report as required by Subsection (1)(b); or

29395 (ii) uses any portion of the funds in violation of Subsection (1)(c).

29396 (2) The Department of Health shall review and evaluate the success and effectiveness of

29397 any program or campaign that receives funding pursuant to a request submitted under

29398 Subsection (1). The review and evaluation:

29399 (a) shall include a comparison of annual smoking trends;

29400 (b) may be conducted by an independent evaluator; and

29401 (c) may be paid for by funds appropriated from the account for that purpose.

29402 (3) The Department of Health shall annually report to the Health and Human Services
29403 Appropriations Subcommittee on the reviews conducted pursuant to Subsection (2).

29404 (4) An organization that fails to comply with the contract requirements set forth in
29405 Subsection (1) shall:

29406 (a) repay the state as provided in Subsection (1)(d); and

29407 (b) be disqualified from receiving funds under this ~~[chapter]~~ part in any subsequent
29408 fiscal year.

29409 (5) The attorney general shall be responsible for recovering funds that are required to
29410 be repaid to the state under this section.

29411 (6) Nothing in this section may be construed as applying to funds that are not
29412 appropriated under this ~~[chapter]~~ part.

29413 Section 616. Section **51-9-301**, which is renumbered from Section 63-97a-101 is
29414 renumbered and amended to read:

29415 **Part 3. Infrastructure and Economic Diversification Investment**

29416 **Account and Severance Tax Holding Account**

29417 ~~[63-97a-101]~~. **51-9-301. Title.**

29418 This ~~[chapter]~~ part is known as the "Infrastructure and Economic Diversification
29419 Investment Account and Severance Tax Holding Account."

29420 Section 617. Section **51-9-302**, which is renumbered from Section 63-97a-102 is
29421 renumbered and amended to read:

29422 ~~[63-97a-102]~~. **51-9-302. Definitions.**

29423 As used in this ~~[chapter]~~ part:

29424 (1) "Infrastructure and Economic Diversification Investment Account" means the
29425 Infrastructure and Economic Diversification Investment Account created in Section
29426 ~~[63-97a-201]~~ 51-9-303.

29427 (2) "Permanent state trust fund" means the permanent state trust fund created under
29428 Utah Constitution Article XXII, Section 4.

29429 (3) "Severance Tax Holding Account" means the Severance Tax Holding Account

29430 created in Section [~~63-97a-202~~] 51-9-304.

29431 Section 618. Section **51-9-303**, which is renumbered from Section 63-97a-201 is
29432 renumbered and amended to read:

29433 ~~[63-97a-201]~~. **51-9-303. Creation of Infrastructure and Economic**
29434 **Diversification Investment Account.**

29435 (1) (a) There is created a restricted account within the General Fund known as the
29436 "Infrastructure and Economic Diversification Investment Account."

29437 (b) The Infrastructure and Economic Diversification Investment Account shall consist
29438 of:

29439 (i) all monies credited to the account under Section [~~63-97a-202~~] 51-9-304;

29440 (ii) appropriations from the Legislature;

29441 (iii) grants from private foundations; and

29442 (iv) interest and investment earnings on account monies.

29443 (2) (a) The Infrastructure and Economic Diversification Investment Account shall earn
29444 interest.

29445 (b) All interest earned on monies in the Infrastructure and Economic Diversification
29446 Investment Account shall be deposited into the Infrastructure and Economic Diversification
29447 Investment Account.

29448 (3) The Legislature may appropriate monies from the Infrastructure and Economic
29449 Diversification Investment Account for infrastructure and economic diversification investment
29450 projects.

29451 Section 619. Section **51-9-304**, which is renumbered from Section 63-97a-202 is
29452 renumbered and amended to read:

29453 ~~[63-97a-202]~~. **51-9-304. Creation of Severance Tax Holding Account --**
29454 **Distribution of funds in the account.**

29455 (1) (a) There is created a restricted account within the General Fund known as the
29456 "Severance Tax Holding Account."

29457 (b) The Severance Tax Holding Account shall consist of:

- 29458 (i) appropriations from the Legislature;
- 29459 (ii) grants from private foundations; and
- 29460 (iii) interest and investment earnings on Severance Tax Holding Account monies.

29461 (2) (a) The Severance Tax Holding Account shall earn interest.

29462 (b) All interest earned on monies in the Severance Tax Holding Account shall be
 29463 deposited into the Severance Tax Holding Account.

29464 (3) If authorized by law the Division of Finance shall deposit all of the monies in the
 29465 Severance Tax Holding Account as of June 30, 2009, into the permanent state trust fund.

29466 (4) The state treasurer shall invest and separately account for the earnings on funds that
 29467 are deposited into the permanent state trust fund under this section.

29468 (5) (a) In accordance with Utah Constitution Article XXII, Section 4, the interest and
 29469 dividends earned annually on revenue from severance taxes that are deposited into the
 29470 permanent state trust fund shall be deposited in the General Fund.

29471 (b) Interest and dividends earned on revenue from severance taxes that are deposited in
 29472 the General Fund pursuant to Subsection (5)(a) shall be credited to the Infrastructure and
 29473 Economic Diversification Investment Account created in Section ~~[63-97a-201]~~ 51-9-303.

29474 Section 620. Section **51-9-401**, which is renumbered from Section 63-63a-1 is
 29475 renumbered and amended to read:

**Part 4. Crime Victims Reparations Trust, Public Safety Support Funds, Substance
 Abuse Prevention Account, and Services for Victims of Domestic Violence Account
~~[63-63a-1]. 51-9-401. Surcharge -- Application and exemptions.~~**

29479 (1) (a) A surcharge shall be paid on all criminal fines, penalties, and forfeitures imposed
 29480 by the courts.

29481 (b) The surcharge shall be:

29482 (i) 85% upon conviction of a:

29483 (A) felony;

29484 (B) class A misdemeanor;

29485 (C) violation of Title 41, Chapter 6a, Part 5, Driving Under the Influence and Reckless

29486 Driving; or
29487 (D) class B misdemeanor not classified within Title 41, Motor Vehicles, including
29488 violation of comparable county or municipal ordinances; or
29489 (ii) 35% upon conviction of any other offense, including violation of county or
29490 municipal ordinances not subject to the 85% surcharge.
29491 (2) The surcharge may not be imposed:
29492 (a) upon nonmoving traffic violations;
29493 (b) upon court orders when the offender is ordered to perform compensatory service
29494 work in lieu of paying a fine; and
29495 (c) upon penalties assessed by the juvenile court as part of the nonjudicial adjustment of
29496 a case under Section 78-3a-502.
29497 (3) (a) The surcharge and the exceptions under Subsections (1) and (2) also apply to all
29498 fines, penalties, and forfeitures imposed on juveniles for conduct that would be criminal if
29499 committed by an adult.
29500 (b) However, the surcharge does not include amounts assessed or collected separately
29501 by juvenile courts for the Juvenile Restitution Account, which is independent of this [chapter]
29502 part and does not affect the imposition or collection of the surcharge.
29503 (4) The surcharge under this section shall be imposed in addition to the fine charged for
29504 a civil or criminal offense, and no reduction may be made in the fine charged due to the
29505 surcharge imposition.
29506 (5) Fees, assessments, and surcharges related to criminal or traffic offenses shall be
29507 authorized and managed by this [chapter] part rather than attached to particular offenses.
29508 Section 621. Section **51-9-402**, which is renumbered from Section 63-63a-2 is
29509 renumbered and amended to read:
29510 **[63-63a-2]. 51-9-402. Division of collected monies retained by state treasurer**
29511 **and local governmental collecting entity -- Purpose of surcharge -- Allocation of**
29512 **collections -- Financial information.**
29513 (1) The amount of the surcharge imposed under this [chapter] part by courts of record

29514 shall be collected before any fine and deposited with the state treasurer.

29515 (2) The amount of the surcharge and the amount of criminal fines, penalties, and
29516 forfeitures imposed under this [chapter] part by courts not of record shall be collected
29517 concurrently.

29518 (a) As monies are collected on criminal fines, penalties, and forfeitures subject to the
29519 85% surcharge, the monies shall be divided pro rata so that the local governmental collecting
29520 entity retains 54% of the collected monies and the state retains 46% of the collected monies.

29521 (b) As monies are collected on criminal fines, penalties, and forfeitures subject to the
29522 35% surcharge, the monies shall be divided pro rata so that the local governmental collecting
29523 entity retains 74% of the collected monies and the state retains 26% of the collected monies.

29524 (c) The court shall deposit with the state treasurer the surcharge portion of all monies
29525 as they are collected.

29526 (3) Courts of record, courts not of record, and administrative traffic proceedings shall
29527 collect financial information to determine:

29528 (a) the total number of cases in which:

29529 (i) a final judgment has been rendered;

29530 (ii) surcharges and fines are paid by partial or installment payment; and

29531 (iii) the judgment is fulfilled by an alternative method upon the court's order;

29532 (b) the total dollar amounts of surcharges owed to the state and fines owed to the state
29533 and county or municipality, including:

29534 (i) waived surcharges;

29535 (ii) uncollected surcharges; and

29536 (iii) collected surcharges.

29537 (4) The courts of record, courts not of record, and administrative traffic proceedings
29538 shall report all collected financial information monthly to the Administrative Office of the
29539 Courts. The collected information shall be categorized by cases subject to the 85% and 35%
29540 surcharge.

29541 (5) The purpose of the surcharge is to finance the trust funds and support accounts as

29542 provided in this [~~chapter~~] part.

29543 (6) (a) From the surcharge, the Division of Finance shall allocate in the manner and for
29544 the purposes described in Sections [~~63-63a-3~~] 51-9-403 through [~~63-63a-10~~] 51-9-411.

29545 (b) Allocations shall be made on a fiscal year basis.

29546 (7) The provisions of [~~Sections 63-63a-1 and 63-63a-2~~] this section and Section
29547 51-9-401 may not impact the distribution and allocation of fines and forfeitures imposed in
29548 accordance with Sections 23-14-13, 78-3-14.5, and 78-5-116.

29549 Section 622. Section **51-9-403**, which is renumbered from Section 63-63a-3 is
29550 renumbered and amended to read:

29551 [~~63-63a-3~~]. **51-9-403. EMS share of surcharge -- Accounting.**

29552 (1) The Division of Finance shall allocate 14% of the collected surcharge established in
29553 Section [~~63-63a-1~~] 51-9-401, but not to exceed the amount appropriated by the Legislature, to
29554 the Emergency Medical Services (EMS) Grants Program Account under Section 26-8a-207.

29555 (2) The amount shall be recorded by the Department of Health as a dedicated credit.

29556 Section 623. Section **51-9-404**, which is renumbered from Section 63-63a-4 is
29557 renumbered and amended to read:

29558 [~~63-63a-4~~]. **51-9-404. Distribution of surcharge amounts.**

29559 (1) In this section:

29560 (a) "Reparation fund" means the Crime Victim Reparation Fund.

29561 (b) "Safety account" means the Public Safety Support Account.

29562 (2) (a) There is created a restricted special revenue fund known as the "Crime Victim
29563 Reparation Fund" to be administered and distributed as provided in this [~~chapter~~] part by the
29564 Reparations Office under [~~Title 63, Chapter 25a, Part 4,~~] Title 63M, Chapter 7, Part 5, Crime
29565 Victims' Reparations Act, in cooperation with the Division of Finance.

29566 (b) Monies deposited in this fund are for victim reparations, criminal justice and
29567 substance abuse, other victim services, and, as appropriated, for administrative costs of the
29568 Commission on Criminal and Juvenile Justice under [~~Title 63, Chapter 25a~~] Title 63M, Chapter
29569 7.

29570 (3) (a) There is created a restricted account in the General Fund known as the "Public
29571 Safety Support Account" to be administered and distributed by the Department of Public Safety
29572 in cooperation with the Division of Finance as provided in this [chapter] part.

29573 (b) Monies deposited in this account shall be appropriated to:

29574 (i) the Division of Peace Officer Standards and Training (POST) as described in Title
29575 53, Chapter 6, Peace Officer Standards and Training Act; and

29576 (ii) the Office of the Attorney General for the support of the Utah Prosecution Council
29577 established in Title 67, Chapter 5a, and the fulfillment of the council's duties.

29578 (4) The Division of Finance shall allocate from the collected surcharge established in
29579 Section ~~[63-63a-1]~~ 51-9-401:

29580 (a) 35% to the reparation fund;

29581 (b) 18.5% to the safety account for POST, but not to exceed the amount appropriated
29582 by the Legislature; and

29583 (c) 3% to the safety account for support of the Utah Prosecution Council, but not to
29584 exceed the amount appropriated by the Legislature.

29585 (5) (a) In addition to the funding provided by other sections of this [chapter] part, a
29586 percentage of the income earned by inmates working for correctional industries in a federally
29587 certified private sector/prison industries enhancement program shall be deposited in the
29588 reparation fund.

29589 (b) The percentage of income deducted from inmate pay under Subsection (5)(a) shall
29590 be determined by the executive director of the Department of Corrections in accordance with
29591 the requirements of the private sector/prison industries enhancement program.

29592 (6) (a) In addition to other monies collected from the surcharge, judges are encouraged
29593 to, and may in their discretion, impose additional reparations to be paid into the reparation fund
29594 by convicted criminals.

29595 (b) The additional discretionary reparations may not exceed the statutory maximum fine
29596 permitted by Title 76, Utah Criminal Code, for that offense.

29597 Section 624. Section **51-9-405**, which is renumbered from Section 63-63a-5 is

29598 renumbered and amended to read:

29599 ~~[63-63a-5]~~. **51-9-405. Substance Abuse Prevention Account established --**
29600 **Funding -- Uses.**

29601 (1) There is created a restricted account within the General Fund known as the
29602 Substance Abuse Prevention Account.

29603 (2) (a) The Division of Finance shall allocate to the Substance Abuse Prevention
29604 Account from the collected surcharge established in Section ~~[63-63a-1]~~ 51-9-401:

29605 (i) 2.5% for the juvenile court, but not to exceed the amount appropriated by the
29606 Legislature; and

29607 (ii) 2.5% for the State Office of Education, but not to exceed the amount appropriated
29608 by the Legislature.

29609 (b) The juvenile court shall use the allocation to pay for community service programs
29610 required by Subsection 78-3a-118(2)(m).

29611 (c) The State Office of Education shall use the allocation in public school programs for:

29612 (i) substance abuse prevention and education;

29613 (ii) substance abuse prevention training for teachers and administrators; and

29614 (iii) district and school programs to supplement, not supplant, existing local prevention
29615 efforts in cooperation with local substance abuse authorities.

29616 Section 625. Section **51-9-406**, which is renumbered from Section 63-63a-6 is
29617 renumbered and amended to read:

29618 ~~[63-63a-6]~~. **51-9-406. Victims of Domestic Violence Services Account**
29619 **established -- Funding -- Uses.**

29620 (1) There is created a restricted account in the General Fund known as the Victims of
29621 Domestic Violence Services Account.

29622 (2) (a) The Division of Finance shall allocate to the Victims of Domestic Violence
29623 Services Account from the collected surcharge established in Section ~~[63-63a-1]~~ 51-9-401:

29624 (i) 4% for the Division for Domestic Violence Services, but not to exceed the amount
29625 appropriated by the Legislature; and

29626 (ii) .5% for the Office of the Attorney General, but not to exceed the amount
29627 appropriated by the Legislature.

29628 (b) The attorney general shall use the allocation for training municipal and county
29629 attorneys in the prosecution of domestic violence offenses.

29630 Section 626. Section **51-9-407**, which is renumbered from Section 63-63a-7 is
29631 renumbered and amended to read:

29632 ~~[63-63a-7]~~. **51-9-407. Intoxicated Driver Rehabilitation Account share of**
29633 **surcharge.**

29634 The Division of Finance shall allocate 7.5% of the collected surcharge established in
29635 Section ~~[63-63a-1]~~ 51-9-401, but not to exceed the amount appropriated by the Legislature, to
29636 the Intoxicated Driver Rehabilitation Account established by Section 62A-15-503.

29637 Section 627. Section **51-9-408**, which is renumbered from Section 63-63a-8 is
29638 renumbered and amended to read:

29639 ~~[63-63a-8]~~. **51-9-408. Children's Legal Defense Account.**

29640 (1) There is created a restricted account within the General Fund known as the
29641 Children's Legal Defense Account.

29642 (2) The purpose of the Children's Legal Defense Account is to provide for programs
29643 that protect and defend the rights, safety, and quality of life of children.

29644 (3) The Legislature shall appropriate money from the account for the administrative and
29645 related costs of the following programs:

29646 (a) implementing the Mandatory Educational Course on Children's Needs for Divorcing
29647 Parents relating to the effects of divorce on children as provided in Sections 30-3-4, 30-3-7,
29648 30-3-10.3, 30-3-11.3, 30-3-15.3, and 30-3-18, and the Mediation Pilot Program - Child
29649 Custody or Parent-time as provided in Sections 30-3-15.3 and 30-3-18;

29650 (b) implementing the use of guardians ad litem as provided in Sections 30-3-5.2,
29651 78-3a-318, 78-3a-912, 78-11-6, and 78-7-9; the training of guardian ad litem and volunteers as
29652 provided in Section 78-3a-912; and termination of parental rights as provided in Sections
29653 78-3a-118, 78-3a-119, 78-3a-903, and Title 78, Chapter 3a, Part 4, Termination of Parental

29654 Rights Act. This account may not be used to supplant funding for the guardian ad litem
29655 program in the juvenile court as provided in Section 78-3a-912; and

29656 (c) implementing and administering the Expedited Parent-time Enforcement Pilot
29657 Program as provided in Section 30-3-38.

29658 (4) The following withheld fees shall be allocated only to the Children's Legal Defense
29659 Account and used only for the purposes provided in Subsections (3)(a) through (c):

29660 (a) the additional \$10 fee withheld on every marriage license issued in the state of Utah
29661 as provided in Section 17-16-21; and

29662 (b) a fee of \$4 shall be withheld from the existing civil filing fee collected on any
29663 complaint, affidavit, or petition in a civil, probate, or adoption matter in every court of record.

29664 (5) The Division of Finance shall allocate the monies described in Subsection (4) from
29665 the General Fund to the Children's Legal Defense Account.

29666 (6) Any funds in excess of \$200,000 remaining in the restricted account as of June 30 of
29667 any fiscal year shall lapse into the General Fund.

29668 Section 628. Section **51-9-409**, which is renumbered from Section 63-63a-8.5 is
29669 renumbered and amended to read:

29670 ~~[63-63a-8.5].~~ **51-9-409. Guardian Ad Litem Services Account established**
29671 **-- Funding -- Uses.**

29672 There is created in the General Fund a restricted account known as the Guardian Ad
29673 Litem Services Account, for the purpose of funding the Office of the Guardian Ad Litem
29674 Director, in accordance with the provisions of Sections 78-3a-911 and 78-3a-912. The Division
29675 of Finance shall allocate 1.75% of the collected surcharge established in Section ~~[63-63a-1]~~
29676 51-9-401 to the Guardian Ad Litem Services Account. That amount may not, however, exceed
29677 the amount appropriated by the Legislature.

29678 Section 629. Section **51-9-410**, which is renumbered from Section 63-63a-9 is
29679 renumbered and amended to read:

29680 ~~[63-63a-9].~~ **51-9-410. Statewide Warrant Operations Account -- Share of**
29681 **surcharge -- Use.**

29682 (1) There is created a restricted account within the General Fund known as the
29683 Statewide Warrant Operations Account.

29684 (2) The Division of Finance shall allocate 2.5% of the collected surcharge established
29685 under Section [~~63-63a-1~~] 51-9-401, but not to exceed the amount appropriated by the
29686 Legislature, to this account.

29687 (3) The Legislature may appropriate money from the restricted account to the
29688 Department of Public Safety to pay for statewide warrant system costs incurred under Section
29689 53-10-208.

29690 Section 630. Section **51-9-411**, which is renumbered from Section 63-63a-10 is
29691 renumbered and amended to read:

29692 **[~~63-63a-10~~]. 51-9-411. Law Enforcement Operations Account -- Share of**
29693 **surcharge -- Uses.**

29694 (1) As used in this section:

29695 (a) "Account" means the Law Enforcement Operations Account.

29696 (b) "Commission" means the Commission on Criminal and Juvenile Justice created in
29697 Section [~~63-25a-10~~] 63M-7-201.

29698 (c) "Law enforcement agency" means a state or local law enforcement agency.

29699 (d) "Other appropriate agency" means a state or local government agency, or a nonprofit
29700 organization, that works to prevent illegal drug activity and enforce laws regarding illegal drug
29701 activity and related criminal activity by:

29702 (i) programs, including education, prevention, treatment, and research programs; and

29703 (ii) enforcement of laws regarding illegal drugs.

29704 (2) There is created a restricted account within the General Fund known as the Law
29705 Enforcement Operations Account.

29706 (3) (a) The Division of Finance shall allocate the balance of the collected surcharge
29707 under Section [~~63-63a-1~~] 51-9-401 that is not allocated under [~~Title 63, Chapter 63a~~] Title 51,
29708 Chapter 9, Part 4, Crime Victim Reparation Trust, Public Safety Support Funds, Substance
29709 Abuse Prevention Account, and Services for Victims of Domestic Violence Account, to the

29710 account, to be appropriated by the Legislature.

29711 (b) Money in the account shall be appropriated to the commission for implementing law
29712 enforcement operations and programs related to reducing illegal drug activity and related
29713 criminal activity as listed in Subsection (5).

29714 (4) (a) The commission shall allocate grants of funds from the account for the purposes
29715 under Subsection (5) to state, local, or multijurisdictional law enforcement agencies and other
29716 appropriate agencies.

29717 (b) The grants shall be made by an application process established by the commission in
29718 accordance with Subsection (6).

29719 (5) (a) The first priority of the commission is to annually allocate not more than
29720 \$2,500,000, depending upon funding available from other sources, to directly fund the
29721 operational costs of state and local law enforcement agencies' drug or crime task forces,
29722 including multijurisdictional task forces.

29723 (b) The second priority of the commission is to allocate grants for specified law
29724 enforcement agency functions and other agency functions as the commission finds appropriate
29725 to more effectively reduce illegal drug activity and related criminal activity, including providing
29726 education, prevention, treatment, and research programs.

29727 (6) (a) In allocating grants and determining the amount of the grants, the commission
29728 shall consider:

29729 (i) the demonstrated ability of the agency to appropriately use the grant to implement
29730 the proposed functions and how this function or task force will add to the law enforcement
29731 agency's current efforts to reduce illegal drug activity and related criminal activity; and

29732 (ii) the agency's cooperation with other state and local agencies and task forces.

29733 (b) Agencies qualify for a grant only if they demonstrate compliance with all reporting
29734 and policy requirements applicable under this section and under [~~Title 63, Chapter 25a~~] Title
29735 63M, Chapter 7, Criminal Justice and Substance Abuse, in order to qualify as a potential grant
29736 recipient.

29737 (7) Recipient agencies may only use grant monies after approval or appropriation by the

29738 agency's governing body, and a determination that the grant monies are nonlapsing.

29739 (8) A recipient law enforcement agency may use funds granted under this section only
29740 for the purposes stated by the commission in the grant.

29741 (9) For each fiscal year, any law enforcement agency that receives a grant from the
29742 commission under this section shall prepare, and file with the commission and the state auditor,
29743 a report in a form specified by the commission. The report shall include the following regarding
29744 each grant:

29745 (a) the agency's name;

29746 (b) the amount of the grant;

29747 (c) the date of the grant;

29748 (d) how the grant has been used; and

29749 (e) a statement signed by both the agency's or political subdivision's executive officer or
29750 designee and by the agency's legal counsel, that all grant funds were used for law enforcement
29751 operations and programs approved by the commission and that relate to reducing illegal drug
29752 activity and related criminal activity, as specified in the grant.

29753 (10) The commission shall report in writing to the legislative Law Enforcement and
29754 Criminal Justice Interim Committee annually regarding the grants allocated under this section,
29755 including the amounts and uses of the grants.

29756 Section 631. Section **51-9-501**, which is renumbered from Section 63-88-101 is
29757 renumbered and amended to read:

29758 **Part 5. Navajo Trust Fund**

29759 ~~[63-88-101].~~ **51-9-501. Definitions.**

29760 As used in this [chapter] part:

29761 (1) "Administrative expenditures" means:

29762 (a) expenditures for professional services;

29763 (b) expense reimbursement for the Dineh Committee; and

29764 (c) expense reimbursement, salaries, and benefits for the trust administrator and the
29765 trust administrator's staff.

- 29766 (2) "Assessment" means taking one of the following actions to assess the health,
29767 education, and general welfare needs of Navajos:
- 29768 (a) a survey of Navajos that includes:
- 29769 (i) a random sample large enough to secure an accurate representation of their needs;
29770 and
- 29771 (ii) a response rate large enough to provide an accurate representation of those needs;
- 29772 (b) at least three public hearings held to survey and solicit Navajo needs that are
29773 advertised for two weeks before the hearing by:
- 29774 (i) announcements by the:
- 29775 (A) Utah Navajo Chapters, if allowed by the chapter; and
29776 (B) Blue Mountain Dine';
- 29777 (ii) notice posted in the chapter buildings and other public locations, if allowed by the
29778 chapter;
- 29779 (iii) notice of the meeting announced on the radio or television; and
29780 (iv) notice of the meeting published at least once per week for two consecutive weeks
29781 in any newspapers of general circulation within the Navajo community; or
- 29782 (c) a physical inventory:
- 29783 (i) conducted by the Office of Trust Administrator;
- 29784 (ii) coordinated with:
- 29785 (A) each Utah Navajo Chapter;
- 29786 (B) the Blue Mountain Dine'; and
29787 (C) other sources; and
- 29788 (iii) conducted to determine needs including:
- 29789 (A) the number and capacity of public facilities;
- 29790 (B) the extent of graveled and paved:
- 29791 (I) roads; or
29792 (II) air strips;
- 29793 (C) the inventory of water resources;

- 29794 (D) the extent of residential electrical power distribution; and
- 29795 (E) the number and condition of housing units.
- 29796 (3) "Assessment analysis results" means the analysis:
- 29797 (a) of the results of the assessment required by Section [~~63-88-105~~] 51-9-505; and
- 29798 (b) that is developed by the Dineh Committee and the trust administrator in accordance
- 29799 with Section [~~63-88-105~~] 51-9-505.
- 29800 (4) "Blue Mountain Dine" means the off-reservation Navajo community organization
- 29801 known as the Blue Mountain Dine'.
- 29802 (5) "Board of trustees" or "board" means the board of trustees created in Section
- 29803 [~~63-88-103~~] 51-9-503.
- 29804 (6) "Business enterprise" means a sole proprietorship, partnership, corporation, or other
- 29805 private entity organized to provide goods or services for a profit.
- 29806 (7) "Capital" means an investment by the owner of a business enterprise:
- 29807 (a) in:
- 29808 (i) cash;
- 29809 (ii) equipment;
- 29810 (iii) land; or
- 29811 (iv) other assets similar to that described in Subsections (7)(a)(i) through (iii); and
- 29812 (b) that is pledged to be used in the operation of the business enterprise.
- 29813 (8) "Dineh Committee" means the Dineh Committee created in Section [~~63-88-107~~]
- 29814 51-9-507.
- 29815 (9) "Income" means all revenues from investments made by the state treasurer of the
- 29816 trust fund principal.
- 29817 (10) "Navajos" means San Juan County, Utah Navajos.
- 29818 (11) "Office of Trust Administrator" means the office created in Section [~~63-88-104~~]
- 29819 51-9-504.
- 29820 (12) "Principal" means:
- 29821 (a) the balance of the trust fund as of February 26, 1992; and

29822 (b) all revenue to the trust fund from whatever source except income as defined in
29823 Subsection (9).

29824 (13) "Service provider" means any of the following that provides goods or services to
29825 Navajos:

- 29826 (a) a business enterprise;
- 29827 (b) a private nonprofit organization; or
- 29828 (c) a government entity.

29829 (14) "Trust administrator" means the professional trust administrator appointed as
29830 provided in this ~~[chapter]~~ part.

29831 (15) "Trust fund" or "fund" means the Navajo Trust Fund created by Section
29832 ~~[63-88-102]~~ 51-9-502.

29833 (16) "Utah Navajo Chapter" means the following chapters of the Navajo Nation:

- 29834 (a) Aneth Chapter;
- 29835 (b) Mexican Water Chapter;
- 29836 (c) Navajo Mountain Chapter;
- 29837 (d) Oljato Chapter;
- 29838 (e) Dennehotso Chapter;
- 29839 (f) Red Mesa Chapter; and
- 29840 (g) Teec Nos Pos Chapter.

29841 Section 632. Section **51-9-502**, which is renumbered from Section 63-88-102 is
29842 renumbered and amended to read:

29843 ~~[63-88-102]~~. **51-9-502. Trust Fund -- Creation -- Oversight.**

29844 (1) There is created a private-purpose trust fund entitled the "Navajo Trust Fund."

29845 (2) The fund consists of:

29846 (a) revenues received by the state that represent the 37-1/2% of the net oil royalties
29847 from the Aneth Extension of the Navajo Indian Reservation required by P.L. 72-403, 47 Stat.
29848 1418, to be paid to the state;

29849 (b) monies received by the trust administrator or Dineh Committee from any contracts

29850 executed by:

29851 (i) the trust administrator;

29852 (ii) the board; or

29853 (iii) the Dineh Committee;

29854 (c) appropriations made to the fund by the Legislature, if any;

29855 (d) income as defined in Subsection [~~63-88-101~~] 51-9-501(9); and

29856 (e) other revenues received from other sources.

29857 (3) The Division of Finance shall account for the receipt and expenditures of fund

29858 monies.

29859 (4) (a) The state treasurer shall invest fund monies by following the procedures and
29860 requirements of Title 51, Chapter 7, State Money Management Act.

29861 (b) (i) The fund shall earn interest.

29862 (ii) The state treasurer shall deposit all interest or other revenue earned from investment
29863 of the fund back into the fund.

29864 (5) The state auditor shall:

29865 (a) conduct an annual audit of the fund's finances, internal controls, and compliance
29866 with statutes, rules, policies, and regulations according to the procedures and requirements of
29867 Title 67, Chapter 3, Auditor; and

29868 (b) deliver a copy of that audit report to the:

29869 (i) board;

29870 (ii) trust administrator;

29871 (iii) Dineh Committee;

29872 (iv) Office of Legislative Research and General Counsel for presentation to the Native
29873 American Legislative Liaison Committee, created in Section 36-22-1;

29874 (v) governor's office;

29875 (vi) Division of Indian Affairs;

29876 (vii) U.S. Bureau of Indian Affairs;

29877 (viii) Navajo Nation; and

29878 (ix) U.S. Secretary of the Interior.

29879 Section 633. Section **51-9-503**, which is renumbered from Section 63-88-103 is
29880 renumbered and amended to read:

29881 ~~[63-88-103]~~. **51-9-503. Board of Trustees of the Utah Navajo Trust Fund.**

29882 (1) (a) There is created a Board of Trustees of the Utah Navajo Trust Fund composed
29883 of three members:

29884 (i) the State Treasurer;

29885 (ii) the Director of the Division of Finance; and

29886 (iii) a state officer or employee appointed by the governor, with the consent of the
29887 Senate, to a four-year term.

29888 (b) The State Treasurer is chair of the board.

29889 (c) Three members of the board are a quorum.

29890 (d) (i) State government officer and employee members who do not receive salary, per
29891 diem, or expenses from their agency for their service may receive per diem and expenses
29892 incurred in the performance of their official duties from the board at the rates established by the
29893 Division of Finance under Sections 63A-3-106 and 63A-3-107.

29894 (ii) State government officer and employee members may decline to receive per diem
29895 and expenses for their service.

29896 (2) (a) The board shall either:

29897 (i) contract with a person to act as trust administrator by following the procedures and
29898 requirements of ~~[Chapter 56,]~~ Title 63G, Chapter 6, Utah Procurement Code and, where not
29899 provided for by this ~~[chapter]~~ part, define the trust administrator's duties and responsibilities; or

29900 (ii) if unable to find a qualified person under Subsection (2)(a)(i) to act as trust
29901 administrator for a reasonable cost, hire a qualified person to act as trust administrator and,
29902 where not provided for by this ~~[chapter]~~ part, define the trust administrator's duties and
29903 responsibilities.

29904 (b) If the board hires a trust administrator under authority of Subsection (2)(a)(ii), the
29905 board may hire, or authorize the trust administrator to hire, other persons necessary to assist the

29906 trust administrator and the board to perform the duties required by this [~~chapter~~] part.

29907 (3) The board shall:

29908 (a) on behalf of the state, act as trustee of the trust fund and exercise the state's

29909 fiduciary responsibilities;

29910 (b) meet at least once every other month;

29911 (c) review and approve all policies, projections, rules, criteria, procedures, forms,

29912 standards, and performance goals established by the trust administrator;

29913 (d) review and approve the trust fund budget prepared by the trust administrator;

29914 (e) review all progress reports from programs financed by the trust fund;

29915 (f) review financial records of the trust fund, including trust fund receipts, expenditures,

29916 and investments; and

29917 (g) do any other things necessary to perform the state of Utah's fiduciary obligations

29918 under the trust fund.

29919 (4) The attorney general shall:

29920 (a) act as legal counsel and provide legal representation to the Board of Trustees; and

29921 (b) attend, or direct an attorney from the attorney general's office to attend, each

29922 meeting of the Board of Trustees.

29923 Section 634. Section **51-9-504**, which is renumbered from Section 63-88-104 is

29924 renumbered and amended to read:

29925 ~~[63-88-104]~~. **51-9-504. Office of Trust Administrator -- Creation.**

29926 (1) If the board appoints a trust administrator under Subsection [~~63-88-103~~] 51-9-503

29927 (2)(a)(ii), there is created an Office of Trust Administrator in the Department of Administrative

29928 Services.

29929 (2) (a) The trust administrator appointed as provided in [~~Section 63-88-103~~] Subsection

29930 51-9-503(2)(a)(ii) shall administer the office.

29931 (b) The Department of Administrative Services shall provide physical space and

29932 logistical and administrative support to the office but may not direct the activities of the office

29933 or the trust administrator.

29934 (c) The Board of Trustees and the Office of Trust Administrator shall assume all of the
29935 functions, powers, duties, rights, and responsibilities of:

- 29936 (i) the Commission of State Indian Affairs;
- 29937 (ii) the Board of Indian Affairs;
- 29938 (iii) the Dineh Committee, except as provided in this [~~chapter~~] part; and
- 29939 (iv) the Division of Indian Affairs, on all matters connected with the trust fund or its
29940 proceeds.

29941 Section 635. Section **51-9-505**, which is renumbered from Section 63-88-105 is
29942 renumbered and amended to read:

29943 ~~[63-88-105]~~. **51-9-505. Trust administrator -- Duties.**

29944 (1) Under the direction of the board, the trust administrator shall:

29945 (a) review the documents and decisions highlighting the history of the trust fund,
29946 including:

29947 (i) the Nelson report, prepared as part of the Bigman v. Utah Navajo Development
29948 Council Inc. C77-0031;

29949 (ii) the November 1991 performance audit of the Utah Navajo Trust Fund by the
29950 legislative auditor general;

29951 (iii) Sakezzie v. Utah Indian Affairs Commission, 198 F. Supp. 218 (1961);

29952 (iv) Sakezzie v. Utah Indian Affairs Commission, 215 F. Supp. 12 (1963); and

29953 (v) the September 8, 1977, consent decree, the stipulation dated November 29, 1984,
29954 modifying the consent decree, and the court's memorandum opinion dated September 25, 1978,
29955 in Bigman v. Utah Navajo Development Council, Inc., C77-0031;

29956 (b) review all potential sources of trust fund revenues;

29957 (c) prepare annual projections of monies that will be available for Navajo programs;

29958 (d) identify all property owned by the trust fund;

29959 (e) establish and maintain a record system to retain records relating to the trust fund's
29960 property;

29961 (f) review all existing and proposed programs financed by the trust fund;

29962 (g) evaluate whether or not the programs described in Subsection (1)(f) are the most
29963 practical and cost-efficient means to provide the desired benefit to Navajos;

29964 (h) consult regularly with the administrators of all programs financed by the trust fund
29965 to obtain progress reports on all programs;

29966 (i) attend all meetings of:

29967 (i) the Dineh Committee; and

29968 (ii) the board of trustees;

29969 (j) establish written policies identifying expenses payable from the fund for Dineh
29970 Committee members;

29971 (k) certify that all expenditures from the trust fund:

29972 (i) comply with the state's fiduciary responsibilities as trustee of the fund; and

29973 (ii) are consistent with this section;

29974 (l) make an annual report:

29975 (i) to the:

29976 (A) board;

29977 (B) the governor; and

29978 (C) the Native American Legislative Liaison Committee, created in Section 36-22-1;

29979 and

29980 (ii) that:

29981 (A) identifies the source and amount of all revenue received by the fund;

29982 (B) identifies the recipient, purpose, and amount of all expenditures from the fund;

29983 (C) identifies specifically each of the fund's investments and the actual return and the
29984 rate of return from each investment; and

29985 (D) recommends any necessary statutory changes to:

29986 (I) improve administration of the fund; or

29987 (II) protect the state from liability as trustee;

29988 (m) establish, in conjunction with the state treasurer, the state auditor, and the Division
29989 of Finance, appropriate accounting practices for all trust fund receipts, expenditures, and

29990 investments according to generally accepted accounting principles;

29991 (n) provide summary records of trust fund receipts, expenditures, and investments to

29992 the board and to the Dineh Committee at each of their meetings;

29993 (o) pay administrative expenses from the fund;

29994 (p) report monthly to the board about:

29995 (i) the trust administrator's activities; and

29996 (ii) the status of the trust fund; and

29997 (q) call additional meetings of the Dineh Committee when necessary.

29998 (2) In conjunction with the Dineh Committee and under the direction of the board, the

29999 trust administrator shall:

30000 (a) subject to Subsection (4), conduct an assessment at least every two years of the

30001 needs of Navajos;

30002 (b) before the beginning of each fiscal year, based on the assessment required by

30003 Subsection (2)(a), develop assessment analysis results that allow the establishment of a list of

30004 the needs of Navajos for that year to be used for the annual budget;

30005 (c) before the beginning of each fiscal year, develop and approve an annual budget for

30006 the trust fund;

30007 (d) develop an ethics and conflict of interest policy that emphasizes the need to avoid

30008 even the appearance of conflict of interest or impropriety that is to apply to:

30009 (i) the trust administrator;

30010 (ii) the trust administrator's employees; and

30011 (iii) the Dineh Committee;

30012 (e) require the trust administrator, each of the trust administrator's employees, and each

30013 Dineh Committee member to sign and keep on file written documentation that acknowledges:

30014 (i) their receipt of the ethics and conflict of interest policy described in Subsection

30015 (2)(d); and

30016 (ii) their willingness to abide by the provisions of the ethics and conflict of interest

30017 policy described in Subsection (2)(d); and

30018 (f) make expenditures from the fund "for the health, education, and general welfare of
30019 the Navajo Indians, residing in San Juan County" as required by:

30020 (i) P.L. 72-403, 47 Stat. 1418 (1933);

30021 (ii) P.L. 90-306, 82 Stat. 121 (1968); and

30022 (iii) this ~~chapter~~ part.

30023 (3) The trust administrator, under direction of the board, may:

30024 (a) contract with public and private entities; and

30025 (b) unless prohibited by law or the requirements of this ~~chapter~~ part, acquire and hold
30026 monies and other property received in the administration of the trust fund.

30027 (4) (a) Notwithstanding Subsection ~~[63-88-101]~~ 51-9-501(2), the trust administrator
30028 shall ensure that at least every six years the assessment includes:

30029 (i) a survey as described in Subsection ~~[63-88-101]~~ 51-9-501(2)(a); or

30030 (ii) public hearings as described in Subsection ~~[63-88-101]~~ 51-9-501(2)(b).

30031 (b) Subsection (2)(a) does not prohibit the trust administrator from conducting a
30032 physical inventory as defined in Subsection ~~[63-88-101]~~ 51-9-501(2)(c) during the same year a
30033 survey or public hearing is required.

30034 Section 636. Section **51-9-506**, which is renumbered from Section 63-88-106 is
30035 renumbered and amended to read:

30036 ~~[63-88-106]~~. **51-9-506. Expenditures from the trust fund.**

30037 (1) (a) Under the direction of the board of trustees, the trust administrator may make
30038 expenditures to invest in business enterprises:

30039 (i) as authorized and limited by this section; and

30040 (ii) giving consideration to the advice of the Dineh Committee.

30041 (b) When making expenditures to invest in a business enterprise the trust administrator:

30042 (i) may expend trust monies only on a business enterprise located in San Juan County;

30043 (ii) may expend trust fund monies only:

30044 (A) to invest in a joint business enterprise; and

30045 (B) when the other party's capital investment is larger than the trust fund's expenditure;

30046 and

30047 (iii) may not continue to make expenditures to or in support of a business enterprise if
30048 the business enterprise fails to show a profit within three years.

30049 (2) (a) Before making any expenditures to a business enterprise or service provider
30050 from the trust fund, the trust administrator shall:

30051 (i) comply with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;

30052 and

30053 (ii) review and approve the business enterprise's or service provider's entire budget.

30054 (b) The trust administrator may require that a business enterprise or service provider
30055 modify its budget or meet other conditions precedent established by the trust administrator
30056 before the business enterprise or service provider may receive expenditures from the trust fund.

30057 (3) The trust administrator shall make all expenditures from the trust fund that are not
30058 administrative expenditures by:

30059 (a) preparing a written document that:

30060 (i) defines specifically how the expenditure from the trust fund may be used;

30061 (ii) establishes any conditions precedent to its use; and

30062 (iii) requires the recipient of trust fund monies to provide the trust administrator with
30063 progress reports detailing how program funds have been expended; and

30064 (b) obtaining the signature of the recipient on that document before releasing any
30065 monies from the trust fund.

30066 (4) The trust administrator shall:

30067 (a) make rules in accordance with Subsection (6) that:

30068 (i) establish policies and criteria for expenditure of the trust fund monies that take into
30069 account the assessment analysis results; and

30070 (ii) establish performance evaluation criteria with which to evaluate the success of
30071 expenditures from the trust fund after they are made;

30072 (b) develop procedures, forms, and standards for persons seeking distribution of trust
30073 fund monies that implement the policies and criteria for expenditures established by rule;

30074 (c) evaluate all requests for expenditures of trust fund monies against:
30075 (i) the policies and criteria established by rule; and
30076 (ii) the requestor's success in meeting performance evaluation criteria and goals in any
30077 prior receipt of trust fund monies;
30078 (d) develop performance goals for each trust fund expenditure that implement the
30079 performance evaluation criteria established in rule; and
30080 (e) monitor and evaluate each trust fund expenditure based upon the performance goals
30081 and performance evaluation criteria created under this Subsection (4).
30082 (5) The trust administrator may expend trust monies for per diem and expenses incurred
30083 by the Dineh Committee in performance of their official duties.
30084 (6) The trust administrator shall make a rule described in Subsection (4)(a):
30085 (a) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
30086 Administrative Rulemaking Act;
30087 (b) with the input and recommendation of the Dineh Committee; and
30088 (c) with the approval of the board of trustees.
30089 Section 637. Section **51-9-507**, which is renumbered from Section 63-88-107 is
30090 renumbered and amended to read:
30091 **[63-88-107]. 51-9-507. Utah Dineh Committee.**
30092 (1) There is created the Dineh Committee.
30093 (2) (a) The governor, with the consent of the Senate, shall appoint nine members to the
30094 committee.
30095 (b) In making an appointment under Subsection (2)(a), the governor shall ensure that:
30096 (i) each member of the committee is an individual:
30097 (A) who is an enrolled member of the Navajo Nation; and
30098 (B) whose name and tribal number are contained in the trust fund's population database;
30099 and
30100 (ii) the committee includes:
30101 (A) two registered members of the Aneth Chapter of the Navajo Nation who reside in

- 30102 San Juan County, Utah;
- 30103 (B) one registered member of the Blue Mountain Dine' who resides in San Juan County,
30104 Utah;
- 30105 (C) one registered member of the Mexican Water Chapter of the Navajo Nation who
30106 resides in San Juan County, Utah;
- 30107 (D) one registered member of the Navajo Mountain Chapter of the Navajo Nation who
30108 resides in San Juan County, Utah;
- 30109 (E) subject to Subsection (11), two members who reside in San Juan County, Utah:
- 30110 (I) one of which shall be a registered member of the Oljato Chapter of the Navajo
30111 Nation; and
- 30112 (II) one of which shall be a registered member of either the Oljato Chapter or the
30113 Dennehotso Chapter of the Navajo Nation;
- 30114 (F) one registered member of the Red Mesa Chapter of the Navajo Nation who resides
30115 in San Juan County, Utah; and
- 30116 (G) one registered member of the Teec Nos Pos Chapter of the Navajo Nation who
30117 resides in San Juan County, Utah.
- 30118 (3) (a) (i) Each of the Utah Navajo Chapters, except the Aneth, Oljato, and Dennehotso
30119 chapters, shall submit to the governor the names of three nominees to the Dineh Committee
30120 chosen by the chapter.
- 30121 (ii) The governor shall select one of the three persons submitted under Subsection
30122 (3)(a)(i) as that chapter's representative on the Dineh Committee.
- 30123 (b) (i) The Blue Mountain Dine' shall submit to the governor the names of three
30124 nominees to the Dineh Committee.
- 30125 (ii) The governor shall select one of the three persons submitted under Subsection
30126 (3)(b)(i) as the Blue Mountain Dine' representative on the Dineh Committee.
- 30127 (c) (i) The Aneth Chapter shall submit to the governor the names of six nominees to the
30128 Dineh Committee chosen by the chapter.
- 30129 (ii) The governor shall select two of the six persons submitted under Subsection

30130 (3)(c)(i) to be the Aneth Chapter's representatives on the Dineh Committee.

30131 (d) (i) The Oljato Chapter shall submit to the governor the names of six nominees to the
30132 Dineh Committee chosen by the chapter.

30133 (ii) One of the six names submitted under Subsection (3)(d)(i) may be a registered
30134 member of the Dennehotso Chapter.

30135 (iii) The governor shall select two of the six persons submitted under Subsection
30136 (3)(d)(i) to be the representatives on the Dineh Committee of the Oljato and Dennehotso
30137 chapters.

30138 (4) The governor may not appoint any person who is currently, or who, within the last
30139 12 months, has been an officer, director, employee, or contractor of any business enterprise or
30140 service provider that solicits, accepts, or receives a benefit from an expenditure of:

30141 (a) the Division of Indian Affairs; or

30142 (b) the trust fund established in this ~~chapter~~ part.

30143 (5) (a) Except as provided in Subsection (5)(b) and other than the amount authorized
30144 by this section for Dineh Committee member expenses, a person appointed to the Dineh
30145 Committee may not solicit, accept, or receive any benefit from an expenditure of:

30146 (i) the Division of Indian Affairs;

30147 (ii) the trust fund; or

30148 (iii) the Division of Indian Affairs or trust fund as an officer, director, employee, or
30149 contractor of any business enterprise or service provider that solicits, accepts, or receives a
30150 benefit from the expenditure of:

30151 (A) the Division of Indian Affairs; or

30152 (B) the trust fund.

30153 (b) A member of the Dineh Committee may receive a benefit from an expenditure of the
30154 trust fund if:

30155 (i) when the benefit is discussed by the Dineh Committee:

30156 (A) the member discloses that the member may receive the benefit;

30157 (B) the member physically leaves the room in which the Dineh Committee is discussing

30158 the benefit; and

30159 (C) the Dineh Committee approves the member receiving the benefit by a unanimous

30160 vote of members present at the meeting discussing the benefit;

30161 (ii) a Utah Navajo Chapter requests that the benefit be received by the member;

30162 (iii) the member is in compliance with the ethics and conflict of interest policy required

30163 under Subsection [~~63-88-105~~] 51-9-505(2)(d);

30164 (iv) (A) the expenditure from the trust fund is made in accordance with this [~~chapter~~]

30165 part; and

30166 (B) the benefit is no greater than the benefit available to members of the Navajo Nation

30167 whose name and tribal number are contained in the trust fund's population database; and

30168 (v) the member is not receiving the benefit as an officer, director, employee, or

30169 contractor of any business enterprise or service provider.

30170 (c) A business enterprise or service provider that has a member as an officer, director,

30171 employee, or contractor may not receive a benefit under Subsection (5)(b).

30172 (6) (a) (i) Except as required by Subsection (6)(a)(ii), as terms of current committee

30173 members expire, the governor shall appoint each new member or reappointed member to a

30174 four-year term.

30175 (ii) Notwithstanding the requirements of Subsection (6)(a)(i), the governor shall, at the

30176 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

30177 committee members are staggered so that approximately half of the committee is appointed

30178 every two years.

30179 (b) Except as provided in Subsection (6)(c), committee members shall serve until their

30180 successors are appointed and qualified.

30181 (c) (i) If a committee member is absent from three consecutive committee meetings, or

30182 if the committee member has violated the ethical or conflict of interest policies established by

30183 statute or by the committee:

30184 (A) that member's appointment is terminated;

30185 (B) the position is vacant; and

30186 (C) the governor shall appoint a replacement.
30187 (ii) When a vacancy occurs in the membership for any reason, the replacement shall be
30188 appointed for the unexpired term according to the procedures of this section.
30189 (7) (a) The committee shall select a chair and a vice chair from its membership each two
30190 years subsequent to the appointment of new members.
30191 (b) Five members of the committee are a quorum for the transaction of business.
30192 (c) The committee shall:
30193 (i) comply with the procedures and requirements of Title 52, Chapter 4, Open and
30194 Public Meetings Act;
30195 (ii) ensure that all of its meetings are held at or near:
30196 (A) a chapter house or meeting hall of a Utah Navajo Chapter; or
30197 (B) other places in Utah that the committee considers practical and appropriate; and
30198 (iii) ensure that all of its meetings are public hearings at which any resident of San Juan
30199 County may appear and speak.
30200 (8) (a) A member shall receive no compensation or benefits for the member's services,
30201 but may receive per diem and expenses incurred in the performance of the member's official
30202 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
30203 63A-3-107 from the trust fund.
30204 (b) A member may decline to receive per diem and expenses for their service.
30205 (9) The Office of Trust Administrator is staff to the committee.
30206 (10) The committee shall advise the trust administrator about the expenditure of trust
30207 fund monies.
30208 (11) If both members appointed under Subsection (2)(b)(ii)(E) are registered members
30209 of the Oljato Chapter, the two members shall attend Dennehotso Chapter meetings as
30210 practicable.
30211 Section 638. Section **51-9-601**, which is renumbered from Section 63-12-1 is
30212 renumbered and amended to read:

Part 6. Forest Reserve Fund

30214 ~~[63-12-1].~~ **51-9-601. Act of Congress accepted.**

30215 The state of Utah renews its acceptance of the apportionment of moneys received from
30216 forest reserves made by Act of Congress approved June 30, 1906 and all acts amendatory
30217 thereof and supplementary thereto, and renews its acceptance of said Act of Congress upon the
30218 terms and conditions set forth in said act; the said apportionment being for the benefit of the
30219 public schools and public roads of the counties wherein may be situated the respective forest
30220 reserves.

30221 Section 639. Section **51-9-602**, which is renumbered from Section 63-12-2 is
30222 renumbered and amended to read:

30223 ~~[63-12-2].~~ **51-9-602. Special fund created.**

30224 The moneys which shall come into the hands of the state treasurer from the United
30225 States pursuant to said act and all acts amendatory thereof and supplementary thereto shall
30226 constitute a fund to be known as the "County Road and School Fund from Forest Reserves."

30227 Section 640. Section **51-9-603**, which is renumbered from Section 63-12-4 is
30228 renumbered and amended to read:

30229 ~~[63-12-4].~~ **51-9-603. Apportionment by the county legislative body.**

30230 The county legislative body of each county participating therein shall immediately upon
30231 receipt of the apportionment proceed to apportion the same in the manner following, to wit:

30232 One-half to the several school districts of the county, according to the number of school
30233 children residing in each of said districts over six and under ~~[eighteen]~~ 18 years of age, and
30234 ~~[one-half]~~ 1/2 for the improvement of the public roads in said county.

30235 Section 641. Section **52-4-203** is amended to read:

30236 **52-4-203. Minutes of open meetings -- Public records -- Recording of meetings.**

30237 (1) Except as provided under Subsection (8), written minutes and a recording shall be
30238 kept of all open meetings.

30239 (2) Written minutes of an open meeting shall include:

30240 (a) the date, time, and place of the meeting;

30241 (b) the names of members present and absent;

- 30242 (c) the substance of all matters proposed, discussed, or decided by the public body
30243 which may include a summary of comments made by members of the public body;
- 30244 (d) a record, by individual member, of each vote taken by the public body;
- 30245 (e) the name of each person who is not a member of the public body, and upon
30246 recognition by the presiding member of the public body, provided testimony or comments to the
30247 public body;
- 30248 (f) the substance, in brief, of the testimony or comments provided by the public under
30249 Subsection (2)(e); and
- 30250 (g) any other information that any member requests be entered in the minutes or
30251 recording.
- 30252 (3) A recording of an open meeting shall:
- 30253 (a) be a complete and unedited record of all open portions of the meeting from the
30254 commencement of the meeting through adjournment of the meeting; and
- 30255 (b) be properly labeled or identified with the date, time, and place of the meeting.
- 30256 (4) (a) The minutes and recordings of an open meeting are public records and shall be
30257 available within a reasonable time after the meeting.
- 30258 (b) An open meeting record kept only by a recording must be converted to written
30259 minutes within a reasonable time upon request.
- 30260 (5) All or any part of an open meeting may be independently recorded by any person in
30261 attendance if the recording does not interfere with the conduct of the meeting.
- 30262 (6) Minutes or recordings of an open meeting that are required to be retained
30263 permanently shall be maintained in or converted to a format that meets long-term records
30264 storage requirements.
- 30265 (7) Written minutes and recordings of open meetings are public records under [~~Title 63;~~
30266 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act, but
30267 written minutes shall be the official record of action taken at the meeting.
- 30268 (8) Either written minutes or a recording shall be kept of:
- 30269 (a) an open meeting that is a site visit or a traveling tour, if no vote or action is taken by

30270 the public body; and

30271 (b) an open meeting of a local district under Title 17B, Limited Purpose Local
30272 Government Entities - Local Districts, or special service district under Title 17A, Chapter 2,
30273 Part 13, Utah Special Service District Act, if the district's annual budgeted expenditures for all
30274 funds, excluding capital expenditures and debt service, are \$50,000 or less.

30275 Section 642. Section **52-4-206** is amended to read:

30276 **52-4-206. Record of closed meetings.**

30277 (1) Except as provided under Subsection (6), if a public body closes a meeting under
30278 Subsection 52-4-205(1), the public body:

30279 (a) shall make a recording of the closed portion of the meeting; and

30280 (b) may keep detailed written minutes that disclose the content of the closed portion of
30281 the meeting.

30282 (2) A recording of a closed meeting shall be complete and unedited from the
30283 commencement of the closed meeting through adjournment of the closed meeting.

30284 (3) The recording and any minutes of a closed meeting shall include:

30285 (a) the date, time, and place of the meeting;

30286 (b) the names of members present and absent; and

30287 (c) the names of all others present except where the disclosure would infringe on the
30288 confidentiality necessary to fulfill the original purpose of closing the meeting.

30289 (4) Minutes or recordings of a closed meeting that are required to be retained
30290 permanently shall be maintained in or converted to a format that meets long-term records
30291 storage requirements.

30292 (5) Both a recording and written minutes of closed meetings are protected records
30293 under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
30294 Management Act, except that the records may be disclosed under a court order only as provided
30295 under Section 52-4-304.

30296 (6) If a public body closes a meeting exclusively for the purposes described under
30297 Subsection 52-4-205(1)(a) or Subsection 52-4-205(1)(f):

30298 (a) the person presiding shall sign a sworn statement affirming that the sole purpose for
30299 closing the meeting was to discuss the purposes described under Subsection 52-4-205(1)(a) or
30300 Subsection 52-4-205(1)(f); and

30301 (b) the provisions of Subsection (1) of this section do not apply.

30302 Section 643. Section **52-4-304** is amended to read:

30303 **52-4-304. Action challenging closed meeting.**

30304 (1) Notwithstanding the procedure established under Subsection [~~63-2-202~~]
30305 63G-2-202(7), in any action brought under the authority of this chapter to challenge the legality
30306 of a closed meeting held by a public body, the court shall:

30307 (a) review the recording or written minutes of the closed meeting in camera; and

30308 (b) decide the legality of the closed meeting.

30309 (2) (a) If the judge determines that the public body did not violate Section 52-4-204,
30310 52-4-205, or 52-4-206 regarding closed meetings, the judge shall dismiss the case without
30311 disclosing or revealing any information from the recording or minutes of the closed meeting.

30312 (b) If the judge determines that the public body violated Section 52-4-204, 52-4-205, or
30313 52-4-206 regarding closed meetings, the judge shall publicly disclose or reveal from the
30314 recording or minutes of the closed meeting all information about the portion of the meeting that
30315 was illegally closed.

30316 Section 644. Section **52-6-101** is enacted to read:

30317 **CHAPTER 6. REIMBURSEMENT OF LEGAL FEES AND**
30318 **COSTS TO OFFICERS AND EMPLOYEES ACT**

30319 **Part 1. General Provisions**

30320 **52-6-101. Title.**

30321 This chapter is known as the "Reimbursement of Legal Fees and Costs to Officers and
30322 Employees Act."

30323 Section 645. Section **52-6-102**, which is renumbered from Section 63-30a-1 is
30324 renumbered and amended to read:

30325 [~~63-30a-1~~]. **52-6-102. Definitions.**

30326 As used in this act:

30327 (1) "Officer or employee" means any individual who at the time of an event giving rise
30328 to a claim under this act is or was elected or appointed to or employed by a public entity,
30329 whether or not compensated, but does not include an independent contractor.

30330 (2) "Public entity" means the state or any political subdivision of it or any office,
30331 department, division, board, agency, commission, council, authority, institution, hospital,
30332 school, college, university, or other instrumentality of the state or any such political subdivision.

30333 Section 646. Section **52-6-201**, which is renumbered from Section 63-30a-2 is
30334 renumbered and amended to read:

30335 **Part 2. Attorney Fees and Court Costs**

30336 **~~[63-30a-2].~~ 52-6-201. Indictment or information against officer or employee --**
30337 **Reimbursement of attorney fees and court costs incurred in defense.**

30338 (1) If a state grand jury indicts, or if an information is filed against, an officer or
30339 employee, in connection with or arising out of any act or omission of that officer or employee
30340 during the performance of [his] the officer or employee's duties, within the scope of [his] the
30341 officer or employee's employment, or under color of [his] the officer or employee's authority,
30342 and that indictment or information is quashed or dismissed or results in a judgment of acquittal,
30343 unless the indictment or information is quashed or dismissed upon application or motion of the
30344 prosecuting attorney, that officer or employee shall be entitled to recover reasonable ~~[attorneys']~~
30345 attorney fees and court costs necessarily incurred in the defense of that indictment or
30346 information from the public entity, unless the officer or employee is found guilty of substantially
30347 the same misconduct that formed the basis for the indictment or information.

30348 (2) If the officer or employee is acquitted of some of the charges or counts, or portions
30349 of the indictment or information are quashed or dismissed, that officer or employee shall be
30350 entitled to recover from the public entity reasonable ~~[attorneys']~~ attorney fees and court costs
30351 necessarily incurred in the defense of those charges, counts, or portions of the indictment or
30352 information that were quashed, dismissed, or resulted in a judgment of acquittal, unless the
30353 misconduct covered by those charges, counts, or portions of the indictment or information that

30354 were quashed, dismissed, or resulted in a judgment of acquittal is substantially the same
30355 misconduct that formed the basis for charges, counts, or portions of the indictment or
30356 information of which the officer or employee was found guilty.

30357 (3) An officer or employee who recovers under this section shall also be entitled to
30358 recover reasonable [~~attorneys'~~] attorney fees and costs necessarily incurred by the officer or
30359 employee in recovering the [~~attorneys'~~] attorney fees and costs allowed under this section,
30360 including [~~attorneys'~~] attorney fees and costs incurred on appeal.

30361 (4) Notwithstanding any other provision of this section, an officer or employee may not
30362 recover for the costs incurred in defense of any charge, count, or portion of the indictment or
30363 information that is quashed or dismissed upon application or motion of the prosecuting
30364 attorney.

30365 Section 647. Section **52-6-202**, which is renumbered from Section 63-30a-3 is
30366 renumbered and amended to read:

30367 **[63-30a-3]. 52-6-202. Payment of reimbursement of attorney fees and court**
30368 **costs.**

30369 (1) A request for reimbursement of [~~attorneys'~~] attorney fees and court costs shall be
30370 filed in the manner provided in Sections [~~63-30d-902~~] 63G-7-902 and [~~63-30d-903~~]
30371 63G-7-903.

30372 (2) (a) Any reimbursement of [~~attorneys'~~] attorney fees and court costs filed on behalf
30373 of an officer or employee of the state shall be paid from funds appropriated to the department or
30374 division that employed the officer or employee at the time of the act or omission that gave rise
30375 to the indictment or information.

30376 (b) If those funds are unavailable, the reimbursement shall be paid from the General
30377 Fund upon approval by the Board of Examiners and legislative appropriation.

30378 Section 648. Section **52-7-101** is enacted to read:

30379 **CHAPTER 7. PUBLIC OFFICERS' ATTORNEY FEES ACT**

30380 **Part 1. General Provisions**

30381 **52-7-101. Title.**

30382 This chapter is known as the "Public Officers' Attorney Fees Act."

30383 Section 649. Section **52-7-102**, which is renumbered from Section 63-30c-1 is
30384 renumbered and amended to read:

30385 ~~[63-30c-1]~~. **52-7-102. "Public officer" defined.**

30386 As used in this chapter:

30387 "Public officer" means a member of the Utah State Senate, a member of the Utah State
30388 House of Representatives, the governor, lieutenant governor, state auditor, state treasurer,
30389 attorney general, or any justice or judge of a court of record.

30390 Section 650. Section **52-7-201**, which is renumbered from Section 63-30c-2 is
30391 renumbered and amended to read:

30392 **Part 2. Claims for Attorney Fees**

30393 ~~[63-30c-2]~~. **52-7-201. Reimbursement of attorney fees and court costs in Article**
30394 **V lawsuits.**

30395 If any public officer is named as a defendant in a civil suit that alleges a violation of
30396 Article V of the Utah Constitution, and that lawsuit is dismissed or results in a judgment in
30397 favor of the defendant, the public officer may, by complying with the requirements and
30398 procedures of this chapter, submit a claim to the state for reimbursement of ~~[his]~~ the defendant's
30399 reasonable ~~[attorneys']~~ attorney fees and court costs necessarily incurred in the defense of that
30400 civil suit.

30401 Section 651. Section **52-7-202**, which is renumbered from Section 63-30c-3 is
30402 renumbered and amended to read:

30403 ~~[63-30c-3]~~. **52-7-202. Procedure for submitting claim -- Representation of**
30404 **certain public officers by named counsel -- Certain claims barred.**

30405 (1) From and after July 1, 1987, within 30 days after ~~[he]~~ a public officer is served with
30406 a copy of the complaint, a public officer named as a defendant in a civil suit that alleges a
30407 violation of Article V of the Utah Constitution shall provide the Legislative Management
30408 Committee and the legislative general counsel with the following information:

30409 (a) a brief summary of the claims against him;

30410 (b) the name of the attorney or law firm that will represent him;

30411 (c) the estimated hourly fee that the attorney or law firm will charge for representing
30412 the public officer; and

30413 (d) an estimate of the hours that the attorney projects are necessary to resolve the
30414 lawsuit.

30415 (2) (a) Unless prohibited by the rules governing the conduct of attorneys adopted by the
30416 Utah Supreme Court under the authority of Article VIII, Sec. 4 of the Utah Constitution, the
30417 Office of the Attorney General, the Office of Legislative Research and General Counsel, or the
30418 general counsel for the judicial branch shall represent a public officer named as a defendant in a
30419 civil suit that alleges a violation of Article V of the Utah Constitution if the Utah Constitution,
30420 statutes, or rules require that such representation be provided.

30421 (b) If a public officer is represented by the Office of the Attorney General, the Office of
30422 Legislative Research and General Counsel, or the general counsel of the judicial branch under
30423 Subsection (2)(a), the public officer may not present a claim for [~~attorneys'~~ attorney] fees or
30424 court costs under this chapter.

30425 Section 652. Section **52-7-203**, which is renumbered from Section 63-30c-4 is
30426 renumbered and amended to read:

30427 ~~[63-30c-4].~~ **52-7-203. No review by Board of Examiners.**

30428 The Board of Examiners may not review any claims submitted under the authority of
30429 this chapter.

30430 Section 653. Section **52-7-204**, which is renumbered from Section 63-30c-5 is
30431 renumbered and amended to read:

30432 ~~[63-30c-5].~~ **52-7-204. Claim and bill given to legislative fiscal analyst and Office
30433 of Legislative Research and General Counsel -- Independent review available -- Private
30434 sources of funds to be considered -- Power of Legislature to adjust or refuse claim.**

30435 (1) A public officer who meets the requirements of this chapter shall submit [~~his~~ the
30436 public officer's claim for payment of [~~attorneys'~~ attorney] fees and court costs, and a copy of
30437 the bills that the public officer received from the attorney who represented him, to both the

30438 Office of the Legislative Fiscal Analyst and the Office of Legislative Research and General
30439 Counsel.

30440 (2) Upon receipt of a claim from the public officer, the legislative fiscal analyst or the
30441 legislative general counsel may, at the direction of the Legislative Management Committee,
30442 submit the claim for [~~attorneys'~~] attorney fees to an independent entity to review the [~~attorneys'~~]
30443 attorney fees and to recommend an appropriate fee.

30444 (3) In considering whether or not to pay the claim, the Legislature may consider
30445 whether or not there are other sources, including private sources, to pay the claim.

30446 (4) The Legislature may pay the claim in full, adjust the claim, or refuse to pay the
30447 claim.

30448 Section 654. Section **52-7-301**, which is renumbered from Section 63-30c-6 is
30449 renumbered and amended to read:

Part 3. Application

~~[63-30c-6].~~ **52-7-301. Retrospective application of chapter.**

This chapter applies to any claim arising prior to the effective date of this chapter if that
claim is filed with the Legislature within two years after the lawsuit was filed.

Section 655. Section **52-8-101**, which is renumbered from Section 63-93-101 is
renumbered and amended to read:

CHAPTER 8. REPORTS AND NOTICES

Part 1. General Provisions

~~[63-93-101].~~ **52-8-101. Title.**

This chapter [~~shall be~~] is known as "Reports and Notices."

Section 656. Section **52-8-102**, which is renumbered from Section 63-93-102 is
renumbered and amended to read:

~~[63-93-102].~~ **52-8-102. Definitions.**

As used in this chapter:

(1) "Attribution" means to be responsible for the truth, correctness, and accuracy of a
report.

30466 (2) "Chief executive officer" means:
30467 (a) the governor, for the state;
30468 (b) the chair of the county commission or the county executive, for a county; and
30469 (c) the mayor, for a municipality, or if governed under a council-manager form of
30470 government, the chair of the council.

30471 (3) "Government entity" includes the state, its agencies and institutions, each county,
30472 municipality, school district, local district, and special service district in Utah.

30473 (4) "Promotional literature" means reports whose primary or secondary purpose is to
30474 provide nonresidents with information about the government entity that produced the report.

30475 (5) (a) "Report" means each account, statement, record of proceedings, summary of
30476 activities, and other written or printed document required by statute that is prepared or
30477 produced by a government entity that is distributed to the public.

30478 (b) "Report" does not mean written or printed documents whose primary purpose is to
30479 provide biographical information about government officials.

30480 Section 657. Section **52-8-201**, which is renumbered from Section 63-93-201 is
30481 renumbered and amended to read:

30482 **Part 2. Penalties**

30483 **[63-93-201]. 52-8-201. Prohibition.**

30484 (1) Except as provided in Subsection (2), a government entity may not include, as part
30485 of any report, the photograph or likeness of any elected official.

30486 (2) A report may contain the photograph or likeness of the chief executive officer of a
30487 government entity if the report is promotional literature.

30488 Section 658. Section **52-8-202**, which is renumbered from Section 63-93-202 is
30489 renumbered and amended to read:

30490 **[63-93-202]. 52-8-202. Penalties.**

30491 If an elected official's photograph or likeness appears on any report in violation of this
30492 section that was prepared under the authority or at the direction of the elected official, that
30493 elected official is personally liable for the cost of preparing and distributing the report.

30494 Section 659. Section **52-9-101**, which is renumbered from Section 63-96-101 is
30495 renumbered and amended to read:

30496 **CHAPTER 9. ELECTED OFFICIALS' FUNDS**

30497 **Part 1. General Provisions**

30498 ~~[63-96-101].~~ **52-9-101. Title.**

30499 This chapter ~~[shall be]~~ is known as "Elected Officials' Funds."

30500 Section 660. Section **52-9-102**, which is renumbered from Section 63-96-102 is
30501 renumbered and amended to read:

30502 ~~[63-96-102].~~ **52-9-102. Definitions.**

30503 As used in this chapter:

30504 (1) (a) "Contribution" means any of the following:

30505 (i) a gift, subscription, donation, loan, advance, or deposit of money or anything of
30506 value to a fund;

30507 (ii) an express, legally enforceable contract, promise, or agreement to make a gift,
30508 subscription, donation, unpaid or partially unpaid loan, advance, or deposit of money or
30509 anything of value to a fund; or

30510 (iii) any transfer of funds from another elected official or surrogate to the filing elected
30511 official's or surrogate's fund.

30512 (b) "Contribution" does not include money lent to the elected official or surrogate by a
30513 financial institution in the ordinary course of business.

30514 (2) "Disbursement" means monies, transfers, or other withdrawals from a fund for any
30515 purpose.

30516 (3) "Elected official" means each person elected to a state office, county office,
30517 municipal office, school board or school district office, local district office, or special service
30518 district office, but does not include judges standing for retention election.

30519 (4) (a) "Fund" means any sum of money or other resources, however titled or
30520 described, that is segregated, designated, or set aside for the use or benefit of an elected official.

30521 (b) "Fund" does not mean:

30522 (i) an elected official's or surrogate's private money or public money; or
30523 (ii) campaign funds or accounts established by candidates under the authority of Title
30524 20A, Chapter 11, Part 2, State Office Candidates - Campaign Organization and Financial
30525 Reporting Requirements, Title 20A, Chapter 11, Part 3, Candidates for Legislative Office -
30526 Campaign Organization and Financial Reporting Requirements, and Title 20A, Chapter 11, Part
30527 4, Officeholder Financial Reporting Requirement.

30528 (5) "Private money" means personal monies used to pay normal expenses for which an
30529 elected official or surrogate is personally liable for state and federal taxes.

30530 (6) "Public money" means monies controlled by an elected official or surrogate in their
30531 public capacity that are accounted for by a governmental entity.

30532 (7) "Surrogate" means any committee, party, organization, or other person or group
30533 who holds or maintains a fund for the benefit of an elected official.

30534 Section 661. Section **52-9-201**, which is renumbered from Section 63-96-103 is
30535 renumbered and amended to read:

Part 2. Reporting Requirements

~~63-96-103~~. 52-9-201. Reporting of funds -- Reports are public records.

30537 (1) (a) By January 5 of each year, each state elected official who has a fund, each
30538 multicounty elected official who has a fund, each surrogate for a state elected official who has a
30539 fund for a state elected official, and each surrogate for a multicounty elected official who has a
30540 fund for a multicounty elected official shall file a funds report containing the information
30541 fund for a multicounty elected official shall file a funds report containing the information
30542 required by this section with the lieutenant governor.

30543 (b) By January 5 of each year, each local elected official who has a fund and each
30544 surrogate for a local elected official who has a fund for a local elected official shall file a funds
30545 report containing the information required by this section with the county clerk of the county in
30546 which the local elected official exercises ~~his~~ the locally elected official's official duties.

30547 (2) Each report shall contain:

30548 (a) the dollar value of the fund as of December 31 of the previous year;

30549 (b) an itemized list of disbursements from the fund during the previous calendar year

30550 identifying:

30551 (i) the date of each disbursement;

30552 (ii) the name and address of each person or entity to whom a disbursement was made;

30553 and

30554 (iii) the purpose of each disbursement; and

30555 (c) an itemized list of contributions to the fund during the previous calendar year,

30556 identifying:

30557 (i) the date of each contribution; and

30558 (ii) the name and address of each person or entity from whom a contribution was

30559 received.

30560 (3) Reports filed under this section are classified as public records for purposes of
30561 disclosure under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
30562 Management Act.

30563 Section 662. Section **53-1-105** is amended to read:

30564 **53-1-105. Rulemaking -- Adjudicative proceedings -- Meetings.**

30565 The commissioner and the department and its boards, councils, divisions, and offices
30566 shall comply with the procedures and requirements of:

30567 (1) [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
30568 in their rulemaking;

30569 (2) [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in
30570 their adjudicative proceedings; and

30571 (3) Title 52, Chapter 4, Open and Public Meetings Act, in their meetings.

30572 Section 663. Section **53-1-106** is amended to read:

30573 **53-1-106. Department duties -- Powers.**

30574 (1) In addition to the responsibilities contained in this title, the department shall:

30575 (a) make rules and perform the functions specified in Title 41, Chapter 6a, Traffic Code,

30576 including:

30577 (i) setting performance standards for towing companies to be used by the department,

30578 as required by Section 41-6a-1406; and

30579 (ii) advising the Department of Transportation regarding the safe design and operation

30580 of school buses, as required by Section 41-6a-1304;

30581 (b) make rules to establish and clarify standards pertaining to the curriculum and

30582 teaching methods of a motor vehicle accident prevention course under Section 31A-19a-211;

30583 (c) aid in enforcement efforts to combat drug trafficking;

30584 (d) meet with the Department of Technology Services to formulate contracts, establish

30585 priorities, and develop funding mechanisms for dispatch and telecommunications operations;

30586 (e) provide assistance to the Crime Victims' Reparations Board and Reparations Office

30587 in conducting research or monitoring victims' programs, as required by Section [~~63-25a-405~~]

30588 63M-7-505;

30589 (f) develop sexual assault exam protocol standards in conjunction with the Utah

30590 Hospital Association;

30591 (g) engage in emergency planning activities, including preparation of policy and

30592 procedure and rulemaking necessary for implementation of the federal Emergency Planning and

30593 Community Right to Know Act of 1986, as required by Section [~~63-5-5~~] 63K-3-301;

30594 (h) implement the provisions of Section 53-2-202, the Emergency Management

30595 Assistance Compact; and

30596 (i) (i) maintain a database of the information listed below regarding each driver license

30597 or state identification card status check made by a law enforcement officer:

30598 (A) the agency employing the law enforcement officer;

30599 (B) the name of the law enforcement officer or the identifying number the agency has

30600 assigned to the law enforcement officer;

30601 (C) the race and gender of the law enforcement officer;

30602 (D) the purpose of the law enforcement officer's status check, including but not limited

30603 to a traffic stop or a pedestrian stop; and

30604 (E) the race of the individual regarding whom the status check is made, based on the

30605 information provided through the application process under Section 53-3-205 or 53-3-804;

30606 (ii) provide access to the database created in Subsection (1)(i)(i) to the Commission on
30607 Criminal and Juvenile Justice for the purpose of:

30608 (A) evaluating the data;

30609 (B) evaluating the effectiveness of the data collection process; and

30610 (C) reporting and making recommendations to the Legislature; and

30611 (iii) classify any personal identifying information of any individual, including law

30612 enforcement officers, in the database as protected records under Subsection [~~63-2-304~~]

30613 63G-2-305(9).

30614 (2) (a) The department may establish a schedule of fees as required or allowed in this
30615 title for services provided by the department.

30616 (b) The fees shall be established in accordance with Section [~~63-38-3.2~~] 63J-1-303.

30617 (3) The department may establish or contract for the establishment of an Organ

30618 Procurement Donor Registry in accordance with Section 26-28-120.

30619 Section 664. Section **53-1-108** is amended to read:

30620 **53-1-108. Commissioner's powers and duties.**

30621 (1) In addition to the responsibilities contained in this title, the commissioner shall:

30622 (a) administer and enforce this title and Title 41, Chapter 12a, Financial Responsibility
30623 of Motor Vehicle Owners and Operators Act;

30624 (b) appoint deputies, inspectors, examiners, clerical workers, and other employees as
30625 required to properly discharge the duties of the department;

30626 (c) make rules:

30627 (i) governing emergency use of signal lights on private vehicles; and

30628 (ii) allowing privately owned vehicles to be designated for part-time emergency use, as
30629 provided in Section 41-6a-310;

30630 (d) set standards for safety belt systems, as required by Section 41-6a-1803;

30631 (e) serve as the chairman of the Disaster Emergency Advisory Council, as required by
30632 Section [~~63-5-4~~] 63K-3-201;

30633 (f) designate vehicles as "authorized emergency vehicles," as required by Section

30634 41-6a-102; and

30635 (g) on or before January 1, 2003, adopt a written policy that prohibits the stopping,
30636 detention, or search of any person when the action is solely motivated by considerations of race,
30637 color, ethnicity, age, or gender.

30638 (2) The commissioner may:

30639 (a) subject to the approval of the governor, establish division headquarters at various
30640 places in the state;

30641 (b) issue to a special agent a certificate of authority to act as a peace officer and revoke
30642 that authority for cause, as authorized in Section 56-1-21.5;

30643 (c) create specialized units within the commissioner's office for conducting internal
30644 affairs and aircraft operations as necessary to protect the public safety;

30645 (d) cooperate with any recognized agency in the education of the public in safety and
30646 crime prevention and participate in public or private partnerships, subject to Subsection (3);

30647 (e) cooperate in applying for and distributing highway safety program funds; and

30648 (f) receive and distribute federal funding to further the objectives of highway safety in
30649 compliance with the Federal Assistance Management Program Act.

30650 (3) (a) Money may not be expended under Subsection (2)(d) for public safety education
30651 unless it is specifically appropriated by the Legislature for that purpose.

30652 (b) Any recognized agency receiving state money for public safety shall file with the
30653 auditor of the state an itemized statement of all its receipts and expenditures.

30654 Section 665. Section **53-1-110** is amended to read:

30655 **53-1-110. Compilation of highway, traffic, and driver licensing laws -- Printing**
30656 **and distribution -- Fees.**

30657 (1) (a) The commissioner shall compile an edition of the general highway, traffic, and
30658 driver licensing laws of the state as soon as practicable after each regular session of the
30659 Legislature.

30660 (b) The edition shall include laws enacted or amended by the most recent session of the
30661 Legislature.

30662 (2) (a) The Division of Finance shall print a sufficient quantity of the compiled highway,
30663 traffic, and driver licensing laws to distribute copies to all state, county, and local enforcement
30664 agencies, courts, legislators, and other agencies as necessary.

30665 (b) A fee may be assessed for each copy of the compilation issued by the Division of
30666 Finance. The fee shall be established by the Division of Finance in accordance with Section
30667 [~~63-38-3.2~~] 63J-1-303.

30668 Section 666. Section **53-1-117** is amended to read:

30669 **53-1-117. Alcohol or drug enforcement funding -- Rulemaking -- Legislative**
30670 **findings.**

30671 (1) From monies appropriated by the Legislature and any other funds made available for
30672 the purposes described under this section, the department shall assist the law enforcement
30673 agencies of the state and its political subdivisions in the enforcement of alcohol or drug-related
30674 offenses.

30675 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
30676 Administrative Rulemaking Act, the commissioner shall make rules establishing criteria and
30677 procedures for granting monies under this section to law enforcement agencies for:

- 30678 (a) providing equipment, including drug and alcohol testing equipment;
- 30679 (b) funding the training and overtime of peace officers; and
- 30680 (c) managing driving under the influence related abandoned vehicles.

30681 (3) The Legislature finds that these monies are for a general and statewide public
30682 purpose.

30683 Section 667. Section **53-2-102** is amended to read:

30684 **53-2-102. Definitions.**

30685 As used in this part:

30686 (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action
30687 against the United States of America or this state.

30688 (2) "Director" means the division director appointed under Section 53-2-103.

30689 (3) "Disaster" means a situation causing, or threatening to cause, widespread damage,

30690 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
 30691 natural phenomena, or technological hazard.

30692 (4) "Division" means the Division of Homeland Security created in Section 53-2-103.

30693 (5) "Energy" includes the energy resources defined in Section [~~63-53a-1~~] 63K-2-103.

30694 (6) "Expenses" means actual labor costs of government and volunteer personnel,
 30695 including workers compensation benefits, fringe benefits, administrative overhead, cost of
 30696 equipment, cost of equipment operation, cost of materials, and the cost of any contract labor
 30697 and materials.

30698 (7) "Hazardous materials emergency" means a sudden and unexpected release of any
 30699 substance that because of its quantity, concentration, or physical, chemical, or infectious
 30700 characteristics presents a direct and immediate threat to public safety or the environment and
 30701 requires immediate action to mitigate the threat.

30702 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

30703 (9) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide,
 30704 avalanche, forest or range fire, drought, or epidemic.

30705 (10) "State of emergency" means a condition in any part of this state that requires state
 30706 government emergency assistance to supplement the local efforts of the affected political
 30707 subdivision to save lives and to protect property, public health, welfare, or safety in the event of
 30708 a disaster, or to avoid or reduce the threat of a disaster.

30709 (11) "Technological hazard" means any hazardous materials accident, mine accident,
 30710 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

30711 Section 668. Section **53-2-102.5** is amended to read:

30712 **53-2-102.5. Loan program for disasters prior to Disaster Recovery Funding Act.**

30713 (1) (a) For each promissory note issued under this section that is unpaid on May 1,
 30714 2006, the director shall issue a new promissory note to replace the existing promissory note:

30715 (i) for the principal amount of the unpaid promissory note without accrued interest, if
 30716 any;

30717 (ii) due on or before June 30, 2007; and

30718 (iii) with no interest rate.

30719 (b) For a promissory note issued under this section that is unpaid as of April 30, 2007,
30720 the division shall ensure that when the principal on the promissory note is repaid, the repayment
30721 is made to the State Disaster Recovery Restricted Account created in Section 53-2-403.

30722 (2) The director shall ensure that each promissory note issued under this section that is
30723 funded by monies appropriated and available for disaster loans as of January 1, 2006, are due on
30724 or before June 30, 2007.

30725 (3) The Division of Finance shall transfer by no later than June 30, 2007, any monies
30726 repaid under this section to the General Fund Budget Reserve Account established in Section
30727 [~~63-38-2.5~~] 63J-1-202 to the State Disaster Recovery Restricted Account created in Section
30728 53-2-403.

30729 (4) Any amount on a promissory note issued under this section before April 30, 2007
30730 that is unpaid as of June 30, 2007 is forgiven and need not be repaid.

30731 Section 669. Section **53-2-104** is amended to read:

30732 **53-2-104. Division duties -- Powers.**

30733 (1) The division shall:

30734 (a) respond to the policies of the governor and the Legislature;

30735 (b) perform functions relating to emergency services and homeland security matters as
30736 directed by the commissioner;

30737 (c) prepare, implement, and maintain programs and plans to provide for:

30738 (i) prevention and minimization of injury and damage caused by disasters;

30739 (ii) prompt and effective response to and recovery from disasters;

30740 (iii) identification of areas particularly vulnerable to disasters;

30741 (iv) coordination of hazard mitigation and other preventive and preparedness measures
30742 designed to eliminate or reduce disasters;

30743 (v) assistance to local officials, state agencies, and the business and public sectors, in
30744 developing emergency action plans;

30745 (vi) coordination of federal, state, and local emergency activities;

- 30746 (vii) coordination of emergency operations plans with emergency plans of the federal
- 30747 government;
- 30748 (viii) coordination of search and rescue activities;
- 30749 (ix) coordination of rapid and efficient communications in times of emergency; and
- 30750 (x) other measures necessary, incidental, or appropriate to this part;

30751 (d) coordinate with local officials, state agencies, and the business and public sectors in
 30752 developing, implementing, and maintaining a state energy emergency plan in accordance with
 30753 Section 53-2-110; and

30754 (e) administer Part 4, Disaster Recovery Funding Act, in accordance with that part.

30755 (2) The division may consult with the Legislative Management Committee, the Judicial
 30756 Council, and legislative and judicial staff offices to assist them in preparing emergency
 30757 succession plans and procedures under [~~Title 63, Chapter 5b~~] Title 63K, Chapter 1, Emergency
 30758 Interim Succession Act.

30759 Section 670. Section **53-2-105** is amended to read:

30760 **53-2-105. Hazardous materials emergency -- Recovery of expenses.**

30761 (1) (a) The director may recover from those persons whose negligent actions caused the
 30762 hazardous materials emergency, expenses incurred by state agencies directly associated with a
 30763 response to a hazardous materials emergency taken under authority of this part, [~~Title 63,~~
 30764 ~~Chapter 5~~] Title 63K, Chapter 3, Emergency Management Act, or [~~Title 63, Chapter 5a~~] Title
 30765 63K, Chapter 2, Disaster Response and Recovery.

30766 (b) The payment of expenses under this Subsection (1) does not constitute an admission
 30767 of liability or negligence in any legal action for damages.

30768 (c) The director may obtain assistance from the attorney general or a county attorney of
 30769 the affected jurisdiction to assist the director in recovering expenses and legal fees.

30770 (d) Any recovered costs shall be deposited in the General Fund as dedicated credits to
 30771 be used by the division to reimburse state and local government agencies for the costs they have
 30772 incurred.

30773 (2) (a) If the cost directly associated with emergency response exceeds all available

30774 funds of the division within a given fiscal year, the division, with approval from the governor,
30775 may incur a deficit in its line item budget.

30776 (b) The Legislature shall provide a supplemental appropriation in the following year to
30777 cover the deficit.

30778 (c) The division shall deposit all costs associated with any emergency response that are
30779 collected in subsequent fiscal years into the General Fund.

30780 (3) Any political subdivision may enact local ordinances pursuant to existing statutory
30781 or constitutional authority to provide for the recovery of expenses incurred by the political
30782 subdivision.

30783 Section 671. Section **53-2-106** is amended to read:

30784 **53-2-106. Expenditures authorized by "state of emergency" declaration.**

30785 (1) (a) The director may use funds authorized under [~~Title 63, Chapter 5a~~] Title 63K,
30786 Chapter 2, Disaster Response and Recovery, to provide:

30787 (i) transportation to and from the disaster scene;

30788 (ii) accommodations at the disaster scene for prolonged incidents; and

30789 (iii) emergency purchase of response equipment and supplies in direct support of a
30790 disaster.

30791 (b) The commissioner may authorize the use of funds accrued under [~~Title 63, Chapter~~
30792 ~~5a~~] Title 63K, Chapter 2, only if the governor declares a state of emergency as provided in
30793 [~~Title 63, Chapter 5a~~] Title 63K, Chapter 2, Disaster Response and Recovery.

30794 (2) These funds may not be allocated to a political subdivision unless the political
30795 subdivision has demonstrated that it is beyond its capability to respond to the disaster and that
30796 no other resources are available in sufficient amount to meet the disaster.

30797 Section 672. Section **53-2-107** is amended to read:

30798 **53-2-107. Search and Rescue Financial Assistance Program -- Uses -- Rulemaking**
30799 **-- Distribution.**

30800 (1) "Reimbursable expenses," as used in this section, means those reasonable costs
30801 incidental to search and rescue activities, not including any salary or overtime paid to any

30802 person on a regular or permanent payroll, including permanent part-time employees, of any
30803 agency or political subdivision of the state, including:

- 30804 (a) rental for fixed wing aircraft, helicopters, snowmobiles, boats, and generators;
- 30805 (b) replacement and upgrade of search and rescue equipment;
- 30806 (c) training of search and rescue volunteers; and
- 30807 (d) any other equipment or expenses necessary or appropriate for conducting search
30808 and rescue activities.

30809 (2) There is created the Search and Rescue Financial Assistance Program within the
30810 division.

30811 (3) (a) The program shall be funded from the following revenue sources:

- 30812 (i) any voluntary contributions to the state received for search and rescue operations;
- 30813 (ii) monies received by the state under Section 23-19-42 and Section 41-22-34; and
- 30814 (iii) appropriations made to the program by the Legislature.

30815 (b) All funding for the program shall be nonlapsing.

30816 (4) The director shall use the monies to reimburse counties for all or a portion of each
30817 county's reimbursable expenses for search and rescue operations subject to:

30818 (a) the approval of the Search and Rescue Advisory Board as provided in Section
30819 53-2-109;

30820 (b) monies available in the program; and

30821 (c) rules made under Subsection (7).

30822 (5) Program monies may not be used to reimburse for any paid personnel costs or paid
30823 man hours spent in emergency response and search and rescue related activities.

30824 (6) The Legislature finds that these funds are for a general and statewide public
30825 purpose.

30826 (7) The division, with the approval of the Search and Rescue Advisory Board, shall
30827 make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
30828 Administrative Rulemaking Act, consistent with this act, establishing:

30829 (a) the costs that qualify as reimbursable expenses;

- 30830 (b) the procedures of agencies to submit expenses and be reimbursed; and
- 30831 (c) a formula to govern the distribution of available monies between counties based on:
- 30832 (i) the total qualifying expenses submitted;
- 30833 (ii) the number of search and rescue incidents per county population;
- 30834 (iii) the number of victims that reside outside the county; and
- 30835 (iv) the number of volunteer hours spent in each county in emergency response and
- 30836 search and rescue related activities per county population.

30837 Section 673. Section **53-2-110** is amended to read:

30838 **53-2-110. Energy emergency plan.**

30839 (1) The division shall develop an energy emergency plan consistent with [~~Title 63;~~
30840 ~~Chapter 53a]~~ Title 63K, Chapter 2, Energy Emergency Powers of Governor.

30841 (2) In developing the energy emergency plan, the division shall coordinate with:

- 30842 (a) the Division of Public Utilities;
- 30843 (b) the Division of Oil, Gas, and Mining;
- 30844 (c) the Division of Air Quality; and
- 30845 (d) the Department of Agriculture and Food with regard to weights and measures.

30846 (3) The energy emergency plan shall:

30847 (a) designate the division as the entity that will coordinate the implementation of the
30848 energy emergency plan;

30849 (b) provide for annual review of the energy emergency plan;

30850 (c) provide for cooperation with public utilities and other relevant private sector
30851 persons;

30852 (d) provide a procedure for maintaining a current list of contact persons required under
30853 the energy emergency plan; and

30854 (e) provide that the energy emergency plan may only be implemented if the governor
30855 declares:

30856 (i) a state of emergency as provided in [~~Title 63, Chapter 5a]~~ Title 63K, Chapter 2,
30857 Disaster Response and Recovery; or

30858 (ii) a state of emergency related to energy as provided in [~~Title 63, Chapter 53a~~] Title
30859 63K, Chapter 2, Energy Emergency Powers of Governor.

30860 (4) If an event requires the implementation of the energy emergency plan, the division
30861 shall report on that event and the implementation of the energy emergency plan to:

30862 (a) the governor; and

30863 (b) the Public Utilities and Technology Interim Committee.

30864 (5) If the energy emergency plan includes a procedure for obtaining information, the
30865 energy emergency plan shall incorporate reporting procedures that conform to existing
30866 requirements of federal, state, and local regulatory authorities wherever possible.

30867 Section 674. Section **53-2-402** is amended to read:

30868 **53-2-402. Definitions.**

30869 (1) Unless otherwise defined in this section, the terms defined in Part 1, Homeland
30870 Security Act, shall have the same meaning for this part.

30871 (2) As used in this part:

30872 (a) "Declared disaster" means one or more events:

30873 (i) within the state;

30874 (ii) that occur within a limited period of time;

30875 (iii) that involve:

30876 (A) a significant number of persons being at risk of bodily harm, sickness, or death; or

30877 (B) a significant portion of real property at risk of loss;

30878 (iv) that are sudden in nature and generally occur less frequently than every three years;

30879 and

30880 (v) that results in:

30881 (A) the president of the United States declaring an emergency or major disaster in the
30882 state;

30883 (B) the governor declaring a state of emergency under [~~Title 63, Chapter 5a~~] Title 63K,
30884 Chapter 2, Disaster Response and Recovery; or

30885 (C) the chief executive officer of a local government declaring a local emergency under

30886 [~~Title 63, Chapter 5a~~] Title 63K, Chapter 2, Disaster Response and Recovery.

30887 (b) "Disaster recovery fund" means the State Disaster Recovery Restricted Account
30888 created in Section 53-2-403.

30889 (c) "Emergency preparedness" means the following done for the purpose of being
30890 prepared for an emergency as defined by the division by rule made in accordance with [~~Title 63,~~
30891 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

30892 (i) the purchase of equipment;

30893 (ii) the training of personnel; or

30894 (iii) the obtaining of a certification.

30895 (d) (i) "Emergency disaster services" means the following that are of a temporary basis:

30896 (A) evacuation;

30897 (B) shelter;

30898 (C) medical triage;

30899 (D) emergency transportation;

30900 (E) repair of infrastructure;

30901 (F) safety services, including fencing or roadblocks;

30902 (G) sandbagging;

30903 (H) emergency debris removal;

30904 (I) temporary bridges;

30905 (J) procurement and distribution of food, water, or ice;

30906 (K) procurement and deployment of generators;

30907 (L) rescue or recovery; or

30908 (M) services similar to those described in Subsections (2)(d)(i)(A) through (L), as

30909 defined by the division by rule, that are generally required within the first 96 hours of a declared
30910 disaster.

30911 (ii) "Emergency disaster services" does not include:

30912 (A) emergency preparedness; or

30913 (B) notwithstanding whether or not a county participates in the Wildland Fire

30914 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs
30915 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
30916 Wildland Fire Suppression Fund.

30917 (e) "Local fund" means a local government disaster fund created in accordance with
30918 Section 53-2-405.

30919 (f) "Local government" means a county, city, or town.

30920 (g) "Special fund" means a fund other than a general fund of a local government that is
30921 created for a special purpose established under the uniform system of budgeting, accounting,
30922 and reporting.

30923 Section 675. Section **53-2-403** is amended to read:

30924 **53-2-403. State Disaster Recovery Restricted Account.**

30925 (1) (a) There is created a restricted account in the General Fund known as the "State
30926 Disaster Recovery Restricted Account."

30927 (b) The disaster recovery fund shall consist of:

30928 (i) monies deposited into the disaster recovery fund in accordance with Section
30929 53-2-102.5;

30930 (ii) monies deposited into the disaster recovery fund in accordance with Section
30931 ~~[63-38-2.7]~~ 63J-1-204;

30932 (iii) monies appropriated to the disaster recovery fund by the Legislature;

30933 (iv) any other public or private monies received by the division that are:

30934 (A) given to the division for purposes consistent with this section; and

30935 (B) deposited into the disaster recovery fund at the request of:

30936 (I) the division; or

30937 (II) the person giving the monies; and

30938 (v) interest or other earnings derived from the disaster recovery fund.

30939 (c) Monies in the disaster recovery fund may only be used as follows:

30940 (i) without the monies being appropriated by the Legislature, in any fiscal year the

30941 division may use \$100,000 to fund, in accordance with Section 53-2-404, costs to the state of

30942 emergency disaster services in response to a declared disaster; and
30943 (ii) subject to being appropriated by the Legislature, monies not described in Subsection
30944 (1)(c)(i) may be used to fund costs to the state directly related to a declared disaster that are not
30945 costs related to:

- 30946 (A) emergency disaster services;
- 30947 (B) emergency preparedness; or
- 30948 (C) notwithstanding whether or not a county participates in the Wildland Fire
30949 Suppression Fund created in Section 65A-8-6.1, any fire suppression or presuppression costs
30950 that may be paid for from the Wildland Fire Suppression Fund if the county participates in the
30951 Wildland Fire Suppression Fund.

30952 (2) The state treasurer shall invest monies in the disaster recovery fund according to
30953 Title 51, Chapter 7, State Money Management Act, except that the state treasurer shall deposit
30954 all interest or other earnings derived from the disaster recovery fund into the disaster recovery
30955 fund.

30956 (3) (a) Except as provided in Subsection (1), the monies in the disaster recovery fund
30957 may not be diverted, appropriated, or used for a purpose that is not listed in this section.

30958 (b) Notwithstanding Section [~~63-38-3.6~~] 63J-1-307, the Legislature may not
30959 appropriate monies from the disaster recovery fund to eliminate or otherwise reduce an
30960 operating deficit if the monies appropriated from the disaster recovery fund are used for a
30961 purpose other than one listed in this section.

30962 (c) The Legislature may not amend the purposes for which monies in the disaster
30963 recovery fund may be used except by the affirmative vote of two-thirds of all the members
30964 elected to each house.

30965 Section 676. Section **53-2-404** is amended to read:

30966 **53-2-404. State costs for emergency disaster services.**

30967 (1) Subject to this section and Section 53-2-403, the division shall use monies described
30968 in Subsection 53-2-403(1)(c)(i) to fund costs to the state of emergency disaster services.

30969 (2) Monies paid by the division under this section to government entities and private

30970 persons providing emergency disaster services are subject to [~~Title 63, Chapter 56~~] Title 63G,
30971 Chapter 6, Utah Procurement Code.

30972 Section 677. Section **53-2-509** is amended to read:

30973 **53-2-509. Personnel responding to requests for assistance.**

30974 (1) Each person or entity holding a license, certificate, or other permit evidencing
30975 qualification in a professional, mechanical, or other skill and responding to a request from a
30976 requesting political subdivision shall, while providing assistance during a declared emergency or
30977 during an authorized drill or exercise, be considered to be licensed, certified, or permitted in the
30978 requesting political subdivision, except as limited by the chief executive officer of the requesting
30979 political subdivision.

30980 (2) Each law enforcement officer rendering aid as provided in this part under the
30981 authority of a state of emergency declared by the governor, whether inside or outside the
30982 officer's jurisdiction, shall have all law enforcement powers and the same privileges and
30983 immunities that the officer has in the officer's own jurisdiction.

30984 (3) Each employee of a responding political subdivision responding to a request by or
30985 giving assistance to a requesting political subdivision as provided in this part:

30986 (a) is entitled to:

30987 (i) all applicable workers compensation benefits for injury or death occurring as a result
30988 of the employee's participation in the response or assistance; and

30989 (ii) any additional state or federal benefits available for line of duty injury or death; and

30990 (b) is, for purposes of liability, considered to be an employee of the requesting political
30991 subdivision.

30992 (4) Each responding political subdivision and its employees are immune from liability
30993 arising out of their actions in responding to a request from a requesting political subdivision to
30994 the extent provided in Section [~~63-30d-201~~] 63G-7-201.

30995 Section 678. Section **53-3-104** is amended to read:

30996 **53-3-104. Division duties.**

30997 The division shall:

30998 (1) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
30999 Administrative Rulemaking Act, make rules:

31000 (a) for examining applicants for a license, as necessary for the safety and welfare of the
31001 traveling public;

31002 (b) for acceptable documentation of an applicant's identity, Utah resident status, Utah
31003 residence address, proof of legal presence, proof of citizenship of a country other than the
31004 United States, and other proof or documentation required under this chapter;

31005 (c) regarding the restrictions to be imposed on a person driving a motor vehicle with a
31006 temporary learner permit or learner permit; and

31007 (d) for exemptions from licensing requirements as authorized in this chapter;

31008 (2) examine each applicant according to the class of license applied for;

31009 (3) license motor vehicle drivers;

31010 (4) file every application for a license received by it and shall maintain indices
31011 containing:

31012 (a) all applications denied and the reason each was denied;

31013 (b) all applications granted; and

31014 (c) the name of every licensee whose license has been suspended, disqualified, or
31015 revoked by the division and the reasons for the action;

31016 (5) suspend, revoke, disqualify, cancel, or deny any license issued in accordance with
31017 this chapter;

31018 (6) file all accident reports and abstracts of court records of convictions received by it
31019 under state law;

31020 (7) maintain a record of each licensee showing [~~his~~] the licensee's convictions and the
31021 traffic accidents in which [~~he~~] the licensee has been involved where a conviction has resulted;

31022 (8) consider the record of a licensee upon an application for renewal of a license and at
31023 other appropriate times;

31024 (9) search the license files, compile, and furnish a report on the driving record of any
31025 person licensed in the state in accordance with Section 53-3-109;

- 31026 (10) develop and implement a record system as required by Section 41-6a-604;
- 31027 (11) in accordance with Section 53A-13-208, establish:
- 31028 (a) procedures and standards to certify teachers of driver education classes to
- 31029 administer knowledge and skills tests;
- 31030 (b) minimal standards for the tests; and
- 31031 (c) procedures to enable school districts to administer or process any tests for students
- 31032 to receive a class D operator's license;
- 31033 (12) in accordance with Section 53-3-510, establish:
- 31034 (a) procedures and standards to certify licensed instructors of commercial driver
- 31035 training school courses to administer the skills test;
- 31036 (b) minimal standards for the test; and
- 31037 (c) procedures to enable licensed commercial driver training schools to administer or
- 31038 process skills tests for students to receive a class D operator's license; and
- 31039 (13) provide administrative support to the Driver License Medical Advisory Board
- 31040 created in Section 53-3-303.
- 31041 Section 679. Section **53-3-106** is amended to read:
- 31042 **53-3-106. Disposition of revenues under this chapter -- Restricted account**
- 31043 **created -- Uses as provided by appropriation -- Nonlapsing.**
- 31044 (1) There is created within the Transportation Fund a restricted account known as the
- 31045 "Department of Public Safety Restricted Account."
- 31046 (2) The account consists of monies generated from the following revenue sources:
- 31047 (a) all monies received under this chapter;
- 31048 (b) administrative fees received according to the fee schedule authorized under this
- 31049 chapter and Section [~~63-38-3.2~~] 63J-1-303; and
- 31050 (c) any appropriations made to the account by the Legislature.
- 31051 (3) (a) The account shall earn interest.
- 31052 (b) All interest earned on account monies shall be deposited in the account.
- 31053 (4) The expenses of the department in carrying out this chapter shall be provided for by

31054 legislative appropriation from this account.

31055 (5) The amount in excess of \$45 of the fees collected under Subsection 53-3-105(30)
31056 shall be appropriated by the Legislature from this account to the department to implement the
31057 provisions of Section 53-1-117, except that of the amount in excess of \$45, \$40 shall be
31058 deposited in the State Laboratory Drug Testing restricted account created in Section 26-1-34.

31059 (6) All monies received under Subsection 41-6a-1406(6)(b)(ii) shall be appropriated by
31060 the Legislature from this account to the department to implement the provisions of Section
31061 53-1-117.

31062 (7) Appropriations to the department from the account are nonlapsing.

31063 Section 680. Section **53-3-109** is amended to read:

31064 **53-3-109. Records -- Access -- Fees -- Rulemaking.**

31065 (1) (a) Except as provided in this section, all records of the division shall be classified
31066 and disclosed in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
31067 Records Access and Management Act.

31068 (b) The division may only disclose personal identifying information:

31069 (i) when the division determines it is in the interest of the public safety to disclose the
31070 information; and

31071 (ii) in accordance with the federal Driver's Privacy Protection Act of 1994, 18 U.S.C.
31072 Chapter 123.

31073 (c) The division may disclose personal identifying information:

31074 (i) to a licensed private investigator holding a valid agency or registrant license, with a
31075 legitimate business need;

31076 (ii) to an insurer, insurance support organization, or a self-insured entity, or its agents,
31077 employees, or contractors that issues any motor vehicle insurance under Title 31A, Chapter 22,
31078 Part 3, Motor Vehicle Insurance, for use in connection with claims investigation activities,
31079 antifraud activities, rating, or underwriting for any person issued a license certificate under this
31080 chapter; or

31081 (iii) to a depository institution as defined in Section 7-1-103 for use in accordance with

31082 the federal Driver's Privacy Protection Act of 1994, 18 U.S.C. Chapter 123.

31083 (2) (a) A person who receives personal identifying information shall be advised by the
31084 division that the person may not:

31085 (i) disclose the personal identifying information from that record to any other person; or

31086 (ii) use the personal identifying information from that record for advertising or
31087 solicitation purposes.

31088 (b) Any use of personal identifying information by an insurer or insurance support
31089 organization, or by a self-insured entity or its agents, employees, or contractors not authorized
31090 by Subsection (1)(c)(ii) is:

31091 (i) an unfair marketing practice under Section 31A-23a-402; or

31092 (ii) an unfair claim settlement practice under Subsection 31A-26-303(3).

31093 (3) (a) Notwithstanding the provisions of Subsection (1)(b), the division or its designee
31094 may disclose portions of a driving record, in accordance with this Subsection (3), to an insurer
31095 as defined under Section 31A-1-301, or a designee of an insurer, for purposes of assessing
31096 driving risk on the insurer's current motor vehicle insurance policyholders.

31097 (b) The disclosure under Subsection (3)(a) shall:

31098 (i) include the licensed driver's name, driver license number, date of birth, and an
31099 indication of whether the driver has had a moving traffic violation that is a reportable violation,
31100 as defined under Section 53-3-102 during the previous month;

31101 (ii) be limited to the records of drivers who, at the time of the disclosure, are covered
31102 under a motor vehicle insurance policy of the insurer; and

31103 (iii) be made under a contract with the insurer or a designee of an insurer.

31104 (c) The contract under Subsection (3)(b)(iii) shall specify:

31105 (i) the criteria for searching and compiling the driving records being requested;

31106 (ii) the frequency of the disclosures;

31107 (iii) the format of the disclosures, which may be in bulk electronic form; and

31108 (iv) a reasonable charge for the driving record disclosures under Subsection (3).

31109 (4) The division may:

31110 (a) collect fees in accordance with Section 53-3-105 for searching and compiling its
31111 files or furnishing a report on the driving record of a person;

31112 (b) prepare under the seal of the division and deliver upon request, a certified copy of
31113 any record of the division, and charge a fee under Section [~~63-38-3.2~~] 63J-1-303 for each
31114 document authenticated; and

31115 (c) charge reasonable fees established in accordance with the procedures and
31116 requirements of Section [~~63-38-3.2~~] 63J-1-303 for disclosing personal identifying information
31117 under Subsection (1)(c).

31118 (5) Each certified copy of a driving record furnished in accordance with this section is
31119 admissible in any court proceeding in the same manner as the original.

31120 (6) (a) A driving record furnished under this section may only report on the driving
31121 record of a person for a period of ten years.

31122 (b) Subsection (6)(a) does not apply to court or law enforcement reports and to reports
31123 of commercial driver license violations.

31124 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
31125 Administrative Rulemaking Act, the division may make rules to designate:

31126 (a) what information shall be included in a report on the driving record of a person;

31127 (b) the form of a report or copy of the report which may include electronic format;

31128 (c) the form of a certified copy, as required under Section 53-3-216, which may include
31129 electronic format;

31130 (d) the form of a signature required under this chapter which may include electronic
31131 format;

31132 (e) the form of written request to the division required under this chapter which may
31133 include electronic format;

31134 (f) the procedures, requirements, and formats for disclosing personal identifying
31135 information under Subsection (1)(c); and

31136 (g) the procedures, requirements, and formats necessary for the implementation of
31137 Subsection (3).

31138 Section 681. Section **53-3-205** is amended to read:

31139 **53-3-205. Application for license or endorsement -- Fee required -- Tests --**
31140 **Expiration dates of licenses and endorsements -- Information required -- Previous licenses**
31141 **surrendered -- Driving record transferred from other states -- Reinstatement -- Fee**
31142 **required -- License agreement.**

31143 (1) An application for any original license, provisional license, or endorsement shall be:

- 31144 (a) made upon a form furnished by the division; and
- 31145 (b) accompanied by a nonrefundable fee set under Section 53-3-105.

31146 (2) An application and fee for an original provisional class D license or an original class
31147 D license entitle the applicant to:

- 31148 (a) not more than three attempts to pass both the knowledge and the skills tests for a
31149 class D license within six months of the date of the application;
- 31150 (b) a learner permit if needed pending completion of the application and testing process;
31151 and
- 31152 (c) an original class D license and license certificate after all tests are passed.

31153 (3) An application and fee for an original class M license entitle the applicant to:

- 31154 (a) not more than three attempts to pass both the knowledge and skills tests for a class
31155 M license within six months of the date of the application;
- 31156 (b) a motorcycle learner permit if needed after the knowledge test is passed; and
- 31157 (c) an original class M license and license certificate after all tests are passed.

31158 (4) An application and fee for a motorcycle or taxicab endorsement entitle the applicant
31159 to:

- 31160 (a) not more than three attempts to pass both the knowledge and skills tests within six
31161 months of the date of the application;
- 31162 (b) a motorcycle learner permit if needed after the motorcycle knowledge test is passed;
31163 and
- 31164 (c) a motorcycle or taxicab endorsement when all tests are passed.

31165 (5) An application and fees for a commercial class A, B, or C license entitle the

31166 applicant to:

31167 (a) not more than two attempts to pass a knowledge test and not more than two
31168 attempts to pass a skills test within six months of the date of the application;

31169 (b) a commercial driver instruction permit if needed after the knowledge test is passed;
31170 and

31171 (c) an original commercial class A, B, or C license and license certificate when all
31172 applicable tests are passed.

31173 (6) An application and fee for a CDL endorsement entitle the applicant to:

31174 (a) not more than two attempts to pass a knowledge test and not more than two
31175 attempts to pass a skills test within six months of the date of the application; and

31176 (b) a CDL endorsement when all tests are passed.

31177 (7) If a CDL applicant does not pass a knowledge test, skills test, or an endorsement
31178 test within the number of attempts provided in Subsection (5) or (6), each test may be taken
31179 two additional times within the six months for the fee provided in Section 53-3-105.

31180 (8) (a) Except as provided under Subsections (8)(f), (g), and (h), an original license
31181 expires on the birth date of the applicant in the fifth year following the year the license
31182 certificate was issued.

31183 (b) Except as provided under Subsections (8)(f), (g), and (h), a renewal or an extension
31184 to a license expires on the birth date of the licensee in the fifth year following the expiration date
31185 of the license certificate renewed or extended.

31186 (c) Except as provided under Subsections (8)(f) and (g), a duplicate license expires on
31187 the same date as the last license certificate issued.

31188 (d) An endorsement to a license expires on the same date as the license certificate
31189 regardless of the date the endorsement was granted.

31190 (e) A license and any endorsement to the license held by a person ordered to active duty
31191 and stationed outside Utah in any of the armed forces of the United States, which expires during
31192 the time period the person is stationed outside of the state, is valid until 90 days after the person
31193 has been discharged or has left the service, unless:

31194 (i) the license is suspended, disqualified, denied, or has been cancelled or revoked by
31195 the division; or

31196 (ii) the licensee updates the information or photograph on the license certificate.

31197 (f) An original license or a renewal to an original license obtained using proof under
31198 Subsection (9)(a)(i)(E)(III) expires on the date of the expiration of the applicant's foreign visa,
31199 permit, or other document granting legal presence in the United States or on the date provided
31200 under this Subsection (8), whichever is sooner.

31201 (g) (i) An original license or a renewal or a duplicate to an original license expires on
31202 the next birth date of the applicant or licensee beginning on July 1, 2005 if:

31203 (A) the license was obtained without using a Social Security number as required under
31204 Subsection (9); and

31205 (B) the license certificate or driving privilege card is not clearly distinguished as
31206 required under Subsection 53-3-207(6).

31207 (ii) A driving privilege card issued or renewed under Section 53-3-207 expires on the
31208 birth date of the applicant in the first year following the year that the driving privilege card was
31209 issued or renewed.

31210 (iii) The expiration dates provided under Subsections (8)(g)(i) and (ii) do not apply to
31211 an original license or driving privilege card or to the renewal of an original license or driving
31212 privilege card with an expiration date provided under Subsection (8)(f).

31213 (h) An original license or a renewal to an original license expires on the birth date of the
31214 applicant in the first year following the year that the license was issued if the applicant is
31215 required to register as a sex offender under Section 77-27-21.5.

31216 (9) (a) In addition to the information required by [~~Title 63, Chapter 46b~~] Title 63G,
31217 Chapter 4, Administrative Procedures Act, for requests for agency action, each applicant shall:

31218 (i) provide the applicant's:

31219 (A) full legal name;

31220 (B) birth date;

31221 (C) gender;

- 31222 (D) between July 1, 2002 and July 1, 2007, race in accordance with the categories
31223 established by the United States Census Bureau;
- 31224 (E) (I) Social Security number;
- 31225 (II) temporary identification number (ITIN) issued by the Internal Revenue Service for
31226 a person who does not qualify for a Social Security number; or
- 31227 (III) (Aa) proof that the applicant is a citizen of a country other than the United States;
- 31228 (Bb) proof that the applicant does not qualify for a Social Security number; and
- 31229 (Cc) proof of legal presence in the United States, as authorized under federal law; and
- 31230 (F) Utah residence address as documented by a form acceptable under rules made by
31231 the division under Section 53-3-104, unless the application is for a temporary CDL issued under
31232 Subsection 53-3-407(2)(b);
- 31233 (ii) provide a description of the applicant;
- 31234 (iii) state whether the applicant has previously been licensed to drive a motor vehicle
31235 and, if so, when and by what state or country;
- 31236 (iv) state whether the applicant has ever had any license suspended, cancelled, revoked,
31237 disqualified, or denied in the last six years, or whether the applicant has ever had any license
31238 application refused, and if so, the date of and reason for the suspension, cancellation,
31239 revocation, disqualification, denial, or refusal;
- 31240 (v) state whether the applicant intends to make an anatomical gift under Title 26,
31241 Chapter 28, Revised Uniform Anatomical Gift Act, in compliance with Subsection (16);
- 31242 (vi) state whether the applicant is required to register as a sex offender under Section
31243 77-27-21.5;
- 31244 (vii) state whether the applicant is a military veteran and does or does not authorize
31245 sharing the information with the state Department of Veterans' Affairs;
- 31246 (viii) provide all other information the division requires; and
- 31247 (ix) sign the application which signature may include an electronic signature as defined
31248 in Section 46-4-102.
- 31249 (b) Each applicant shall have a Utah residence address, unless the application is for a

- 31250 temporary CDL issued under Subsection 53-3-407(2)(b).
- 31251 (c) The division shall maintain on its computerized records an applicant's:
- 31252 (i) (A) Social Security number;
- 31253 (B) temporary identification number (ITIN); or
- 31254 (C) other number assigned by the division if Subsection (9)(a)(i)(E)(III) applies; and
- 31255 (ii) indication whether the applicant is required to register as a sex offender under
- 31256 Section 77-27-21.5.
- 31257 (d) An applicant may not be denied a license for refusing to provide race information
- 31258 required under Subsection (9)(a)(i)(D).
- 31259 (10) The division shall require proof of every applicant's name, birthdate, and birthplace
- 31260 by at least one of the following means:
- 31261 (a) current license certificate;
- 31262 (b) birth certificate;
- 31263 (c) Selective Service registration; or
- 31264 (d) other proof, including church records, family Bible notations, school records, or
- 31265 other evidence considered acceptable by the division.
- 31266 (11) When an applicant receives a license in another class, all previous license
- 31267 certificates shall be surrendered and canceled. However, a disqualified commercial license may
- 31268 not be canceled unless it expires before the new license certificate is issued.
- 31269 (12) (a) When an application is received from a person previously licensed in another
- 31270 state to drive a motor vehicle, the division shall request a copy of the driver's record from the
- 31271 other state.
- 31272 (b) When received, the driver's record becomes part of the driver's record in this state
- 31273 with the same effect as though entered originally on the driver's record in this state.
- 31274 (13) An application for reinstatement of a license after the suspension, cancellation,
- 31275 disqualification, denial, or revocation of a previous license shall be accompanied by the
- 31276 additional fee or fees specified in Section 53-3-105.
- 31277 (14) A person who has an appointment with the division for testing and fails to keep the

31278 appointment or to cancel at least 48 hours in advance of the appointment shall pay the fee under
31279 Section 53-3-105.

31280 (15) A person who applies for an original license or renewal of a license agrees that the
31281 person's license is subject to any suspension or revocation authorized under this title or Title 41,
31282 Motor Vehicles.

31283 (16) (a) The indication of intent under Subsection (9)(a)(v) shall be authenticated by the
31284 licensee in accordance with division rule.

31285 (b) (i) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
31286 Records Access and Management Act, the division may, upon request, release to an organ
31287 procurement organization, as defined in Section 26-28-102, the names and addresses of all
31288 persons who under Subsection (9)(a)(v) indicate that they intend to make an anatomical gift.

31289 (ii) An organ procurement organization may use released information only to:

31290 (A) obtain additional information for an anatomical gift registry; and

31291 (B) inform licensees of anatomical gift options, procedures, and benefits.

31292 (17) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
31293 Access and Management Act, the division may release to the Department of Veterans' Affairs
31294 the names and addresses of all persons who indicate their status as a veteran under Subsection
31295 (9)(a)(vii).

31296 (18) The division and its employees are not liable, as a result of false or inaccurate
31297 information provided under Subsection (9)(a)(v) or (vii), for direct or indirect:

31298 (a) loss;

31299 (b) detriment; or

31300 (c) injury.

31301 (19) A person who knowingly fails to provide the information required under
31302 Subsection (9)(a)(vi) is guilty of a class A misdemeanor.

31303 Section 682. Section **53-3-221 (Superseded 07/01/08)** is amended to read:

31304 **53-3-221 (Superseded 07/01/08). Offenses which may result in denial, suspension,**
31305 **disqualification, or revocation of license without hearing -- Additional grounds for**

31306 **suspension -- Point system for traffic violations -- Notice and hearing -- Reporting of**
 31307 **traffic violation procedures.**

31308 (1) By following the emergency procedures in [~~Title 63, Chapter 46b~~] Title 63G,
 31309 Chapter 4, Administrative Procedures Act, the division may immediately deny, suspend,
 31310 disqualify, or revoke the license of any person without hearing and without receiving a record of
 31311 the person's conviction of crime when the division has been notified or has reason to believe the
 31312 person:

31313 (a) has committed any offenses for which mandatory suspension or revocation of a
 31314 license is required upon conviction under Section 53-3-220;

31315 (b) has, by reckless or unlawful driving of a motor vehicle, caused or contributed to an
 31316 accident resulting in death or injury to any other person, or serious property damage;

31317 (c) is incompetent to drive a motor vehicle or is afflicted with mental or physical
 31318 infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the
 31319 highways;

31320 (d) has committed a serious violation of the motor vehicle laws of this state;

31321 (e) has knowingly acquired, used, displayed, or transferred an item that purports to be
 31322 an authentic driver license certificate issued by a governmental entity if the item is not an
 31323 authentic driver license certificate or has permitted an unlawful use of the license as prohibited
 31324 under Section 53-3-229; or

31325 (f) has been convicted of serious offenses against traffic laws governing the movement
 31326 of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for
 31327 the safety of other persons on the highways.

31328 (2) (a) The division may suspend the license of a person under Subsection (1) when the
 31329 person has failed to comply with the terms stated on a traffic citation issued in this state, except
 31330 this Subsection (2) does not apply to highway weight limit violations or violations of law
 31331 governing the transportation of hazardous materials.

31332 (b) This Subsection (2) applies to parking and standing violations only if a court has
 31333 issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy

31334 the terms of the citation.

31335 (c) (i) This Subsection (2) may not be exercised unless notice of the pending suspension
31336 of the driving privilege has been sent at least ten days previously to the person at the address
31337 provided to the division.

31338 (ii) After clearance by the division, a report authorized by Section 53-3-104 may not
31339 contain any evidence of a suspension that occurred as a result of failure to comply with the
31340 terms stated on a traffic citation.

31341 (3) (a) The division may suspend the license of a person under Subsection (1) when the
31342 division has been notified by a court that the person has an outstanding unpaid fine, an
31343 outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a
31344 court.

31345 (b) The suspension remains in effect until the division is notified by the court that the
31346 order has been satisfied.

31347 (c) After clearance by the division, a report authorized by Section 53-3-104 may not
31348 contain any evidence of the suspension.

31349 (4) The division shall make rules establishing a point system as provided for in this
31350 Subsection (4).

31351 (a) (i) The division shall assign a number of points to each type of moving traffic
31352 violation as a measure of its seriousness.

31353 (ii) The points shall be based upon actual relationships between types of traffic
31354 violations and motor vehicle traffic accidents.

31355 (b) Every person convicted of a traffic violation shall have assessed against ~~his~~ the
31356 person's driving record the number of points that the division has assigned to the type of
31357 violation of which the person has been convicted, except that the number of points assessed
31358 shall be decreased by 10% if on the abstract of the court record of the conviction the court has
31359 graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the
31360 court has graded the severity of violation as maximum.

31361 (c) (i) A separate procedure for assessing points for speeding offenses shall be

31362 established by the division based upon the severity of the offense.

31363 (ii) The severity of a speeding violation shall be graded as:

31364 (A) "minimum" for exceeding the posted speed limit by up to ten miles per hour;

31365 (B) "intermediate" for exceeding the posted speed limit by from 11 to 20 miles per
31366 hour; and

31367 (C) "maximum" for exceeding the posted speed limit by 21 or more miles per hour.

31368 (iii) Consideration shall be made for assessment of no points on minimum speeding
31369 violations, except for speeding violations in school zones.

31370 (d) (i) Points assessed against a person's driving record shall be deleted for violations
31371 occurring before a time limit set by the division.

31372 (ii) The time limit may not exceed three years.

31373 (iii) The division may also delete points to reward violation-free driving for periods of
31374 time set by the division.

31375 (e) (i) By publication in two newspapers having general circulation throughout the
31376 state, the division shall give notice of the number of points it has assigned to each type of traffic
31377 violation, the time limit set by the division for the deletion of points, and the point level at which
31378 the division will generally take action to deny or suspend under this section.

31379 (ii) The division may not change any of the information provided above regarding
31380 points without first giving new notice in the same manner.

31381 (5) (a) (i) Upon denying or suspending the license of a person under this section, the
31382 division shall immediately notify the licensee in a manner specified by the division and afford
31383 him an opportunity for a hearing in the county where the licensee resides.

31384 (ii) The hearing shall be documented, and the division or its authorized agent may
31385 administer oaths, may issue subpoenas for the attendance of witnesses and the production of
31386 relevant books and papers, and may require a reexamination of the licensee.

31387 (iii) One or more members of the division may conduct the hearing, and any decision
31388 made after a hearing before any number of the members of the division is as valid as if made
31389 after a hearing before the full membership of the division.

31390 (iv) After the hearing the division shall either rescind its order of denial or suspension,
31391 extend the denial or suspension of the license, or revoke the license.

31392 (b) The denial or suspension of the license remains in effect pending qualifications
31393 determined by the division regarding a person:

31394 (i) whose license has been denied or suspended following reexamination;

31395 (ii) who is incompetent to drive a motor vehicle;

31396 (iii) who is afflicted with mental or physical infirmities that might make him dangerous
31397 on the highways; or

31398 (iv) who may not have the necessary knowledge or skill to drive a motor vehicle safely.

31399 (6) (a) The division may suspend or revoke the license of any resident of this state upon
31400 receiving notice of the conviction of that person in another state of an offense committed there
31401 that, if committed in this state, would be grounds for the suspension or revocation of a license.

31402 (b) The division may, upon receiving a record of the conviction in this state of a
31403 nonresident driver of a motor vehicle or motorboat of any offense under the motor vehicle laws
31404 of this state, forward a certified copy of the record to the motor vehicle administrator in the
31405 state where the person convicted is a resident.

31406 (7) (a) The division may suspend or revoke the license of any nonresident to drive a
31407 motor vehicle in this state for any cause for which the license of a resident driver may be
31408 suspended or revoked.

31409 (b) Any nonresident who drives a motor vehicle upon a highway when [~~his~~] the
31410 person's license has been suspended or revoked by the division is guilty of a class C
31411 misdemeanor.

31412 (8) (a) The division may not deny or suspend the license of any person for a period of
31413 more than one year except:

31414 (i) for failure to comply with the terms of a traffic citation under Subsection (2);

31415 (ii) upon receipt of a second or subsequent order suspending juvenile driving privileges
31416 under Section 53-3-219;

31417 (iii) when extending a denial or suspension upon receiving certain records or reports

31418 under Subsection 53-3-220(2); and

31419 (iv) for failure to give and maintain owner's or operator's security under Section
31420 41-12a-411.

31421 (b) The division may suspend the license of a person under Subsection (2) until ~~he~~ the
31422 person shows satisfactory evidence of compliance with the terms of the traffic citation.

31423 (9) (a) By following the emergency procedures in ~~[Title 63, Chapter 46b]~~ Title 63G,
31424 Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of
31425 any person without hearing and without receiving a record of ~~his~~ the person's conviction for a
31426 crime when the division has reason to believe that the person's license was granted by the
31427 division through error or fraud or that the necessary consent for the license has been withdrawn
31428 or is terminated.

31429 (b) The procedure upon suspension is the same as under Subsection (5), except that
31430 after the hearing the division shall either rescind its order of suspension or cancel the license.

31431 (10) (a) The division, having good cause to believe that a licensed driver is incompetent
31432 or otherwise not qualified to be licensed, may upon notice in a manner specified by the division
31433 of at least five days to the licensee require him to submit to an examination.

31434 (b) Upon the conclusion of the examination the division may suspend or revoke the
31435 person's license, permit him to retain the license, or grant a license subject to a restriction
31436 imposed in accordance with Section 53-3-208.

31437 (c) Refusal or neglect of the licensee to submit to an examination is grounds for
31438 suspension or revocation of ~~his~~ the licensee's license.

31439 (11) (a) Except as provided in Subsection (11)(b), a report authorized by Section
31440 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in
31441 this state if the conviction was for a speed of ten miles per hour or less, above the posted speed
31442 limit and did not result in an accident, unless authorized in a manner specified by the division by
31443 the individual whose report is being requested.

31444 (b) The provisions of Subsection (11)(a) do not apply for:

31445 (i) a CDL license holder; or

31446 (ii) a violation that occurred in a commercial motor vehicle.

31447 (12) (a) By following the emergency procedures in [~~Title 63, Chapter 46b~~] Title 63G,
31448 Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of
31449 a person if it has reason to believe that the person is the owner of a motor vehicle for which
31450 security is required under Title 41, Chapter 12a, Vehicle Financial Responsibility of Motor
31451 Vehicle Owners and Operators Act, and has driven the motor vehicle or permitted it to be
31452 driven within this state without the security being in effect.

31453 (b) Section 41-12a-411 regarding the requirement of proof of owner's or operator's
31454 security applies to persons whose driving privileges are suspended under this Subsection (12).

31455 (c) If the division exercises the right of immediate suspension granted under this
31456 Subsection (12), the notice and hearing provisions of Subsection (5) apply.

31457 (d) A person whose license suspension has been sustained or whose license has been
31458 revoked by the division under this subsection may file a request for agency action requesting a
31459 hearing.

31460 (13) Any suspension or revocation of a person's license under this section also
31461 disqualifies any license issued to that person under Part 4 of this chapter.

31462 Section 683. Section **53-3-221 (Effective 07/01/08)** is amended to read:

31463 **53-3-221 (Effective 07/01/08). Offenses which may result in denial, suspension,**
31464 **disqualification, or revocation of license without hearing -- Additional grounds for**
31465 **suspension -- Point system for traffic violations -- Notice and hearing -- Reporting of**
31466 **traffic violation procedures.**

31467 (1) By following the emergency procedures in [~~Title 63, Chapter 46b~~] Title 63G,
31468 Chapter 4, Administrative Procedures Act, the division may immediately deny, suspend,
31469 disqualify, or revoke the license of any person without hearing and without receiving a record of
31470 the person's conviction of crime when the division has been notified or has reason to believe the
31471 person:

31472 (a) has committed any offenses for which mandatory suspension or revocation of a
31473 license is required upon conviction under Section 53-3-220;

31474 (b) has, by reckless or unlawful driving of a motor vehicle, caused or contributed to an
31475 accident resulting in death or injury to any other person, or serious property damage;

31476 (c) is incompetent to drive a motor vehicle or is afflicted with mental or physical
31477 infirmities or disabilities rendering it unsafe for the person to drive a motor vehicle upon the
31478 highways;

31479 (d) has committed a serious violation of the motor vehicle laws of this state;

31480 (e) has knowingly acquired, used, displayed, or transferred an item that purports to be
31481 an authentic driver license certificate issued by a governmental entity if the item is not an
31482 authentic driver license certificate or has permitted an unlawful use of the license as prohibited
31483 under Section 53-3-229; or

31484 (f) has been convicted of serious offenses against traffic laws governing the movement
31485 of motor vehicles with a frequency that indicates a disrespect for traffic laws and a disregard for
31486 the safety of other persons on the highways.

31487 (2) (a) The division may suspend the license of a person under Subsection (1) when the
31488 person has failed to comply with the terms stated on a traffic citation issued in this state, except
31489 this Subsection (2) does not apply to highway weight limit violations or violations of law
31490 governing the transportation of hazardous materials.

31491 (b) This Subsection (2) applies to parking and standing violations only if a court has
31492 issued a warrant for the arrest of a person for failure to post bail, appear, or otherwise satisfy
31493 the terms of the citation.

31494 (c) (i) This Subsection (2) may not be exercised unless notice of the pending suspension
31495 of the driving privilege has been sent at least ten days previously to the person at the address
31496 provided to the division.

31497 (ii) After clearance by the division, a report authorized by Section 53-3-104 may not
31498 contain any evidence of a suspension that occurred as a result of failure to comply with the
31499 terms stated on a traffic citation.

31500 (3) (a) The division may suspend the license of a person under Subsection (1) when the
31501 division has been notified by a court that the person has an outstanding unpaid fine, an

31502 outstanding incomplete restitution requirement, or an outstanding warrant levied by order of a
31503 court.

31504 (b) The suspension remains in effect until the division is notified by the court that the
31505 order has been satisfied.

31506 (c) After clearance by the division, a report authorized by Section 53-3-104 may not
31507 contain any evidence of the suspension.

31508 (4) The division shall make rules establishing a point system as provided for in this
31509 Subsection (4).

31510 (a) (i) The division shall assign a number of points to each type of moving traffic
31511 violation as a measure of its seriousness.

31512 (ii) The points shall be based upon actual relationships between types of traffic
31513 violations and motor vehicle traffic accidents.

31514 (b) Every person convicted of a traffic violation shall have assessed against ~~his~~ the
31515 person's driving record the number of points that the division has assigned to the type of
31516 violation of which the person has been convicted, except that the number of points assessed
31517 shall be decreased by 10% if on the abstract of the court record of the conviction the court has
31518 graded the severity of violation as minimum, and shall be increased by 10% if on the abstract the
31519 court has graded the severity of violation as maximum.

31520 (c) (i) A separate procedure for assessing points for speeding offenses shall be
31521 established by the division based upon the severity of the offense.

31522 (ii) The severity of a speeding violation shall be graded as:

31523 (A) "minimum" for exceeding the posted speed limit by up to ten miles per hour;

31524 (B) "intermediate" for exceeding the posted speed limit by from 11 to 20 miles per
31525 hour; and

31526 (C) "maximum" for exceeding the posted speed limit by 21 or more miles per hour.

31527 (iii) Consideration shall be made for assessment of no points on minimum speeding
31528 violations, except for speeding violations in school zones.

31529 (d) (i) Points assessed against a person's driving record shall be deleted for violations

31530 occurring before a time limit set by the division.

31531 (ii) The time limit may not exceed three years.

31532 (iii) The division may also delete points to reward violation-free driving for periods of
31533 time set by the division.

31534 (e) (i) By publication in two newspapers having general circulation throughout the
31535 state, the division shall give notice of the number of points it has assigned to each type of traffic
31536 violation, the time limit set by the division for the deletion of points, and the point level at which
31537 the division will generally take action to deny or suspend under this section.

31538 (ii) The division may not change any of the information provided above regarding
31539 points without first giving new notice in the same manner.

31540 (5) (a) (i) Upon denying or suspending the license of a person under this section, the
31541 division shall immediately notify the licensee in a manner specified by the division and afford
31542 him an opportunity for a hearing in the county where the licensee resides.

31543 (ii) The hearing shall be documented, and the division or its authorized agent may
31544 administer oaths, may issue subpoenas for the attendance of witnesses and the production of
31545 relevant books and papers, and may require a reexamination of the licensee.

31546 (iii) One or more members of the division may conduct the hearing, and any decision
31547 made after a hearing before any number of the members of the division is as valid as if made
31548 after a hearing before the full membership of the division.

31549 (iv) After the hearing the division shall either rescind its order of denial or suspension,
31550 extend the denial or suspension of the license, or revoke the license.

31551 (b) The denial or suspension of the license remains in effect pending qualifications
31552 determined by the division regarding a person:

31553 (i) whose license has been denied or suspended following reexamination;

31554 (ii) who is incompetent to drive a motor vehicle;

31555 (iii) who is afflicted with mental or physical infirmities that might make him dangerous
31556 on the highways; or

31557 (iv) who may not have the necessary knowledge or skill to drive a motor vehicle safely.

31558 (6) (a) Subject to Subsection (6)(d), the division shall suspend a person's license when
31559 the division receives notice from the Office of Recovery Services that the Office of Recovery
31560 Services has ordered the suspension of the person's license.

31561 (b) A suspension under Subsection (6)(a) shall remain in effect until the division
31562 receives notice from the Office of Recovery Services that the Office of Recovery Services has
31563 rescinded the order of suspension.

31564 (c) After an order of suspension is rescinded under Subsection (6)(b), a report
31565 authorized by Section 53-3-104 may not contain any evidence of the suspension.

31566 (d) (i) If the division suspends a person's license under this Subsection (6), the division
31567 shall, upon application, issue a temporary limited driver license to the person if that person
31568 needs a driver license for employment, education, or child visitation.

31569 (ii) The temporary limited driver license described in this section:

31570 (A) shall provide that the person may operate a motor vehicle only for the purpose of
31571 driving to or from the person's place of employment, education, or child visitation;

31572 (B) shall prohibit the person from driving a motor vehicle for any purpose other than a
31573 purpose described in Subsection (6)(d)(ii)(A); and

31574 (C) shall expire 90 days after the day on which the temporary limited driver license is
31575 issued.

31576 (iii) (A) During the period beginning on the day on which a temporary limited driver
31577 license is issued under this Subsection (6), and ending on the day that the temporary limited
31578 driver license expires, the suspension described in this Subsection (6) only applies if the person
31579 who is suspended operates a motor vehicle for a purpose other than employment, education, or
31580 child visitation.

31581 (B) Upon expiration of a temporary limited driver license described in this Subsection
31582 (6)(d):

31583 (I) a suspension described in Subsection (6)(a) shall be in full effect until the division
31584 receives notice, under Subsection (6)(b), that the order of suspension is rescinded; and

31585 (II) a person suspended under Subsection (6)(a) may not drive a motor vehicle for any

31586 reason.

31587 (iv) The division is not required to issue a limited driver license to a person under this
31588 Subsection (6)(d) if there are other legal grounds for the suspension of the person's driver
31589 license.

31590 (v) The division shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
31591 Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this part.

31592 (7) (a) The division may suspend or revoke the license of any resident of this state upon
31593 receiving notice of the conviction of that person in another state of an offense committed there
31594 that, if committed in this state, would be grounds for the suspension or revocation of a license.

31595 (b) The division may, upon receiving a record of the conviction in this state of a
31596 nonresident driver of a motor vehicle or motorboat of any offense under the motor vehicle laws
31597 of this state, forward a certified copy of the record to the motor vehicle administrator in the
31598 state where the person convicted is a resident.

31599 (8) (a) The division may suspend or revoke the license of any nonresident to drive a
31600 motor vehicle in this state for any cause for which the license of a resident driver may be
31601 suspended or revoked.

31602 (b) Any nonresident who drives a motor vehicle upon a highway when [~~his~~] the
31603 person's license has been suspended or revoked by the division is guilty of a class C
31604 misdemeanor.

31605 (9) (a) The division may not deny or suspend the license of any person for a period of
31606 more than one year except:

31607 (i) for failure to comply with the terms of a traffic citation under Subsection (2);

31608 (ii) upon receipt of a second or subsequent order suspending juvenile driving privileges
31609 under Section 53-3-219;

31610 (iii) when extending a denial or suspension upon receiving certain records or reports
31611 under Subsection 53-3-220(2);

31612 (iv) for failure to give and maintain owner's or operator's security under Section
31613 41-12a-411; or

31614 (v) when the division suspends the license under Subsection (6).

31615 (b) The division may suspend the license of a person under Subsection (2) until ~~he~~ the
31616 person shows satisfactory evidence of compliance with the terms of the traffic citation.

31617 (10) (a) By following the emergency procedures in [~~Title 63, Chapter 46b~~] Title 63G,
31618 Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of
31619 any person without hearing and without receiving a record of [~~his~~] the perons's conviction for a
31620 crime when the division has reason to believe that the person's license was granted by the
31621 division through error or fraud or that the necessary consent for the license has been withdrawn
31622 or is terminated.

31623 (b) The procedure upon suspension is the same as under Subsection (5), except that
31624 after the hearing the division shall either rescind its order of suspension or cancel the license.

31625 (11) (a) The division, having good cause to believe that a licensed driver is incompetent
31626 or otherwise not qualified to be licensed, may upon notice in a manner specified by the division
31627 of at least five days to the licensee require him to submit to an examination.

31628 (b) Upon the conclusion of the examination the division may suspend or revoke the
31629 person's license, permit him to retain the license, or grant a license subject to a restriction
31630 imposed in accordance with Section 53-3-208.

31631 (c) Refusal or neglect of the licensee to submit to an examination is grounds for
31632 suspension or revocation of [~~his~~] the licensee's license.

31633 (12) (a) Except as provided in Subsection (12)(b), a report authorized by Section
31634 53-3-104 may not contain any evidence of a conviction for speeding on an interstate system in
31635 this state if the conviction was for a speed of ten miles per hour or less, above the posted speed
31636 limit and did not result in an accident, unless authorized in a manner specified by the division by
31637 the individual whose report is being requested.

31638 (b) The provisions of Subsection (12)(a) do not apply for:

31639 (i) a CDL license holder; or

31640 (ii) a violation that occurred in a commercial motor vehicle.

31641 (13) (a) By following the emergency procedures in [~~Title 63, Chapter 46b~~] Title 63G,

31642 Chapter 4, Administrative Procedures Act, the division may immediately suspend the license of
31643 a person if it has reason to believe that the person is the owner of a motor vehicle for which
31644 security is required under Title 41, Chapter 12a, Financial Responsibility of Motor Vehicle
31645 Owners and Operators Act, and has driven the motor vehicle or permitted it to be driven within
31646 this state without the security being in effect.

31647 (b) Section 41-12a-411 regarding the requirement of proof of owner's or operator's
31648 security applies to persons whose driving privileges are suspended under this Subsection (13).

31649 (c) If the division exercises the right of immediate suspension granted under this
31650 Subsection (13), the notice and hearing provisions of Subsection (5) apply.

31651 (d) A person whose license suspension has been sustained or whose license has been
31652 revoked by the division under this Subsection (13) may file a request for agency action
31653 requesting a hearing.

31654 (14) Any suspension or revocation of a person's license under this section also
31655 disqualifies any license issued to that person under Part 4, Uniform Driver License Act, of this
31656 chapter.

31657 Section 684. Section **53-3-221.5 (Effective 07/01/08)** is amended to read:

31658 **53-3-221.5 (Effective 07/01/08). Disclosure of license information to the Office of**
31659 **Recovery Services.**

31660 (1) The division shall disclose to the Office of Recovery Services the name, address,
31661 and other identifying information of each person:

31662 (a) to whom a license has been issued; or

31663 (b) whose driving privileges have been suspended, revoked, or reinstated.

31664 (2) All information received by the Office of Recovery Services under this section is
31665 subject to [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
31666 Management Act.

31667 Section 685. Section **53-3-303.5** is amended to read:

31668 **53-3-303.5. Driver License Medical Advisory Board -- Medical waivers.**

31669 (1) The Driver License Medical Advisory Board shall:

31670 (a) advise the director of the division; and
31671 (b) establish and recommend in a manner specified by the board functional ability profile
31672 guidelines and standards for determining the physical, mental, and emotional capabilities of
31673 applicants for specific types of licenses, appropriate to various driving abilities.

31674 (2) (a) The Driver License Medical Advisory Board shall establish fitness standards,
31675 including provisions for a waiver of specified federal driver's physical qualifications under 49
31676 CFR 391.41, for intrastate commercial driving privileges.

31677 (b) The standards under this Subsection (2) may only be implemented if the United
31678 States Department of Transportation (USDOT) will not impose any sanctions, including funding
31679 sanctions, against the state.

31680 (3) In case of uncertainty of interpretation of these guidelines and standards, or in
31681 special circumstances, applicants may request a review of any division decision by a panel of
31682 board members. All of the actions of the director and board are subject to judicial review.

31683 (4) (a) If a person applies for a waiver established under Subsection (2), the applicant
31684 shall bear any costs directly associated with the cost of administration of the waiver program,
31685 with respect to the applicant's application, in addition to any fees required under Section
31686 53-3-105.

31687 (b) The division shall establish any additional fee necessary to administer the license
31688 under this Subsection (4) in accordance with Section [~~63-38-3.2~~] 63J-1-303.

31689 Section 686. Section **53-3-304** is amended to read:

31690 **53-3-304. Licensing of impaired persons -- Medical review -- Restricted license --**
31691 **Procedures.**

31692 (1) (a) If the division has reason to believe that an applicant for a license is an impaired
31693 person, the division may require one or both of the following:

31694 (i) a physical examination of the applicant by a health care professional and the
31695 submittal by the health care professional of a signed medical report indicating the results of the
31696 physical examination;

31697 (ii) a follow-up medical review of the applicant by a health care professional and

31698 completion of a medical report at intervals established by the division under standards
31699 recommended by the board.

31700 (b) The format of the medical report required under Subsection (a) shall be devised by
31701 the division with the advice of the board and shall elicit the necessary medical information to
31702 determine whether it would be a public safety hazard to permit the applicant to drive a motor
31703 vehicle on the highways.

31704 (2) (a) The division may grant a restricted license to an impaired person who is
31705 otherwise qualified to obtain a license.

31706 (b) The license continues in effect until its expiration date so long as the licensee
31707 complies with the requirements set forth by the division.

31708 (c) The license renewal is subject to the conditions of this section.

31709 (d) Any physical, mental, or emotional impairment of the applicant that in the opinion of
31710 the division does not affect the applicant's ability to exercise reasonable and ordinary control at
31711 all times in driving a motor vehicle upon the highway, does not prevent granting a license to the
31712 applicant.

31713 (3) (a) If an examination is required under this section, the division is not bound by the
31714 recommendation of the examining health care professional but shall give fair consideration to
31715 the recommendation in acting upon the application. The criterion is whether upon all the
31716 evidence it is safe to permit the applicant to drive a motor vehicle.

31717 (b) In deciding whether to grant or deny a license, the division may be guided by the
31718 opinion of experts in the fields of diagnosing and treating mental, physical, or emotional
31719 disabilities and may take into consideration any other factors that bear on the issue of public
31720 safety.

31721 (4) Information provided under this section relating to physical, mental, or emotional
31722 impairment is classified under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
31723 Access and Management Act.

31724 Section 687. Section **53-3-505** is amended to read:

31725 **53-3-505. School license -- Contents of rules.**

31726 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
31727 Administrative Rulemaking Act, the commissioner shall make rules regarding the requirements
31728 for:

- 31729 (a) a school license, including requirements concerning:
 - 31730 (i) locations;
 - 31731 (ii) equipment;
 - 31732 (iii) courses of instruction;
 - 31733 (iv) instructors;
 - 31734 (v) previous records of the school and instructors;
 - 31735 (vi) financial statements;
 - 31736 (vii) schedule of fees and charges;
 - 31737 (viii) character and reputation of the operators and instructors;
 - 31738 (ix) insurance as the commissioner determines necessary to protect the interests of the
31739 public; and
- 31740 (x) other provisions the commissioner may prescribe for the protection of the public;
31741 and
- 31742 (b) an instructor's license, including requirements concerning:
 - 31743 (i) moral character;
 - 31744 (ii) physical condition;
 - 31745 (iii) knowledge of the courses of instruction;
 - 31746 (iv) motor vehicle laws and safety principles and practices;
 - 31747 (v) previous personnel and employment records; and
 - 31748 (vi) other provisions the commissioner may prescribe for the protection of the public;
- 31749 (c) applications for licenses; and
- 31750 (d) minimum standards for:
 - 31751 (i) driving simulation devices that are fully interactive under Subsection
31752 53-3-505.5(2)(b); and
 - 31753 (ii) driving simulation devices that are not fully interactive under Subsection

31754 53-3-505.5(2)(c).

31755 (2) Rules made by the commissioner shall require that a commercial driver training
31756 school offering motorcycle rider education meet or exceed the standards established by the
31757 Motorcycle Safety Foundation.

31758 (3) Rules made by the commissioner shall require that an instructor of motorcycle rider
31759 education meet or exceed the standards for certification established by the Motorcycle Safety
31760 Foundation.

31761 (4) The commissioner may call upon the state superintendent of public instruction for
31762 assistance in formulating appropriate rules.

31763 Section 688. Section **53-3-506** is amended to read:

31764 **53-3-506. License expiration and renewal -- Fee required -- Disposition of**
31765 **revenue.**

31766 (1) (a) All commercial driver training school licenses, commercial testing only school
31767 licenses, school operator licenses, and instructor licenses:

31768 (i) expire one year from the date of issuance; and

31769 (ii) may be renewed upon application to the commissioner as prescribed by rule.

31770 (b) Each application for an original or renewal school license, school operator license,
31771 or instructor license shall be accompanied by a fee determined by the department under Section
31772 [~~63-38-3.2~~] 63J-1-303.

31773 (c) A license fee may not be refunded if the license is rejected, suspended, or revoked.

31774 (2) The license fees collected under this part shall be:

31775 (a) placed in a fund designated as the "Commercial Driver Training Law Fund"; and

31776 (b) used under the supervision and direction of the director of the Division of Finance
31777 for the administration of this part.

31778 Section 689. Section **53-3-510** is amended to read:

31779 **53-3-510. Instructors certified to administer skills tests.**

31780 (1) (a) The division shall establish procedures and standards to certify licensed
31781 instructors of driver training courses under this part to administer skills tests.

31782 (b) An instructor may not administer a skills test under this section to a student that
31783 took the course from the same school or the same instructor.

31784 (2) The division is the certifying authority.

31785 (3) (a) Subject to Subsection (1), an instructor certified under this section may give
31786 skills tests designed for driver training courses authorized under this part.

31787 (b) The division shall establish minimal standards for the test that is at least as difficult
31788 as those required to receive a class D operator's license under Title 53, Chapter 3, Uniform
31789 Driver License Act.

31790 (c) A student who fails the skills test given by an instructor certified under this section
31791 may apply for a class D operator's license under Title 53, Chapter 3, Part 2, Driver Licensing
31792 Act, and complete the skills test at a division office.

31793 (4) A student who successfully passes the test given by a certified driver training
31794 instructor under this section satisfies the driving parts of the test required for a class D
31795 operator's license.

31796 (5) The division shall establish procedures to enable licensed commercial driver training
31797 schools to administer or process the skills test authorized under this section for a class D
31798 operator's license.

31799 (6) The division shall establish the standards and procedures required under this section
31800 by rules made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
31801 Administrative Rulemaking Act.

31802 Section 690. Section **53-3-805** is amended to read:

31803 **53-3-805. Identification card -- Contents -- Specifications.**

31804 (1) (a) The division shall issue an identification card that bears:

31805 (i) the distinguishing number assigned to the person by the division;

31806 (ii) the name, birth date, and Utah residence address of the person;

31807 (iii) a brief description of the person for the purpose of identification;

31808 (iv) a photograph of the person;

31809 (v) a photograph or other facsimile of the person's signature; and

31810 (vi) an indication whether the person intends to make an anatomical gift under Title 26,
31811 Chapter 28, Revised Uniform Anatomical Gift Act.

31812 (b) An identification card issued by the division may not bear the person's Social
31813 Security number or place of birth.

31814 (2) (a) The card shall be of an impervious material, resistant to wear, damage, and
31815 alteration.

31816 (b) Except as provided under Section 53-3-806, the size, form, and color of the card is
31817 prescribed by the commissioner.

31818 (3) At the applicant's request, the card may include a statement that the applicant has a
31819 special medical problem or allergies to certain drugs, for the purpose of medical treatment.

31820 (4) (a) The indication of intent under Subsection 53-3-804(2)(j) shall be authenticated
31821 by the applicant in accordance with division rule.

31822 (b) (i) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
31823 Records Access and Management Act, the division may, upon request, release to an organ
31824 procurement organization, as defined in Section 26-28-102, the names and addresses of all
31825 persons who under Subsection 53-3-804(2)(j) indicate that they intend to make an anatomical
31826 gift.

31827 (ii) An organ procurement organization may use released information only to:

31828 (A) obtain additional information for an anatomical gift registry; and

31829 (B) inform applicants of anatomical gift options, procedures, and benefits.

31830 (5) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
31831 Access and Management Act, the division may release to the Department of Veterans' Affairs
31832 the names and addresses of all persons who indicate their status as a veteran under Subsection
31833 53-3-804(2)(l).

31834 (6) The division and its employees are not liable, as a result of false or inaccurate
31835 information provided under Subsection 53-3-804(2)(j) or (l), for direct or indirect:

31836 (a) loss;

31837 (b) detriment; or

- 31838 (c) injury.
- 31839 Section 691. Section **53-3-903** is amended to read:
- 31840 **53-3-903. Motorcycle Rider Education Program.**
- 31841 (1) (a) The division shall develop standards for and administer the Motorcycle Rider
- 31842 Education Program.
- 31843 (b) The division shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 31844 Chapter 3, Utah Administrative Rulemaking Act, to implement this chapter.
- 31845 (2) The program shall include:
- 31846 (a) a novice rider training course;
- 31847 (b) a rider training course for experienced riders; and
- 31848 (c) an instructor training course.
- 31849 (3) The division may expand the program to include:
- 31850 (a) enhancing public awareness of motorcycle riders;
- 31851 (b) increasing the awareness of motorcycle riders of the effects of alcohol and drugs;
- 31852 (c) motorcycle rider skills improvement;
- 31853 (d) program and other motorcycle safety promotion; and
- 31854 (e) improvement of motorcycle licensing efforts.
- 31855 (4) (a) Rider training courses shall be open to all residents of the state who either hold a
- 31856 valid driver's license for any classification or are eligible for a temporary motorcycle learner's
- 31857 permit.
- 31858 (b) An adequate number of novice rider training courses shall be provided to meet the
- 31859 reasonably anticipated needs of all persons in the state who are eligible and who desire to
- 31860 participate in the program.
- 31861 (c) Program delivery may be phased in over a reasonable period of time.
- 31862 (5) (a) The division may enter into contracts with either public or private institutions to
- 31863 provide a rider training course approved by the division.
- 31864 (b) The institution shall issue certificates of completion in the manner and form
- 31865 prescribed by the director to persons who satisfactorily complete the requirements of the

31866 course.

31867 (c) An institution conducting a rider training course may charge a reasonable tuition fee
31868 to cover the cost of offering the course.

31869 (d) (i) The division may use program funds to defray its own expenses in administering
31870 the program.

31871 (ii) The division may reimburse entities that offer approved courses for actual expenses
31872 incurred in offering the courses, up to a limit established by the division based upon available
31873 program funds.

31874 (iii) Any reimbursement paid to an entity must be entirely reflected by the entity in
31875 reduced course enrollment fees for students.

31876 (6) (a) Standards for the motorcycle rider training courses, including standards for
31877 course curriculum, materials, and student evaluation, and standards for the training and approval
31878 of instructors shall meet or exceed established national standards for motorcycle rider training
31879 courses prescribed by the Motorcycle Safety Foundation.

31880 (b) Motorcycle rider training courses shall be taught only by instructors approved under
31881 Section 53-3-904.

31882 (c) Motorcycle rider training courses for novices shall include at least eight hours of
31883 practice riding.

31884 (7) The commissioner shall appoint a full-time program coordinator to oversee and
31885 direct the program.

31886 Section 692. Section **53-5-704** is amended to read:

31887 **53-5-704. Division duties -- Permit to carry concealed firearm -- Certification for**
31888 **concealed firearms instructor -- Requirements for issuance -- Violation -- Denial,**
31889 **suspension, or revocation -- Appeal procedure.**

31890 (1) (a) The division or its designated agent shall issue a permit to carry a concealed
31891 firearm for lawful self defense to an applicant who is 21 years of age or older within 60 days
31892 after receiving an application, unless during the 60-day period the division finds proof that the
31893 applicant is not of good character.

31894 (b) The permit is valid throughout the state for five years, without restriction, except as
31895 otherwise provided by Section 53-5-710.

31896 (2) (a) An applicant satisfactorily demonstrates good character if the applicant:

31897 (i) has not been convicted of a felony;

31898 (ii) has not been convicted of a crime of violence;

31899 (iii) has not been convicted of an offense involving the use of alcohol;

31900 (iv) has not been convicted of an offense involving the unlawful use of narcotics or
31901 other controlled substances;

31902 (v) has not been convicted of an offense involving moral turpitude;

31903 (vi) has not been convicted of an offense involving domestic violence;

31904 (vii) has not been adjudicated by a state or federal court as mentally incompetent, unless
31905 the adjudication has been withdrawn or reversed; and

31906 (viii) is qualified to purchase and possess a firearm pursuant to Section 76-10-503 and
31907 federal law.

31908 (b) In assessing good character under Subsection (2)(a), the licensing authority shall
31909 consider mitigating circumstances.

31910 (3) (a) The division may deny, suspend, or revoke a concealed firearm permit if it has
31911 reasonable cause to believe that the applicant has been or is a danger to self or others as
31912 demonstrated by evidence, including:

31913 (i) past pattern of behavior involving unlawful violence or threats of unlawful violence;

31914 (ii) past participation in incidents involving unlawful violence or threats of unlawful
31915 violence; or

31916 (iii) conviction of an offense in violation of Title 76, Chapter 10, Part 5, Weapons.

31917 (b) The division may not deny, suspend, or revoke a concealed firearm permit solely for
31918 a single conviction for an infraction violation of Title 76, Chapter 10, Part 5, Weapons.

31919 (c) In determining whether the applicant has been or is a danger to self or others, the
31920 division may inspect:

31921 (i) expunged records of arrests and convictions of adults as provided in Section

31922 77-18-15; and

31923 (ii) juvenile court records as provided in Section 78-3a-206.

31924 (d) (i) If a person granted a permit under this part has been charged with a crime of
31925 violence in any state, the division shall suspend the permit.

31926 (ii) Upon notice of the acquittal of the person charged, or notice of the charges having
31927 been dropped, the division shall immediately reinstate the suspended permit.

31928 (4) A former peace officer who departs full-time employment as a peace officer, in an
31929 honorable manner, shall be issued a concealed firearm permit within five years of that departure
31930 if the officer meets the requirements of this section.

31931 (5) Except as provided in Subsection (6), the licensing authority shall also require the
31932 applicant to provide:

31933 (a) the address of the applicant's permanent residence;

31934 (b) one recent dated photograph;

31935 (c) one set of fingerprints; and

31936 (d) evidence of general familiarity with the types of firearms to be concealed as defined
31937 in Subsection (7).

31938 (6) An applicant who is a law enforcement officer under Section 53-13-103 may
31939 provide a letter of good standing from the officer's commanding officer in place of the evidence
31940 required by Subsection (5)(d).

31941 (7) (a) General familiarity with the types of firearms to be concealed includes training
31942 in:

31943 (i) the safe loading, unloading, storage, and carrying of the types of firearms to be
31944 concealed; and

31945 (ii) current laws defining lawful use of a firearm by a private citizen, including lawful
31946 self-defense, use of force by a private citizen, including use of deadly force, transportation, and
31947 concealment.

31948 (b) Evidence of general familiarity with the types of firearms to be concealed may be
31949 satisfied by one of the following:

- 31950 (i) completion of a course of instruction conducted by a national, state, or local firearms
31951 training organization approved by the division;
- 31952 (ii) certification of general familiarity by a person who has been certified by the division,
31953 which may include a law enforcement officer, military or civilian firearms instructor, or hunter
31954 safety instructor; or
- 31955 (iii) equivalent experience with a firearm through participation in an organized shooting
31956 competition, law enforcement, or military service.
- 31957 (c) Instruction taken by a student under Subsection (7)(b) shall be in person and not
31958 through electronic means.
- 31959 (8) (a) An applicant for certification as a Utah concealed firearms instructor shall:
- 31960 (i) be at least 21 years of age;
- 31961 (ii) be currently eligible to possess a firearm under Section 76-10-503 and federal law;
- 31962 (iii) have a current National Rifle Association certification or its equivalent as
31963 determined by the division; and
- 31964 (iv) for certificates issued beginning July 1, 2006, have taken a course of instruction and
31965 passed a certification test as described in Subsection (8)(c).
- 31966 (b) An instructor's certification is valid for three years from the date of issuance, unless
31967 revoked by the division.
- 31968 (c) (i) In order to obtain initial certification or renew a certification, an instructor shall
31969 attend an instructional course and pass a test under the direction of the division.
- 31970 (ii) (A) Beginning May 1, 2006, the division shall provide or contract to provide the
31971 course referred to in Subsection (8)(c)(i) twice every year.
- 31972 (B) The course shall include instruction on current Utah law related to firearms,
31973 including concealed carry statutes and rules, and the use of deadly force by private citizens.
- 31974 (d) (i) Each applicant for certification under this Subsection (8) shall pay a fee of
31975 \$50.00 at the time of application for initial certification.
- 31976 (ii) The renewal fee for the certificate is \$25.
- 31977 (iii) The fees paid under Subsections (8)(d)(i) and (ii) may be used by the division as a

31978 dedicated credit to cover the cost incurred in maintaining and improving the instruction program
31979 required for concealed firearm instructors under this Subsection (8).

31980 (9) A certified concealed firearms instructor shall provide each of the instructor's
31981 students with the required course of instruction outline approved by the division.

31982 (10) (a) (i) A concealed firearms instructor is required to provide a signed certificate to
31983 a person successfully completing the offered course of instruction.

31984 (ii) The instructor shall sign the certificate with the exact name indicated on the
31985 instructor's certification issued by the division under Subsection (8).

31986 (iii) (A) The certificate shall also have affixed to it the instructor's official seal, which is
31987 the exclusive property of the instructor and may not be used by any other person.

31988 (B) The instructor shall destroy the seal upon revocation or expiration of the
31989 instructor's certification under Subsection (8).

31990 (C) The division shall determine the design and content of the seal to include at least the
31991 following:

31992 (I) the instructor's name as it appears on the instructor's certification;

31993 (II) the words "Utah Certified Concealed Firearms Instructor," "state of Utah," and "my
31994 certification expires on (the instructor's certification expiration date)"; and

31995 (III) the instructor's business or residence address.

31996 (D) The seal shall be affixed to each student certificate issued by the instructor in a
31997 manner that does not obscure or render illegible any information or signatures contained in the
31998 document.

31999 (b) The applicant shall provide the certificate to the division in compliance with
32000 Subsection (5)(d).

32001 (11) The division may deny, suspend, or revoke the certification of a concealed firearms
32002 instructor if it has reason to believe the applicant has:

32003 (a) become ineligible to possess a firearm under Section 76-10-503 or federal law; or

32004 (b) knowingly and willfully provided false information to the division.

32005 (12) A concealed firearms instructor has the same appeal rights as set forth in

32006 Subsection (15).

32007 (13) In providing instruction and issuing a permit under this part, the concealed firearms
32008 instructor and the licensing authority are not vicariously liable for damages caused by the permit
32009 holder.

32010 (14) An individual who knowingly and willfully provides false information on an
32011 application filed under this part is guilty of a class B misdemeanor, and the application may be
32012 denied, or the permit may be suspended or revoked.

32013 (15) (a) In the event of a denial, suspension, or revocation of a permit, the applicant
32014 may file a petition for review with the board within 60 days from the date the denial, suspension,
32015 or revocation is received by the applicant by certified mail, return receipt requested.

32016 (b) The denial of a permit shall be in writing and shall include the general reasons for
32017 the action.

32018 (c) If an applicant appeals the denial to the review board, the applicant may have access
32019 to the evidence upon which the denial is based in accordance with [~~Title 63, Chapter 2~~] Title
32020 63G, Chapter 2, Government Records Access and Management Act.

32021 (d) On appeal to the board, the agency has the burden of proof by a preponderance of
32022 the evidence.

32023 (e) (i) Upon a ruling by the board on the appeal of a denial, the division shall issue a
32024 final order within 30 days stating the board's decision.

32025 (ii) The final order shall be in the form prescribed by Subsection [~~63-46b-5~~]
32026 63G-4-203(1)(i).

32027 (iii) The final order is final agency action for purposes of judicial review under Section
32028 [~~63-46b-15~~] 63G-4-402.

32029 (16) The commissioner may make rules in accordance with [~~Title 63, Chapter 46a~~] Title
32030 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this chapter.

32031 Section 693. Section **53-5-705** is amended to read:

32032 **53-5-705. Temporary permit to carry concealed firearm -- Denial, suspension, or**
32033 **revocation -- Appeal.**

- 32034 (1) The division or its designated agent may issue a temporary permit to carry a
32035 concealed firearm to a person who:
- 32036 (a) has applied for a permit under Section 53-5-704;
 - 32037 (b) has applied for a temporary permit under this section; and
 - 32038 (c) meets the criteria required in Subsections (2) and (3).
- 32039 (2) To receive a temporary permit under this section, the applicant shall demonstrate in
32040 writing to the satisfaction of the licensing authority extenuating circumstances that would justify
32041 issuing a temporary permit.
- 32042 (3) A temporary permit may not be issued under this section until preliminary record
32043 checks regarding the applicant have been made with the National Crime Information Center and
32044 the division to determine any criminal history.
- 32045 (4) A temporary permit is valid only for a maximum of 90 days or any lesser period
32046 specified by the division, or until a permit under Section 53-5-704 is issued to the holder of the
32047 temporary permit, whichever period is shorter.
- 32048 (5) The licensing authority may deny, suspend, or revoke a temporary permit prior to
32049 expiration if the commissioner determines:
- 32050 (a) the circumstances justifying the temporary permit no longer exist; or
 - 32051 (b) the holder of the temporary permit does not meet the requirements for a permit
32052 under Section 53-5-704.
 - 32053 (6) (a) The denial, suspension, or revocation of a temporary permit shall be in writing
32054 and shall include the reasons for the action.
 - 32055 (b) The licensing authority's decision to deny, suspend, or revoke a temporary permit
32056 may not be appealed to the board.
 - 32057 (c) Denial, suspension, or revocation under this subsection is final action for purposes
32058 of judicial review under Section ~~[63-46b-15]~~ 63G-4-402.
- 32059 Section 694. Section **53-5-708** is amended to read:
32060 **53-5-708. Permit -- Names private.**
32061 (1) When any permit is issued, a record shall be maintained in the office of the licensing

32062 authority. Notwithstanding the requirements of Subsection [~~63-2-301(1)~~] 63G-2-301(2)(b), the
32063 names, addresses, telephone numbers, dates of birth, and Social Security numbers of persons
32064 receiving permits are protected records under Subsection [~~63-2-304~~] 63G-2-305(10).

32065 (2) Copies of each permit issued shall be filed immediately by the licensing authority
32066 with the division.

32067 Section 695. Section **53-5a-101**, which is renumbered from Section 63-98-101 is
32068 renumbered and amended to read:

CHAPTER 5a. FIREARM LAWS

~~[63-98-101].~~ **53-5a-101. Title.**

This chapter is known as "Firearm Laws."

32072 Section 696. Section **53-5a-102**, which is renumbered from Section 63-98-102 is
32073 renumbered and amended to read:

~~[63-98-102].~~ **53-5a-102. Uniform firearm laws.**

32075 (1) The individual right to keep and bear arms being a constitutionally protected right
32076 under Article I, Section 6 of the Utah Constitution, the Legislature finds the need to provide
32077 uniform civil and criminal firearm laws throughout the state.

32078 (2) Except as specifically provided by state law, a local authority or state entity may
32079 not:

32080 (a) prohibit an individual from owning, possessing, purchasing, selling, transferring,
32081 transporting, or keeping a firearm at the individual's place of residence, property, business, or in
32082 any vehicle lawfully in the individual's possession or lawfully under the individual's control; or

32083 (b) require an individual to have a permit or license to purchase, own, possess,
32084 transport, or keep a firearm.

32085 (3) In conjunction with Title 76, Chapter 10, Part 5, Weapons, this section is uniformly
32086 applicable throughout this state and in all its political subdivisions and municipalities.

32087 (4) All authority to regulate firearms is reserved to the state except where the
32088 Legislature specifically delegates responsibility to local authorities or state entities.

32089 (5) Unless specifically authorized by the Legislature by statute, a local authority or state

32090 entity may not enact, establish, or enforce any ordinance, regulation, rule, or policy pertaining to
32091 firearms that in any way inhibits or restricts the possession or use of firearms on either public or
32092 private property.

32093 (6) As used in this section:

32094 (a) "firearm" has the same meaning as defined in Subsection 76-10-501(9); and

32095 (b) "local authority or state entity" includes public school districts, public schools, and
32096 state institutions of higher education.

32097 (7) Nothing in this section restricts or expands private property rights.

32098 Section 697. Section **53-6-105** is amended to read:

32099 **53-6-105. Duties of director -- Powers -- Rulemaking.**

32100 (1) The director, with the advice of the council, shall:

32101 (a) prescribe standards for the certification of a peace officer training academy, certify
32102 an academy that meets the prescribed standards, and prescribe standards for revocation of
32103 certification for cause;

32104 (b) prescribe minimum qualifications for certification of peace officers appointed or
32105 elected to enforce the laws of this state and its subdivisions and prescribe standards for
32106 revocation of certification for cause;

32107 (c) establish minimum requirements for the certification of training instructors and
32108 establish standards for revocation of certification;

32109 (d) provide for the issuance of appropriate certificates to those peace officers
32110 completing the basic training programs offered by a certified academy or those persons who
32111 pass a certification examination as provided for in this chapter;

32112 (e) consult and cooperate with certified academy administrators and instructors for the
32113 continued development and improvement of the basic training programs provided by the
32114 certified academy and for the further development and implementation of advanced in-service
32115 training programs;

32116 (f) consult and cooperate with state institutions of higher education to develop
32117 specialized courses of study for peace officers in the areas of criminal justice, police

32118 administration, criminology, social sciences, and other related disciplines;

32119 (g) consult and cooperate with other departments, agencies, and local governments

32120 concerned with peace officer training;

32121 (h) perform any other acts necessary to develop peace officer training programs within

32122 the state;

32123 (i) report to the council at regular meetings of the council and when the council

32124 requires;

32125 (j) recommend peace officer standards and training requirements to the commissioner,

32126 governor, and the Legislature; and

32127 (k) make rules as provided in this chapter.

32128 (2) With the permission of the commissioner, the director may execute contracts on

32129 behalf of the division with criminal justice agencies to provide training for employees of those

32130 agencies if:

32131 (a) the employees or the employing agency pay a registration fee equivalent to the cost

32132 of the training; and

32133 (b) the contract does not reduce the effectiveness of the division in its primary

32134 responsibility of providing training for peace officers of the state.

32135 (3) The director may:

32136 (a) revoke certification of a certified academy for cause; and

32137 (b) make training aids and materials available to local law enforcement agencies.

32138 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

32139 Administrative Rulemaking Act, and consistent with Title 53, Chapter 6, Part 3, Dispatcher

32140 Training and Certification Act, the director shall, with the advice of the council, make rules:

32141 (a) establishing minimum requirements for the certification of dispatcher training

32142 instructors in a certified academy or interagency program and standards for revocation of this

32143 certification;

32144 (b) establishing approved curriculum and a basic schedule for the basic dispatcher

32145 training course and the content of the dispatcher certification examination;

32146 (c) providing for the issuance of appropriate certificates to a person who completes the
32147 basic dispatcher course or who passes a dispatcher certification examination as provided for in
32148 this chapter;

32149 (d) establishing approved courses for certified dispatchers' annual training; and

32150 (e) establishing a reinstatement procedure for a certified dispatcher who has not
32151 obtained the required annual training hours.

32152 Section 698. Section **53-6-213** is amended to read:

32153 **53-6-213. Appropriations from reparation fund.**

32154 (1) The Legislature shall appropriate from the fund established in [~~Title 63, Chapter~~
32155 ~~25a, Part 4, the~~ Title 63M, Chapter 7, Part 5, Crime Victims' Reparations Act, to the division,
32156 funds for training of law enforcement officers in the state.

32157 (2) The department shall make an annual report to the Legislature, which includes the
32158 amount received during the previous fiscal year.

32159 Section 699. Section **53-7-204** is amended to read:

32160 **53-7-204. Duties of Utah Fire Prevention Board -- Local administrative duties.**

32161 (1) The board shall:

32162 (a) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
32163 Administrative Rulemaking Act:

32164 (i) adopting a nationally recognized fire code and the specific edition of that fire code as
32165 the state fire code to be used as the standard;

32166 (ii) establishing minimum standards for the prevention of fire and for the protection of
32167 life and property against fire and panic in any:

32168 (A) publicly owned building, including all public and private schools, colleges, and
32169 university buildings;

32170 (B) building or structure used or intended for use as an asylum, a mental hospital, a
32171 hospital, a sanitarium, a home for the aged, an assisted living facility, a children's home or day
32172 care center, or any similar institutional type occupancy of any capacity; and

32173 (C) place of assemblage where 50 or more persons may gather together in a building,

- 32174 structure, tent, or room for the purpose of amusement, entertainment, instruction, or education;
- 32175 (iii) establishing safety and other requirements for placement and discharge of display
- 32176 fireworks based upon:
- 32177 (A) the specific edition of the nationally recognized fire code selected by the board
- 32178 under Subsection (1)(a)(i); and
- 32179 (B) relevant publications of the National Fire Protection Association;
- 32180 (iv) establishing minimum safety standards for retail storage, handling, and sale of class
- 32181 C common state approved explosives;
- 32182 (v) defining methods to establish proof of competence to place and discharge display
- 32183 fireworks;
- 32184 (vi) for deputizing qualified persons to act as deputy fire marshals, and to secure special
- 32185 services in emergencies;
- 32186 (vii) implementing Sections 53-7-106 and 53-7-205;
- 32187 (viii) setting guidelines for use of funding;
- 32188 (ix) establishing criteria for training and safety equipment grants for fire departments
- 32189 enrolled in firefighter certification; and
- 32190 (x) establishing minimum ongoing training standards for hazardous materials emergency
- 32191 response agencies;
- 32192 (b) recommend to the commissioner a state fire marshal;
- 32193 (c) develop policies under which the state fire marshal and [~~his~~] the state fire marshal's
- 32194 authorized representatives will perform;
- 32195 (d) provide for the employment of field assistants and other salaried personnel as
- 32196 required;
- 32197 (e) prescribe the duties of the state fire marshal and [~~his~~] the state fire marshal's
- 32198 authorized representatives;
- 32199 (f) establish a statewide fire prevention, fire education, and fire service training program
- 32200 in cooperation with the Board of Regents;
- 32201 (g) establish a statewide fire statistics program for the purpose of gathering fire data

32202 from all political subdivisions of the state;

32203 (h) establish a fire academy in accordance with Section 53-7-204.2;

32204 (i) coordinate the efforts of all people engaged in fire suppression in the state;

32205 (j) work aggressively with the local political subdivisions to reduce fire losses;

32206 (k) regulate the sale and servicing of portable fire extinguishers and automatic fire

32207 suppression systems in the interest of safeguarding lives and property;

32208 (l) establish a certification program for persons who inspect and test automatic fire

32209 sprinkler systems;

32210 (m) establish a certification program for persons who inspect and test fire alarm

32211 systems; and

32212 (n) establish a certification for persons who provide response services regarding

32213 hazardous materials emergencies.

32214 (2) The board may incorporate in its rules by reference, in whole or in part, nationally

32215 recognized and readily available standards and codes pertaining to the protection of life and

32216 property from fire, explosion, or panic.

32217 (3) (a) The board may only make amendments to the state fire code adopted under

32218 Subsection (1)(a)(i) in accordance with Section 53-7-205.

32219 (b) The amendments may be applicable to the entire state or within a city, county, or

32220 fire protection district.

32221 (4) The following functions shall be administered locally by a city, county, or fire

32222 protection district:

32223 (a) issuing permits, including open burning permits pursuant to Sections 11-7-1 and

32224 19-2-114;

32225 (b) creating a local board of appeals in accordance with the state fire code; and

32226 (c) establishing, modifying, or deleting fire flow and water supply requirements.

32227 Section 700. Section **53-7-204.2** is amended to read:

32228 **53-7-204.2. Fire Academy -- Establishment -- Fire Academy Support Account --**

32229 **Funding.**

- 32230 (1) In this section:
- 32231 (a) "Account" means the Fire Academy Support Account created in Subsection (4).
- 32232 (b) "Property insurance premium" means premium paid as consideration for property
- 32233 insurance as defined in Section 31A-1-301.
- 32234 (2) The board shall:
- 32235 (a) establish a fire academy that:
- 32236 (i) provides instruction and training for paid, volunteer, institutional, and industrial
- 32237 firefighters;
- 32238 (ii) develops new methods of firefighting and fire prevention;
- 32239 (iii) provides training for fire and arson detection and investigation;
- 32240 (iv) provides public education programs to promote fire safety;
- 32241 (v) provides for certification of firefighters, pump operators, instructors, and officers;
- 32242 and
- 32243 (vi) provides facilities for teaching fire-fighting skills;
- 32244 (b) establish a cost recovery fee in accordance with Section [~~63-38-3.2~~] 63J-1-303 for
- 32245 training commercially employed firefighters; and
- 32246 (c) request funding for the academy.
- 32247 (3) The board may:
- 32248 (a) accept gifts, donations, and grants of property and services on behalf of the fire
- 32249 academy; and
- 32250 (b) enter into contractual agreements necessary to facilitate establishment of the school.
- 32251 (4) (a) To provide a funding source for the academy and for the general operation of
- 32252 the State Fire Marshal Division, there is created in the General Fund a restricted account known
- 32253 as the Fire Academy Support Account.
- 32254 (b) The following revenue shall be deposited in the account to implement this section:
- 32255 (i) the percentage specified in Subsection (5) of the annual tax for each year that is
- 32256 levied, assessed, and collected under Title 59, Chapter 9, Taxation of Admitted Insurers, upon
- 32257 property insurance premiums and as applied to fire and allied lines insurance collected by

32258 insurance companies within the state;

32259 (ii) the percentage specified in Subsection (6) of all money assessed and collected upon
32260 life insurance premiums within the state;

32261 (iii) the cost recovery fees established by the board;

32262 (iv) gifts, donations, and grants of property on behalf of the fire academy; and

32263 (v) appropriations made by the Legislature.

32264 (5) The percentage of the tax specified in Subsection (4)(b)(i) to be deposited in the
32265 account each fiscal year is 25%.

32266 (6) The percentage of the money specified in Subsection (4)(b)(ii) to be deposited in the
32267 account each fiscal year is 5%.

32268 Section 701. Section **53-7-216** is amended to read:

32269 **53-7-216. Portable fire extinguishers -- Certification required to service.**

32270 (1) Each firm engaged in the business of servicing portable fire extinguishers or
32271 automatic fire suppression systems that automatically detect fire and discharge an approved fire
32272 extinguishing agent onto or in the area of the fire shall be certified by the state fire marshal.

32273 (2) An application for certification shall be in writing, on forms prescribed by the board,
32274 and require evidence of competency.

32275 (3) The board may establish a fee under Section [~~63-38-3.2~~] 63J-1-303 to be paid upon
32276 application for certification.

32277 (4) This section does not apply to standpipe systems, deluge systems, or automatic fire
32278 sprinkler systems.

32279 Section 702. Section **53-7-225.5** is amended to read:

32280 **53-7-225.5. Inspection and testing of automatic fire sprinkler systems --**

32281 **Certification required.**

32282 (1) Each person engaged in the inspection and testing of automatic fire sprinkler
32283 systems shall be certified by the state fire marshal.

32284 (2) The board shall by rule prescribe an application form and standards for certification
32285 qualification and for renewal and revocation.

32286 (3) Applicants for certification as an automatic fire sprinkler system inspector and tester
32287 shall:

32288 (a) submit a written application on the form prescribed by the board;

32289 (b) provide evidence of competency as required by the board; and

32290 (c) submit the fee established under Subsection (4).

32291 (4) The board may establish an application fee under Section [~~63-38-3.2~~] 63J-1-303.

32292 Section 703. Section **53-7-225.6** is amended to read:

32293 **53-7-225.6. Inspection and testing of fire alarm systems -- Certification and**
32294 **exceptions.**

32295 (1) (a) Each person, other than fire and building inspectors and electricians licensed
32296 under Title 58, Chapter 55, Utah Construction Trades Licensing Act, engaged in the inspection
32297 and testing of fire alarm systems shall be certified by the state fire marshal.

32298 (b) The board shall by administrative rule prescribe:

32299 (i) an application form; and

32300 (ii) standards for certification qualification and for renewal and revocation.

32301 (2) Applicants for certification as a fire alarm system inspector and tester shall:

32302 (a) submit a written application on the form prescribed by the board;

32303 (b) provide evidence of competency as required by the board; and

32304 (c) submit the fee established under Subsection (3).

32305 (3) The board may establish an application fee under Section [~~63-38-3.2~~] 63J-1-303.

32306 Section 704. Section **53-7-314** is amended to read:

32307 **53-7-314. Fees -- Setting -- Deposit -- Use.**

32308 (1) The board shall establish fees authorized in this part in accordance with the
32309 procedures specified in Section [~~63-38-3.2~~] 63J-1-303, but the fees shall be deposited as
32310 provided in Subsection (2).

32311 (2) Fees collected by the division under this part, shall be deposited with the state
32312 treasurer as a nonlapsing dedicated credit, to be used for the implementation of this part.

32313 Section 705. Section **53-7-407 (Effective 07/01/08)** is amended to read:

32314 **53-7-407 (Effective 07/01/08). Implementation -- Effect of part on Model Tobacco**
32315 **Settlement Act and Tobacco Tax and Licensing Act.**

32316 (1) The state fire marshal may promulgate rules and regulations, pursuant to [~~Title 63,~~
32317 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to
32318 effectuate the purposes of this part.

32319 (2) The State Tax Commission in the regular course of conducting inspections of
32320 wholesale dealers, agents, and retail dealers, as authorized under Title 59, Chapter 14, Cigarette
32321 and Tobacco Tax and Licensing Act, may inspect cigarettes to determine if the cigarettes are
32322 marked as required by Section 53-7-405. If the cigarettes are not marked as required, the State
32323 Tax Commission shall notify the state fire marshal.

32324 (3) Nothing in this part shall affect an entity's obligations pursuant to:

32325 (a) Title 59, Chapter 14, Cigarette and Tobacco Tax and Licensing Act; or

32326 (b) Title 59, Chapter 22, Model Tobacco Settlement Act.

32327 Section 706. Section **53-8-204** is amended to read:

32328 **53-8-204. Division duties -- Official inspection stations -- Permits -- Fees --**
32329 **Suspension or revocation -- Utah-based interstate commercial motor carriers.**

32330 (1) The division shall:

32331 (a) conduct examinations of every safety inspection station permit applicant and safety
32332 inspector certificate applicant to determine whether the applicant is properly equipped and
32333 qualified to make safety inspections;

32334 (b) issue safety inspection station permits and safety inspector certificates to qualified
32335 applicants;

32336 (c) establish application, renewal, and reapplication fees in accordance with Section
32337 [~~63-38-3.2~~] 63J-1-303 for safety inspection station permits and safety inspector certificates;

32338 (d) provide instructions and all necessary forms, including safety inspection certificates,
32339 to safety inspection stations for the inspection of motor vehicles and the issuance of the safety
32340 inspection certificates;

32341 (e) charge a \$2 fee for each safety inspection certificate;

32342 (f) investigate complaints regarding safety inspection stations and safety inspectors;
32343 (g) compile and publish all applicable safety inspection laws, rules, instructions, and
32344 standards and distribute them to all safety inspection stations and provide updates to the
32345 compiled laws, rules, instructions, and standards as needed;

32346 (h) establish a fee in accordance with Section [~~63-38-3.2~~] 63J-1-303 to cover the cost
32347 of compiling and publishing the safety inspection laws, rules, instructions, and standards and any
32348 updates; and

32349 (i) assist the council in conducting its meetings and hearings.

32350 (2) (a) (i) Receipts from the fees established in accordance with Subsection (1)(h) are
32351 fixed collections to be used by the division for the expenses of the Utah Highway Patrol
32352 incurred under Subsection (1)(h).

32353 (ii) Funds received in excess of the expenses under Subsection (1)(h) shall be deposited
32354 in the Transportation Fund.

32355 (b) (i) The first \$.75 of the fee under Subsection (1)(e) is a dedicated credit to be used
32356 solely by the Utah Highway Patrol for the expenses of administering this section.

32357 (ii) The remaining funds collected under Subsection (1)(e) shall be deposited in the
32358 Transportation Fund.

32359 (iii) The dedicated credits described under Subsection (2)(b)(i) are in addition to any
32360 other appropriations provided to administer the safety inspection program duties under this
32361 section.

32362 (3) The division may:

32363 (a) before issuing a safety inspection permit, require an applicant, other than a fleet
32364 station or government station, to file a bond that will provide a guarantee that the applicant
32365 safety inspection station will make compensation for any damage to a motor vehicle during an
32366 inspection or adjustment due to negligence on the part of an applicant or [~~his~~] the applicant's
32367 employees;

32368 (b) establish procedures governing the issuance of safety inspection certificates to
32369 Utah-based interstate commercial motor carriers; and

- 32370 (c) suspend, revoke, or refuse renewal of any safety inspection station permit issued
32371 when the division finds that the safety inspection station is not:
- 32372 (i) properly equipped; or
 - 32373 (ii) complying with rules made by the division; and
- 32374 (d) suspend, revoke, or refuse renewal of any safety inspection station permit or safety
32375 inspector certificate issued when the station or inspector has violated any safety inspection law
32376 or rule.
- 32377 (4) The division shall maintain a record of safety inspection station permits and safety
32378 inspector certificates issued, suspended, revoked, or refused renewal under Subsection (3)(c).
- 32379 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
32380 Administrative Rulemaking Act, the division shall make rules:
- 32381 (a) setting minimum standards covering the design, construction, condition, and
32382 operation of motor vehicle equipment for safely operating a motor vehicle on the highway;
 - 32383 (b) establishing motor vehicle safety inspection procedures to ensure a motor vehicle
32384 can be operated safely;
 - 32385 (c) establishing safety inspection station building, equipment, and personnel
32386 requirements necessary to qualify to perform safety inspections;
 - 32387 (d) establishing age, training, examination, and renewal requirements to qualify for a
32388 safety inspector certificate;
 - 32389 (e) establishing program guidelines for a school district that elects to implement a safety
32390 inspection apprenticeship program for high school students;
 - 32391 (f) establishing requirements:
 - 32392 (i) designed to protect consumers from unwanted or unneeded repairs or adjustments;
 - 32393 (ii) for maintaining safety inspection records;
 - 32394 (iii) for providing reports to the division; and
 - 32395 (iv) for maintaining and protecting safety inspection certificates;
 - 32396 (g) establishing procedures for a motor vehicle that fails a safety inspection;
 - 32397 (h) setting bonding amounts for safety inspection stations if bonds are required under

32398 Subsection (3)(a); and
32399 (i) establishing procedures for a safety inspection station to follow if the station is going
32400 out of business.
32401 (6) The rules of the division:
32402 (a) shall conform as nearly as practical to federal motor vehicle safety standards
32403 including 49 CFR 393, 396, 396 Appendix G, and Federal Motor Vehicle Safety Standards 205;
32404 and
32405 (b) may incorporate by reference, in whole or in part, the federal standards under
32406 Subsection (6)(a) and nationally recognized and readily available standards and codes on motor
32407 vehicle safety.
32408 Section 707. Section **53-8-211** is amended to read:
32409 **53-8-211. Safety inspection of school buses and other vehicles.**
32410 (1) (a) The Highway Patrol shall:
32411 (i) perform safety inspections at least twice each school year on all school buses
32412 operated by each school district and each private school in the state for the transportation of
32413 students, except as otherwise provided in Subsection (1)(b); and
32414 (ii) cause to be removed from the public highways any vehicle found to have mechanical
32415 or other defects under Subsection (1)(a) endangering the safety of passengers and the public
32416 until the defects have been corrected.
32417 (b) (i) A school district or private school may perform the safety inspections of a school
32418 bus that it operates in accordance with rules made by the division under [~~Title 63, Chapter 46a~~]
32419 Title 63G, Chapter 3, Utah Administrative Rule Making Act, and after consultation with the
32420 State Board of Education.
32421 (ii) The rules under Subsection (1)(b)(i) shall include provisions for:
32422 (A) maintaining school bus drivers' hours of service records;
32423 (B) requiring school bus drivers to maintain vehicle condition reports;
32424 (C) maintaining school bus maintenance and repair records; and
32425 (D) validating that defects discovered during the inspection process have been corrected

32426 prior to returning a school bus to service.

32427 (iii) (A) The division shall audit school bus safety operations of each school district and
32428 private school performing inspections under Subsection (1)(b)(i) to ensure compliance with the
32429 rules made under that subsection.

32430 (B) The audit may include both a formal examination of the district's or school's
32431 inspection records and a random physical inspection of buses that have been safety inspected by
32432 the district or the school.

32433 (iv) A school district or school must have a comprehensive school bus maintenance plan
32434 approved by the division in order to participate in the safety inspection program.

32435 (v) A school district or private school may not operate any vehicle found to have
32436 mechanical or other defects that would endanger the safety of passengers and the public until
32437 the defects have been corrected.

32438 (2) Motor vehicles operated by private schools or school districts, and not used for the
32439 transportation of students, are subject to Section 53-8-205.

32440 Section 708. Section **53-9-103** is amended to read:

32441 **53-9-103. Commissioner of Public Safety to administer -- Bureau to issue licenses**
32442 **-- Records -- Bonds -- Rulemaking.**

32443 (1) The commissioner of the Department of Public Safety shall administer this chapter.

32444 (2) (a) The bureau, acting at the direction of the commissioner, shall issue a private
32445 investigator license to any applicant who meets qualifications for licensure under Section
32446 53-9-108.

32447 (b) The bureau shall issue a license to a qualified apprentice applicant within five
32448 business days of receipt of the application.

32449 (3) (a) The bureau shall keep records of:

32450 (i) all applications for licenses under this chapter; and

32451 (ii) all bonds and proof of workers' compensation required to be filed.

32452 (b) The records shall include statements as to whether a license or renewal license has
32453 been issued for each application and bond.

32454 (4) If a license is revoked, suspended, canceled, or denied or if a licensee is placed on
32455 probation, the date of filing the order for revocation, suspension, cancellation, denial, or
32456 probation shall be included in the records.

32457 (5) The bureau shall maintain:

32458 (a) a list of all licensees whose license has been revoked, suspended, placed on
32459 probation, or canceled; and

32460 (b) a written record of complaints filed against licensees.

32461 (6) The commissioner may make rules in accordance with [~~Title 63, Chapter 46a~~] Title
32462 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer this chapter.

32463 Section 709. Section **53-9-108** is amended to read:

32464 **53-9-108. Qualifications for licensure.**

32465 (1) (a) An applicant for an agency license under this chapter shall be at least 21 years of
32466 age, a citizen or legal resident of the United States, and of good moral character.

32467 (b) An applicant may not have been:

32468 (i) convicted of a felony;

32469 (ii) convicted of an act involving illegally using, carrying, or possessing a dangerous
32470 weapon;

32471 (iii) convicted of an act of personal violence or force on any person or convicted of
32472 threatening to commit an act of personal violence or force against another person;

32473 (iv) convicted of an act constituting dishonesty or fraud;

32474 (v) convicted of an act involving moral turpitude;

32475 (vi) placed on probation or parole;

32476 (vii) named in an outstanding arrest warrant; or

32477 (viii) convicted of illegally obtaining or disclosing private, controlled, or protected
32478 records as provided in Section [~~63-2-801~~] 63G-2-801.

32479 (c) In assessing good moral character under Subsection (1)(b), the board shall consider
32480 mitigating circumstances presented by an applicant regarding information under Subsections
32481 (1)(b)(vi) and (viii).

32482 (d) If previously or currently licensed in another state or jurisdiction, the applicant shall
32483 be in good standing within that state or jurisdiction.

32484 (e) An applicant shall have completed a minimum of two years, or 2,000 hours, of
32485 investigative experience that consists of actual work performed as a licensed private investigator
32486 for a private agency, or 2,000 hours of work performed in an investigative capacity for the
32487 federal government, or for a state, county, or municipal government.

32488 (f) (i) An applicant for an agency license shall substantiate investigative work
32489 experience claimed as years of qualifying experience and provide the exact details as to the
32490 character and nature of the experience on a form prescribed by the department and certified by
32491 the applicant's employers.

32492 (ii) If the applicant is unable to supply written certification from an employer in whole
32493 or in part, the applicant may offer written certification from persons other than an employer
32494 covering the same subject matter for consideration by the board.

32495 (iii) The applicant shall prove completion of the required experience to the satisfaction
32496 of the board and the board may independently verify the certification offered on behalf of the
32497 applicant.

32498 (2) (a) (i) An applicant for a registrant license shall meet all qualification standards of
32499 this section, except Subsection (1)(d).

32500 (ii) An applicant shall have a minimum of one year, or 1,000 hours, of investigative
32501 experience that consists of actual work performed as a private investigator for a private agency,
32502 the federal government, a state, county, or municipal government.

32503 (b) A licensed registrant, as defined in Section 53-9-102, shall only work as an
32504 employee of, or as an independent contractor with, an agency licensed in Utah and physically
32505 located within Utah, and may not:

32506 (i) advertise [his] the licensed registrant's services or conduct investigations for the
32507 general public; or

32508 (ii) employ other private investigators or hire them as independent contractors.

32509 (3) (a) An applicant for an apprentice license, lacking the experience required for a

32510 registrant license, shall meet all of the qualification standards in Subsection (1) except
32511 Subsection (1)(d), and shall complete an apprentice application.

32512 (b) (i) An apprentice, as defined in Section 53-9-102, shall work under the direct
32513 supervision and guidance of an agency licensed in Utah and located within Utah, full-time for
32514 one year or for 1,000 hours, prior to acquiring eligibility for a registrant license.

32515 (ii) A licensed apprentice shall only work under the direction of a licensed agency and
32516 may not:

32517 (A) advertise [~~his~~] the licensed apprentice's services or conduct investigations for the
32518 general public;

32519 (B) employ other private investigators; or

32520 (C) obtain information from the Utah State Tax Commission Motor Vehicle Division or
32521 Driver License Division within the Department of Public Safety, except the apprentice may
32522 utilize this information for a legitimate business need and under the direct supervision of a
32523 licensed agency.

32524 (4) (a) An applicant for an agency, registrant, or apprentice license may be eligible for a
32525 license without meeting all or part of the investigative work experience required by this section
32526 if the applicant:

32527 (i) has a criminal justice degree from an accredited college or university;

32528 (ii) is certified by Peace Officer Standards and Training; or

32529 (iii) can substantiate other similar law enforcement or investigative training in the areas
32530 set forth in Subsection 53-9-102(17).

32531 (b) The board shall determine whether or not training may replace the work experience
32532 requirement and to what extent.

32533 Section 710. Section **53-9-113** is amended to read:

32534 **53-9-113. Grounds for denial of a license -- Appeal.**

32535 (1) The board may deny a license or the renewal of a license if the applicant has:

32536 (a) committed an act that, if committed by a licensee, would be grounds for probation,
32537 suspension, or revocation of a license under this chapter;

32538 (b) employed or contracted with a person who has been refused a license under this
32539 chapter or who has had a license revoked;

32540 (c) while not licensed under this chapter, committed, or aided and abetted the
32541 commission of, any act for which a license is required by this chapter; or

32542 (d) knowingly made a material misstatement in connection with an application for a
32543 license or renewal of a license.

32544 (2) (a) The board's denial of a license under this chapter shall:

32545 (i) be in writing;

32546 (ii) describe the basis for the denial; and

32547 (iii) inform the applicant that if the applicant desires a hearing to contest the denial, the
32548 applicant shall submit a request in writing to the board within 30 days after the denial has been
32549 sent by the department by certified mail to the applicant.

32550 (b) The board shall schedule a hearing on the denial for the next board meeting after the
32551 applicant's request for a hearing has been received by the board.

32552 (3) The decision of the board may be appealed to the commissioner, who may:

32553 (a) return the case to the board for reconsideration;

32554 (b) modify the board's decision; or

32555 (c) reverse the board's decision.

32556 (4) The department shall promptly issue a final order of the commissioner and send the
32557 order to the applicant.

32558 (5) Decisions of the commissioner are subject to judicial review pursuant to Section
32559 ~~[63-46b-15]~~ 63G-4-402.

32560 Section 711. Section **53-9-115** is amended to read:

32561 **53-9-115. Business name and address -- Posting of license -- Advertising.**

32562 (1)(a) Subject to the provisions of this chapter, a licensee may conduct an investigative
32563 business under a name other than the licensee's by:

32564 (i) complying with the requirements of Title 42, Chapter 2, Conducting Business Under
32565 Assumed Name; and

- 32566 (ii) providing a copy of the filed certificate to the commissioner.
- 32567 (b) Failure to comply with Subsection (1)(a) shall result in the suspension of the license.
- 32568 (2) Each licensee shall have at least one physical location from which the normal
- 32569 business of the agency is conducted. The address of this location shall be on file with the
- 32570 commissioner at all times and is not a public record pursuant to Subsection [~~63-2-301(1)~~]
- 32571 63G-2-301(2)(b)(ii).
- 32572 (3) The license certificate issued by the commissioner shall be posted in a conspicuous
- 32573 place in the principal office of the licensee.
- 32574 (4) Subject to the provisions of this chapter, a licensee may solicit business through any
- 32575 accepted form of advertising.
- 32576 (a) Any advertisement shall contain the licensee's name and license number as it appears
- 32577 on the license certificate.
- 32578 (b) A licensee may not use false, deceptive, or misleading advertising.
- 32579 Section 712. Section **53-9-118** is amended to read:
- 32580 **53-9-118. Grounds for disciplinary action -- Types of action.**
- 32581 (1) The board may suspend or revoke a license or registration or deny an application for
- 32582 a license if a person engages in any of the following:
- 32583 (a) fraud or willful misrepresentation in applying for an original license or renewal of an
- 32584 existing license;
- 32585 (b) using any letterhead, advertising, or other printed matter in any manner representing
- 32586 that the licensee is an instrumentality of the federal government, a state, or any political
- 32587 subdivision of a state;
- 32588 (c) using a name different from that under which the licensee is currently licensed for
- 32589 any advertising, solicitation, or contract to secure business unless the name is an authorized
- 32590 fictitious name;
- 32591 (d) impersonating, permitting, or aiding and abetting an employee or independent
- 32592 contractor to impersonate a peace officer or employee of the United States, any state, or a
- 32593 political subdivision of a state;

- 32594 (e) knowingly violating, advising, encouraging, or assisting the violation of any statute,
32595 court order, or injunction in the course of a business regulated under this chapter;
- 32596 (f) falsifying fingerprints or photographs while operating under this chapter;
- 32597 (g) conviction of a felony;
- 32598 (h) conviction of any act involving illegally using, carrying, or possessing a dangerous
32599 weapon;
- 32600 (i) conviction of any act involving moral turpitude;
- 32601 (j) conviction of any act of personal violence or force against any person or conviction
32602 of threatening to commit any act of personal violence or force against any person;
- 32603 (k) soliciting business for an attorney in return for compensation;
- 32604 (l) conviction of any act constituting dishonesty or fraud;
- 32605 (m) being placed on probation, parole, or named in an outstanding arrest warrant;
- 32606 (n) committing or permitting any employee or independent contractor to commit any
32607 act during the period when the license is expired or suspended;
- 32608 (o) willfully neglecting to render to a client services or a report as agreed between the
32609 parties and for which compensation has been paid or tendered in accordance with the agreement
32610 of the parties unless the licensee chooses to withdraw from the case and returns the funds for
32611 work not yet completed;
- 32612 (p) the unauthorized release of information acquired on behalf of a client by a licensee,
32613 or its employee or contract agent as a result of activities regulated under this chapter;
- 32614 (q) failing to cooperate with, misrepresenting to, or refusing access to business or
32615 investigative records requested by the board or an authorized representative of the department
32616 engaged in an official investigation pursuant to this chapter;
- 32617 (r) employing or contracting with any unlicensed or improperly licensed person or
32618 agency to conduct activities regulated under this chapter if the licensure status was known or
32619 could have been ascertained by reasonable inquiry;
- 32620 (s) permitting, authorizing, aiding, or in any way assisting an employee to conduct
32621 services as described in this chapter on an independent contractor basis and not under the

32622 authority of the licensed agency;

32623 (t) failure to maintain in full force and effect workers' compensation insurance, if
32624 applicable;

32625 (u) conducting private investigation services regulated by this chapter on a revoked or
32626 suspended license;

32627 (v) accepting employment, contracting, or in any way engaging in employment that has
32628 an adverse impact on investigations being conducted on behalf of clients;

32629 (w) advertising in a false, deceptive, or misleading manner;

32630 (x) refusing to display the identification card issued by the department to any person
32631 having reasonable cause to verify the validity of the license;

32632 (y) committing any act of unprofessional conduct;

32633 (z) conviction of any act of illegally obtaining or disseminating private, controlled, or
32634 protected records under Section [~~63-2-801~~] 63G-2-801; or

32635 (aa) engaging in any other conduct prohibited by this chapter.

32636 (2) (a) If the board finds, based on the investigation, that the public health, safety, or
32637 welfare requires emergency action, the board may order a summary suspension of a license
32638 pending proceedings for revocation or other action.

32639 (b) If the board issues a summary suspension order, the commissioner shall issue to the
32640 licensee a written notice of the order and indicate the licensee's right to request a formal hearing
32641 before the board.

32642 (c) The licensee's request for a formal hearing shall be in writing and received by the
32643 department within 30 working days of the date the summary suspension was sent by the
32644 department to the licensee by certified mail.

32645 (3) If the board finds, based on the investigation or hearing, that a violation under
32646 Subsection (1) has occurred, notice will be sent to the licensee of the board's decision by mailing
32647 a true copy to the licensee's last-known address in the department's files by certified mail, return
32648 receipt requested.

32649 (4) Based on information the board receives from the investigation or during a hearing,

32650 it may do any of the following:

- 32651 (a) dismiss the complaint if the board believes it is without merit;
 - 32652 (b) take emergency action;
 - 32653 (c) issue a letter of concern, if applicable;
 - 32654 (d) impose a civil fine not to exceed \$500;
 - 32655 (e) place the license on suspension for a period of not more than 12 months;
 - 32656 (f) revoke the license or registration; and
 - 32657 (g) place all records, evidence findings, and conclusion, and any other information
- 32658 pertinent to the investigation, in a confidential and protected records section of the file
- 32659 maintained at the department.

32660 (5) A letter of concern issued pursuant to Section 53-9-118 is a document that is

32661 retained by the department and may be used in future disciplinary actions against a licensee.

32662 (6) Appeal of the board's decision shall be made in writing to the commissioner within

32663 15 days of the date of issuance of the board's decision. The commissioner shall review the

32664 finding by the board and may affirm, return to the board for reconsideration, reverse, adopt,

32665 modify, supplement, amend, or reject the recommendation of the board.

32666 (7) The department shall issue a final written order within 30 days outlining the

32667 commissioner's decision on the appeal. The final order is final agency action for purposes of

32668 judicial review under Section [~~63-46b-15~~] 63G-4-402.

32669 (8) All fines collected under this section shall be deposited in the General Fund.

32670 Section 713. Section **53-10-108** is amended to read:

32671 **53-10-108. Restrictions on access, use, and contents of division records -- Limited**

32672 **use of records for employment purposes -- Challenging accuracy of records -- Usage fees**

32673 **-- Missing children records.**

32674 (1) Dissemination of information from a criminal history record or warrant of arrest

32675 information from division files is limited to:

32676 (a) criminal justice agencies for purposes of administration of criminal justice and for

32677 employment screening by criminal justice agencies;

32678 (b) noncriminal justice agencies or individuals for any purpose authorized by statute,
32679 executive order, court rule, court order, or local ordinance;

32680 (c) agencies or individuals for the purpose of obtaining required clearances connected
32681 with foreign travel or obtaining citizenship;

32682 (d) (i) agencies or individuals pursuant to a specific agreement with a criminal justice
32683 agency to provide services required for the administration of criminal justice; and

32684 (ii) the agreement shall specifically authorize access to data, limit the use of the data to
32685 purposes for which given, and ensure the security and confidentiality of the data;

32686 (e) agencies or individuals for the purpose of a preplacement adoptive study, in
32687 accordance with the requirements of Section 78-30-3.5;

32688 (f) (i) agencies and individuals as the commissioner authorizes for the express purpose
32689 of research, evaluative, or statistical activities pursuant to an agreement with a criminal justice
32690 agency; and

32691 (ii) private security agencies through guidelines established by the commissioner for
32692 employment background checks for their own employees and prospective employees;

32693 (g) a qualifying entity for employment background checks for their own employees and
32694 persons who have applied for employment with the qualifying entity; and

32695 (h) other agencies and individuals as the commissioner authorizes and finds necessary
32696 for protection of life and property and for offender identification, apprehension, and prosecution
32697 pursuant to an agreement.

32698 (2) An agreement under Subsection (1)(f) or (1)(h) shall specifically authorize access to
32699 data, limit the use of data to research, evaluative, or statistical purposes, preserve the anonymity
32700 of individuals to whom the information relates, and ensure the confidentiality and security of the
32701 data.

32702 (3) (a) Before requesting information under Subsection (1)(g), a qualifying entity must
32703 obtain a signed waiver from the person whose information is requested.

32704 (b) The waiver must notify the signee:

32705 (i) that a criminal history background check will be conducted;

32706 (ii) who will see the information; and
32707 (iii) how the information will be used.
32708 (c) Information received by a qualifying entity under Subsection (1)(g) may only be:
32709 (i) available to persons involved in the hiring or background investigation of the
32710 employee; and
32711 (ii) used for the purpose of assisting in making an employment or promotion decision.
32712 (d) A person who disseminates or uses information obtained from the division under
32713 Subsection (1)(g) for purposes other than those specified under Subsection (3)(c), in addition to
32714 any penalties provided under this section, is subject to civil liability.
32715 (e) A qualifying entity that obtains information under Subsection (1)(g) shall provide
32716 the employee or employment applicant an opportunity to:
32717 (i) review the information received as provided under Subsection (8); and
32718 (ii) respond to any information received.
32719 (f) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
32720 Administrative Rulemaking Act, the division may make rules to implement this Subsection (3).
32721 (g) (i) The applicant fingerprint card fee under Subsection (1)(g) is \$15.
32722 (ii) The name check fee under Subsection (1)(g) is \$10.
32723 (iii) These fees remain in effect until changed by the division through the process under
32724 Section [~~63-38-3.2~~] 63J-1-303.
32725 (iv) Funds generated under Subsections (3)(g)(i), (3)(g)(ii), and (8)(b) shall be
32726 deposited in the General Fund as a dedicated credit by the department to cover the costs
32727 incurred in providing the information.
32728 (h) The division or its employees are not liable for defamation, invasion of privacy,
32729 negligence, or any other claim in connection with the contents of information disseminated
32730 under Subsection (1)(g).
32731 (4) Any criminal history record information obtained from division files may be used
32732 only for the purposes for which it was provided and may not be further disseminated, except
32733 that a criminal history provided to an agency pursuant to Subsection (1)(e) may be provided by

32734 the agency to the person who is the subject of the history, another licensed child-placing agency,
32735 or the attorney for the adoptive parents for the purpose of facilitating an adoption.

32736 (5) If an individual has no prior criminal convictions, criminal history record information
32737 contained in the division's computerized criminal history files may not include arrest or
32738 disposition data concerning an individual who has been acquitted, ~~[his]~~ the person's charges
32739 dismissed, or when no complaint against him has been filed.

32740 (6) (a) This section does not preclude the use of the division's central computing
32741 facilities for the storage and retrieval of criminal history record information.

32742 (b) This information shall be stored so it cannot be modified, destroyed, or accessed by
32743 unauthorized agencies or individuals.

32744 (7) Direct access through remote computer terminals to criminal history record
32745 information in the division's files is limited to those agencies authorized by the commissioner
32746 under procedures designed to prevent unauthorized access to this information.

32747 (8) (a) The commissioner shall establish procedures to allow an individual right of
32748 access to review and receive a copy of ~~[his]~~ the individual's criminal history report.

32749 (b) A processing fee for the right of access service, including obtaining a copy of the
32750 individual's criminal history report under Subsection (8)(a) is \$10. This fee remains in effect
32751 until changed by the commissioner through the process under Section ~~[63-38-3.2]~~ 63J-1-303.

32752 (c) (i) The commissioner shall establish procedures for an individual to challenge the
32753 completeness and accuracy of criminal history record information contained in the division's
32754 computerized criminal history files regarding that individual.

32755 (ii) These procedures shall include provisions for amending any information found to be
32756 inaccurate or incomplete.

32757 (9) The private security agencies as provided in Subsection (1)(f)(ii):

32758 (a) shall be charged for access; and

32759 (b) shall be registered with the division according to rules made by the division under
32760 ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

32761 (10) Before providing information requested under this section, the division shall give

32762 priority to criminal justice agencies needs.

32763 (11) (a) Misuse of access to criminal history record information is a class B
32764 misdemeanor.

32765 (b) The commissioner shall be informed of the misuse.

32766 Section 714. Section **53-10-406** is amended to read:

32767 **53-10-406. DNA specimen analysis -- Bureau responsibilities.**

32768 (1) The bureau shall:

32769 (a) store all DNA specimens received and other physical evidence obtained from
32770 analysis of those specimens;

32771 (b) analyze the specimens to establish the genetic profile of the donor or to otherwise
32772 determine the identity of persons or contract with other qualified public or private laboratories
32773 to conduct the analysis;

32774 (c) maintain a criminal identification data base containing information derived from
32775 DNA analysis;

32776 (d) utilize the specimens to create statistical population frequency data bases, provided
32777 that genetic profiles or other information in a population frequency data base may not be
32778 identified with specific individuals;

32779 (e) ensure that the DNA identification system does not provide information allowing
32780 prediction of genetic disease or predisposition to illness; and

32781 (f) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
32782 Administrative Rulemaking Act, establishing procedures for obtaining, transmitting, and
32783 analyzing DNA specimens and for storing and destroying DNA specimens and other physical
32784 evidence and criminal identification information obtained from the analysis.

32785 (2) Procedures for DNA analysis may include all techniques which the Department of
32786 Public Safety determines are accurate and reliable in establishing identity, including but not
32787 limited to, analysis of DNA, antigen antibodies, polymorphic enzymes, or polymorphic proteins.

32788 (3) (a) In accordance with Section [~~63-2-304~~] 63G-2-305, all DNA specimens received
32789 shall be classified as protected.

32790 (b) The Department of Public Safety may not transfer or disclose any DNA specimen,
32791 physical evidence, or criminal identification information obtained, stored, or maintained under
32792 this section, except under its provisions.

32793 (4) Notwithstanding the provisions of Subsection [~~63-2-202~~] 63G-2-202(1), the
32794 department may deny inspection if it determines that there is a reasonable likelihood that the
32795 inspection would prejudice a pending criminal investigation.

32796 (5) The department shall adopt procedures governing the inspection of records, DNA
32797 specimens, and challenges to the accuracy of records. The procedures shall accommodate the
32798 need to preserve the materials from contamination and destruction.

32799 (6) (a) Whenever a court reverses the conviction, judgment, or order that created an
32800 obligation to provide a DNA specimen, the person who provided the specimen may request
32801 destruction of the specimen and any criminal identification record created in connection with
32802 that specimen.

32803 (b) Upon receipt of a written request for destruction pursuant to this section and a
32804 certified copy of the court order reversing the conviction, judgment, or order, the Department
32805 of Public Safety shall destroy any specimen received from the person, any physical evidence
32806 obtained from that specimen, and any criminal identification records pertaining to the person,
32807 unless the department determines that the person has otherwise become obligated to submit a
32808 DNA specimen as a result of a separate conviction or juvenile adjudication for an offense listed
32809 in Section 53-10-403.

32810 (7) The department is not required to destroy any item of physical evidence obtained
32811 from a DNA specimen if evidence relating to another person subject to the provisions of
32812 Sections 53-10-404 and 53-10-405 would as a result be destroyed.

32813 (8) A DNA specimen, physical evidence, or criminal identification record may not be
32814 affected by an order to set aside a conviction, except under the provisions of this section.

32815 (9) If funding is not available for analysis of any of the DNA specimens collected under
32816 this part, the bureau shall store the collected specimens until funding is made available for
32817 analysis through state or federal funds.

32818 Section 715. Section **53-10-602** is amended to read:
32819 **53-10-602. Committee's duties and powers.**
32820 (1) The committee shall:
32821 (a) review and make recommendations to the division, the Bureau of Communications,
32822 public safety answering points, and the Legislature on:
32823 (i) technical and operational issues for the implementation of a unified statewide
32824 wireless and land-based E-911 emergency system;
32825 (ii) specific technology and standards for the implementation of a unified statewide
32826 wireless and land-based E-911 emergency system;
32827 (iii) expenditures by local public service answering points to assure implementation of a
32828 unified statewide wireless and land-based E-911 emergency system and standards of operation;
32829 and
32830 (iv) mapping systems and technology necessary to implement the unified statewide
32831 wireless and land-based E-911 emergency system;
32832 (b) administer the fund as provided in this part;
32833 (c) assist as many local entities as possible, at their request, to implement the
32834 recommendations of the committee; and
32835 (d) fulfill all other duties imposed on the committee by the Legislature by this part.
32836 (2) The committee may sell, lease, or otherwise dispose of equipment or personal
32837 property belonging to the committee, the proceeds from which shall return to the fund.
32838 (3) The committee shall issue the reimbursement allowed under Subsection
32839 53-10-605(1)(b) provided that:
32840 (a) the reimbursement is based on aggregated cost studies submitted to the committee
32841 by the wireless carriers seeking reimbursement; and
32842 (b) the reimbursement to any one carrier does not exceed 125% of the wireless carrier's
32843 contribution to the fund.
32844 (4) The committee shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
32845 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the fund created in Section

32846 53-10-603 including rules that establish the criteria, standards, technology, and equipment that a
32847 local entity or state agency must adopt in order to qualify for grants from the fund.

32848 Section 716. Section **53-11-103** is amended to read:

32849 **53-11-103. Commissioner of Public Safety administers -- Licensure --**

32850 **Rulemaking.**

32851 (1) The commissioner administers this chapter, including keeping records of:

32852 (a) all applications for licenses under this chapter; and

32853 (b) proof of workers' compensation required to be filed.

32854 (2) Records shall include statements as to whether a license or renewal license has been
32855 issued for each application and bond.

32856 (3) If a license is revoked, suspended, or canceled, or a license is denied or placed on
32857 probation, the commissioner shall ensure the date of filing the order for revocation, suspension,
32858 cancellation, denial, or probation is included in the records.

32859 (4) The commissioner shall maintain a list of all individuals, firms, partnerships,
32860 associations, or corporations that have had a license revoked, suspended, placed on probation,
32861 or canceled and a written record of complaints filed against licensees.

32862 (5) (a) The commissioner may make rules in accordance with [~~Title 63, Chapter 46a~~]
32863 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this
32864 chapter.

32865 (b) These rules shall include a requirement that all providers offering instruction or
32866 continuing instruction required for licensure under this chapter shall offer the courses to all
32867 applicants at the same course fees, in order to be qualified by the board.

32868 (6) All records referred to under this section are open to the public under [~~Title 63,~~
32869 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act, except
32870 licensees' residential addresses and telephone numbers.

32871 Section 717. Section **53-11-118** is amended to read:

32872 **53-11-118. Grounds for denial of license -- Appeal.**

32873 (1) The board may deny a license application or a license renewal if the applicant has:

32874 (a) committed an act that, if committed by a licensee, would be grounds for probation,
 32875 suspension, or revocation of a license under this chapter;

32876 (b) employed as a bail recovery agent or bail recovery apprentice employee or contract
 32877 employee a person who has been refused a license under this chapter or who has had a license
 32878 revoked in any state;

32879 (c) committed, or aided and abetted the commission of, any act for which a license is
 32880 required by this chapter, while not licensed under this chapter; or

32881 (d) knowingly made a material misstatement in connection with an application for a
 32882 license or renewal of a license under this chapter.

32883 (2) The issuance of an identification card shall be denied to an applicant if the applicant
 32884 fails to meet the required licensure qualifications.

32885 (3) (a) The denial of the issuance of a license under this chapter shall be in writing and
 32886 describe the basis for the denial.

32887 (b) The board's denial shall inform the applicant in writing that if the applicant desires a
 32888 hearing to contest the denial, ~~he~~ the applicant shall submit a request in writing to the
 32889 commissioner within 30 days after the issuance of the denial.

32890 (c) The hearing shall be scheduled not later than 60 days after receipt of the request.

32891 (4) The commissioner shall hear the appeal, and may:

32892 (a) return the case to the board for reconsideration;

32893 (b) modify the board's decision; or

32894 (c) reverse the board's decision.

32895 (5) Decisions of the commissioner are subject to judicial review pursuant to Section
 32896 ~~[63-46b-15]~~ 63G-4-402.

32897 Section 718. Section **53-11-119** is amended to read:

32898 **53-11-119. Grounds for disciplinary action.**

32899 (1) The board may take disciplinary action under Subsection (2), (4), or (5) regarding a
 32900 license granted under this chapter if the board finds the licensee commits any of the following
 32901 while engaged in activities regulated under this chapter:

- 32902 (a) fraud or willful misrepresentation in applying for an original license or renewal of an
32903 existing license;
- 32904 (b) using any letterhead, advertising, or other printed matter in any manner representing
32905 that ~~he~~ the licensee is an instrumentality of the federal government, a state, or any political
32906 subdivision of a state;
- 32907 (c) using a name different from that under which ~~he~~ the licensee is currently licensed
32908 for any advertising, solicitation, or contract to secure business unless the name is an authorized
32909 fictitious name;
- 32910 (d) impersonating, permitting, or aiding and abetting an employee to impersonate a law
32911 enforcement officer or employee of the United States, any state, or a political subdivision of a
32912 state;
- 32913 (e) knowingly violating, advising, encouraging, or assisting in the violation of any
32914 statute, court order, or injunction in the course of conducting an agency regulated under this
32915 chapter;
- 32916 (f) falsifying fingerprints or photographs while operating under this chapter;
- 32917 (g) has a conviction for:
- 32918 (i) a felony;
- 32919 (ii) any act involving illegally using, carrying, or possessing a dangerous weapon;
- 32920 (iii) any act involving moral turpitude;
- 32921 (iv) any act of personal violence or force against any person or conviction of
32922 threatening to commit any act of personal violence or force against any person;
- 32923 (v) any act constituting dishonesty or fraud;
- 32924 (vi) impersonating a peace officer; or
- 32925 (vii) any act of illegally obtaining or disseminating private, controlled, or protected
32926 records under Section ~~[63-2-801]~~ 63G-2-801;
- 32927 (h) soliciting business for an attorney in return for compensation;
- 32928 (i) being placed on probation, parole, compensatory service, or named in an outstanding
32929 arrest warrant;

32930 (j) committing, or permitting any employee or contract employee to commit any act
32931 during the period between the expiration of a license for failure to renew within the time fixed
32932 by this chapter, and the reinstatement of the license, that would be cause for the suspension or
32933 revocation of the license or grounds for denial of the application for the license;

32934 (k) willfully neglecting to render to a client services or a report as agreed between the
32935 parties and for which compensation has been paid or tendered in accordance with the agreement
32936 of the parties, but if the investigator chooses to withdraw from the case and returns the funds
32937 for work not yet done, no violation of this section exists;

32938 (l) failing or refusing to cooperate with, failing to provide truthful information to, or
32939 refusing access to an authorized representative of the department engaged in an official
32940 investigation;

32941 (m) employing or contracting with any unlicensed or improperly licensed person or
32942 agency to conduct activities regulated under this chapter if the licensure status was known or
32943 could have been ascertained by reasonable inquiry;

32944 (n) permitting, authorizing, aiding, or in any way assisting a licensed employee to
32945 conduct services as described in this chapter on an independent contractor basis and not under
32946 the authority of the licensed agency;

32947 (o) failure to maintain in full force and effect workers' compensation insurance, if
32948 applicable;

32949 (p) advertising in a false, deceptive, or misleading manner;

32950 (q) refusing to display the identification card issued by the department to any person
32951 having reasonable cause to verify the validity of the license;

32952 (r) committing any act of unprofessional conduct; or

32953 (s) engaging in any other conduct prohibited by this chapter.

32954 (2) On completion of an investigation, the board may:

32955 (a) dismiss the case;

32956 (b) take emergency action;

32957 (c) issue a letter of concern, if applicable;

32958 (d) impose a civil penalty not to exceed \$500;

32959 (e) place all records, evidence, findings, and conclusions and any other information
32960 pertinent to the investigation in the confidential and protected records section of the file
32961 maintained at the department; or

32962 (f) if the board finds, based on the investigation, that a violation of Subsection (1) has
32963 occurred, notice shall be sent to the licensee of the results of the hearing by mailing a true copy
32964 to the licensee's last-known address in the department's files by certified mail, return receipt
32965 requested.

32966 (3) A letter of concern shall be retained by the commissioner and may be used in future
32967 disciplinary actions against a licensee.

32968 (4) (a) If the board finds, based on its investigation under Subsection (1), that the public
32969 health, safety, or welfare requires emergency action, the board may order a summary suspension
32970 of a license pending proceedings for revocation or other action.

32971 (b) If the board issues an order of summary suspension, the board shall issue to the
32972 licensee a written notice of complaint and formal hearing, setting forth the charges made against
32973 the licensee and [~~his~~] the licensee's right to a formal hearing before the board within 60 days.

32974 (5) Based on information the board receives during a hearing it may:

32975 (a) (i) dismiss the complaint if the board believes it is without merit;

32976 (ii) fix a period and terms of probation best adapted to educate the licensee;

32977 (iii) place the license on suspension for a period of not more than 12 months; or

32978 (iv) revoke the license; and

32979 (b) impose a civil penalty not to exceed \$500.

32980 (6) (a) On a finding by the board that a bail recovery agency licensee committed a
32981 violation of Subsection (1), the probation, suspension, or revocation terminates the employment
32982 of all licensees employed or employed by contract by the bail bond agency.

32983 (b) If a licensee who is an employee or contract employee of a bail bond agency
32984 committed a violation of Subsection (1), the probation, suspension, or revocation applies only
32985 to the license held by that individual under this chapter.

32986 (7) (a) Appeal of the board's decision shall be made in writing to the commissioner
32987 within 30 days after the date of issuance of the board's decision.

32988 (b) The hearing shall be scheduled not later than 60 days after receipt of the request.

32989 (c) The commissioner shall review the finding by the board and may affirm, return to
32990 the board for reconsideration, reverse, adopt, modify, supplement, amend, or reject the
32991 recommendation of the board.

32992 (8) A person may appeal the commissioner's decision to the district court pursuant to
32993 Section [~~63-46b-15~~] 63G-4-402.

32994 (9) All penalties collected under this section shall be deposited in the General Fund.
32995 Section 719. Section **53-13-106** is amended to read:

32996 **53-13-106. Federal officers -- State law enforcement authority.**

32997 (1) (a) "Federal officer" includes:

32998 (i) a special agent of the Federal Bureau of Investigation;

32999 (ii) a special agent of the United States Secret Service;

33000 (iii) a special agent of the United States Department of Homeland Security, excluding a
33001 customs inspector or detention removal officer;

33002 (iv) a special agent of the Bureau of Alcohol, Tobacco and Firearms;

33003 (v) a special agent of the Federal Drug Enforcement Agency;

33004 (vi) a United States marshal, deputy marshal, and special deputy United States marshal;

33005 and

33006 (vii) a U.S. Postal Inspector of the United States Postal Inspection Service.

33007 (b) Notwithstanding Subsection (2), federal officers listed in Subsection (1)(a) have
33008 statewide law enforcement authority relating to felony offenses under the laws of this state.

33009 (c) The council may designate other federal peace officers, as necessary, if the officers:

33010 (i) are persons employed full-time by the United States government as federally

33011 recognized law enforcement officers primarily responsible for the investigation and enforcement
33012 of the federal laws;

33013 (ii) have successfully completed formal law enforcement training offered by an agency

33014 of the federal government consisting of not less than 400 hours; and

33015 (iii) maintain in-service training in accordance with the standards set forth in Section
33016 53-13-103.

33017 (2) Except as otherwise provided under [~~Title 63, Chapter 8~~] Title 63L, Chapter 8,
33018 Federal Jurisdiction, and Title 77, Chapter 9, Uniform Act on Fresh Pursuit, a federal officer
33019 may exercise state law enforcement authority only if:

33020 (a) the state law enforcement agencies and county sheriffs with jurisdiction enter into an
33021 agreement with the federal agency to be given authority; and

33022 (b) except as provided in Subsection (3), each federal officer employed by the federal
33023 agency meets the waiver requirements set forth in Section 53-6-206.

33024 (3) A federal officer working as such in the state on or before July 1, 1995, may
33025 exercise state law enforcement authority without meeting the waiver requirement.

33026 (4) At any time, consistent with any contract with a federal agency, a state or local law
33027 enforcement authority may withdraw state law enforcement authority from any individual
33028 federal officer by sending written notice to the federal agency and to the division.

33029 (5) The authority of a federal officer under this section is limited to the jurisdiction of
33030 the authorizing state or local agency, and may be further limited by the state or local agency to
33031 enforcing specific statutes, codes, or ordinances.

33032 Section 720. Section **53-15-101**, which is renumbered from Section 63-94-101 is
33033 renumbered and amended to read:

33034 **CHAPTER 15. MCGRUFF SAFE HOUSE ACT**

33035 **Part 1. General Provisions**

33036 [~~63-94-101~~]. **53-15-101. Title.**

33037 This chapter is known as the "McGruff Safe House Act."

33038 Section 721. Section **53-15-102**, which is renumbered from Section 63-94-102 is
33039 renumbered and amended to read:

33040 [~~63-94-102~~]. **53-15-102. Purpose.**

33041 (1) The Legislature recognizes that children are often in dangerous situations that may

33042 be threatening or frightening to them and that there is a need for "safe homes" in our
33043 neighborhoods where a child may go for help.

33044 (2) The Legislature also recognizes that along with the need for "safe homes" that
33045 children can recognize easily, there is needed a method by which these homes can be identified.

33046 (3) The purpose of this chapter is to:

33047 (a) provide and designate a recognizable symbol for those "safe homes" that children
33048 can readily identify; and

33049 (b) establish a method by which local law enforcement agencies can identify and train
33050 volunteers who are willing to make their homes "safe homes".

33051 Section 722. Section **53-15-201**, which is renumbered from Section 63-94-103 is
33052 renumbered and amended to read:

Part 2. McGruff House Network Program

33053 **~~[63-94-103]~~. 53-15-201. Designation -- Administration.**

33054 (1) The National McGruff House Network Program is hereby designated as the
33055 officially recognized statewide "safe house" program for Utah.

33056 (2) The program shall be administered through the Department of Public Safety by the
33057 Utah Council for Crime Prevention.

33058 Section 723. Section **53-15-202**, which is renumbered from Section 63-94-104 is
33059 renumbered and amended to read:

33060 **~~[63-94-104]~~. 53-15-202. Program requirements.**

33061 (1) The statewide program administrator shall:

33062 (a) provide support and training upon request to local law enforcement agencies
33063 interested in implementing the program in their area;

33064 (b) provide local programs with signs for display in approved "safe homes"; and

33065 (c) maintain a register of all "safe homes" that includes, at a minimum, the address of
33066 the home and the names of all persons living in the home.

33067 (2) The local program shall:

33068 (a) recruit volunteer "safe homes" in neighborhoods with the help of local community
33069

- 33070 groups;
- 33071 (b) provide training and education to volunteers regarding the program and its use;
- 33072 (c) provide for an application process for volunteers;
- 33073 (d) conduct criminal history background checks on volunteers and members of their
- 33074 households;
- 33075 (e) approve or disapprove applications for "safe homes";
- 33076 (f) provide education through community programs for parents and children on the
- 33077 program and the proper use of "safe homes";
- 33078 (g) provide approved "safe homes" with signs for display;
- 33079 (h) provide procedures by which a "safe home" may be removed from the register; and
- 33080 (i) provide for a method of renewal of the "safe home" designation in order to keep the
- 33081 registry current and provide for the periodic review of the "safe home", the volunteer, and all
- 33082 members of the household.

33083 Section 724. Section **53A-1-402.5** is amended to read:

33084 **53A-1-402.5. State board rules establishing basic ethical conduct standards --**

33085 **Local school board policies.**

33086 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

33087 Administrative Rulemaking Act, the State Board of Education shall make rules that establish

33088 basic ethical conduct standards for public education employees who provide education-related

33089 services outside of their regular employment to their current or prospective public school

33090 students.

33091 (2) The rules shall provide that a local school board may adopt policies implementing

33092 the standards and addressing circumstances present in the district.

33093 Section 725. Section **53A-1-408** is amended to read:

33094 **53A-1-408. Appropriations reallocation.**

33095 (1) Notwithstanding the requirements of [~~Title 63, Chapter 38~~] Title 63J, Chapter 1,

33096 Budgetary Procedures Act, the State Board of Education may reallocate between line items

33097 appropriations for the support of public education for the fiscal year beginning July 1, 2001 and

33098 ending June 30, 2002:

33099 (a) as described in Items 231 through 239 in Chapter 334, Laws of Utah 2001; and

33100 (b) as modified by:

33101 (i) Chapter 5, Laws of Utah First Special Session 2001;

33102 (ii) H.B. 1, 2002 General Session; and

33103 (iii) H.B. 3, 2002 General Session.

33104 (2) The total amount of money reallocated under Subsection (1) may not exceed the
33105 sum of the reductions made by H.B. 1, 2002 General Session, and H.B. 3, 2002 General
33106 Session.

33107 Section 726. Section **53A-1-611** is amended to read:

33108 **53A-1-611. Standards and assessment processes to measure student performance**
33109 **-- Basic skills competency test.**

33110 (1) The Legislature recognizes the need for the State Board of Education to develop
33111 and implement standards and assessment processes to ensure that student progress is measured
33112 and that school boards and school personnel are accountable.

33113 (2) (a) In addition to its responsibilities under Sections 53A-1-603 through 53A-1-605,
33114 the State Board of Education, through the state superintendent of public instruction, shall
33115 design a basic skills competency test to be administered in the tenth grade.

33116 (b) A student must pass the basic skills competency test, in addition to the established
33117 requirements of the state and local board of education of the district in which the student
33118 attends school, in order to receive a basic high school diploma of graduation.

33119 (c) The state board shall include in the test, at a minimum, components on English
33120 language arts and reading and mathematics.

33121 (d) A student who fails to pass all components of the test may not receive a basic high
33122 school diploma but may receive a certificate of completion or alternative completion diploma
33123 under rules made by the State Board of Education in accordance with [~~Title 63, Chapter 46a~~]
33124 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

33125 (e) The state board shall make rules:

33126 (i) to allow students who initially fail the test to retake all or part of the test; and
33127 (ii) that take into account and are consistent with federal law relating to students with
33128 disabilities in the administration of the test.

33129 (3) The state board shall implement the tenth grade basic skills competency test, no
33130 later than the beginning of the 2003-04 school year.

33131 (4) The requirements of this section are to be complementary to the other achievement
33132 testing provisions of this part.

33133 Section 727. Section **53A-1-612** is amended to read:

33134 **53A-1-612. Basic Skills Education Stipend Program.**

33135 (1) As used in this section:

33136 (a) "Basic skills education" means individual or group instruction, including
33137 assessments, designed to develop the skills and knowledge necessary to pass the Utah Basic
33138 Skills Competency Test.

33139 (b) "Basic skills provider" means:

33140 (i) a school district;

33141 (ii) a charter school;

33142 (iii) an accredited public or private educational institution; or

33143 (iv) other entity that meets board requirements pursuant to Subsection (12).

33144 (c) "Program" means the Basic Skills Education Stipend Program.

33145 (d) "Stipend recipient" means a student who receives a stipend under this section.

33146 (e) "Utah Basic Skills Competency Test" or "UBSCT" means the basic skills
33147 competency test administered to students pursuant to Section 53A-1-611.

33148 (2) The Basic Skills Education Stipend Program is created to provide students who
33149 have not passed the UBSCT supplemental instruction in the skills and knowledge necessary to
33150 pass the test.

33151 (3) The State Board of Education shall administer the Basic Skills Education Stipend
33152 Program.

33153 (4) (a) A student may receive a stipend for basic skills education if:

33154 (i) the student's score on one more subtests is below the midpoint of the partial mastery
33155 range;

33156 (ii) the student's parent or guardian is a Utah resident;

33157 (iii) the student is enrolled full-time in a public school in the state; and

33158 (iv) the student does not qualify for the Utah Alternative Assessment.

33159 (b) A student who meets the criteria of Subsection (4)(a) may receive a stipend for
33160 basic skills education in the subject of each subtest failed. Depending upon the number of
33161 subtests failed, a student may receive one, two, or three stipends. A student may receive a
33162 stipend only once for each subtest failed.

33163 (5) Stipend amounts shall be based on a student's subtest score as follows:

33164 (a) \$500, if the student's subtest score was below the midpoint of the partial mastery
33165 range but above the minimal mastery range;

33166 (b) \$1,000, if the student's subtest score was below the partial mastery range, but above
33167 or at the midpoint of the minimal mastery range; or

33168 (c) \$1,500, if the student's subtest score was below the midpoint of the minimal mastery
33169 range.

33170 (6) A stipend recipient may apply for basic skills education from any basic skills
33171 provider.

33172 (7) Each basic skill provider shall accept stipend recipients on a first come/first served
33173 basis.

33174 (8) A stipend recipient shall give the following to the basic skills provider selected to
33175 provide basic skills education:

33176 (a) a voucher in the amount of the stipend which the basic skills educator may present
33177 for payment by the board if the stipend recipient passes the subtest corresponding to the basic
33178 skills education provided by the basic skills provider; and

33179 (b) an authorization signed by the stipend recipient's parent or guardian for the stipend
33180 recipient's school to release records of the stipend recipient to the basic skills provider, if the
33181 basic skills provider is not the school district or charter school in which the stipend recipient is

33182 enrolled.

33183 (9) A basic skills provider who possesses a voucher shall receive payment from the
33184 board in the amount of the stipend, if, on a subsequent administration of the UBSCT, the
33185 stipend recipient passes the subtest corresponding to the basic skills education provided by the
33186 basic skills provider.

33187 (10) (a) A basic skills provider may charge a stipend recipient an amount in addition to
33188 that paid by the board.

33189 (b) The additional amount charged by a basic skills provider shall be:

33190 (i) consistent with the restriction in Utah Constitution Article X, Section 2;

33191 (ii) disclosed to the stipend recipient's parent or guardian when the stipend recipient
33192 applies for basic skills education; and

33193 (iii) reported to the board before receiving payment from the board.

33194 (c) A basic skills provider may not make any additional charge or refund of a charge
33195 contingent upon a stipend recipient's passing or failing a UBSCT subtest.

33196 (11) (a) Stipends shall be awarded by the board subject to the availability of money
33197 appropriated by the Legislature for that purpose.

33198 (b) The Legislature shall annually appropriate money to the board from the General
33199 Fund to make stipend payments.

33200 (c) If monies are not available to pay for all stipends requested, the stipends shall be
33201 allocated according to rules adopted by the State Board of Education.

33202 (12) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
33203 Administrative Rulemaking Act, the State Board of Education shall make rules:

33204 (a) establishing qualifications for basic skills providers who are not school districts, high
33205 schools, or accredited public or private educational institutions;

33206 (b) establishing procedures for the administration of the Basic Skills Education Stipend
33207 Program; and

33208 (c) requiring the parent or guardian of a stipend recipient who selects a basic skills
33209 provider other than the school district or charter school in which the stipend recipient is enrolled

33210 to sign:

33211 (i) an acknowledgment that the school district or charter school is released from further
33212 remediation responsibility for the stipend recipient; and

33213 (ii) if the student has an IEP, an acknowledgment that offering a voucher to the basic
33214 skill provider has the same effect as a parental refusal to consent to services pursuant to Section
33215 614(a)(1) of the Individuals with Disabilities Education Act, 20 U.S.C. Sec. 1400 et seq.

33216 (13) School districts and charter schools shall provide each student who qualifies for a
33217 basic skills education stipend information about the Basic Skills Education Stipend Program,
33218 including:

33219 (a) voucher applications; and

33220 (b) how to access a list of approved public and private providers.

33221 Section 728. Section **53A-1-706** is amended to read:

33222 **53A-1-706. Purchases of educational technology.**

33223 (1) (a) A school district or college of education shall comply with [~~Title 63, Chapter 56~~]
33224 Title 63G, Chapter 6, Utah Procurement Code, in purchasing technology, except as otherwise
33225 provided in Subsection (1)(b).

33226 (b) A school district may purchase computers from, and contract for the repair or
33227 refurbishing of computers with, the Utah Correctional Industries without going through the
33228 bidding or competition procedures outlined in [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Part
33229 4, Source Selections and Contract Formation.

33230 (2) A school district or college of education may purchase technology through
33231 cooperative purchasing contracts administered by the state Division of Purchasing or through its
33232 own established purchasing program.

33233 Section 729. Section **53A-1a-508** is amended to read:

33234 **53A-1a-508. Content of a charter -- Modification of charter.**

33235 (1) The major issues involving the operation of a charter school shall be considered in
33236 advance by the applicant for a charter school and written into the school's charter.

33237 (2) The governing body of the charter school and the chartering entity shall sign the

- 33238 charter.
- 33239 (3) The charter shall include:
- 33240 (a) the age or grade levels to be served by the school;
- 33241 (b) the projected maximum number of students to be enrolled in the school and the
- 33242 projected enrollment in each of the first three years of operations;
- 33243 (c) the governance structure of the school;
- 33244 (d) the financial plan for the school and the provisions which will be made for auditing
- 33245 the school under Subsection 53A-1a-507(4);
- 33246 (e) the mission and education goals of the school, the curriculum offered, and the
- 33247 methods of assessing whether students are meeting educational goals, to include at a minimum
- 33248 participation in the Utah Performance Assessment System for Students under Chapter 1, Part 6,
- 33249 Achievement Tests;
- 33250 (f) admission and dismissal procedures, including suspension procedures;
- 33251 (g) procedures to review complaints of parents regarding the operation of the school;
- 33252 (h) the opportunity for parental involvement at the school;
- 33253 (i) how the school will provide adequate liability and other appropriate insurance for the
- 33254 school, its governing body, and its employees;
- 33255 (j) the proposed school calendar, including the length of the school day and school year;
- 33256 (k) whether any agreements have been entered into or plans developed with school
- 33257 districts regarding participation of charter school students in extracurricular activities within the
- 33258 school districts;
- 33259 (l) the district within which the school will be located and the address of the school's
- 33260 physical facility, if known at the time the charter is signed;
- 33261 (m) the qualifications to be required of the teachers, including the requirement of a
- 33262 criminal background check;
- 33263 (n) in the case of an existing public school converting to charter status, alternative
- 33264 arrangements for current students who choose not to attend the charter school and for current
- 33265 teachers who choose not to teach at the school after its conversion to charter status;

- 33266 (o) the school's intention to create a library;
- 33267 (p) a description of school administrative and supervisory services;
- 33268 (q) fiscal procedures to be used by the school; and
- 33269 (r) the school's policies and procedures regarding:
- 33270 (i) employee evaluation; and
- 33271 (ii) employment of relatives.
- 33272 (4) A charter may be modified by mutual agreement of the board and the governing
- 33273 body of the school.
- 33274 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 33275 Administrative Rulemaking Act, the State Board of Education shall make rules that establish the
- 33276 procedures and deadlines for approved charter schools to apply and qualify for expansion,
- 33277 including the establishment of satellite campuses.
- 33278 Section 730. Section **53A-1a-509** is amended to read:
- 33279 **53A-1a-509. Noncompliance -- Rulemaking.**
- 33280 (1) (a) If a charter school is found to be out of compliance with the requirements of
- 33281 Section 53A-1a-507 or the school's charter, the chartering entity shall notify the school's
- 33282 governing board in writing that the school has a reasonable time to remedy the deficiency,
- 33283 except as otherwise provided in Subsection 53A-1a-510(3)(a).
- 33284 (b) If the school does not remedy the deficiency within the established timeline, the
- 33285 chartering entity may:
- 33286 (i) remove a school director or finance officer;
- 33287 (ii) remove governing board members;
- 33288 (iii) appoint an interim director or mentor to work with the charter school; or
- 33289 (iv) terminate the school's charter.
- 33290 (c) The costs of an interim director or mentor appointed pursuant to Subsection (1)(b)
- 33291 shall be paid from the funds of the charter school for which the interim director or mentor is
- 33292 working.
- 33293 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

33294 Administrative Rulemaking Act, the State Board of Education shall make rules:

33295 (a) specifying the timeline for remedying deficiencies under Subsection (1)(a); and

33296 (b) ensuring the compliance of a charter school with its approved charter.

33297 Section 731. Section **53A-1a-510** is amended to read:

33298 **53A-1a-510. Termination of a charter.**

33299 (1) A chartering entity may terminate a school's charter for any of the following
33300 reasons:

33301 (a) failure of the school to meet the requirements stated in the charter;

33302 (b) failure to meet generally accepted standards of fiscal management;

33303 (c) subject to Subsection (6), failure to make adequate yearly progress under the No
33304 Child Left Behind Act of 2001, 20 U.S.C. Sec. 6301 et seq.;

33305 (d) violation of requirements under this part or another law; or

33306 (e) other good cause shown.

33307 (2) (a) The chartering entity shall notify the governing body of the school of the
33308 proposed termination in writing, state the grounds for the termination, and stipulate that the
33309 governing body may request an informal hearing before the chartering entity.

33310 (b) The chartering entity shall conduct the hearing in accordance with [~~Title 63, Chapter~~
33311 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, within 30 days after receiving a
33312 written request under Subsection (2)(a).

33313 (c) If the chartering entity, by majority vote, approves a motion to terminate a charter
33314 school, the governing body of the charter school may appeal the decision to the State Board of
33315 Education.

33316 (d) (i) The State Board of Education shall hear an appeal of a termination made
33317 pursuant to Subsection (2)(c).

33318 (ii) The State Board of Education's action is final action subject to judicial review.

33319 (3) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
33320 Administrative Rulemaking Act, the State Board of Education shall make rules that require a
33321 charter school to report any threats to the health, safety, or welfare of its students to the State

33322 Charter School Board in a timely manner.

33323 (b) The rules under Subsection (3)(a) shall also require the charter school report to
33324 include what steps the charter school has taken to remedy the threat.

33325 (4) The chartering entity may terminate a charter immediately if good cause has been
33326 shown or if the health, safety, or welfare of the students at the school is threatened.

33327 (5) If a charter is terminated during a school year:

33328 (a) the school district in which the school is located may assume operation of the
33329 school; or

33330 (b) a private management company may be hired to operate the school.

33331 (6) (a) If a charter is terminated, a student who attended the school may apply to and
33332 shall be enrolled in another public school under the enrollment provisions of Title 53A, Chapter
33333 2, Part 2, District of Residency, subject to space availability.

33334 (b) Normal application deadlines shall be disregarded under Subsection (6)(a).

33335 (7) A chartering entity may terminate a charter pursuant to Subsection (1)(c) under the
33336 same circumstances that local educational agencies are required to implement alternative
33337 governance arrangements under 20 U.S.C. Sec. 6316.

33338 Section 732. Section **53A-1a-511** is amended to read:

33339 **53A-1a-511. Waivers from state board rules -- Application of statutes and rules**
33340 **to charter schools.**

33341 (1) A charter school shall operate in accordance with its charter and is subject to Title
33342 53A, State System of Public Education, and other state laws applicable to public schools,
33343 except as otherwise provided in this part.

33344 (2) (a) A charter school or any other public school or school district may apply to the
33345 State Board of Education for a waiver of any state board rule that inhibits or hinders the school
33346 or the school district from accomplishing its mission or educational goals set out in its strategic
33347 plan or charter.

33348 (b) The state board may grant the waiver, unless:

33349 (i) the waiver would cause the school district or the school to be in violation of state or

33350 federal law; or

33351 (ii) the waiver would threaten the health, safety, or welfare of students in the district or

33352 at the school.

33353 (c) If the State Board of Education denies the waiver, the reason for the denial shall be

33354 provided in writing to the waiver applicant.

33355 (3) (a) Except as provided in Subsection (3)(b), State Board of Education rules

33356 governing the following do not apply to a charter school:

33357 (i) school libraries;

33358 (ii) required school administrative and supervisory services; and

33359 (iii) required expenditures for instructional supplies.

33360 (b) A charter school shall comply with rules implementing statutes that prescribe how

33361 state appropriations may be spent.

33362 (4) The following provisions of Title 53A, State System of Public Education, and rules

33363 adopted under those provisions, do not apply to a charter school:

33364 (a) Sections 53A-1a-108 and 53A-1a-108.5, requiring the establishment of a school

33365 community council and school improvement plan;

33366 (b) Sections 53A-3-413 and 53A-3-414, pertaining to the use of school buildings as

33367 civic centers;

33368 (c) Section 53A-3-420, requiring the use of activity disclosure statements;

33369 (d) Section 53A-12-207, requiring notification of intent to dispose of textbooks;

33370 (e) Section 53A-13-107, requiring annual presentations on adoption;

33371 (f) Chapter 19, Part 1, Fiscal Procedures, pertaining to fiscal procedures of school

33372 districts and local school boards; and

33373 (g) Section 53A-14-107, requiring an independent evaluation of instructional materials.

33374 (5) For the purposes of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement

33375 Code, a charter school shall be considered a local public procurement unit.

33376 (6) Each charter school shall be subject to:

33377 (a) Title 52, Chapter 4, Open and Public Meetings Act; and

33378 (b) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
33379 Management Act.

33380 (7) (a) The State Charter School Board shall, in concert with the charter schools, study
33381 existing state law and administrative rules for the purpose of determining from which laws and
33382 rules charter schools should be exempt.

33383 (b) (i) The State Charter School Board shall present recommendations for exemption to
33384 the State Board of Education for consideration.

33385 (ii) The State Board of Education shall consider the recommendations of the State
33386 Charter School Board and respond within 60 days.

33387 Section 733. Section **53A-1a-513** is amended to read:

33388 **53A-1a-513. Funding for charter schools.**

33389 (1) (a) Charter schools shall receive funding as described in this section, except
33390 Subsections (2) through (7) do not apply to charter schools described in Subsection (1)(b).

33391 (b) Charter schools authorized by local school boards that are converted from district
33392 schools or operate in district facilities without paying reasonable rent shall receive funding as
33393 prescribed in Section 53A-1a-515.

33394 (2) (a) Except as provided in Subsection (2)(b), a charter school shall receive state
33395 funds, as applicable, on the same basis as a school district receives funds.

33396 (b) In distributing funds under Title 53A, Chapter 17a, Minimum School Program Act,
33397 to charter schools, charter school pupils shall be weighted, where applicable, as follows:

33398 (i) .55 for kindergarten pupils;

33399 (ii) .9 for pupils in grades 1-6;

33400 (iii) .99 for pupils in grades 7-8; and

33401 (iv) 1.2 for pupils in grades 9-12.

33402 (c) The State Board of Education shall make rules in accordance with [~~Title 63,~~

33403 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer

33404 Subsection (2)(b), including hold harmless provisions to maintain a charter elementary school's

33405 funding level for a period of two years after the effective date of the distribution formula.

33406 (d) Subsection (2)(b) does not apply to funds appropriated to charter schools to replace
33407 local property tax revenues.

33408 (3) The State Board of Education shall adopt rules to provide for the distribution of
33409 monies to charter schools under this section.

33410 (4) (a) The Legislature shall provide an appropriation for charter schools for each of
33411 their students to replace some of the local property tax revenues that are not available to charter
33412 schools. The amount of money provided for each charter school student shall be determined by:

33413 (i) calculating the sum of:

33414 (A) school districts' operations and maintenance revenues derived from local property
33415 taxes, except revenues from imposing a minimum basic tax rate pursuant to Section
33416 53A-17a-135;

33417 (B) school districts' capital projects revenues derived from local property taxes; and

33418 (C) school districts' expenditures for interest on debt; and

33419 (ii) dividing the sum by the total average daily membership of the districts' schools.

33420 (b) Of the monies provided to a charter school under Subsection (4)(a), 10% shall be
33421 expended for funding school facilities only.

33422 (c) To qualify for money under Subsection (4)(a), a new charter school shall, by
33423 September 30 of the school year prior to the school year it intends to begin operations:

33424 (i) obtain approval of its application for a charter from:

33425 (A) the State Board of Education, pursuant to Section 53A-1a-505; or

33426 (B) a local school board, pursuant to Section 53A-1a-515; and

33427 (ii) submit to the chartering entity an estimate of the charter school's first year
33428 enrollment.

33429 (d) Subsection (4)(c) does not apply to charter schools beginning operations in the
33430 2005-06 school year.

33431 (e) By December 1, the State Charter School Board shall submit to the Governor's
33432 Office of Planning and Budget and the Office of the Legislative Fiscal Analyst an estimate of
33433 total charter school enrollment in the state for the following school year.

33434 (5) Charter schools are eligible to receive federal funds if they meet all applicable
33435 federal requirements and comply with relevant federal regulations.

33436 (6) The State Board of Education shall distribute funds for charter school students
33437 directly to the charter school.

33438 (7) (a) Notwithstanding Subsection (2), a charter school is not eligible to receive state
33439 transportation funding.

33440 (b) The board shall also adopt rules relating to the transportation of students to and
33441 from charter schools, taking into account Sections 53A-2-210 and 53A-17a-127.

33442 (c) The governing body of the charter school may provide transportation through an
33443 agreement or contract with the local school board, a private provider, or with parents.

33444 (8) (a) (i) The state superintendent of public instruction may allocate grants for both
33445 start-up and ongoing costs to eligible charter school applicants from monies appropriated for
33446 the implementation of this part.

33447 (ii) Applications for the grants shall be filed on a form determined by the state
33448 superintendent and in conjunction with the application for a charter.

33449 (iii) The amount of a grant may vary based upon the size, scope, and special
33450 circumstances of the charter school.

33451 (iv) The governing board of the charter school shall use the grant to meet the expenses
33452 of the school as established in the school's charter.

33453 (b) The State Board of Education shall coordinate the distribution of federal monies
33454 appropriated to help fund costs for establishing and maintaining charter schools within the state.

33455 (9) (a) A charter school may receive, hold, manage and use any devise, bequest, grant,
33456 endowment, gift, or donation of any property made to the school for any of the purposes of this
33457 part.

33458 (b) It is unlawful for any person affiliated with a charter school to demand or request
33459 any gift, donation, or contribution from a parent, teacher, employee, or other person affiliated
33460 with the charter school as a condition for employment or enrollment at the school or continued
33461 attendance at the school.

33462 (10) The State Office of Education shall use up to \$1,044,000 of funding provided for
33463 new growth to fund additional growth needs in charter schools in fiscal year 2005.

33464 Section 734. Section **53A-1a-601** is amended to read:

33465 **53A-1a-601. Job enhancements for mathematics, science, technology, and special**
33466 **education training.**

33467 (1) As used in this part, "special education teacher" includes occupational therapist.

33468 (2) The Public Education Job Enhancement Program is established to attract, train, and
33469 retain highly qualified:

33470 (a) secondary teachers with expertise in mathematics, physics, chemistry, physical
33471 science, learning technology, or information technology;

33472 (b) special education teachers; and

33473 (c) teachers in grades four through six with mathematics endorsements.

33474 (3) The program shall provide for the following:

33475 (a) application by a school district superintendent or the principal of a school on behalf
33476 of a qualified teacher;

33477 (b) an award of up to \$20,000 or a scholarship to cover the tuition costs for a master's
33478 degree, an endorsement, or graduate education in the areas identified in Subsection (2) to be
33479 given to selected public school teachers on a competitive basis:

33480 (i) whose applications are approved under Subsection 53A-1a-602(4); and

33481 (ii) who teach in the state's public education system for four years in the areas identified
33482 in Subsection (2);

33483 (c) (i) as to the cash awards under Subsection (3)(b), payment of the award in two
33484 installments, with an initial payment of up to \$10,000 at the beginning of the term and up to
33485 \$10,000 at the conclusion of the term;

33486 (ii) repayment of a portion of the initial payment by the teacher if the teacher fails to
33487 complete two years of the four-year teaching term in the areas identified in Subsection (2) as
33488 provided by rule of the State Board of Education in accordance with [~~Title 63, Chapter 46a~~]
33489 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, unless waived for good cause by

33490 the Job Enhancement Committee created in Section 53A-1a-602; and

33491 (iii) nonpayment of the second installment if the teacher fails to complete the four-year
33492 teaching term; and

33493 (d) (i) as to the scholarships awarded under Subsection (3)(b), provision for the
33494 providing institution to certify adequate performance in obtaining the master's degree,
33495 endorsement, or graduate education in order for the teacher to maintain the scholarship; and

33496 (ii) repayment by the teacher of a prorated portion of the scholarship, if the teacher fails
33497 to complete the authorized classes or program or to teach in the state system of public
33498 education in the areas identified in Subsection (2) for four years after obtaining the master's
33499 degree, the endorsement, or graduate education.

33500 (4) An individual teaching in the public schools under a letter of authorization may
33501 participate in the cash award program if:

33502 (a) the individual has taught under the letter of authorization for at least one year in the
33503 areas referred to in Subsection (2); and

33504 (b) the application made under Subsection (3)(a) is based in large part upon the
33505 individual receiving a superior evaluation as a classroom teacher.

33506 (5) (a) The program may provide for the expenditure of up to \$1,000,000 of available
33507 monies, if at least an equal amount of matching monies become available, to provide
33508 professional development training to superintendents, administrators, and principals in the
33509 effective use of technology in public schools.

33510 (b) An award granted under this Subsection (5) shall be made in accordance with
33511 criteria developed and adopted by the Job Enhancement Committee created in Section
33512 53A-1a-602.

33513 (c) An amount up to \$120,000 of the \$1,000,000 authorized in Subsection (5)(a) may
33514 be expended, regardless of the matching monies being available.

33515 Section 735. Section **53A-1a-602** is amended to read:

33516 **53A-1a-602. Job Enhancement Committee -- Composition -- Duties --**
33517 **Appropriation.**

- 33518 (1) There is created a Job Enhancement Committee to implement and administer the
33519 Public Education Job Enhancement Program established in Section 53A-1a-601.
- 33520 (2) (a) The committee shall consist of:
- 33521 (i) two members of the State Board of Education selected by the board;
- 33522 (ii) two members of the State Board of Regents selected by the board;
- 33523 (iii) six members of the general public who have business experience in mathematics,
33524 physics, chemistry, physical science, learning technology, or information technology selected by
33525 the governor;
- 33526 (iv) a master high school teacher, who has teaching experience in mathematics, physics,
33527 chemistry, physical science, learning technology, or information technology, selected by the
33528 superintendent of public instruction;
- 33529 (v) a master special education teacher, selected by the superintendent of public
33530 instruction; and
- 33531 (vi) a master teacher in grades four through six with a mathematics endorsement,
33532 selected by the superintendent of public instruction.
- 33533 (b) Committee members shall receive no compensation or benefits for their service on
33534 the committee, but may receive per diem and expenses incurred in the performance of their
33535 duties at rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 33536 (3) (a) The committee shall receive and review applications submitted for participation
33537 in the Public Education Job Enhancement Program established under Section 53A-1a-601.
- 33538 (b) In reviewing applications, the committee shall focus on:
- 33539 (i) the prioritized critical areas of need identified under Subsection (5)(a); and
33540 (ii) the awards being made on a competitive basis.
- 33541 (c) If the committee approves an application received under Subsection (3)(a), it shall
33542 contract directly with the teacher applicant to receive the award or the scholarship for a master's
33543 degree, an endorsement, or graduate education, subject to Section 53A-1a-601.
- 33544 (d) The State Board of Education, through the superintendent of public instruction,
33545 shall provide staff support for the committee and adequate and reliable data on the state's supply

33546 of and demand for qualified:

33547 (i) secondary teachers with expertise in mathematics, physics, chemistry, physical
33548 science, learning technologies, or information technology;

33549 (ii) special education teachers; and

33550 (iii) teachers in grades four through six with mathematics endorsements.

33551 (4) The committee may apply for grants and matching monies to enhance funding
33552 available for the program established in Section 53A-1a-601.

33553 (5) The committee shall make a rule in accordance with [~~Title 63, Chapter 46a~~] Title
33554 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing policies and procedures for:

33555 (a) making the awards and offering the scholarships in accordance with prioritized
33556 critical areas of need as determined by the committee;

33557 (b) timelines for the submission and approval of applications under Subsection (3); and

33558 (c) the distribution of the awards and scholarships to successful applicants based on
33559 available monies provided by legislative appropriation.

33560 (6) Subject to future budget constraints, the Legislature shall make an annual
33561 appropriation to the State Board of Education to fund the Public Education Job Enhancement
33562 Program established under Section 53A-1a-601.

33563 Section 736. Section **53A-1a-707** is amended to read:

33564 **53A-1a-707. Board to make rules.**

33565 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
33566 Rulemaking Act, the board shall make rules consistent with this part establishing:

33567 (1) the eligibility of students to participate in the scholarship program; and

33568 (2) the application process for the scholarship program.

33569 Section 737. Section **53A-1a-808** is amended to read:

33570 **53A-1a-808. Board to make rules.**

33571 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
33572 Administrative Rulemaking Act, the board shall make rules consistent with this part:

33573 (a) establishing the application process for the scholarship program, including

33574 procedures to allow a parent to apply for a scholarship online;

33575 (b) establishing how the income of a scholarship student's parents shall be determined

33576 and verified; and

33577 (c) implementing Section 53A-1a-807.

33578 (2) By May 15, 2007, the board shall adopt rules establishing:

33579 (a) the application process for private schools and scholarship students; and

33580 (b) how the income of a scholarship student's parents shall be determined.

33581 Section 738. Section **53A-1a-902** is amended to read:

33582 **53A-1a-902. Voluntary extended-day kindergarten program.**

33583 (1) If funds are appropriated for this purpose, the State Board of Education shall

33584 allocate available funds, consistent with Section 53A-1a-903, to charter schools and school

33585 districts that apply to offer extended-day kindergarten.

33586 (2) A school district shall coordinate program application, funding, administration, and

33587 reporting for its schools that participate in the program.

33588 (3) A charter school or school district:

33589 (a) may not require a student to participate in extended-day kindergarten;

33590 (b) shall continue to offer part-day kindergarten for students not participating in the

33591 program; and

33592 (c) shall continue to honor the provisions of any preexisting contractual agreement

33593 related to other early intervention programs offered at the school site, through the remaining

33594 term of the contract.

33595 (4) A charter school or school district that receives funds under this part shall:

33596 (a) annually conduct a kindergarten readiness assessment for incoming kindergarten

33597 students prior to the beginning of the school year;

33598 (b) ensure that:

33599 (i) a majority of students enrolled in an extended-day kindergarten class under this part

33600 are students who have the greatest need for additional instruction, as determined by the

33601 kindergarten readiness assessment; and

33602 (ii) an extended-day kindergarten class does not have more enrolled students than other
33603 kindergarten classes in the school;

33604 (c) utilize allocated funds to establish extended-day kindergarten in the schools with
33605 greatest need as measured by the percentage of students eligible for free lunch; and

33606 (d) annually report to the State Board of Education regarding:

33607 (i) the number of students served;

33608 (ii) the specific results achieved by the program, including any standardized testing or
33609 district-directed assessment;

33610 (iii) challenges encountered in administering the program and suggestions for
33611 improvement; and

33612 (iv) specific accountability for and tracking of the voluntary extended-day kindergarten
33613 program dollars each year.

33614 (5) Until 2012, the superintendent of public instruction shall annually report to the
33615 Education Interim Committee on the program, including a summary of information reported
33616 under Subsection (4)(d).

33617 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
33618 Administrative Rulemaking Act, and consistent with this part, the State Board of Education
33619 shall make rules establishing application and reporting procedures necessary to administer this
33620 part.

33621 Section 739. Section **53A-2-123** is amended to read:

33622 **53A-2-123. Notice before preparing or amending a long-range plan or acquiring**
33623 **certain property.**

33624 (1) As used in this section:

33625 (a) "Affected entity" means each county, municipality, local district under Title 17B,
33626 Limited Purpose Local Government Entities - Local Districts, special service district under Title
33627 17A, Chapter 2, Part 13, Utah Special Service District Act, interlocal cooperation entity
33628 established under Title 11, Chapter 13, Interlocal Cooperation Act, and specified public utility:

33629 (i) whose services or facilities are likely to require expansion or significant modification

33630 because of an intended use of land; or

33631 (ii) that has filed with the school district a copy of the general or long-range plan of the
33632 county, municipality, local district, special service district, school district, interlocal cooperation
33633 entity, or specified public utility.

33634 (b) "Specified public utility" means an electrical corporation, gas corporation, or
33635 telephone corporation, as those terms are defined in Section 54-2-1.

33636 (2) (a) If a school district located in a county of the first or second class prepares a
33637 long-range plan regarding its facilities proposed for the future or amends an already existing
33638 long-range plan, the school district shall, before preparing a long-range plan or amendments to
33639 an existing long-range plan, provide written notice, as provided in this section, of its intent to
33640 prepare a long-range plan or to amend an existing long-range plan.

33641 (b) Each notice under Subsection (2)(a) shall:

33642 (i) indicate that the school district intends to prepare a long-range plan or to amend a
33643 long-range plan, as the case may be;

33644 (ii) describe or provide a map of the geographic area that will be affected by the
33645 long-range plan or amendments to a long-range plan;

33646 (iii) be sent to:

33647 (A) each county in whose unincorporated area and each municipality in whose
33648 boundaries is located the land on which the proposed long-range plan or amendments to a
33649 long-range plan are expected to indicate that the proposed facilities will be located;

33650 (B) each affected entity;

33651 (C) the Automated Geographic Reference Center created in Section 63F-1-506;

33652 (D) each association of governments, established pursuant to an interlocal agreement
33653 under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality
33654 described in Subsection (2)(b)(iii)(A) is a member; and

33655 (E) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202;

33656 (iv) with respect to the notice to counties and municipalities described in Subsection

33657 (2)(b)(iii)(A) and affected entities, invite them to provide information for the school district to

33658 consider in the process of preparing, adopting, and implementing the long-range plan or
33659 amendments to a long-range plan concerning:

33660 (A) impacts that the use of land proposed in the proposed long-range plan or
33661 amendments to a long-range plan may have on the county, municipality, or affected entity; and

33662 (B) uses of land that the county, municipality, or affected entity is planning or
33663 considering that may conflict with the proposed long-range plan or amendments to a long-range
33664 plan; and

33665 (v) include the address of an Internet website, if the school district has one, and the
33666 name and telephone number of a person where more information can be obtained concerning the
33667 school district's proposed long-range plan or amendments to a long-range plan.

33668 (3) (a) Except as provided in Subsection (3)(d), each school district intending to
33669 acquire real property in a county of the first or second class for the purpose of expanding the
33670 district's infrastructure or other facilities shall provide written notice, as provided in this
33671 Subsection (3), of its intent to acquire the property if the intended use of the property is
33672 contrary to:

33673 (i) the anticipated use of the property under the county or municipality's general plan; or

33674 (ii) the property's current zoning designation.

33675 (b) Each notice under Subsection (3)(a) shall:

33676 (i) indicate that the school district intends to acquire real property;

33677 (ii) identify the real property; and

33678 (iii) be sent to:

33679 (A) each county in whose unincorporated area and each municipality in whose
33680 boundaries the property is located; and

33681 (B) each affected entity.

33682 (c) A notice under this Subsection (3) is a protected record as provided in Subsection
33683 [~~63-2-304~~] 63G-2-305(7).

33684 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the school district
33685 previously provided notice under Subsection (2) identifying the general location within the

33686 municipality or unincorporated part of the county where the property to be acquired is located.

33687 (ii) If a school district is not required to comply with the notice requirement of
33688 Subsection (3)(a) because of application of Subsection (3)(d)(i), the school district shall provide
33689 the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of the real
33690 property.

33691 Section 740. Section **53A-2-206** is amended to read:

33692 **53A-2-206. Interstate compact students -- Inclusion in attendance count --**
33693 **Funding for foreign exchange students -- Annual report -- Requirements for exchange**
33694 **student agencies.**

33695 (1) A school district or charter school may include the following students in the
33696 district's or school's membership and attendance count for the purpose of apportionment of state
33697 monies:

33698 (a) a student enrolled under an interstate compact, established between the State Board
33699 of Education and the state education authority of another state, under which a student from one
33700 compact state would be permitted to enroll in a public school in the other compact state on the
33701 same basis as a resident student of the receiving state; or

33702 (b) a student receiving services under the Compact on Placement of Children.

33703 (2) (a) A school district or charter school may include foreign exchange students in the
33704 district's or school's membership and attendance count for the purpose of apportionment of state
33705 monies, except as provided in Subsections (2)(b) through (e).

33706 (b) (i) Notwithstanding Section 53A-17a-106, foreign exchange students may not be
33707 included in average daily membership for the purpose of determining the number of weighted
33708 pupil units in the grades 1-12 basic program.

33709 (ii) Subject to the limitation in Subsection (2)(c), the number of weighted pupil units in
33710 the grades 1-12 basic program attributed to foreign exchange students shall be equal to the
33711 number of foreign exchange students who were:

33712 (A) enrolled in a school district or charter school on October 1 of the previous fiscal
33713 year; and

33714 (B) sponsored by an agency approved by the district's local school board or charter
33715 school's governing board.

33716 (c) (i) The total number of foreign exchange students in the state that may be counted
33717 for the purpose of apportioning state monies under Subsection (2)(b) shall be the lesser of:

33718 (A) the number of foreign exchange students enrolled in public schools in the state on
33719 October 1 of the previous fiscal year; or

33720 (B) 328 foreign exchange students.

33721 (ii) The State Board of Education shall make rules in accordance with [~~Title 63;~~
33722 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer the cap
33723 on the number of foreign exchange students that may be counted for the purpose of
33724 apportioning state monies under Subsection (2)(b).

33725 (d) Notwithstanding Sections 53A-17a-133 and 53A-17a-134, weighted pupil units in
33726 the grades 1-12 basic program for foreign exchange students, as determined by Subsections
33727 (2)(b) and (c), may not be included for the purposes of determining a school district's state
33728 guarantee money under the voted or board leeway programs.

33729 (e) Notwithstanding Section 53A-17a-125, foreign exchange students may not be
33730 included in enrollment when calculating student growth for the purpose of adjusting the annual
33731 appropriation for retirement and Social Security.

33732 (3) A school district or charter school may:

33733 (a) enroll foreign exchange students that do not qualify for state monies; and

33734 (b) pay for the costs of those students with other funds available to the school district
33735 or charter school.

33736 (4) Due to the benefits to all students of having the opportunity to become familiar with
33737 individuals from diverse backgrounds and cultures, school districts are encouraged to enroll
33738 foreign exchange students, as provided in Subsection (3), particularly in schools with declining
33739 or stable enrollments where the incremental cost of enrolling the foreign exchange student may
33740 be minimal.

33741 (5) The board shall make an annual report to the Legislature on the number of exchange

33742 students and the number of interstate compact students sent to or received from public schools
33743 outside the state.

33744 (6) (a) A local school board or charter school governing board shall require each
33745 approved exchange student agency to provide it with a sworn affidavit of compliance prior to
33746 the beginning of each school year.

33747 (b) The affidavit shall include the following assurances:

33748 (i) that the agency has complied with all applicable policies of the board;

33749 (ii) that a household study, including a background check of all adult residents, has been
33750 made of each household where an exchange student is to reside, and that the study was of
33751 sufficient scope to provide reasonable assurance that the exchange student will receive proper
33752 care and supervision in a safe environment;

33753 (iii) that host parents have received training appropriate to their positions, including
33754 information about enhanced criminal penalties under Subsection 76-5-406(10) for persons who
33755 are in a position of special trust;

33756 (iv) that a representative of the exchange student agency shall visit each student's place
33757 of residence at least once each month during the student's stay in Utah;

33758 (v) that the agency will cooperate with school and other public authorities to ensure
33759 that no exchange student becomes an unreasonable burden upon the public schools or other
33760 public agencies;

33761 (vi) that each exchange student will be given in the exchange student's native language
33762 names and telephone numbers of agency representatives and others who could be called at any
33763 time if a serious problem occurs; and

33764 (vii) that alternate placements are readily available so that no student is required to
33765 remain in a household if conditions appear to exist which unreasonably endanger the student's
33766 welfare.

33767 (7) (a) A local school board or charter school governing board shall provide each
33768 approved exchange student agency with a list of names and telephone numbers of individuals
33769 not associated with the agency who could be called by an exchange student in the event of a

33770 serious problem.

33771 (b) The agency shall make a copy of the list available to each of its exchange students in
33772 the exchange student's native language.

33773 Section 741. Section **53A-3-303** is amended to read:

33774 **53A-3-303. Duties of business administrator.**

33775 Subject to the direction of the district superintendent of schools, the district's business
33776 administrator shall:

33777 (1) attend all meetings of the board, keep an accurate record of its proceedings, and
33778 have custody of the seal and records;

33779 (2) be custodian of all district funds, be responsible and accountable for all money
33780 received and disbursed, and keep accurate records of all revenues received and their sources;

33781 (3) countersign with the president of the board all warrants and claims against the
33782 district as well as other legal documents approved by the board;

33783 (4) prepare and submit to the board each month a written report of the district's receipts
33784 and expenditures;

33785 (5) use uniform budgeting, accounting, and auditing procedures and forms approved by
33786 the State Board of Education, which shall be in accordance with generally accepted accounting
33787 principles or auditing standards and [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Utah Budgetary
33788 Procedures Act;

33789 (6) prepare and submit to the board a detailed annual statement for the period ending
33790 June 30, of the revenue and expenditures, including beginning and ending fund balances;

33791 (7) assist the superintendent in the preparation and submission of budget documents and
33792 statistical and fiscal reports required by law or the State Board of Education;

33793 (8) insure that adequate internal controls are in place to safeguard the district's funds;
33794 and

33795 (9) perform other duties as the superintendent may require.

33796 Section 742. Section **53A-3-402.11** is amended to read:

33797 **53A-3-402.11. Reading Performance Improvement Scholarship Program.**

33798 (1) There is established a Reading Performance Improvement Scholarship Program to
33799 assist selected elementary teachers in obtaining a reading endorsement so that they may help
33800 improve the reading performance of students in their classes.

33801 (2) The State Board of Education shall award scholarships of up to \$500 to each
33802 recipient under the program.

33803 (3) The board shall give weighted consideration to scholarship applicants who:

33804 (a) teach in grades kindergarten through three;

33805 (b) are designated by their schools as, or are seeking the designation of, reading
33806 specialist; and

33807 (c) teach in a rural area of the state.

33808 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
33809 Administrative Rulemaking Act, the board shall provide by rule for:

33810 (a) the application procedure for the scholarship; and

33811 (b) what constitutes a reading specialist at the elementary school level.

33812 Section 743. Section **53A-3-424** is amended to read:

33813 **53A-3-424. Rulemaking -- Reporting.**

33814 The State Office of Education may make rules in accordance with [~~Title 63, Chapter~~
33815 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding compliance
33816 standards and reporting requirements for local school boards with respect to the policy required
33817 by Section 53A-3-422.

33818 Section 744. Section **53A-3-702** is amended to read:

33819 **53A-3-702. Professional development pilot program.**

33820 (1) A pilot program is created to evaluate the effects on student academic achievement
33821 of reducing the minimum school term established by the State Board of Education by up to 22
33822 hours for the purpose of conducting professional development for instructional staff.

33823 (2) To participate in the pilot program, a local school board shall submit a plan to a
33824 community council for approval before submission to the State Board of Education that
33825 includes the following information:

- 33826 (a) the schools intending to participate in the pilot program;
- 33827 (b) the revised school schedule;
- 33828 (c) a description of the professional development activities;
- 33829 (d) the expected outcomes from the professional development, including measurable
- 33830 academic achievement goals; and
- 33831 (e) the method of evaluating the effectiveness of the professional development.

33832 (3) The State Board of Education shall determine the maximum number of school
33833 districts and schools that may participate in the pilot program.

33834 (4) The State Board of Education shall make rules, in accordance with [~~Title 63;~~
33835 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for the
33836 implementation of the pilot program.

33837 (5) The State Board of Education shall submit to the Education Interim Committee:

- 33838 (a) preliminary findings from the pilot program by October 1, 2006; and
- 33839 (b) a final report and recommendations for expansion of the program by October 1,
- 33840 2007.

33841 Section 745. Section **53A-6-103** is amended to read:

33842 **53A-6-103. Definitions.**

33843 As used in this chapter:

33844 (1) "Accredited institution" means an institution meeting the requirements of Section
33845 53A-6-107.

33846 (2) (a) "Alternative preparation program" means preparation for licensure in accordance
33847 with applicable law and rule through other than an approved preparation program.

33848 (b) "Alternative preparation program" includes the competency-based licensing program
33849 described in Section 53A-6-104.5.

33850 (3) "Ancillary requirement" means a requirement established by law or rule in addition
33851 to completion of an approved preparation program or alternative education program or
33852 establishment of eligibility under the NASDTEC Interstate Contract, and may include any of the
33853 following:

- 33854 (a) minimum grade point average;
- 33855 (b) standardized testing or assessment;
- 33856 (c) mentoring;
- 33857 (d) recency of professional preparation or experience;
- 33858 (e) graduation from an accredited institution; or
- 33859 (f) evidence relating to moral, ethical, physical, or mental fitness.
- 33860 (4) "Approved preparation program" means a program for preparation of educational
- 33861 personnel offered through an accredited institution in Utah or in a state which is a party to a
- 33862 contract with Utah under the NASDTEC Interstate Contract and which, at the time the program
- 33863 was completed by the applicant:
 - 33864 (a) was approved by the governmental agency responsible for licensure of educators in
 - 33865 the state in which the program was provided;
 - 33866 (b) satisfied requirements for licensure in the state in which the program was provided;
 - 33867 (c) required completion of a baccalaureate; and
 - 33868 (d) included a supervised field experience.
- 33869 (5) "Board" means the Utah State Board of Education.
- 33870 (6) "Certificate" means a license issued by a governmental jurisdiction outside the state.
- 33871 (7) "Core academic subjects" means English, reading or language arts, mathematics,
- 33872 science, foreign languages, civics and government, economics, arts, history, and geography.
- 33873 (8) "Educator" means:
 - 33874 (a) a person who holds a license;
 - 33875 (b) a teacher, counselor, administrator, librarian, or other person required, under rules
 - 33876 of the board, to hold a license; or
 - 33877 (c) a person who is the subject of an allegation which has been received by the board or
 - 33878 UPPAC and was, at the time noted in the allegation, a license holder or a person employed in a
 - 33879 position requiring licensure.
- 33880 (9) (a) "Endorsement" means a stipulation appended to a license setting forth the areas
- 33881 of practice to which the license applies.

33882 (b) An endorsement shall be issued upon completion of a competency-based teacher
33883 preparation program from a regionally accredited university that meets state content standards.

33884 (10) "License" means an authorization issued by the board which permits the holder to
33885 serve in a professional capacity in the public schools. The five levels of licensure are:

33886 (a) "letter of authorization," which is:

33887 (i) a temporary license issued to a person who has not completed requirements for a
33888 competency-based, or level 1, 2, or 3 license, such as:

33889 (A) a student teacher; or

33890 (B) a person participating in an alternative preparation program; or

33891 (ii) a license issued, pursuant to board rules, to a person who has achieved eminence, or
33892 has outstanding qualifications, in a field taught in public schools;

33893 (b) "competency-based license" which is issued to a teacher based on the teacher's
33894 demonstrated teaching skills and abilities;

33895 (c) "level 1 license," which is a license issued upon completion of:

33896 (i) a competency-based teacher preparation program from a regionally accredited
33897 university; or

33898 (ii) an approved preparation program or an alternative preparation program, or
33899 pursuant to an agreement under the NASDTEC Interstate Contract, to candidates who have
33900 also met all ancillary requirements established by law or rule;

33901 (d) "level 2 license," which is a license issued after satisfaction of all requirements for a
33902 level 1 license as well as any additional requirements established by law or rule relating to
33903 professional preparation or experience; and

33904 (e) "level 3 license," which is a license issued to an educator who holds a current Utah
33905 level 2 license and has also received, in the educator's field of practice, National Board
33906 certification or a doctorate from an accredited institution.

33907 (11) "NASDTEC" means the National Association of State Directors of Teacher
33908 Education and Certification.

33909 (12) "NASDTEC Interstate Contract" means the contract implementing Title 53A,

33910 Chapter 6, Part 2, Compact for Interstate Qualification of Educational Personnel, which is
33911 administered through NASDTEC.

33912 (13) "National Board certification" means a current certificate issued by the National
33913 Board for Professional Teaching Standards.

33914 (14) "Necessarily existent small school" means a school classified as a necessarily
33915 existent small school in accordance with Section 53A-17a-109.

33916 (15) "Office" means the Utah State Office of Education.

33917 (16) "Rule" means an administrative rule adopted by the board under [~~Title 63, Chapter~~
33918 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

33919 (17) "School" means a public or private entity which provides educational services to a
33920 minor child.

33921 (18) "Small school district" means a school district with an enrollment of less than
33922 5,000 students.

33923 (19) "UPPAC" means the Utah Professional Practices Advisory Commission.

33924 Section 746. Section **53A-6-105** is amended to read:

33925 **53A-6-105. Licensing fees -- Credit to subfund -- Payment of expenses.**

33926 (1) The board shall levy a fee for each new, renewed, or reinstated license or
33927 endorsement in accordance with Section [~~63-38-3.2~~] 63J-1-303.

33928 (2) Fee payments are credited to the Professional Practices Restricted Subfund in the
33929 Uniform School Fund.

33930 (3) The board shall pay the expenses of issuing licenses and of UPPAC operations, and
33931 the costs of collecting license fees from the restricted subfund.

33932 (4) The office shall submit an annual report to the Legislature's Public Education
33933 Appropriations Subcommittee informing the Legislature about the fund, fees assessed and
33934 collected, and expenditures from the fund.

33935 Section 747. Section **53A-6-112** is amended to read:

33936 **53A-6-112. Grants for licensed teachers.**

33937 (1) As used in this section:

- 33938 (a) "Licensed teacher" means a teacher who holds:
- 33939 (i) a level 1, level 2, or level 3 license; and
- 33940 (ii) the endorsements required by board rule for the teacher's assignments.
- 33941 (b) "National Board certification" means a current certificate issued by the National
- 33942 Board for Professional Teaching Standards.
- 33943 (2) A grant program is created to minimize out-of-pocket expenses of licensed teachers
- 33944 to:
- 33945 (a) obtain National Board certification; or
- 33946 (b) take tests to meet federal highly qualified teacher standards as defined in 20 U.S.C.
- 33947 Sec. 7801.
- 33948 (3) The State Board of Education shall give grants to school districts and charter
- 33949 schools for the purpose stated in Subsection (2) from monies appropriated by the Legislature
- 33950 for that purpose.
- 33951 (4) To receive a grant, a school district or charter school shall provide matching funds
- 33952 to minimize out-of-pocket expenses of licensed teachers to obtain National Board certification
- 33953 or to take tests to meet federal highly qualified teacher standards in an amount equal to the
- 33954 grant.
- 33955 (5) Grant monies and matching funds shall be used to pay for costs of licensed teachers
- 33956 that are directly related to:
- 33957 (a) obtaining National Board certification; or
- 33958 (b) taking tests that, if the licensed teacher passes, the teacher meets federal highly
- 33959 qualified teacher standards.
- 33960 (6) The State Board of Education shall distribute money appropriated by the
- 33961 Legislature to school districts and charter schools to pay for costs of licensed teachers directly
- 33962 related to obtaining National Board certification or taking tests to meet federal highly qualified
- 33963 teacher standards in accordance with:
- 33964 (a) Subsection (4); and
- 33965 (b) a formula adopted by the board, after consultation with school districts and charter

33966 schools, that allocates the funding in a fair and equitable manner.

33967 (7) The State Board of Education shall make rules in accordance with [~~Title 63,~~
33968 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer this
33969 section.

33970 Section 748. Section **53A-6-503** is amended to read:

33971 **53A-6-503. Reimbursement of legal fees and costs to educators.**

33972 (1) As used in this section:

33973 (a) "Action" means any action, except those referred to in Section [~~63-30a-2]~~ 52-6-201,
33974 brought against an educator by an individual or entity other than:

33975 (i) the entity who licenses the educator; and

33976 (ii) the school district that employs the educator or employed the educator at the time
33977 of the alleged act or omission.

33978 (b) "Educator" means an individual who holds or is required to hold a license under this
33979 chapter and is employed by a school district located within the state.

33980 (c) "School district" includes the Schools for the Deaf and the Blind and the state's
33981 applied technology centers.

33982 (2) Except as otherwise provided in Section [~~63-30a-2]~~ 52-6-201, an educator is
33983 entitled to recover reasonable attorneys' fees and costs incurred in [~~his~~] the educator's defense
33984 against an individual or entity who initiates an action against the educator if:

33985 (a) the action is brought for any act or omission of the educator during the performance
33986 of the educator's duties within the scope of the educator's employment; and

33987 (b) it is dismissed or results in findings favorable to the educator.

33988 (3) An educator who recovers under this section is also entitled to recover reasonable
33989 attorneys' fees and costs necessarily incurred by the educator in recovering the attorneys' fees
33990 and costs allowed under Subsection (2).

33991 Section 749. Section **53A-11-102.5** is amended to read:

33992 **53A-11-102.5. Dual enrollment.**

33993 (1) A person having control of a minor under this part who is enrolled in a regularly

33994 established private school or a home school may also enroll the minor in a public school for dual
33995 enrollment purposes.

33996 (2) The minor may participate in any academic activity in the public school available to
33997 students in the minor's grade or age group, subject to compliance with the same rules and
33998 requirements that apply to a full-time student's participation in the activity.

33999 (3) Except as otherwise provided in Sections 53A-11-101.5 and 53A-11-102, a student
34000 enrolled in a public school may also be enrolled in a private school or a home school for dual
34001 enrollment purposes.

34002 (4) A student enrolled in a dual enrollment program is considered a student of the
34003 district in which the public school of attendance is located for purposes of state funding to the
34004 extent of the student's participation in the public school programs.

34005 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
34006 Administrative Rulemaking Act, the State Board of Education shall make rules for purposes of
34007 dual enrollment to govern and regulate the transferability of credits toward graduation that are
34008 earned in a private or home school.

34009 (6) The State Board of Education shall determine the policies and procedures necessary
34010 to permit students enrolled under Subsection (1) to participate in public school extracurricular
34011 activities.

34012 Section 750. Section **53A-12-103** is amended to read:

34013 **53A-12-103. Waiver of fees.**

34014 (1) (a) A local school board shall require, as part of an authorization granted under
34015 Section 53A-12-102, that adequate waivers or other provisions are available to ensure that no
34016 student is denied the opportunity to participate because of an inability to pay the required fee,
34017 deposit, or charge.

34018 (b) (i) If, however, a student must repeat a course or requires remediation to advance or
34019 graduate and a fee is associated with the course or the remediation program, it is presumed that
34020 the student will pay the fee.

34021 (ii) If the student or the student's parent or guardian is financially unable to pay the fee,

34022 the board shall provide for alternatives to waiving the fee, which may include installment
34023 payments and school or community service or work projects for the student.

34024 (iii) In cases of extreme financial hardship or where the student has suffered a long-term
34025 illness, or death in the family, or other major emergency and where installment payments and the
34026 imposition of a service or work requirement would not be reasonable, the student may receive a
34027 partial or full waiver of the fee required under Subsection (1)(b)(i).

34028 (iv) The waiver provisions in Subsections (2) and (3) apply to all other fees, deposits,
34029 and charges made in the secondary schools.

34030 (2) (a) The board shall require each school in the district that charges a fee under this
34031 chapter to provide a variety of alternatives for satisfying the fee requirement to those who
34032 qualify for fee waivers, in addition to the outright waiver of the fee.

34033 (b) The board shall develop and provide a list of alternatives for the schools, including
34034 such options as allowing the student to provide:

34035 (i) tutorial assistance to other students;

34036 (ii) assistance before or after school to teachers and other school personnel on school
34037 related matters; and

34038 (iii) general community or home service.

34039 (c) Each school may add to the list of alternatives provided by the board, subject to
34040 approval by the board.

34041 (3) A local school board may establish policies providing for partial fee waivers or other
34042 alternatives for those students who, because of extenuating circumstances, are not in a financial
34043 position to pay the entire fee.

34044 (4) With regard to children who are in the custody of the Division of Child and Family
34045 Services who are also eligible under Title IV-E of the federal Social Security Act, local school
34046 boards shall require fee waivers or alternatives in accordance with Subsections (1) through (3).

34047 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
34048 Administrative Rulemaking Act, the State Board of Education shall make rules:

34049 (a) requiring a parent or guardian of a student applying for a fee waiver to provide

34050 documentation and certification to the school verifying:

34051 (i) the student's eligibility to receive the waiver; and

34052 (ii) that the alternatives for satisfying the fee requirements under Subsection (2) have
34053 been complied with to the fullest extent reasonably possible according to the individual
34054 circumstances of both the fee waiver applicant and the school; and

34055 (b) specifying the acceptable forms of documentation for the requirement under
34056 Subsection (5)(a), which shall include verification based on income tax returns or current pay
34057 stubs.

34058 (6) Notwithstanding the requirements under Subsection (5), a school is not required to
34059 keep documentation on file after the verification is completed.

34060 Section 751. Section **53A-13-101.6** is amended to read:

34061 **53A-13-101.6. Instruction on the flag of the United States of America.**

34062 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
34063 Administrative Rulemaking Act, the State Board of Education shall provide by rule for a
34064 program of instruction within the public schools relating to the flag of the United States.

34065 (2) The instruction shall include the history of the flag, etiquette, customs pertaining to
34066 the display and use of the flag, and other patriotic exercises as provided by Sections 36 U.S.C.
34067 170 to 177.

34068 (3) (a) The pledge of allegiance to the flag shall be recited:

34069 (i) at the beginning of the day in each elementary public school in the state; and

34070 (ii) once a week at the beginning of a school day in each public secondary school in the
34071 state.

34072 (b) Each student shall be informed by posting a notice in a conspicuous place that the
34073 student has the right not to participate in reciting the pledge.

34074 (c) A student shall be excused from reciting the pledge upon written request from the
34075 student's parent or legal guardian.

34076 Section 752. Section **53A-13-106** is amended to read:

34077 **53A-13-106. Instruction in firearm safety -- Purpose -- School districts to**

34078 **implement volunteer education classes -- Parental consent exception.**

34079 (1) (a) School districts may permit the use of district approved volunteers or school
34080 district teachers for instruction of firearm safety education classes for students.

34081 (b) The volunteers or school district teachers instructing the firearm safety education
34082 class are encouraged to utilize donated materials prepared by firearms training and education
34083 organizations or to develop their own materials within existing budgets.

34084 (2) The purpose of firearm safety education is to:

34085 (a) develop the knowledge, habits, skills, and attitudes necessary for the safe handling
34086 of firearms; and

34087 (b) help students avoid firearm injuries.

34088 (3) School districts may offer firearm safety instruction to students in grades
34089 kindergarten through four to teach them that in order to avoid injury when they find a firearm
34090 they should:

34091 (a) not touch it;

34092 (b) tell an adult about finding the firearm and its location; and

34093 (c) be able to share the instruction provided in Subsections (3)(a) and (b) with any other
34094 minors who are with them when they find a firearm.

34095 (4) As used in this chapter, "firearm" means any firearm as defined in Section
34096 76-10-501.

34097 (5) The State Board of Education shall make rules promulgated pursuant to [~~Title 63,~~
34098 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for:

34099 (a) use of certified volunteers for instruction of firearm safety education classes in the
34100 public schools;

34101 (b) use of public school classrooms or auditoriums for these classes;

34102 (c) school district review of donated materials before their use; and

34103 (d) proof of certification as a firearm safety instructor.

34104 (6) (a) A local school board may require every student in grades kindergarten through
34105 six to participate in a firearm safety education class offered within the public schools under this

34106 section.

34107 (b) A student may be exempted from participation upon notification to the local school
34108 by the student's parent or legal guardian that the parent or legal guardian wants the student
34109 exempted from the class in its entirety or any portion specified.

34110 (7) If a student is exempted under Subsection (6), the school may provide other
34111 activities during the period of time in which the student would otherwise be participating in the
34112 program.

34113 (8) The school districts may permit the Division of Wildlife Resources, local law
34114 enforcement agencies, peace officers as defined in Title 53, Chapter 13, Peace Officer
34115 Classifications, certified instructors, certified hunter education instructors, and other certified
34116 firearms safety instructors, as provided by rules adopted under Subsection (5)(a) to teach the
34117 firearm safety education class on a voluntary basis.

34118 (9) The school district is encouraged to maximize the use of existing firearm safety
34119 educational materials which are available at minimal or no cost and the use of certified volunteer
34120 instructors.

34121 (10) The school district may review the class on a regular basis for its effectiveness.

34122 Section 753. Section **53A-13-201** is amended to read:

34123 **53A-13-201. Driver education established by school districts.**

34124 (1) As used in this part:

34125 (a) "Driver education" includes classroom instruction and driving and observation in a
34126 dual-controlled motor vehicle.

34127 (b) "Driving" or "behind-the-wheel driving" means operating a dual-controlled motor
34128 vehicle under the supervision of a certified instructor.

34129 (2) (a) Local school districts may establish and maintain driver education for pupils.

34130 (b) A school or local school district that provides driver education shall provide an
34131 opportunity for each pupil enrolled in that school or local school district to take the written test
34132 when the pupil is 15 years and nine months of age.

34133 (c) Notwithstanding the provisions of Subsection (2)(b), a school or local school

34134 district that provides driver education may provide an opportunity for each pupil enrolled in that
34135 school or school district to take the written test when the pupil is 15 years of age.

34136 (3) The purpose of driver education is to help develop the knowledge, attitudes, habits,
34137 and skills necessary for the safe operation of motor vehicles.

34138 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
34139 Administrative Rulemaking Act, the State Board of Education shall make rules for driver
34140 education offered in the public schools.

34141 (5) The rules under Subsection (4) shall:

34142 (a) require at least one hour of classroom training on the subject of railroad crossing
34143 safety for each driver education pupil; and

34144 (b) establish minimum standards for approved driving ranges under Section 53-3-505.5.

34145 (6) The requirements of Section 53-3-505.5 apply to any behind-the-wheel driving
34146 training provided as part of driver education offered under this part and used to satisfy the
34147 driver training requirement under Section 53-3-204.

34148 Section 754. Section **53A-13-208** is amended to read:

34149 **53A-13-208. Driver education teachers certified as license examiners.**

34150 (1) The Driver License Division of the Department of Public Safety and the State Board
34151 of Education through the State Office of Education shall establish procedures and standards to
34152 certify teachers of driver education classes under this part to administer written and driving
34153 tests.

34154 (2) The division is the certifying authority.

34155 (3) (a) A teacher certified under this section shall give written and driving tests designed
34156 for driver education classes authorized under this part.

34157 (b) The Driver License Division shall, in conjunction with the State Office of Education,
34158 establish minimal standards for the driver education class tests that are at least as difficult as
34159 those required to receive a class D operator's license under Title 53, Chapter 3, Uniform Drivers
34160 License Act.

34161 (c) A student who passes the written test but fails the driving test given by a teacher

34162 certified under this section may apply for a learner permit or class D operator's license under
34163 Title 53, Chapter 3, Part 2, Driver Licensing Act, and complete the driving test at a Driver
34164 License Division office.

34165 (4) A student shall have a learner permit issued by the Driver License Division under
34166 Section 53-3-210.5 in the student's immediate possession at all times when operating a motor
34167 vehicle under this section.

34168 (5) A student who successfully passes the tests given by a certified driver education
34169 teacher under this section satisfies the written and driving parts of the test required for a learner
34170 permit or class D operator's license.

34171 (6) The Driver License Division and the State Board of Education shall establish
34172 procedures to enable school districts to administer or process any tests for students to receive a
34173 learner permit or class D operator's license.

34174 (7) The division and board shall establish the standards and procedures required under
34175 this section by rules made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
34176 Utah Administrative Rulemaking Act.

34177 Section 755. Section **53A-13-209** is amended to read:

34178 **53A-13-209. Programs authorized -- Minimum standards.**

34179 (1) Local school districts may:

34180 (a) allow students to complete the classroom training portion of driver education
34181 through the following programs:

34182 (i) home study; or

34183 (ii) the electronic high school;

34184 (b) provide each parent with driver education instructional materials to assist in parent
34185 involvement with driver education including behind-the-wheel driving materials;

34186 (c) offer driver education outside of school hours in order to reduce the cost of
34187 providing driver education;

34188 (d) offer driver education through community education programs;

34189 (e) offer the classroom portion of driver education in the public schools and allow the

34190 student to complete the behind-the-wheel portion with a private provider:

34191 (i) licensed under Section 53-3-504; and

34192 (ii) not associated with the school or under contract with the school under Subsection

34193 53A-13-202(3); or

34194 (f) any combination of Subsections (1)(a) through (e).

34195 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

34196 Administrative Rulemaking Act, the State Board of Education shall establish minimum

34197 standards for the school-related programs under Subsection (1).

34198 Section 756. Section **53A-15-101.5** is amended to read:

34199 **53A-15-101.5. Concurrent enrollment instruction in Mandarin Chinese.**

34200 (1) (a) As used in this section, "category IV languages" means those languages

34201 designated the most difficult to learn by the Defense Language Institute as provided in training

34202 to members of the United States Military.

34203 (b) The Legislature recognizes:

34204 (i) the importance of students acquiring skills in foreign languages in order for them to

34205 successfully compete in a global society; and

34206 (ii) that the acquisition of category IV languages, such as Mandarin Chinese, Arabic,

34207 Korean, and Japanese, by students in the state's public schools requires extended sequences of

34208 study to acquire useful proficiency in listening, speaking, reading, and writing.

34209 (2) (a) As a component of the concurrent enrollment program authorized under Section

34210 53A-15-101, the State Board of Education and the State Board of Regents, in consultation with

34211 the Utah Education Network, may develop and implement a concurrent enrollment course of

34212 study in the category IV language of Mandarin Chinese.

34213 (b) The course shall be taught over EDNET, the state's two-way interactive system for

34214 video and audio, to high school juniors and seniors in the state's public education system.

34215 (3) (a) The concurrent enrollment course in Mandarin Chinese authorized in Subsection

34216 (2) may use paraprofessionals in the classroom who:

34217 (i) are fluent in Mandarin Chinese; and

34218 (ii) can provide reinforcement and tutoring to students on days and at times when they
34219 are not receiving instruction over EDNET under Subsection (2)(b).

34220 (b) The State Board of Education, through the State Superintendent of Public
34221 Instruction, and professors who teach Chinese in the state system of higher education shall
34222 jointly ensure that the paraprofessionals are fluent in Mandarin Chinese.

34223 (4) The State Board of Education and the State Board of Regents shall make joint rules
34224 on the concurrent enrollment course authorized under this section in accordance with [~~Title 63,~~
34225 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to include:

34226 (a) notification to school districts on the times and places of the course offerings; and

34227 (b) instructional materials for the course.

34228 (5) Students who successfully complete the concurrent enrollment course offered under
34229 this section shall receive tuition reimbursement for a sequential Mandarin Chinese course they
34230 successfully complete at an institution within the state system of higher education under rules
34231 made by the State Board of Regents in accordance with [~~Title 63, Chapter 46a]~~ Title 63G,
34232 Chapter 3, Utah Administrative Rulemaking Act.

34233 (6) The State Board of Education and the State Board of Regents shall jointly track and
34234 monitor the Mandarin Chinese language program and may expand the program to include other
34235 category IV languages, subject to student demand for the courses and available resources.

34236 Section 757. Section **53A-15-104** is amended to read:

34237 **53A-15-104. Critical Languages Program -- Pilot.**

34238 (1) (a) As used in this section, "critical languages" means those languages described in
34239 the federal National Security Language Initiative, including Chinese, Arabic, Russian, Farsi,
34240 Hindi, and Korean.

34241 (b) The Legislature recognizes:

34242 (i) the importance of students acquiring skills in foreign languages in order for them to
34243 successfully compete in a global society; and

34244 (ii) the academic, societal, and economic development benefits of the acquisition of
34245 critical languages.

- 34246 (2) (a) The State Board of Education, in consultation with the Utah Education
34247 Network, shall develop and implement courses of study in the critical languages.
- 34248 (b) A course may be taught:
- 34249 (i) over EDNET, the state's two-way interactive system for video and audio, to students
34250 in the state's public education system; or
- 34251 (ii) through the Electronic High School.
- 34252 (3) (a) The courses authorized in Subsection (2) may use paraprofessionals in the
34253 classroom who:
- 34254 (i) are fluent in the critical language being taught; and
- 34255 (ii) can provide reinforcement and tutoring to students on days and at times when they
34256 are not receiving instruction over EDNET under Subsection (2)(b).
- 34257 (b) The State Board of Education, through the state superintendent of public
34258 instruction, shall ensure that the paraprofessionals are fluent in the critical languages.
- 34259 (4) The State Board of Education shall make rules on the critical languages courses
34260 authorized under this section in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
34261 Utah Administrative Rulemaking Act, to include:
- 34262 (a) notification to school districts on the times and places of the course offerings; and
- 34263 (b) instructional materials for the courses.
- 34264 (5) The State Board of Education shall track and monitor the Critical Languages
34265 Program and may expand the program to include more course offerings and other critical
34266 languages, subject to student demand for the courses and available resources.
- 34267 (6) Subject to funding for the program, the State Board of Education shall establish a
34268 pilot program for school districts and schools to initially participate in the Critical Languages
34269 Program that provides:
- 34270 (a) \$6,000 per language per school, for up to 20 schools, for courses offered in critical
34271 languages;
- 34272 (b) \$100 per student who completes a critical languages course; and
- 34273 (c) an additional \$400 per foreign exchange student who completes a critical languages

34274 course.

34275 Section 758. Section **53A-16-101.5** is amended to read:

34276 **53A-16-101.5. School LAND Trust Program -- Purpose -- Distribution of funds --**
34277 **School plans for use of funds.**

34278 (1) There is established the School LAND (Learning And Nurturing Development)
34279 Trust Program for the state's public schools to provide financial resources to enhance or
34280 improve student academic achievement and implement a component of the school improvement
34281 plan.

34282 (2) (a) The program shall be funded each fiscal year:

34283 (i) from the Interest and Dividends Account created in Section 53A-16-101; and

34284 (ii) in the amount of the sum of the following:

34285 (A) the interest and dividends from the investment of monies in the permanent State
34286 School Fund deposited to the Interest and Dividends Account in the immediately preceding
34287 year; and

34288 (B) interest accrued on monies in the Interest and Dividends Account in the
34289 immediately preceding fiscal year.

34290 (b) On and after July 1, 2003, the program shall be funded as provided in Subsection
34291 (2)(a) up to a maximum of an amount equal to 2% of the funds provided for the Minimum
34292 School Program, pursuant to Title 53A, Chapter 17a, Minimum School Program Act, each
34293 fiscal year.

34294 (c) The Legislature shall annually allocate, through an appropriation to the State Board
34295 of Education, a portion of School LAND Trust Program monies for the administration of the
34296 program.

34297 (3) (a) The State Board of Education shall allocate the monies referred to in Subsection
34298 (2) annually for the fiscal year beginning July 1, 2000, and for each fiscal year thereafter as
34299 follows:

34300 (i) school districts shall receive 10% of the funds on an equal basis; and

34301 (ii) the remaining 90% of the funds shall be distributed on a per student basis, with each

34302 district receiving its allocation based on the number of students in the district as compared to
34303 the state total.

34304 (b) Each school district shall distribute its allocation under Subsection (3)(a) to each
34305 school within the district on an equal per student basis.

34306 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
34307 Administrative Rulemaking Act, the board may make rules regarding the time and manner in
34308 which the student count shall be made for allocation of the monies.

34309 (4) Except as provided in Subsection (7), in order to receive its allocation under
34310 Subsection (3), a school shall have established a school community council under Section
34311 53A-1a-108.

34312 (5) (a) The school community council or its subcommittee shall develop a program to
34313 use its allocation under Subsection (3) to implement a component of the school's improvement
34314 plan, including:

- 34315 (i) the school's identified most critical academic needs;
- 34316 (ii) a recommended course of action to meet the identified academic needs;
- 34317 (iii) a specific listing of any programs, practices, materials, or equipment which the
34318 school will need to implement a component of its school improvement plan to have a direct
34319 impact on the instruction of students and result in measurable increased student performance;
- 34320 and

34321 (iv) how the school intends to spend its allocation of funds under this section to
34322 enhance or improve academic excellence at the school.

34323 (b) The school may develop a multiyear program, but the program shall be presented
34324 and approved by the school community council and the local school board of the district in
34325 which the school is located annually and as a prerequisite to receiving program funds allocated
34326 under this section.

34327 (6) (a) Each school shall:

- 34328 (i) implement the program as approved by the school community council and approved
34329 by the local school board;

34330 (ii) provide ongoing support for the council's or its subcommittee's program;
34331 (iii) meet school board reporting requirements regarding financial and performance
34332 accountability of the program; and
34333 (iv) publicize to its patrons and the general public on how the funds it received under
34334 this section were used to enhance or improve academic excellence at the school and implement
34335 a component of the school's improvement plan, including the results of those efforts.

34336 (b) (i) Each school through its council or its subcommittee shall prepare and present an
34337 annual report of the program to its local school board at the end of the school year.

34338 (ii) The report shall detail the use of program funds received by the school under this
34339 section and an assessment of the results obtained from the use of the funds.

34340 (7) (a) The governing board of a charter school shall prepare a plan for the use of
34341 school trust monies that includes the elements listed in Subsection (5).

34342 (b) The plan shall be subject to approval by the entity that authorized the establishment
34343 of the charter school.

34344 (8) (a) A school community council and a governing board of a charter school may not
34345 be required to:

34346 (i) send a letter to legislators or other elected officials on the school's use of School
34347 LAND Trust Program monies as a condition of receiving the monies; or

34348 (ii) report to the State Board of Education or any local school board on whether any
34349 letters were sent to legislators or other elected officials on the school's use of School LAND
34350 Trust Program monies.

34351 (b) Subsection (8)(a)(i) does not apply to the annual report to the local school board
34352 required by Subsection (6)(b).

34353 Section 759. Section **53A-17a-105** is amended to read:

34354 **53A-17a-105. Action required for underestimated or overestimated weighted**
34355 **pupil units -- Action required for underestimating or overestimating local contributions.**

34356 (1) If the number of weighted pupil units in a program is underestimated in Section
34357 53A-17a-104, the amount per pupil in that program paid under this chapter must be reduced so

34358 that the amount paid does not exceed the estimated amount by program.

34359 (2) If the number of weighted pupil units in a program is overestimated in Section
34360 53A-17a-104, the state superintendent of public instruction shall either increase the amount paid
34361 in that program per weighted pupil unit or transfer the unused amount in that program to
34362 another program included in the minimum school program.

34363 (3) (a) If surplus funds are transferred to another program, the state superintendent, if
34364 ~~he~~ the state superintendent determines certain districts have greater need for additional funds,
34365 may designate the districts as well as the programs to which the transferred funds will be
34366 allocated.

34367 (b) Any amounts transferred under Subsection (3)(a) may be spent in addition to the
34368 amounts listed in Section 53A-17a-104.

34369 (4) The limitation on the proceeds from local tax rates for operation and maintenance
34370 programs under this chapter is subject to modification by local school boards under Sections
34371 53A-17a-133 and 53A-17a-134 and to special tax rates authorized by this chapter, and shall be
34372 adjusted accordingly.

34373 (5) If local contributions are overestimated, the guarantee per weighted pupil unit is
34374 reduced for all programs so the total state contribution for operation and maintenance programs
34375 does not exceed the amount authorized in Subsection 53A-17a-104(1).

34376 (6) (a) If local contributions from the basic tax rate for operation and maintenance
34377 programs are underestimated, the excess is applied first to support the value of the weighted
34378 pupil unit as set by the Legislature for total weighted pupil units generated by the districts and
34379 those costs of Social Security and retirement, transportation, and board and voted leeway that
34380 occur as a result of the additional generated weighted pupil units, following internal adjustments
34381 by the state superintendent as provided in this section.

34382 (b) The state contribution is decreased so the total school program cost for operation
34383 and maintenance programs does not exceed the total estimated contributions to school districts
34384 for all programs under Subsection 53A-17a-104(2) plus the amount of local revenue necessary
34385 to support the value of the weighted pupil unit for weighted pupil units generated and those

34386 costs of Social Security and retirement, transportation, and board and voted leeway that occur
34387 as a result of the additional generated weighted pupil units.

34388 (7) As an exception to Section [~~63-38-8~~] 63J-1-401, the state fiscal officer may not
34389 close out appropriations from the Uniform School Fund at the end of a fiscal year.

34390 Section 760. Section **53A-17a-107** is amended to read:

34391 **53A-17a-107. Professional staff weighted pupil units.**

34392 (1) Professional staff weighted pupil units are computed and distributed in accordance
34393 with the following schedule:

34394 (a) Professional Staff Cost Formula

| 34395 | | | | | Master's | |
|-------|------------|------------|-------------|----------|-------------|-----------|
| 34396 | Years of | Bachelor's | Bachelor's | Master's | Degree | |
| 34397 | Experience | Degree | +30 Qt. Hr. | Degree | +45 Qt. Hr. | Doctorate |
| 34398 | 1 | 1.00 | 1.05 | 1.10 | 1.15 | |
| 34399 | 1.20 | | | | | |
| 34400 | 2 | 1.05 | 1.10 | 1.15 | 1.20 | |
| 34401 | 1.25 | | | | | |
| 34402 | 3 | 1.10 | 1.15 | 1.20 | 1.25 | |
| 34403 | 1.30 | | | | | |
| 34404 | 4 | 1.15 | 1.20 | 1.25 | 1.30 | |
| 34405 | 1.35 | | | | | |
| 34406 | 5 | 1.20 | 1.25 | 1.30 | 1.35 | |
| 34407 | 1.40 | | | | | |
| 34408 | 6 | 1.25 | 1.30 | 1.35 | 1.40 | |
| 34409 | 1.45 | | | | | |
| 34410 | 7 | 1.30 | 1.35 | 1.40 | 1.45 | |
| 34411 | 1.50 | | | | | |
| 34412 | 8 | 1.35 | 1.40 | 1.45 | 1.50 | |
| 34413 | 1.55 | | | | | |

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34414 9 1.50 1.55

34415 1.60

34416 10 1.60

34417 1.65

34418 11 1.70

34419 (b) Multiply the number of full-time or equivalent professional personnel in each

34420 applicable experience category in Subsection (1)(a) by the applicable weighting factor.

34421 (c) Divide the total of Subsection (1)(b) by the number of professional personnel

34422 included in Subsection (1)(b) and reduce the quotient by 1.00.

34423 (d) Multiply the result of Subsection (1)(c) by 1/4 of the weighted pupil units computed

34424 in accordance with Sections 53A-17a-106 and 53A-17a-109.

34425 (2) The State Board of Education shall enact rules in accordance with [~~Title 63,~~

34426 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, which require a

34427 certain percentage of a district's professional staff to be certified in the area in which they teach

34428 in order for the district to receive full funding under the schedule.

34429 (3) If an individual's teaching experience is a factor in negotiating a contract of

34430 employment to teach in the state's public schools, then the local school board is encouraged to

34431 accept as credited experience all of the years the individual has taught in the state's public

34432 schools.

34433 Section 761. Section **53A-17a-111** is amended to read:

34434 **53A-17a-111. Weighted pupil units for programs for students with disabilities --**

34435 **District allocation.**

34436 (1) The number of weighted pupil units for students with disabilities shall reflect the

34437 direct cost of programs for those students conducted in accordance with rules established by the

34438 State Board of Education in accordance with [~~Title 63, Chapter 46a]~~ Title 63G, Chapter 3,

34439 Utah Administrative Rulemaking Act.

34440 (2) Disability program monies allocated to districts are restricted and shall be spent for

34441 the education of students with disabilities but may include expenditures for approved programs

34442 of services conducted for certified instructional personnel who have students with disabilities in
34443 their classes.

34444 (3) The State Board of Education shall establish and strictly interpret definitions and
34445 provide standards for determining which students have disabilities and shall assist districts in
34446 determining the services that should be provided to students with disabilities.

34447 (4) Each year the board shall evaluate the standards and guidelines that establish the
34448 identifying criteria for disability classifications to assure strict compliance with those standards
34449 by the districts.

34450 (5) (a) Monies appropriated to the State Board of Education in Section 53A-17a-104
34451 for add-on WPU's for students with disabilities enrolled in regular programs shall be allocated to
34452 school districts as provided in this Subsection (5).

34453 (b) Beginning on July 1, 2003, the State Board of Education shall:

34454 (i) use a district's average number of special education add-on weighted pupil units
34455 determined by the previous five year's average daily membership data as a foundation for the
34456 special education add-on appropriation; and

34457 (ii) implement a hold harmless provision for up to three years as needed to accomplish a
34458 phase-in period for school districts to accommodate the change in the special education add-on
34459 WPU's foundation formula.

34460 (c) A district's special education add-on WPU's for the current year may not be less than
34461 the foundation special education add-on WPU's.

34462 (d) Growth WPU's shall be added to the prior year special education add-on WPU's, and
34463 growth WPU's shall be determined as follows:

34464 (i) The special education student growth factor is calculated by comparing S-3 total
34465 special education ADM of two years previous to the current year to the S-3 total special
34466 education ADM three years previous to the current year, not to exceed the official October total
34467 district growth factor from the prior year.

34468 (ii) When calculating and applying the growth factor, a district's S-3 total special
34469 education ADM for a given year is limited to 12.18% of the district's S-3 total student ADM for

34470 the same year.

34471 (iii) Growth ADMs are calculated by applying the growth factor to the S-3 total special
34472 education ADM of two years previous to the current year.

34473 (iv) Growth ADMs for each district are multiplied by 1.53 weighted pupil units and
34474 added to the prior year special education add-on WPU to determine each district's total
34475 allocation.

34476 (6) If monies appropriated under this chapter for programs for students with disabilities
34477 do not meet the costs of districts for those programs, each district shall first receive the amount
34478 generated for each student with a disability under the basic program.

34479 Section 762. Section **53A-17a-120** is amended to read:

34480 **53A-17a-120. Appropriation for accelerated learning programs.**

34481 (1) Money appropriated to the State Board of Education in Section 53A-17a-104 for
34482 accelerated learning programs shall be allocated to local school boards and charter schools for
34483 the following programs:

34484 (a) programs in grades 1-12 for the gifted and talented; and

34485 (b) advanced placement.

34486 (2) (a) Districts shall spend monies for these programs according to rules established by
34487 the State Board of Education in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
34488 Utah Administrative Rulemaking Act.

34489 (b) The State Board of Education shall develop uniform and consistent policies for
34490 school districts to follow in utilizing advanced placement monies.

34491 Section 763. Section **53A-17a-121** is amended to read:

34492 **53A-17a-121. Appropriation for at-risk programs.**

34493 (1) Money appropriated to the State Board of Education in Section 53A-17a-104 for
34494 at-risk programs shall be allocated to local school boards for the following programs:

34495 (a) youth in custody;

34496 (b) homeless and disadvantaged minority students;

34497 (c) mathematics, engineering, and science achievement programs;

- 34498 (d) gang prevention and intervention; and
- 34499 (e) at-risk flow through.
- 34500 (2) Districts shall spend monies for these programs according to rules established by the
- 34501 State Board of Education in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
- 34502 Utah Administrative Rulemaking Act.
- 34503 (3) (a) From the amount appropriated for youth at risk programs, the board shall
- 34504 allocate moneys to school districts for homeless and disadvantaged minority students.
- 34505 (b) Each district shall receive its allocation on the basis of:
- 34506 (i) the total number of homeless students in the district;
- 34507 (ii) added to 50% of the number of disadvantaged minority students in the district;
- 34508 (iii) multiplying the total of Subsections (3)(b)(i) and (ii) by the value of the weighted
- 34509 pupil unit; and
- 34510 (iv) prorating the amount under Subsection (3)(b)(iii) to the amount in Subsection
- 34511 (3)(a).
- 34512 (4) (a) From the amount appropriated for at-risk programs, the board shall allocate
- 34513 monies for mathematics, engineering, and science achievement programs, MESA programs, in
- 34514 the districts.
- 34515 (b) The board shall make the distribution to school districts on a competitive basis by
- 34516 application under guidelines established by the board.
- 34517 (5) (a) From the amount appropriated for at-risk programs, the board shall distribute
- 34518 moneys for gang prevention and intervention programs at the district or school level.
- 34519 (b) The board shall make the distribution to school districts under guidelines established
- 34520 by the board consistent with Section 53A-15-601.
- 34521 (6) (a) From the amount appropriated for at-risk programs, the board shall distribute
- 34522 moneys for programs for youth in custody.
- 34523 (b) The board shall allocate these moneys to school districts which operate programs
- 34524 for youth in custody in accordance with standards established by the board.
- 34525 (7) From the amount appropriated for at-risk programs, the board shall allocate monies

34526 based on:

34527 (a) a formula which takes into account prior year WPU's per district and a district's low
34528 income population; and

34529 (b) a minimum base of no less than \$18,600 for small school districts.

34530 Section 764. Section **53A-17a-131.9** is amended to read:

34531 **53A-17a-131.9. Agencies coming together for children and youth at risk.**

34532 (1) Monies appropriated to or received by the State Board of Education to maintain
34533 [~~Title 63, Chapter 75~~] Title 63M, Chapter 9, Families, Agencies, and Communities Together for
34534 Children and Youth At Risk Act, shall be subject to the provisions of this section.

34535 (2) Participation in the at risk programs funded under this section shall require consent
34536 from a parent or legal guardian for the participant to receive initial or continuing services under
34537 the program.

34538 (3) A participant's parent or legal guardian shall be actively involved in the program and
34539 all applicable state and federal laws and regulations shall be observed by the entities and
34540 individuals providing the services.

34541 (4) The board shall use the appropriation to experiment on a community full-service
34542 delivery system level to provide data on the merits of moving the concept to a fully implemented
34543 statewide system.

34544 Section 765. Section **53A-17a-131.15** is amended to read:

34545 **53A-17a-131.15. State contribution for the Electronic High School.**

34546 Money appropriated to the State Board of Education in Section 53A-17a-104 for the
34547 Electronic High School shall be distributed to the school according to rules established by the
34548 board in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
34549 Rulemaking Act.

34550 Section 766. Section **53A-17a-131.17** is amended to read:

34551 **53A-17a-131.17. State contribution for School LAND Trust Program.**

34552 (1) If the amount of money prescribed for funding the School LAND Trust Program in
34553 Section 53A-16-101.5 is less than or greater than the money appropriated in Section

34554 53A-17a-104 for the School LAND Trust Program, the appropriation shall be equal to the
34555 amount of money prescribed for funding the School LAND Trust Program in Section
34556 53A-16-101.5, up to a maximum of an amount equal to 2% of the funds provided for the
34557 Minimum School Program, pursuant to Title 53A, Chapter 17a, Minimum School Program Act.

34558 (2) The State Board of Education shall distribute the money appropriated in Subsection
34559 (1) in accordance with Section 53A-16-101.5 and rules established by the board in accordance
34560 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

34561 Section 767. Section **53A-17a-153** is amended to read:

34562 **53A-17a-153. Educator salary adjustments.**

34563 (1) As used in this section, "educator" means a person employed by a school district,
34564 charter school, or the Utah Schools for the Deaf and the Blind who holds:

34565 (a) a license issued under Title 53A, Chapter 6, Educator Licensing and Professional
34566 Practices Act; and

34567 (b) a position as a:

34568 (i) classroom teacher;

34569 (ii) speech pathologist;

34570 (iii) librarian or media specialist;

34571 (iv) preschool teacher;

34572 (v) school administrator;

34573 (vi) mentor teacher;

34574 (vii) teacher specialist or teacher leader;

34575 (viii) guidance counselor;

34576 (ix) audiologist;

34577 (x) psychologist; or

34578 (xi) social worker.

34579 (2) In recognition of the need to attract and retain highly skilled and dedicated
34580 educators, the Legislature shall annually appropriate money for educator salary adjustments,
34581 subject to future budget constraints.

34582 (3) Money appropriated to the State Board of Education for educator salary
34583 adjustments shall be distributed to school districts, charter schools, and the Utah Schools for the
34584 Deaf and the Blind in proportion to the number of full-time-equivalent educator positions in a
34585 school district, a charter school, or the Utah Schools for the Deaf and the Blind as compared to
34586 the total number of full-time-equivalent educator positions in school districts, charter schools,
34587 and the Utah Schools for the Deaf and the Blind.

34588 (4) School districts, charter schools, and the Utah Schools for the Deaf and the Blind
34589 shall award bonuses to educators as follows:

34590 (a) the amount of the salary adjustment shall be the same for each full-time-equivalent
34591 educator position in the school district, charter school, or the Utah Schools for the Deaf and the
34592 Blind;

34593 (b) a person who is not a full-time educator shall receive a partial salary adjustment
34594 based on the number of hours the person works as an educator; and

34595 (c) salary adjustments may be awarded only to educators who have received a
34596 satisfactory rating or above on their most recent evaluation.

34597 (5) (a) Each school district and charter school and the Utah Schools for the Deaf and
34598 the Blind shall submit a report to the State Board of Education on how the money for salary
34599 adjustments was spent, including the amount of the salary adjustment and the number of full and
34600 partial salary adjustments awarded.

34601 (b) The State Board of Education shall compile the information reported under
34602 Subsection (5) and submit it to the Public Education Appropriations Subcommittee by
34603 November 30 each year.

34604 (6) The State Board of Education may make rules as necessary to administer this
34605 section, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
34606 Rulemaking Act.

34607 (7) Subject to future budget constraints, the Legislature shall appropriate sufficient
34608 monies each year to:

34609 (a) maintain educator salary adjustments provided in prior years; and

34610 (b) provide educator salary adjustments to new employees.

34611 Section 768. Section **53A-19-105** is amended to read:

34612 **53A-19-105. School district interfund transfers.**

34613 (1) A school district shall spend revenues only within the fund for which they were
34614 originally authorized, levied, collected, or appropriated.

34615 (2) Except as otherwise provided in this section, school district interfund transfers of
34616 residual equity are prohibited.

34617 (3) The State Board of Education may authorize school district interfund transfers of
34618 residual equity when a district states its intent to create a new fund or expand, contract, or
34619 liquidate an existing fund.

34620 (4) The State Board of Education may also authorize school district interfund transfers
34621 of residual equity for a financially distressed district if the board determines the following:

34622 (a) the district has a significant deficit in its maintenance and operations fund caused by
34623 circumstances not subject to the administrative decisions of the district;

34624 (b) the deficit cannot be reasonably reduced under Section 53A-19-104; and

34625 (c) without the transfer, the school district will not be capable of meeting statewide
34626 educational standards adopted by the State Board of Education.

34627 (5) The board shall develop standards for defining and aiding financially distressed
34628 school districts under this section in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
34629 3, Utah Administrative Rulemaking Act.

34630 (6) (a) All debt service levies not subject to certified tax rate hearings shall be recorded
34631 and reported in the debt service fund.

34632 (b) Debt service levies under Subsection 59-2-924(2)(a)(v)(C) that are not subject to
34633 the certified tax rate hearing requirements of Sections 59-2-918 and 59-2-919 may not be used
34634 for any purpose other than retiring general obligation debt.

34635 (c) Amounts from these levies remaining in the debt service fund at the end of a fiscal
34636 year shall be used in subsequent years for general obligation debt retirement.

34637 (d) Any amounts left in the debt service fund after all general obligation debt has been

34638 retired may be transferred to the capital projects fund upon completion of the budgetary hearing
34639 process required under Section 53A-19-102.

34640 Section 769. Section **53A-20-101** is amended to read:

34641 **53A-20-101. Construction and alteration of schools and plants -- Advertising for**
34642 **bids -- Payment and performance bonds -- Contracts -- Bidding limitations on local**
34643 **school boards -- Interest of local school board members.**

34644 (1) As used in this section, the word "sealed" does not preclude acceptance of
34645 electronically sealed and submitted bids or proposals in addition to bids or proposals manually
34646 sealed and submitted.

34647 (2) (a) Prior to the construction of any school or the alteration of any existing school
34648 plant, if the total estimated accumulative building project cost exceeds \$80,000, a local school
34649 board shall advertise for bids on the project at least ten days before the bid due date.

34650 (b) The board shall have the advertisement published in a newspaper having general
34651 circulation throughout the state and in appropriate construction trade publications that offer free
34652 listings.

34653 (c) A similar advertisement is required in a newspaper published or having general
34654 circulation in any city or county that would be affected by the proposed project.

34655 (d) The advertisement shall:

34656 (i) require sealed proposals for the building project in accordance with plans and
34657 specifications furnished by the local school board;

34658 (ii) state where and when the proposals will be opened and shall reserve the right of the
34659 board to reject any and all proposals; and

34660 (iii) require a certified check or bid bond of not less than 5% of the bid to accompany
34661 the bid.

34662 (3) (a) The board shall meet at the time and place specified in the advertisement and
34663 publicly open and read all received proposals.

34664 (b) If satisfactory bids are received, the board shall award the contract to the lowest
34665 responsible bidder.

- 34666 (c) If none of the proposals are satisfactory, all shall be rejected.
- 34667 (d) The board shall again advertise in the manner provided in this section.
- 34668 (e) If, after advertising a second time no satisfactory bid is received, the board may
34669 proceed under its own direction with the required project.
- 34670 (4) (a) The check or bond required under Subsection (2)(d) shall be drawn in favor of
34671 the local school board.
- 34672 (b) If the successful bidder fails or refuses to enter into the contract and furnish the
34673 additional bonds required under this section, then the bidder's check or bond is forfeited to the
34674 district.
- 34675 (5) A local school board shall require payment and performance bonds of the successful
34676 bidder as required in Section [~~63-56-504~~] 63G-6-505.
- 34677 (6) (a) A local school board may require in the proposed contract that at least 10% of
34678 the contract price be withheld until the project is completed and accepted by the board.
- 34679 (b) If money is withheld, the board shall place it in an interest bearing account, and the
34680 interest accrues for the benefit of the contractor and subcontractors.
- 34681 (c) This money shall be paid upon completion of the project and acceptance by the
34682 board.
- 34683 (7) (a) A local school board may not bid on projects within the district if the total
34684 accumulative estimated cost exceeds \$80,000.
- 34685 (b) The board may use its resources if no satisfactory bids are received under this
34686 section.
- 34687 (8) If the local school board determines in accordance with Section [~~63-56-501~~]
34688 63G-6-501 to use a construction manager/general contractor as its method of construction
34689 contracting management on projects where the total estimated accumulative cost exceeds
34690 \$80,000, it shall select the construction manager/general contractor using one of the source
34691 selection methods provided for in Sections [~~63-56-401~~] 63G-6-401 through [~~63-56-501~~]
34692 63G-6-501.
- 34693 (9) A local school board member may not have a direct or indirect financial interest in

34694 the construction project contract.

34695 Section 770. Section **53A-20c-102** is amended to read:

34696 **53A-20c-102. Energy Efficiency Fund -- Contents -- Use of fund monies.**

34697 (1) As used in this section:

34698 (a) "Board" means the Board of the Utah Geological Survey.

34699 (b) "Energy code" means the energy efficiency code adopted by the Division of
34700 Occupational and Professional Licensing under Section 58-56-4.

34701 (c) "Energy efficiency project" means:

34702 (i) for existing buildings, a retrofit to improve energy efficiency; or

34703 (ii) for new buildings, an enhancement to improve energy efficiency beyond the
34704 minimum required by the energy code.

34705 (d) "Fund" means the Energy Efficiency Fund created by this part.

34706 (2) There is created a revolving loan fund known as the Energy Efficiency Fund.

34707 (3) The fund shall consist of:

34708 (a) monies appropriated to it by the Legislature;

34709 (b) monies received for the repayment of loans made from the fund;

34710 (c) monies made available to the state for energy efficiency from any source; and

34711 (d) interest earned on the fund.

34712 (4) (a) The board shall make loans from the fund only to school districts to finance
34713 energy efficiency projects in school district buildings, including paying the costs of construction,
34714 engineering, investigation, inspection, and other related expenses.

34715 (b) The board may not:

34716 (i) make loans from the fund to finance a school district's compliance with the energy
34717 code in the construction of a new building;

34718 (ii) make a loan from the fund with a term of less than two years or more than 12 years;

34719 or

34720 (iii) make loans from the fund to any entity other than a school district.

34721 (5) (a) (i) Each school district seeking a loan shall submit an application to the board in

34722 the form and containing the information that the board requires, which shall include the plans
34723 and specifications for the proposed energy efficiency project.

34724 (ii) In the application, the school district may request a loan to cover all or part of the
34725 cost of an energy efficiency project.

34726 (b) If an application is rejected, the board shall notify the applicant stating the reasons
34727 for the rejection.

34728 (6) (a) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title
34729 63G, Chapter 3, Utah Administrative Rulemaking Act, the board shall make rules establishing
34730 criteria for:

34731 (i) determining eligibility for loans; and

34732 (ii) determining appropriate priorities among projects.

34733 (b) In making rules governing determining priorities for eligible projects, the board may
34734 consider:

34735 (i) possible additional sources of revenue;

34736 (ii) the feasibility and practicality of the project;

34737 (iii) the energy savings attributable to an eligible energy efficiency project;

34738 (iv) the annual energy cost savings attributable to an eligible energy efficiency project;

34739 (v) the projected energy cost payback of an eligible energy efficiency project;

34740 (vi) the financial need of the public facility owner;

34741 (vii) the environmental and other benefits to the state and local community attributable
34742 to an eligible energy efficiency project; and

34743 (viii) the availability of federal funds for the project.

34744 (7) (a) In approving a project, the board shall:

34745 (i) review the loan application and the plans and specifications for the project;

34746 (ii) determine whether or not to grant the loan by applying its eligibility criteria; and

34747 (iii) if the loan is granted, prioritize the project by applying its priority criteria.

34748 (b) The board may condition approval of a loan request and the availability of funds on
34749 assurances from the school district that the board considers necessary to ensure that:

- 34750 (i) the proceeds of the loan will be used to pay the cost of the project; and
- 34751 (ii) the project will be completed.
- 34752 (8) Employees of the state energy program shall serve as staff to the board when it
- 34753 performs the duties established in this section.

34754 Section 771. Section **53A-21-103** is amended to read:

34755 **53A-21-103. Qualifications for participation in the foundation program --**
 34756 **Distribution of monies -- Distribution formulas.**

34757 (1) In order for a school district to qualify for monies under the Capital Outlay
 34758 Foundation Program established in Subsection 53A-21-102(1), a local school board must levy a
 34759 tax rate of up to .0024 per dollar of taxable value for capital outlay and debt service.

34760 (2) The State Board of Education shall adopt rules in accordance with [~~Title 63,~~
 34761 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, that:

34762 (a) allow a school district levying less than the full .0024 tax rate to receive
 34763 proportional funding under the foundation program based upon the percentage of the .0024 tax
 34764 rate levied by the district; and

34765 (b) maintain a school district's funding under the Capital Outlay Foundation Program
 34766 for up to two years if the school district's funding would otherwise be reduced as a consequence
 34767 of changes in the certified tax rate under Section 59-2-924 due to changes in property valuation.

34768 (3) The State Board of Education shall distribute monies in the Capital Outlay
 34769 Foundation Program in accordance with a formula developed by the state superintendent of
 34770 public instruction which guarantees that a tax rate of up to .0024 per dollar of taxable value for
 34771 capital outlay and debt service yields a minimum amount per pupil in average daily membership.

34772 Section 772. Section **53A-21-103.5** is amended to read:

34773 **53A-21-103.5. Qualifications for participation in the Enrollment Growth**
 34774 **Program -- State Board of Education rules -- Distribution formula.**

34775 (1) As used in this section:

34776 (a) "ADM" means average daily membership.

34777 (b) "Derived valuation" means total school district property tax current collections from

34778 April 1 through the following March 31, divided by the tax rates for the same year.

34779 (c) "Yield per ADM" means the product of the derived valuation multiplied by .0024,
34780 divided by average daily membership.

34781 (2) (a) The State Board of Education shall distribute monies in the Enrollment Growth
34782 Program to qualifying school districts whose:

34783 (i) average net enrollment for the prior three years is a net increase in enrollment; and

34784 (ii) yield per ADM is less than two times the prior year's average yield per ADM for
34785 Utah school districts.

34786 (b) A school district that meets the criteria of Subsection (2)(a) shall receive Enrollment
34787 Growth Program monies in the same proportion that the district's three-year average net
34788 enrollment bears to the total three-year net enrollment of all the districts that meet the criteria of
34789 Subsection (2)(a).

34790 (c) The State Board of Education shall make rules in accordance with [~~Title 63;~~
34791 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer this
34792 section.

34793 Section 773. Section **53A-24-114** is amended to read:

34794 **53A-24-114. Governor's Committee on Employment of People with Disabilities.**

34795 (1) There is created the Governor's Committee on Employment of People with
34796 Disabilities.

34797 (2) (a) The State Board of Education shall appoint at least twelve members to the
34798 committee.

34799 (b) The State Board of Education shall ensure that the committee includes members
34800 from the public and private sectors who represent:

34801 (i) business and industry;

34802 (ii) individuals with disabilities and their advocates;

34803 (iii) job training and placement;

34804 (iv) administrative subunits of the state, such as the Department of Human Resource

34805 Management, the Department of Workforce Services, Public Education, Higher Education, and

34806 the Department of Human Services;

34807 (v) labor;

34808 (vi) veterans;

34809 (vii) medical;

34810 (viii) health;

34811 (ix) insurance;

34812 (x) media; and

34813 (xi) the general public.

34814 (c) (i) Except as provided in Subsection (2)(c)(ii), the State Board of Education shall
34815 appoint committee members to serve four-year terms.

34816 (ii) In making the initial appointments to the committee, the State Board of Education
34817 shall appoint approximately 1/2 of the members to two-year terms and 1/2 of the members to
34818 four-year terms.

34819 (d) Committee members shall serve until their successors are appointed and qualified.

34820 (e) The State Board of Education shall fill any vacancy that occurs on the committee for
34821 any reason by appointing a person according to the procedures of this section for the unexpired
34822 term of the vacated member.

34823 (f) The State Board of Education shall select a chair from the membership.

34824 (g) Seven members of the committee are a quorum for the transaction of business.

34825 (3) (a) The committee shall:

34826 (i) promote employment opportunities for individuals with disabilities;

34827 (ii) serve as the designated state liaison to the President's Committee on Employment of
34828 People with Disabilities;

34829 (iii) provide training and technical assistance to employers in implementing the
34830 Americans with Disabilities Act;

34831 (iv) develop and disseminate appropriate information through workshops, meetings, and
34832 other requests in response to needs to employers and others regarding employment of
34833 individuals with disabilities;

34834 (v) establish contacts with various community representatives to identify and resolve
34835 barriers to full participation in employment and community life;

34836 (vi) formally recognize exemplary contributions in the areas of employment, job
34837 placement, training, rehabilitation, support services, medicine, media or public relations, and
34838 personal achievements made by individuals with disabilities;

34839 (vii) advise, encourage, and motivate individuals with disabilities who are preparing for
34840 or seeking employment to reach their full potential as qualified employees;

34841 (viii) advocate for policies and practices that promote full and equal rights for
34842 individuals with disabilities;

34843 (ix) advise the State Board of Education and the governor on issues that affect
34844 employment and other requests for information on disability issues;

34845 (x) prepare an annual report on the progress, accomplishments, and future goals of the
34846 committee and present the report to the State Board of Education and the governor; and

34847 (xi) establish and maintain a cooperative liaison between the governor's office, the
34848 executive director of the committee, and the executive director of the Utah State Office of
34849 Rehabilitation to fulfill the committee's purpose.

34850 (b) The committee may, by following the procedures and requirements of [~~Title 63,~~
34851 ~~Chapter 38e]~~ Title 63J, Chapter 5, Federal Funds Procedures, receive and accept federal funds,
34852 and may receive and accept state funds, private gifts, donations, and funds from any source to
34853 carry out its purposes.

34854 (4) The director of the State Office of Rehabilitation shall appoint a person to staff the
34855 committee.

34856 Section 774. Section **53A-26a-302** is amended to read:

34857 **53A-26a-302. Qualifications for certification.**

34858 Each applicant for certification under this chapter shall:

34859 (1) submit an application in a form prescribed by the State Board of Education;

34860 (2) pay a fee determined by the State Board of Education under Section [~~63-38-3.2]~~

34861 63J-1-303 to help offset the costs of implementing this chapter for the administration of

34862 examinations for certification and for the issuance of certificates;

34863 (3) be of good moral character; and

34864 (4) comply with any other qualifications for certification established by the State Board
34865 of Education pursuant to Subsection 53A-26a-202(2).

34866 Section 775. Section **53B-2-107** is amended to read:

34867 **53B-2-107. Appropriations reallocation.**

34868 (1) Notwithstanding the requirements of [~~Title 63, Chapter 38~~] Title 63J, Chapter 1,
34869 Budgetary Procedures Act, appropriations for the support of higher education for the fiscal year
34870 beginning July 1, 2001 and ending June 30, 2002, may be reallocated between line items as
34871 provided in this section.

34872 (2) (a) The president of the University of Utah may reallocate between line items the
34873 appropriations:

34874 (i) described in Items 143-150 and Item 152 in Chapter 334, Laws of Utah 2001; and

34875 (ii) as modified by:

34876 (A) H.B. 1, 2002 General Session; and

34877 (B) H.B. 3, 2002 General Session.

34878 (b) The total amount of money reallocated may not exceed the sum of the reductions
34879 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34880 (3) (a) The president of Utah State University may reallocate between line items the
34881 appropriations:

34882 (i) described in Items 154-166 in Chapter 334, Laws of Utah 2001; and

34883 (ii) as modified by:

34884 (A) H.B. 1, 2002 General Session; and

34885 (B) H.B. 3, 2002 General Session.

34886 (b) The total amount of money reallocated may not exceed the sum of the reductions
34887 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34888 (4) (a) The president of Weber State University may reallocate between line items the
34889 appropriations:

- 34890 (i) described in Items 168 and 169 in Chapter 334, Laws of Utah 2001; and
- 34891 (ii) as modified by:
- 34892 (A) H.B. 1, 2002 General Session; and
- 34893 (B) H.B. 3, 2002 General Session.
- 34894 (b) The total amount of money reallocated may not exceed the sum of the reductions
- 34895 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.
- 34896 (5) (a) The president of Southern Utah University may reallocate between line items the
- 34897 appropriations:
- 34898 (i) described in Items 170-172 in Chapter 334, Laws of Utah 2001; and
- 34899 (ii) as modified by:
- 34900 (A) H.B. 1, 2002 General Session; and
- 34901 (B) H.B. 3, 2002 General Session.
- 34902 (b) The total amount of money reallocated may not exceed the sum of the reductions
- 34903 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.
- 34904 (6) (a) The president of Snow College may reallocate between line items the
- 34905 appropriations:
- 34906 (i) described in Items 173-175 in Chapter 334, Laws of Utah 2001; and
- 34907 (ii) as modified by:
- 34908 (A) H.B. 1, 2002 General Session; and
- 34909 (B) H.B. 3, 2002 General Session.
- 34910 (b) The total amount of money reallocated may not exceed the sum of the reductions
- 34911 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.
- 34912 (7) (a) The president of Dixie State College may reallocate between line items the
- 34913 appropriations:
- 34914 (i) described in Items 177-179 in Chapter 334, Laws of Utah 2001; and
- 34915 (ii) as modified by:
- 34916 (A) H.B. 1, 2002 General Session; and
- 34917 (B) H.B. 3, 2002 General Session.

34918 (b) The total amount of money reallocated may not exceed the sum of the reductions
34919 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34920 (8) (a) The president of the College of Eastern Utah may reallocate between line items
34921 the appropriations:

34922 (i) described in Items 180-183 in Chapter 334, Laws of Utah 2001; and

34923 (ii) as modified by:

34924 (A) H.B. 1, 2002 General Session; and

34925 (B) H.B. 3, 2002 General Session.

34926 (b) The total amount of money reallocated may not exceed the sum of the reductions
34927 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34928 (9) (a) The president of Utah Valley State College may reallocate between line items
34929 the appropriations:

34930 (i) described in Items 184 and 185 in Chapter 334, Laws of Utah 2001; and

34931 (ii) as modified by:

34932 (A) H.B. 1, 2002 General Session; and

34933 (B) H.B. 3, 2002 General Session.

34934 (b) The total amount of money reallocated may not exceed the sum of the reductions
34935 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34936 (10) (a) The president of Salt Lake Community College may reallocate between line
34937 items the appropriations:

34938 (i) described in Items 186-188 in Chapter 334, Laws of Utah 2001; and

34939 (ii) as modified by:

34940 (A) H.B. 1, 2002 General Session; and

34941 (B) H.B. 3, 2002 General Session.

34942 (b) The total amount of money reallocated may not exceed the sum of the reductions
34943 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34944 (11) (a) The State Board of Regents may reallocate between line items the
34945 appropriations:

34946 (i) described in Items 189, 190, and 192-199 in Chapter 334, Laws of Utah 2001; and

34947 (ii) as modified by:

34948 (A) H.B. 1, 2002 General Session; and

34949 (B) H.B. 3, 2002 General Session.

34950 (b) The total amount of money reallocated may not exceed the sum of the reductions

34951 made in H.B. 1, 2002 General Session and H.B. 3, 2002 General Session.

34952 Section 776. Section **53B-2-108** is amended to read:

34953 **53B-2-108. Appropriations reallocation.**

34954 (1) Notwithstanding the requirements of [~~Title 63, Chapter 38~~] Title 63J, Chapter 1,

34955 Budgetary Procedures Act, appropriations for the support of higher education for the fiscal year

34956 beginning July 1, 2002 and ending June 30, 2003, may be reallocated between line items as

34957 provided in this section.

34958 (2) (a) The president of the University of Utah may reallocate between line items the

34959 appropriations:

34960 (i) described in Items 141-149 in S.B. 1, 2002 General Session; and

34961 (ii) as modified by supplemental appropriations, including H.B. 4001, 2002 Fourth

34962 Special Session and H.B. 5009, 2002 Fifth Special Session.

34963 (b) The total amount of money reallocated may not exceed the sum of the reductions

34964 made in the supplemental appropriations.

34965 (3) (a) The president of Utah State University may reallocate between line items the

34966 appropriations:

34967 (i) described in Items 150-159 in S.B. 1, 2002 General Session; and

34968 (ii) as modified by supplemental appropriations, including H.B. 4001, 2002 Fourth

34969 Special Session and H.B. 5009, 2002 Fifth Special Session.

34970 (b) The total amount of money reallocated may not exceed the sum of the reductions

34971 made in the supplemental appropriations.

34972 (4) (a) The president of Weber State University may reallocate between line items the

34973 appropriations:

- 34974 (i) described in Items 160 and 161 in S.B. 1, 2002 General Session; and
34975 (ii) as modified by supplemental appropriations, including H.B. 4001, 2002 Fourth
34976 Special Session and H.B. 5009, 2002 Fifth Special Session.
- 34977 (b) The total amount of money reallocated may not exceed the sum of the reductions
34978 made in the supplemental appropriations.
- 34979 (5) (a) The president of Southern Utah University may reallocate between line items the
34980 appropriations:
- 34981 (i) described in Items 162-164 in S.B. 1, 2002 General Session; and
34982 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
34983 Session.
- 34984 (b) The total amount of money reallocated may not exceed the sum of the reductions
34985 made in the supplemental appropriations.
- 34986 (6) (a) The president of Snow College may reallocate between line items the
34987 appropriations:
- 34988 (i) described in Items 165-167 in S.B. 1, 2002 General Session; and
34989 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
34990 Session.
- 34991 (b) The total amount of money reallocated may not exceed the sum of the reductions
34992 made in the supplemental appropriations.
- 34993 (7) (a) The president of Dixie State College may reallocate between line items the
34994 appropriations:
- 34995 (i) described in Items 168-170 in S.B. 1, 2002 General Session; and
34996 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
34997 Session.
- 34998 (b) The total amount of money reallocated may not exceed the sum of the reductions
34999 made in the supplemental appropriations.
- 35000 (8) (a) The president of the College of Eastern Utah may reallocate between line items
35001 the appropriations:

35002 (i) described in Items 171-174 in S.B. 1, 2002 General Session; and
35003 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
35004 Session.

35005 (b) The total amount of money reallocated may not exceed the sum of the reductions
35006 made in the supplemental appropriations.

35007 (9) (a) The president of Utah Valley State College may reallocate between line items
35008 the appropriations:

35009 (i) described in Items 175 and 176 in S.B. 1, 2002 General Session; and
35010 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
35011 Session.

35012 (b) The total amount of money reallocated may not exceed the sum of the reductions
35013 made in the supplemental appropriations.

35014 (10) (a) The president of Salt Lake Community College may reallocate between line
35015 items the appropriations:

35016 (i) described in Items 177-179 in S.B. 1, 2002 General Session; and
35017 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
35018 Session.

35019 (b) The total amount of money reallocated may not exceed the sum of the reductions
35020 made in the supplemental appropriations.

35021 (11) (a) The State Board of Regents may reallocate between line items the
35022 appropriations:

35023 (i) described in Items 180-189 in S.B. 1, 2002 General Session; and
35024 (ii) as modified by supplemental appropriations, including H.B. 5009, 2002 Fifth Special
35025 Session.

35026 (b) The total amount of money reallocated may not exceed the sum of the reductions
35027 made in the supplemental appropriations.

35028 Section 777. Section **53B-6-105** is amended to read:
35029 **53B-6-105. Engineering and Computer Technology Initiative.**

35030 (1) The Legislature recognizes that a significant increase in the number of engineering,
35031 computer science, and related technology graduates from the state system of higher education is
35032 required over the next several years to advance the intellectual, cultural, social, and economic
35033 well-being of the state and its citizens.

35034 (2) (a) (i) The State Board of Regents shall therefore develop, establish, and maintain
35035 an Engineering and Computer Science Initiative within the state system of higher education to
35036 double the number of graduates in engineering, computer science, and related technology by
35037 2006 and triple the number of graduates by 2009.

35038 (ii) The board shall make a rule in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
35039 Chapter 3, Utah Administrative Rulemaking Act, providing the criteria for those fields of study
35040 that qualify as "related technology" under this section and Sections 53B-6-105.7 and
35041 53B-6-105.9.

35042 (b) The initiative shall include components that:

35043 (i) improve the quality of instructional programs in engineering, computer science, and
35044 related technology by providing supplemental monies for equipment purchases; and

35045 (ii) provide incentives to:

35046 (A) students through a loan and loan forgiveness program under Section 53B-6-105.7;
35047 and

35048 (B) institutions to hire and retain faculty under Section 53B-6-105.9.

35049 (3) The increase in program capacity under Subsection (2)(a) shall include funding for
35050 new and renovated capital facilities and funding for new engineering and computer science
35051 programs.

35052 (4) The Legislature shall provide an annual appropriation to fund the initiative as a
35053 budget line item for the State Board of Regents.

35054 Section 778. Section **53B-6-105.7** is amended to read:

35055 **53B-6-105.7. Initiative student loan and loan forgiveness program.**

35056 (1) (a) There is established an engineering, computer science, and related technology
35057 student loan program as a component of the initiative created in Section 53B-6-105.

35058 (b) The program is established to recruit and train engineering, computer science, and
35059 related technology students to assist in providing for and advancing the intellectual and
35060 economic welfare of the state.

35061 (2) (a) The board:

35062 (i) may make rules for the overall administration of the program in accordance with
35063 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

35064 (ii) shall administer the program consistent with the general student loan provisions
35065 outlined in Title 53B.

35066 (b) The board shall also use the following policies and procedures in administering the
35067 student loan program:

35068 (i) students may use their loans at any institution within the state system of higher
35069 education that offers an engineering, computer science, or related technology baccalaureate
35070 degree;

35071 (ii) loans shall be given to students who declare an intent to complete a prescribed
35072 course of instruction in one of the areas referred to in Subsection (2)(b)(i) and to work in the
35073 state for a period of four years after graduation in one of those areas;

35074 (iii) a loan may be cancelled at any time by the institution of attendance, if the student
35075 fails to make reasonable progress towards obtaining the baccalaureate degree or there appears
35076 to be a reasonable certainty that the student does not intend to work in the state upon
35077 graduation, and the board shall require repayment together with interest; and

35078 (iv) (A) a loan recipient who does not work in the state in one of the areas listed in
35079 Subsection (1)(a) for a term equal to the number of years of the loan within a reasonable period
35080 of time after graduation shall repay a graduated portion of the loan based upon the uncompleted
35081 term together with appropriate interest, unless waived for good cause; and

35082 (B) one year of employment as an engineer or in the field of computer science or related
35083 technologies is credit for a one-year loan for tuition and fees.

35084 (3) The Legislature shall make an annual appropriation to the board to fund the student
35085 loan program created in this section.

35086 Section 779. Section **53B-6-105.9** is amended to read:

35087 **53B-6-105.9. Incentive program for engineering, computer science, and related**
35088 **technology faculty.**

35089 (1) The Legislature shall provide an annual appropriation to help fund the faculty
35090 incentive component of the Engineering and Computer Science Initiative established under
35091 Section 53B-6-105.

35092 (2) The appropriation shall be used to hire, recruit, and retain outstanding faculty in
35093 engineering, computer science, and related technology fields under guidelines established by the
35094 State Board of Regents.

35095 (3) (a) State institutions of higher education shall match the appropriation on a
35096 one-to-one basis in order to qualify for state monies appropriated under Subsection (1).

35097 (b) (i) Qualifying institutions shall annually report their matching dollars to the board.

35098 (ii) The board shall make a summary report of the institutional matches.

35099 (iii) The annual report of the Technology Initiative Advisory Board required by Section
35100 53B-6-105.5 shall include the summary report of the institutional matches.

35101 (4) The board shall make a rule in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
35102 Chapter 3, Utah Administrative Rulemaking Act, establishing policies and procedures to apply
35103 for and distribute the state appropriation to qualifying institutions.

35104 Section 780. Section **53B-6-106** is amended to read:

35105 **53B-6-106. Jobs Now Economic Development Initiative.**

35106 (1) The State Board of Regents shall develop, establish, and maintain a Jobs Now
35107 Economic Development Initiative within the state system of higher education, including the
35108 Utah College of Applied Technology, to promote workforce preparation programs that meet
35109 critical needs and shortages throughout the state.

35110 (2) The initiative shall provide support for technical training expansion that trains skilled
35111 potential employees within a period not to exceed 12 months for technical jobs in critical needs
35112 occupations.

35113 (3) (a) The Legislature shall provide an annual appropriation to fund the initiative in a

35114 line item to the State Board of Regents.

35115 (b) (i) The board shall allocate at least 2/3 of the appropriation to the Utah College of
35116 Applied Technology for distribution to college campuses within the college as recommended by
35117 the Utah College of Applied Technology Board of Trustees.

35118 (ii) A college campus shall use money received under Subsection (3)(b)(i) for technical
35119 training expansion referred to in Subsection (2).

35120 (c) The board may allocate and distribute up to 1/3 of the appropriation to institutions
35121 within the state system of higher education for short term training programs that prepare skilled
35122 potential employees within a period not to exceed 12 months for technical jobs in critical needs
35123 occupations.

35124 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
35125 Administrative Rulemaking Act, the board shall make rules:

35126 (i) to implement the Jobs Now Economic Development Initiative; and

35127 (ii) by which institutions may apply for the moneys referred to in Subsection (3)(c).

35128 Section 781. Section **53B-7-502** is amended to read:

35129 **53B-7-502. Higher Education Tuition Assistance Program.**

35130 (1) There is created the Utah Higher Education Tuition Assistance Program, hereafter
35131 referred to in this part as the program.

35132 (2) The board shall administer the program.

35133 (3) The program shall be funded through appropriations by the Legislature.

35134 (4) Money appropriated for the program shall be available only for need-based grants to
35135 higher education students, as provided in this part.

35136 (5) (a) The board shall adopt rules for administration of the program, in accordance
35137 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

35138 (b) The rules shall include the requirements that money appropriated to the program for
35139 a specific fiscal year, plus any remaining balance at the end of the preceding fiscal year, shall be
35140 allocated to eligible institutions on the following basis:

35141 (i) the board shall distribute 50% of the amount available for allocation each fiscal year

35142 in equal proportions to:

35143 (A) Snow College, main campus and extensions;

35144 (B) Dixie State College, main campus and extensions;

35145 (C) College of Eastern Utah, main campus and extensions;

35146 (D) College of Eastern Utah, San Juan Campus and extensions;

35147 (E) Utah Valley University, main campus and extensions;

35148 (F) Salt Lake Community College, Taylorsville campus and extensions; and

35149 (G) Salt Lake Community College, South City Campus; and

35150 (ii) the board shall distribute 50% of the amount available for allocation each fiscal year

35151 to the Utah State University for its instructional centers at Roosevelt, Blanding, Randolph,

35152 Price, Moab, Brigham City, Tooele, Richfield, and Ephraim, and other centers as may be

35153 determined by the board.

35154 (6) Higher education institutions may submit applications to the board, for specific

35155 eligible entities, for grants to students with demonstrated financial need, determined by criteria

35156 established by the board.

35157 Section 782. Section **53B-12-101** is amended to read:

35158 **53B-12-101. Utah Higher Education Assistance Authority designated -- Powers**

35159 **and duties.**

35160 The board is the Utah Higher Education Assistance Authority and, in this capacity, may

35161 do the following:

35162 (1) guarantee 100% of the principal of and interest on a loan to or for the benefit of a

35163 person attending or accepted to attend an eligible postsecondary educational institution to assist

35164 that person in meeting any educational expenses incurred in an academic year;

35165 (2) take, hold, and administer real or personal property and moneys, including interest

35166 and income, either absolutely or in trust, for any purpose under this chapter;

35167 (3) acquire property for the purposes indicated in Subsection (2) by purchase or lease

35168 and by the acceptance of gifts, grants, bequests, devises, or loans;

35169 (4) enter into or contract with an eligible lending institution, or with a public or private

35170 postsecondary educational institution to provide for the administration by the institution of any
35171 loan or loan guarantee made by it, including application and repayment provisions;

35172 (5) participate in federal programs guaranteeing, reinsuring, or otherwise supporting
35173 loans to eligible borrowers for postsecondary educational purposes and agree to, and comply
35174 with, the conditions and regulations applicable to those programs;

35175 (6) adopt, amend, or repeal rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
35176 Chapter 3, Utah Administrative Rulemaking Act, to govern the activities authorized by this
35177 chapter;

35178 (7) receive state appropriations for the fund established under Section 53B-12-104 to
35179 match deposits and to accept contributions received by it for this purpose;

35180 (8) receive funds from the federal government to assist in implementing federally
35181 supported programs administered under this chapter;

35182 (9) engage, appoint, or contract for the services of officers, agents, employees, and
35183 private consultants to render and perform professional and technical duties and provide
35184 assistance and advice in carrying out the purposes of this chapter, to describe their duties, and
35185 to fix the amount and source of their compensation; and

35186 (10) receive employment information from the Workforce Development and
35187 Information Division in accordance with Section 35A-4-312 for the purpose of collecting
35188 defaulted student loans made under this chapter. The information obtained under this
35189 Subsection (10) shall be limited to the employer's name, address, and telephone number for
35190 borrowers who have defaulted on a student loan held by the Utah Higher Education Assistance
35191 Authority.

35192 Section 783. Section **53B-16-302** is amended to read:

35193 **53B-16-302. Records that may be classified as restricted.**

35194 A public institution of higher education may classify only the following records as
35195 restricted:

35196 (1) that portion of a technology transfer record or sponsored research record to which
35197 access must be restricted for the purpose of securing and maintaining proprietary protection of

35198 intellectual property rights, including but not limited to patents, copyrights, trademarks, and
35199 trade secrets; or

35200 (2) that portion of a technology transfer record or sponsored research record to which
35201 access is restricted for competitive or proprietary purposes, as a condition of actual or potential
35202 participation in a sponsored research or technology transfer agreement; provided, however, that
35203 upon receipt of a written request for a reasonably identifiable record, the public institution of
35204 higher education shall disclose:

35205 (a) prior to a memorandum of intent to contract or an agreement in principle between
35206 the parties:

35207 (i) the names of the parties, or, if the disclosure of names would cause competitive
35208 harm, a general description of the type of parties negotiating the technology transfer or
35209 sponsored research agreement; and

35210 (ii) a general description of the nature of the technology transfer or sponsored research
35211 under consideration, excluding proprietary or competitive information; or

35212 (b) after a memorandum of intent to contract or an agreement in principle between the
35213 parties:

35214 (i) the names of the parties involved in the technology transfer or sponsored research;

35215 (ii) a general description of the nature of the technology transfer or sponsored research
35216 to be conducted, excluding proprietary or competitive information; and

35217 (iii) records of the technology transfer or sponsored research to be conducted,
35218 excluding those portions of records to which access is limited under this part or ~~Title 63,~~

35219 ~~Chapter 2]~~ Title 63G, Chapter 2, Government Records Access and Management Act.

35220 Section 784. Section **53B-16-303** is amended to read:

35221 **53B-16-303. Access to restricted records.**

35222 Notwithstanding any other provision of ~~[Title 63, Chapter 2]~~ Title 63G, Chapter 2,
35223 Government Records Access and Management Act, access to records restricted by this part
35224 shall only be permitted upon:

35225 (1) written consent of the public institution of higher education originating, receiving,

35226 or maintaining such records; or

35227 (2) a finding by the State Records Committee or a court that the record has not been
35228 properly classified as restricted under Section [~~63-2-302~~] 63G-2-302, provided that the review
35229 of a restricted classification of a record shall not include considerations of weighing public and
35230 private interests regarding access to a properly classified record as contained in Subsection
35231 [~~63-2-403~~] 63G-2-403(11)(b) or [~~63-2-404~~] 63G-2-404(8) or Section [~~63-2-308~~] 63G-2-309.
35232 Nothing in this Subsection (2) shall be construed to limit the authority of the State Board of
35233 Regents to reclassify and disclose a record of a public institution of higher education.

35234 Section 785. Section **53B-16-304** is amended to read:

35235 **53B-16-304. Business confidentiality claims.**

35236 (1) (a) Any person who provides to a public institution of higher education a record that
35237 the person believes should be protected under a provision listed in Subsection [~~63-2-308~~]
35238 63G-2-309(1)(b)(i), restricted under Section 53B-16-302, or both protected under a provision
35239 listed in Subsection [~~63-2-308~~] 63G-2-309(1)(b)(i) and restricted under Section 53B-16-302,
35240 shall provide the public institution of higher education:

35241 (i) a written claim of business confidentiality; and

35242 (ii) a concise statement of reasons supporting the claim of business confidentiality.

35243 (b) The person described in Subsection (1)(a) shall make the filing at the
35244 commencement of:

35245 (i) the sponsored research project; or

35246 (ii) the technology transfer process.

35247 (c) A claim of business confidentiality submitted under this Subsection (1) shall cover
35248 all protected and restricted records exchanged during the:

35249 (i) sponsored research project; or

35250 (ii) technology transfer process.

35251 (2) The inadvertent failure to make a legally adequate claim of business confidentiality
35252 at the time required by Subsection (1) does not prejudice the claimant's right to make a legally
35253 adequate claim at a different time before disclosure of the record.

35254 Section 786. Section **53B-16-305** is amended to read:

35255 **53B-16-305. Applicability of the Government Records Access and Management**
35256 **Act.**

35257 Except as otherwise provided by this part, the provisions of [~~Title 63, Chapter 2~~] Title
35258 63G, Chapter 2, Government Records Access and Management Act, will apply to restricted
35259 technology transfer or sponsored research records as defined in this part, as if the records were
35260 protected records as defined by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2.

35261 Section 787. Section **53B-17-603** is amended to read:

35262 **53B-17-603. Curation and deposit of specimens.**

35263 (1) For purposes of this section:

35264 (a) "Collections" is defined as provided in Section 9-8-302.

35265 (b) "Curation facility" means:

35266 (i) the museum;

35267 (ii) an accredited facility meeting federal curation standards; or

35268 (iii) an appropriate state park.

35269 (c) "Museum" means the Utah Museum of Natural History.

35270 (d) "Repository" means:

35271 (i) a facility designated by the museum through memoranda of agreement; or

35272 (ii) a place of reburial.

35273 (e) "School and institutional trust lands" are those properties defined in Section
35274 53C-1-103.

35275 (2) The museum shall make rules to ensure the adequate curation of all collections from
35276 lands owned or controlled by the state or its subdivisions. The rules shall:

35277 (a) conform to, but not be limited by, federal curation policy;

35278 (b) recognize that collections recovered from school and institutional trust lands are
35279 owned by the respective trust, and shall be made available for exhibition as the beneficiaries of
35280 the respective trust may request, subject to museum curation policy and the curation facility's
35281 budgetary priorities;

35282 (c) recognize that any collections obtained in exchange for collections found on school
35283 and institutional trust lands shall be owned by the respective trust; and

35284 (d) recognize that if, at its discretion, the curation facility makes and sells reproductions
35285 derived from collections found on school or institutional trust lands, any monies obtained from
35286 these sales shall be given to the respective trust, but the curation facility may retain monies
35287 sufficient to recover the direct costs of preparation for sale and a reasonable fee for handling the
35288 sale.

35289 (3) (a) The museum may enter into memoranda of agreement with other repositories
35290 located in and outside the state to act as its designee for the curation of collections.

35291 (b) In these memoranda, the museum may delegate some or all of its authority to
35292 curate.

35293 (4) (a) All collections recovered from lands owned or controlled by the state or its
35294 subdivisions shall be deposited at the museum, a curation facility, or at a repository within a
35295 reasonable time after the completion of field work.

35296 (b) The museum shall make rules establishing procedures for selection of the
35297 appropriate curation facility or repository.

35298 (c) The rules shall consider:

35299 (i) whether the permittee, authorized pursuant to Section 9-8-305, is a curation facility;

35300 (ii) the appropriateness of reburial;

35301 (iii) the proximity of the curation facility or repository to the point of origin of the
35302 collection;

35303 (iv) the preference of the owner of the land on which the collection was found;

35304 (v) the nature of the collection and the repository's or curation facility's ability and
35305 desire to curate the collection in question, and ability to maximize the scientific, educational,
35306 and cultural benefits for the people of the state and the school and institutional trusts;

35307 (vi) selection of a second curation facility or repository, if the original repository or
35308 curation facility becomes unable to curate the collections under its care; and

35309 (vii) establishment of an arbitration process for the resolution of disputes over the

35310 location of a curation facility or repository, which shall include an ultimate arbitration authority
35311 consisting of the landowner, the state archaeologist or paleontologist, and a representative from
35312 the governor's office.

35313 (d) The repository or curation facility may charge a curation fee commensurate with the
35314 costs of maintaining those collections, except that a fee may not be charged to the respective
35315 trust for collections found on school or institutional trust lands.

35316 (5) The repository or curation facility shall make specimens available through loans to
35317 museums and research institutions in and out of the state when, in the opinion of the repository
35318 or curation facility:

35319 (a) the use of the specimens is appropriate; and

35320 (b) arrangements are made for safe custodianship of the specimens.

35321 (6) The museum shall comply with the procedures of [~~Title 63, Chapter 46a~~] Title 63G,
35322 Chapter 3, Utah Administrative Rulemaking Act, regarding publication of its rules in the Utah
35323 State Bulletin and the Utah Administrative Code.

35324 Section 788. Section **53C-1-201** is amended to read:

35325 **53C-1-201. Creation of administration -- Purpose -- Director.**

35326 (1) (a) There is established within state government the School and Institutional Trust
35327 Lands Administration.

35328 (b) The administration shall manage all school and institutional trust lands and assets
35329 within the state, except as otherwise provided in Title 53C, Chapter 3, Deposit and Allocation
35330 of Revenue from Trust Lands, and Sections 51-7a-201 and 51-7a-202.

35331 (2) The administration is an independent state agency and not a division of any other
35332 department.

35333 (3) (a) It is subject to the usual legislative and executive department controls except as
35334 provided in this Subsection (3).

35335 (b) (i) The director may make rules as approved by the board that allow the
35336 administration to classify a business proposal submitted to the administration as protected under
35337 Section [~~63-2-304~~] 63G-2-305, for as long as is necessary to evaluate the proposal.

35338 (ii) The administration shall return the proposal to the party who submitted the
35339 proposal, and incur no further duties under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
35340 Government Records Access and Management Act, if the administration determines not to
35341 proceed with the proposal.

35342 (iii) The administration shall classify the proposal pursuant to law if it decides to
35343 proceed with the proposal.

35344 (iv) Section [~~63-2-403~~] 63G-2-403 does not apply during the review period.

35345 (c) The director shall make rules in compliance with [~~Title 63, Chapter 46a~~] Title 63G,
35346 Chapter 3, Utah Administrative Rulemaking Act, except that the director, with the board's
35347 approval, may establish a procedure for the expedited approval of rules, based on written
35348 findings by the director showing:

35349 (i) the changes in business opportunities affecting the assets of the trust;

35350 (ii) the specific business opportunity arising out of those changes which may be lost
35351 without the rule or changes to the rule;

35352 (iii) the reasons the normal procedures under Section [~~63-46a-4~~] 63G-3-301 cannot be
35353 met without causing the loss of the specific opportunity;

35354 (iv) approval by at least five board members; and

35355 (v) that the director has filed a copy of the rule and a rule analysis, stating the specific
35356 reasons and justifications for its findings, with the Division of Administrative Rules and notified
35357 interested parties as provided in Subsection [~~63-46a-4~~] 63G-3-301(8).

35358 (d) (i) The administration shall comply with Title 67, Chapter 19, Utah State Personnel
35359 Management Act, except as provided in this Subsection (3)(d).

35360 (ii) The board may approve, upon recommendation of the director, that exemption for
35361 specific positions under Subsections 67-19-12(2) and 67-19-15(1) is required in order to enable
35362 the administration to efficiently fulfill its responsibilities under the law. The director shall
35363 consult with the executive director of the Department of Human Resource Management prior to
35364 making such a recommendation.

35365 (iii) The positions of director, deputy director, associate director, assistant director,

35366 legal counsel appointed under Section 53C-1-305, administrative assistant, and public affairs
35367 officer are exempt under Subsections 67-19-12(2) and 67-19-15(1).

35368 (iv) Salaries for exempted positions, except for the director, shall be set by the director,
35369 after consultation with the executive director of the Department of Human Resource
35370 Management, within ranges approved by the board. The board and director shall consider
35371 salaries for similar positions in private enterprise and other public employment when setting
35372 salary ranges.

35373 (v) The board may create an annual incentive and bonus plan for the director and other
35374 administration employees designated by the board, based upon the attainment of financial
35375 performance goals and other measurable criteria defined and budgeted in advance by the board.

35376 (e) The administration shall comply with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6,
35377 Utah Procurement Code, except where the board approves, upon recommendation of the
35378 director, exemption from the Utah Procurement Code, and simultaneous adoption of rules
35379 under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, for
35380 procurement, which enable the administration to efficiently fulfill its responsibilities under the
35381 law.

35382 (f) (i) The board and director shall review the exceptions under this Subsection (3) and
35383 make recommendations for any modification, if required, which the Legislature would be asked
35384 to consider during its annual general session.

35385 (ii) The board and director may include in their recommendations any other proposed
35386 exceptions from the usual executive and legislative controls the board and director consider
35387 necessary to accomplish the purpose of this title.

35388 (4) The administration is managed by a director of school and institutional trust lands
35389 appointed by a majority vote of the board of trustees with the consent of the governor.

35390 (5) (a) The board of trustees shall provide policies for the management of the
35391 administration and for the management of trust lands and assets.

35392 (b) The board shall provide policies for the ownership and control of Native American
35393 remains that are discovered or excavated on school and institutional trust lands in consultation

35394 with the Division of Indian Affairs and giving due consideration to Title 9, Chapter 9, Part 4,
35395 Native American Grave Protection and Repatriation Act. The director may make rules in
35396 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
35397 Act, to implement policies provided by the board regarding Native American remains.

35398 (6) In connection with joint ventures for the development of trust lands and minerals
35399 approved by the board under Sections 53C-1-303 and 53C-2-401, the administration may
35400 become a member of a limited liability company under Title 48, Chapter 2c, Utah Revised
35401 Limited Liability Company Act, and is considered a person under Section 48-2c-102.

35402 Section 789. Section **53C-1-202** is amended to read:

35403 **53C-1-202. Board of trustees membership -- Nomination list -- Qualifications --**
35404 **Terms -- Replacement -- Chair -- Quorum.**

35405 (1) There is established the School and Institutional Trust Lands Board of Trustees.

35406 (2) The board shall consist of seven members appointed on a nonpartisan basis by the
35407 governor with the consent of the Senate for nonconsecutive six-year terms.

35408 (3) (a) Of the initial appointments to the board, the governor shall appoint one member
35409 to serve a six-year term, one member to serve a five-year term, one member to serve a four-year
35410 term, one member to serve a three-year term, one member to serve a two-year term, and one
35411 member to serve a one-year term.

35412 (b) All subsequent appointments shall be for a term of six years, except if a vacancy
35413 occurs, the governor shall appoint a replacement, following the procedures set forth in
35414 Subsections (2), (4), (5), and (6), to fill the unexpired term.

35415 (c) Any member of the board who has served less than six years upon the expiration of
35416 that member's term is eligible for a consecutive reappointment.

35417 (d) Neither the term provision in Subsection (2) nor Subsection (3) applies to an
35418 appointment made under Subsection (5).

35419 (4) (a) The governor shall select six of the seven appointees to the board from a
35420 nomination list of at least two candidates for each position or vacancy submitted pursuant to
35421 Section 53C-1-203.

35422 (b) The governor may request an additional nomination list of at least two candidates
35423 from the nominating committee if the initial list of candidates for a given position is
35424 unacceptable.

35425 (c) (i) If the governor fails to select an appointee within 60 days after receipt of the
35426 initial list or within 60 days after the receipt of an additional list, the nominating committee shall
35427 make an interim appointment by majority vote.

35428 (ii) The interim appointee shall serve until the matter is resolved by the committee and
35429 the governor or until replaced pursuant to this chapter.

35430 (5) (a) The governor may appoint one member without requiring a nomination list.

35431 (b) The member appointed under Subsection (5)(a) serves at the pleasure of the
35432 governor.

35433 (6) (a) Each board candidate shall possess outstanding professional qualifications
35434 pertinent to the purposes and activities of the trust.

35435 (b) The board shall represent the following areas of expertise:

35436 (i) nonrenewable resource management or development;

35437 (ii) renewable resource management or development; and

35438 (iii) real estate.

35439 (c) Other qualifications which are pertinent for membership to the board are expertise in
35440 any of the following areas:

35441 (i) business;

35442 (ii) investment banking;

35443 (iii) finance;

35444 (iv) trust administration;

35445 (v) asset management; and

35446 (vi) the practice of law in any of the areas referred to in Subsections (6)(b) and (6)(c)(i)
35447 through (v).

35448 (7) The board of trustees shall select a chair from its membership.

35449 (8) Before assuming a position on the board, each member shall take an oath of office.

35450 (9) Four members of the board constitute a quorum for the transaction of business.

35451 (10) The governor or five board members may, for cause, remove a member of the
35452 board.

35453 (11) An aggrieved party to a final action by the board may obtain judicial review of that
35454 action under Sections [~~63-46b-15~~] 63G-4-402 and [~~63-46b-16~~] 63G-4-403.

35455 Section 790. Section **53C-1-304** is amended to read:

35456 **53C-1-304. Rules to ensure procedural due process -- Board review of director**
35457 **action -- Judicial review.**

35458 (1) The board shall make rules to ensure procedural due process in the resolution of
35459 complaints concerning actions by the board, director, and the administration.

35460 (2) An aggrieved party to a final action by the director or the administration may
35461 petition the board for administrative review of the decision.

35462 (3) (a) The board may appoint a qualified hearing examiner for purposes of taking
35463 evidence and making recommendations for board action.

35464 (b) The board shall consider the recommendations of the examiner in making decisions.

35465 (4) (a) The board shall uphold the decision of the director or the administration unless it
35466 finds, by a preponderance of the evidence, that the decision violated applicable law, policy, or
35467 rules.

35468 (b) The board shall base its final actions on findings and conclusions and shall inform
35469 the aggrieved party of its right to judicial review.

35470 (5) An aggrieved party to a final action by the board may obtain judicial review of that
35471 action under Sections [~~63-46b-15~~] 63G-4-402 and [~~63-46b-16~~] 63G-4-403.

35472 Section 791. Section **53C-2-201** is amended to read:

35473 **53C-2-201. Planning procedures -- Assistance from other state agencies -- Plans**
35474 **consistent with trust responsibilities.**

35475 (1) The director:

35476 (a) shall develop rules describing the degree of planning necessary for each category of
35477 activity on trust lands; and

35478 (b) may request other state agencies to generate technical data or other support services
35479 for the development and implementation of trust lands plans.

35480 (2) The plans for school and institutional trust lands shall be:

35481 (a) developed in a manner consistent with the director's responsibility to insure that the
35482 interest of the trust beneficiaries is paramount; and

35483 (b) if required by rule, approved by the board.

35484 (3) The director shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
35485 Utah Administrative Rulemaking Act, for notifying and consulting with interested parties under
35486 this section.

35487 (4) Subject to Subsection (1), the development of a written plan is not a prerequisite to
35488 actions by the director.

35489 Section 792. Section **54-1-2.5** is amended to read:

35490 **54-1-2.5. Procedures -- Adjudicative proceedings.**

35491 Except as specifically provided to the contrary in Chapter 7, the commission shall
35492 comply with the procedures and requirements of [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4,
35493 Administrative Procedures Act, in its adjudicative proceedings.

35494 Section 793. Section **54-3-28** is amended to read:

35495 **54-3-28. Notice required of certain public utilities before preparing or amending**
35496 **a long-range plan or acquiring certain property.**

35497 (1) As used in this section:

35498 (a) (i) "Affected entity" means each county, municipality, local district under Title 17B,
35499 Limited Purpose Local Government Entities - Local Districts, special service district, school
35500 district, interlocal cooperation entity established under Title 11, Chapter 13, Interlocal
35501 Cooperation Act, and specified public utility:

35502 (A) whose services or facilities are likely to require expansion or significant
35503 modification because of expected uses of land under a proposed long-range plan or under
35504 proposed amendments to a long-range plan; or

35505 (B) that has filed with the specified public utility a copy of the general or long-range

35506 plan of the county, municipality, local district, special service district, school district, interlocal
35507 cooperation entity, or specified public utility.

35508 (ii) "Affected entity" does not include the specified public utility that is required under
35509 Subsection (2) to provide notice.

35510 (b) "Specified public utility" means an electrical corporation, gas corporation, or
35511 telephone corporation, as those terms are defined in Section 54-2-1.

35512 (2) (a) If a specified public utility prepares a long-range plan regarding its facilities
35513 proposed for the future in a county of the first or second class or amends an already existing
35514 long-range plan, the specified public utility shall, before preparing a long-range plan or
35515 amendments to an existing long-range plan, provide written notice, as provided in this section,
35516 of its intent to prepare a long-range plan or to amend an existing long-range plan.

35517 (b) Each notice under Subsection (2) shall:

35518 (i) indicate that the specified public utility intends to prepare a long-range plan or to
35519 amend a long-range plan, as the case may be;

35520 (ii) describe or provide a map of the geographic area that will be affected by the
35521 long-range plan or amendments to a long-range plan;

35522 (iii) be sent to:

35523 (A) each county in whose unincorporated area and each municipality in whose
35524 boundaries is located the land on which the proposed long-range plan or amendments to a
35525 long-range plan are expected to indicate that the proposed facilities will be located;

35526 (B) each affected entity;

35527 (C) the Automated Geographic Reference Center created in Section 63F-1-506;

35528 (D) each association of governments, established pursuant to an interlocal agreement
35529 under Title 11, Chapter 13, Interlocal Cooperation Act, of which a county or municipality
35530 described in Subsection (2)(b)(iii)(A) is a member; and

35531 (E) the state planning coordinator appointed under Section [~~63-38d-202~~] 63J-4-202;

35532 (iv) with respect to the notice to counties and municipalities described in Subsection
35533 (2)(b)(iii)(A) and affected entities, invite them to provide information for the specified public

35534 utility to consider in the process of preparing, adopting, and implementing the long-range plan
35535 or amendments to a long-range plan concerning:

35536 (A) impacts that the use of land proposed in the proposed long-range plan or
35537 amendments to a long-range plan may have on the county, municipality, or affected entity; and

35538 (B) uses of land that the county, municipality, or affected entity is planning or
35539 considering that may conflict with the proposed long-range plan or amendments to a long-range
35540 plan; and

35541 (v) include the address of an Internet website, if the specified public utility has one, and
35542 the name and telephone number of a person where more information can be obtained concerning
35543 the specified public utility's proposed long-range plan or amendments to a long-range plan.

35544 (3) (a) Except as provided in Subsection (3)(d), each specified public utility intending to
35545 acquire real property in a county of the first or second class for the purpose of expanding its
35546 infrastructure or other facilities used for providing the services that the specified public utility is
35547 authorized to provide shall provide written notice, as provided in this Subsection (3), of its
35548 intent to acquire the property if the intended use of the property is contrary to:

35549 (i) the anticipated use of the property under the county or municipality's general plan; or
35550 (ii) the property's current zoning designation.

35551 (b) Each notice under Subsection (3)(a) shall:

35552 (i) indicate that the specified public utility intends to acquire real property;

35553 (ii) identify the real property; and

35554 (iii) be sent to:

35555 (A) each county in whose unincorporated area and each municipality in whose
35556 boundaries the property is located; and

35557 (B) each affected entity.

35558 (c) A notice under this Subsection (3) is a protected record as provided in Subsection
35559 ~~[63-2-304]~~ 63G-2-305(7).

35560 (d) (i) The notice requirement of Subsection (3)(a) does not apply if the specified public
35561 utility previously provided notice under Subsection (2) identifying the general location within

35562 the municipality or unincorporated part of the county where the property to be acquired is
35563 located.

35564 (ii) If a specified public utility is not required to comply with the notice requirement of
35565 Subsection (3)(a) because of application of Subsection (3)(d)(i), the specified public utility shall
35566 provide the notice specified in Subsection (3)(a) as soon as practicable after its acquisition of
35567 the real property.

35568 Section 794. Section **54-5-1.5** is amended to read:

35569 **54-5-1.5. Special regulation fee -- Supplemental Levy Committee -- Supplemental**
35570 **fee -- Fee for electrical cooperatives.**

35571 (1) (a) A special fee to defray the cost of regulation is imposed upon all public utilities
35572 subject to the jurisdiction of the Public Service Commission.

35573 (b) The special fee is in addition to any charge now assessed, levied, or required by law.

35574 (2) (a) The executive director of the Department of Commerce shall determine the
35575 special fee for the Department of Commerce.

35576 (b) The chair of the Public Service Commission shall determine the special fee for the
35577 Public Service Commission.

35578 (c) The fee shall be assessed as a uniform percentage of the gross operating revenue for
35579 the preceding calendar year derived from each public utility's business and operations during
35580 that period within this state, excluding income derived from interstate business. Gross
35581 operating revenue shall not include income to a wholesale electric cooperative derived from the
35582 sale of power to a rural electric cooperative which resells that power within the state.

35583 (3) (a) The executive director of the Department of Commerce shall notify each public
35584 utility subject to the provisions of this chapter of the amount of the fee.

35585 (b) The fee is due and payable on or before July 1 of each year.

35586 (4) (a) It is the intent of the Legislature that the public utilities provide all of the funds
35587 for the administration, support, and maintenance of:

35588 (i) the Public Service Commission;

35589 (ii) state agencies within the Department of Commerce involved in the regulation of

35590 public utilities; and

35591 (iii) expenditures by the attorney general for utility regulation.

35592 (b) Notwithstanding Subsection (4)(a), the fee imposed by Subsection (1) shall not
35593 exceed the greater of:

35594 (i) (A) for a public utility other than an electrical cooperative, .3% of the public utility's
35595 gross operating revenues for the preceding calendar year; or

35596 (B) for an electrical cooperative, .15% of the electrical cooperative's gross operating
35597 revenues for the preceding calendar year; or

35598 (ii) \$50.

35599 (5) (a) There is created a Supplemental Levy Committee to levy additional assessments
35600 on public utilities when unanticipated costs of regulation occur in any fiscal year.

35601 (b) The Supplemental Levy Committee shall consist of:

35602 (i) one member selected by the executive director of the Department of Commerce;

35603 (ii) one member selected by the chairman of the Public Service Commission;

35604 (iii) two members selected by the three public utilities that paid the largest percent of
35605 the current regulatory fee; and

35606 (iv) one member selected by the four appointed members.

35607 (c) (i) The members of the Supplemental Levy Committee shall be selected within ten
35608 working days after the executive director of the Department of Commerce gives written notice
35609 to the Public Service Commission and the public utilities that a supplemental levy committee is
35610 needed.

35611 (ii) If the members of the Supplemental Levy Committee have not been appointed
35612 within the time prescribed, the governor shall appoint the members of the Supplemental Levy
35613 Committee.

35614 (d) (i) During any state fiscal year, the Supplemental Levy Committee, by a majority
35615 vote and subject to audit by the state auditor, may impose a supplemental fee on the regulated
35616 utilities for the purpose of defraying any increased cost of regulation.

35617 (ii) The supplemental fee imposed upon the utilities shall equal a percentage of their

35618 gross operating revenue for the preceding calendar year.

35619 (iii) The aggregate of all fees, including any supplemental fees assessed, shall not exceed
35620 .3% of the gross operating revenue of the utilities assessed for the preceding calendar year.

35621 (iv) Payment of the supplemental fee is due within 30 days after receipt of the
35622 assessment.

35623 (v) The utility may, within ten days after receipt of assessment, request a hearing before
35624 the Public Service Commission if it questions the need for, or the reasonableness of, the
35625 supplemental fee.

35626 (e) (i) Any supplemental fee collected to defray the cost of regulation shall be
35627 transferred to the state treasurer as a departmental collection according to the provisions of
35628 Section [~~63-38-9~~] 63J-1-404.

35629 (ii) Supplemental fees are excess collections, credited according to the procedures of
35630 Section [~~63-38-9~~] 63J-1-404.

35631 (iii) Charges billed to the Department of Commerce by any other state department,
35632 institution, or agency for services rendered in connection with regulation of a utility shall be
35633 credited by the state treasurer from the special or supplemental fees collected to the
35634 appropriations account of the entity providing that service according to the procedures provided
35635 in [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act.

35636 (6) (a) For purposes of this section, "electrical cooperative" means:

35637 (i) a distribution electrical cooperative; or

35638 (ii) a wholesale electrical cooperative.

35639 (b) Subject to Subsection (6)(c), if the regulation of one or more electrical cooperatives
35640 causes unanticipated costs of regulation in a fiscal year, the commission may impose a
35641 supplemental fee on the one or more electrical cooperatives in this state responsible for the
35642 increased cost of regulation.

35643 (c) The aggregate of all fees imposed under this section on an electrical cooperative in a
35644 calendar year shall not exceed the greater of:

35645 (i) .3% of the electrical cooperative's gross operating revenues for the preceding

35646 calendar year; or

35647 (ii) \$50.

35648 Section 795. Section **54-7-15** is amended to read:

35649 **54-7-15. Review or rehearing by commission -- Application -- Procedure --**

35650 **Prerequisite to court action -- Effect of commission decisions.**

35651 (1) Before seeking judicial review of the commission's action, any party, stockholder,
35652 bondholder, or other person pecuniarily interested in the public utility who is dissatisfied with an
35653 order of the commission shall meet the requirements of this section.

35654 (2) (a) After any order or decision has been made by the commission, any party to the
35655 action or proceeding, any stockholder, bondholder, or other party pecuniarily interested in the
35656 public utility affected may apply for rehearing of any matters determined in the action or
35657 proceeding.

35658 (b) An applicant may not urge or rely on any ground not set forth in the application in
35659 an appeal to any court.

35660 (c) Any application for rehearing not granted by the commission within 20 days is
35661 denied.

35662 (d) (i) If the commission grants any application for rehearing without suspending the
35663 order involved, the commission shall issue its decision on rehearing within 20 days after final
35664 submission.

35665 (ii) If the commission fails to render its decision on rehearing within 20 days, the order
35666 involved is affirmed.

35667 (e) Unless an order of the commission directs that an order is stayed or postponed, an
35668 application for review or rehearing does not excuse any corporation or person from complying
35669 with and obeying any order or decision of the commission.

35670 (3) Any order or decision on rehearing that abrogates, changes, or modifies an original
35671 order or decision has the same force and effect as an original order or decision, but does not
35672 affect any right, or the enforcement of any right, arising from the original order or decision
35673 unless so ordered by the commission.

35674 (4) An order of the commission, including a decision on rehearing:
35675 (a) shall have binding force and effect only with respect to a public utility that is an
35676 actual party to the proceeding in which the order is rendered; and
35677 (b) does not determine any right, privilege, obligation, duty, constraint, burden, or
35678 responsibility with respect to a public utility that is not a party to the proceeding in which the
35679 order is rendered unless, in accordance with Subsection [~~63-46a-3~~] 63G-3-201(6), the
35680 commission makes a rule that incorporates the one or more principles of law that:
35681 (i) are established by the order;
35682 (ii) are not in commission rules at the time of the order; and
35683 (iii) affect the right, privilege, obligation, duty, constraint, burden, or responsibility with
35684 respect to the public utility.
35685 Section 796. Section **54-8b-2.1** is amended to read:
35686 **54-8b-2.1. Competitive entry.**
35687 (1) Notwithstanding any provision of Section 54-4-25 to the contrary, the commission
35688 may issue a certificate to a telecommunications corporation authorizing it to compete in
35689 providing local exchange services or other public telecommunications services in all or part of
35690 the service territory of an incumbent telephone corporation, except until December 31, 1997, a
35691 telecommunications corporation may not receive a certificate to compete in providing local
35692 exchange service within any local exchange with fewer than 5,000 access lines that is owned or
35693 controlled by an incumbent telephone corporation with fewer than 30,000 access lines in the
35694 state. The procedure specified in Subsection (3)(c) for excluding competition within a local
35695 exchange with fewer than 5,000 access lines shall apply on December 31, 1997 or thereafter.
35696 (2) The commission shall issue a certificate to the applying telecommunications
35697 corporation if the commission determines that:
35698 (a) the applicant has sufficient technical, financial, and managerial resources and abilities
35699 to provide the public telecommunications services applied for; and
35700 (b) the issuance of the certificate to the applicant is in the public interest.
35701 (3) (a) The commission shall process the application in accordance with [~~Title 63,~~

35702 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

35703 (b) Each telecommunications corporation holding a certificate to provide public
35704 telecommunications service within the geographic area where an applicant is seeking to provide
35705 telecommunications service shall be provided notice of the application and granted automatic
35706 status as an intervenor.

35707 (c) An intervening incumbent telephone corporation serving fewer than 30,000 access
35708 lines in the state may petition the commission to exclude from an application filed pursuant to
35709 Subsection (1) any local exchange with fewer than 5,000 access lines that is owned or
35710 controlled by the intervening incumbent telephone corporation. Upon finding that the action is
35711 consistent with the public interest, the commission shall order that the application exclude such
35712 local exchange.

35713 (d) The commission shall approve or deny the application under this section within 240
35714 days after it is filed. If the commission has not acted on an application within 240 days, the
35715 application is considered granted.

35716 (4) If the commission issues a certificate to a competitive telecommunications
35717 corporation to provide local exchange services in a local exchange that has fewer than 5,000
35718 lines and that is controlled by an incumbent telephone corporation with fewer than 30,000
35719 access lines in the state, the commission shall impose an obligation upon the competitive
35720 telecommunications corporation to provide public telecommunications services to any customer
35721 or class of customers who requests service within the local exchange. The competing
35722 telecommunications corporation's obligation to serve shall be no greater than that of the
35723 incumbent telephone corporation.

35724 (5) An incumbent telephone corporation with fewer than 30,000 access lines in the state
35725 may not be required to become a carrier of intrastate toll services.

35726 Section 797. Section **54-8b-10** is amended to read:

35727 **54-8b-10. Imposing a surcharge to provide hearing and speech impaired persons**
35728 **with telecommunication devices -- Definitions -- Procedures for establishing program --**
35729 **Surcharge -- Administration and disposition of surcharge moneys.**

- 35730 (1) As used in this section:
- 35731 (a) "Certified deaf or severely hearing or speech impaired person" means any state
- 35732 resident who:
- 35733 (i) is so certified by:
- 35734 (A) a licensed physician;
- 35735 (B) an otolaryngologist;
- 35736 (C) a speech language pathologist;
- 35737 (D) an audiologist; or
- 35738 (E) a qualified state agency; and
- 35739 (ii) qualifies for assistance under any low income public assistance program
- 35740 administered by a state agency.
- 35741 (b) "Certified interpreter" means a person who is a certified interpreter under Title 53A,
- 35742 Chapter 26a, Interpreter Services for the Hearing Impaired Act.
- 35743 (c) (i) "Telecommunication device" means any mechanical adaptation device that
- 35744 enables a deaf or severely hearing or speech impaired person to use the telephone.
- 35745 (ii) "Telecommunication device" includes:
- 35746 (A) telecommunication devices for the deaf (TDD);
- 35747 (B) telephone amplifiers;
- 35748 (C) telephone signal devices;
- 35749 (D) artificial larynxes; and
- 35750 (E) adaptive equipment for TDD keyboard access.
- 35751 (2) The commission shall hold hearings to establish a program whereby any certified
- 35752 deaf or severely hearing or speech impaired customer of a telephone corporation that provides
- 35753 service through a local exchange or of a wireless telecommunications provider may obtain a
- 35754 telecommunication device capable of serving the customer at no charge to the customer beyond
- 35755 the rate for basic service.
- 35756 (3) (a) The program described in Subsection (2) shall provide a dual party relay system
- 35757 using third party intervention to connect a certified deaf or severely hearing or speech impaired

35758 person with a normal hearing person by way of telecommunication devices designed for that
35759 purpose.

35760 (b) The commission may, by rule, establish the type of telecommunications device to be
35761 provided to ensure functional equivalence.

35762 (4) (a) The commission shall impose a surcharge on each residence and business access
35763 line of each customer to the local exchange of any telephone corporation providing such lines in
35764 this state to cover the costs of:

35765 (i) the program described in Subsection (2); and

35766 (ii) payments made under Subsection (5).

35767 (b) The commission shall establish by rule the amount to be charged under this section,
35768 which may not exceed 25 cents per residence and business access line.

35769 (c) The telephone corporation shall collect the surcharge from its customers and
35770 transfer the money collected to the commission under rules adopted by the commission.

35771 (d) The surcharge shall be separately identified on customer bills.

35772 (5) (a) Any money collected from the surcharge imposed under Subsection (4) shall be
35773 deposited in the state treasury as dedicated credits to be administered as determined by the
35774 Public Service Commission.

35775 (b) These dedicated credits may be used only:

35776 (i) for the purchase, maintenance, repair, and distribution of telecommunication devices;

35777 (ii) for the acquisition, operation, maintenance, and repair of a dual party relay system;

35778 (iii) to reimburse telephone corporations for the expenses incurred in collecting and
35779 transferring to the commission the surcharge imposed by the commission;

35780 (iv) for the general administration of the program;

35781 (v) to train persons in the use of telecommunications devices; and

35782 (vi) by the commission to contract, in compliance with [~~Title 63, Chapter 56~~] Title 63G,
35783 Chapter 6, Utah Procurement Code, with:

35784 (A) an institution within the state system of higher education listed in Section

35785 53B-1-102 for a program approved by the Board of Regents that trains persons to qualify as

35786 certified interpreters; or

35787 (B) the Division of Services to the Deaf and Hard of Hearing for a program that trains
 35788 persons to qualify as certified interpreters.

35789 (c) (i) The commission shall make rules under [~~Title 63, Chapter 46a~~] Title 63G,
 35790 Chapter 3, Utah Administrative Rulemaking Act, for the administration of monies under
 35791 Subsection (5)(b)(vi).

35792 (ii) In the initial rulemaking to determine the administration of monies under Subsection
 35793 (5)(b)(vi), the commission shall give notice and hold a public hearing.

35794 (d) Monies received by the commission under Subsection (4) are nonlapsing.

35795 (6) (a) The telephone surcharge need not be collected by a local exchange company if
 35796 the amount collected would be less than the actual administrative costs of the collection.

35797 (b) If Subsection (6)(a) applies, the local exchange company shall submit to the
 35798 commission, in lieu of the revenue from the surcharge collection, a breakdown of the anticipated
 35799 costs and the expected revenue from the collection, showing that the costs exceed the revenue.

35800 (7) The commission shall solicit the advice, counsel, and physical assistance of severely
 35801 hearing or speech impaired persons and the organizations serving them in the design and
 35802 implementation of the program.

35803 Section 798. Section **54-14-104** is amended to read:

35804 **54-14-104. Rules and procedures.**

35805 The board may, pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 35806 Administrative Rulemaking Act, adopt rules governing proceedings under this chapter
 35807 consistent with this chapter and [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
 35808 Procedures Act.

35809 Section 799. Section **54-14-307** is amended to read:

35810 **54-14-307. Stay of board's decision pending review or appeal.**

35811 (1) A petition for review, rehearing, or reconsideration or a petition for judicial review
 35812 does not stay or suspend the effectiveness of a written decision of the board.

35813 (2) Any party seeking to stay the effectiveness of a decision of the board shall seek a

35814 stay under Section [~~63-46b-18~~] 63G-4-405.

35815 Section 800. Section **54-17-102** is amended to read:

35816 **54-17-102. Definitions.**

35817 As used in this chapter:

35818 (1) "Affected electrical utility" means an electrical corporation with at least 200,000
35819 retail customers in the state.

35820 (2) "Benchmark option" means an energy resource against which bids in an open bid
35821 process may be evaluated that:

35822 (a) could be constructed or owned by:

35823 (i) an affected electrical utility; or

35824 (ii) an affiliate of an affected electrical utility; or

35825 (b) may be a purchase of:

35826 (i) electricity;

35827 (ii) electric generating capacity; or

35828 (iii) electricity and electric generating capacity.

35829 (3) "Integrated resource plan" means a plan that contains:

35830 (a) the demand and energy forecast by the affected electrical utility for at least a
35831 ten-year period;

35832 (b) the affected electrical utility's options for meeting the requirements shown in its load
35833 and resource forecast in an economic and reliable manner, including:

35834 (i) demand-side and supply-side options; and

35835 (ii) a brief description and summary cost-benefit analysis, if available, of each option
35836 that was considered;

35837 (c) the affected electrical utility's assumptions and conclusions with respect to the effect
35838 of the plan on the cost and reliability of energy service;

35839 (d) a description of the external environmental and economic consequences of the plan
35840 to the extent practicable; and

35841 (e) any other data and analyses as the commission may require.

35842 (4) "Significant energy resource" for an affected electrical utility means a resource that
35843 consists of:

35844 (a) a total of 100 megawatts or more of new generating capacity that has a dependable
35845 life of ten or more years;

35846 (b) a purchase of the following if the contract is for a term of ten or more years and not
35847 less than 100 megawatts:

35848 (i) electricity;

35849 (ii) electric generating capacity; or

35850 (iii) electricity and electrical generating capacity;

35851 (c) the purchase or lease by an affected electrical utility from an affiliated company of:

35852 (i) a generating facility;

35853 (ii) electricity;

35854 (iii) electrical generating capacity; or

35855 (iv) electricity and electrical generating capacity;

35856 (d) a contract with an option for the affected electrical utility or an affiliate to purchase
35857 a resource that consists of not less than 100 megawatts or more of new generating capacity that
35858 has a remaining dependable life of ten or more years; or

35859 (e) a type of resource designated by the commission as a significant energy resource in
35860 rules made by the commission in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
35861 Utah Administrative Rulemaking Act, after considering the affected electrical utility's integrated
35862 resource plan and action plan.

35863 (5) "Solicitation" means a request for proposals or other invitation for persons to
35864 submit a bid or proposal through an open bid process for construction or acquisition of a
35865 significant energy resource.

35866 Section 801. Section **54-17-103** is amended to read:

35867 **54-17-103. Rulemaking.**

35868 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
35869 Administrative Rulemaking Act, the commission:

35870 (a) shall make rules when required by this chapter; and
35871 (b) in addition to the rules required under Subsection (1)(a), may make rules necessary
35872 for the implementation of this chapter.

35873 (2) Notwithstanding a requirement that the commission make rules, the commission
35874 may take action under this chapter before the commission makes a required rule including:

- 35875 (a) approving a solicitation process under Part 2, Solicitation Process;
- 35876 (b) approving a significant energy resource under Section 54-17-302;
- 35877 (c) issuing an order under Section 54-17-304 regarding whether an affected electrical
35878 utility should proceed with implementing a significant energy resource decision;
- 35879 (d) approving an energy resource under Section 54-17-402; or
- 35880 (e) issuing an order under Section 54-17-404 regarding whether an energy utility should
35881 proceed with implementing a resource decision.

35882 Section 802. Section **54-17-201** is amended to read:

35883 **54-17-201. Solicitation process required -- Exception.**

35884 (1) (a) An affected electrical utility shall comply with this chapter to acquire or
35885 construct a significant energy resource after February 25, 2005.

35886 (b) Notwithstanding Subsection (1)(a), this chapter does not apply to a significant
35887 energy resource for which the affected electrical utility has issued a solicitation before February
35888 25, 2005.

35889 (2) (a) Except as provided in Subsection (3), to acquire or construct a significant
35890 energy resource, an affected electrical utility shall conduct a solicitation process that is approved
35891 by the commission.

35892 (b) To obtain the approval of the commission of a solicitation process, the affected
35893 electrical utility shall file with the commission a request for approval that includes:

- 35894 (i) a description of the solicitation process the affected electrical utility will use;
- 35895 (ii) a complete proposed solicitation; and
- 35896 (iii) any other information the commission requires by rule made in accordance with

35897 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

35898 (c) In ruling on the request for approval of a solicitation process, the commission shall
35899 determine whether the solicitation process:

35900 (i) complies with this chapter and rules made in accordance with [~~Title 63, Chapter 46a~~]
35901 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

35902 (ii) is in the public interest taking into consideration:

35903 (A) whether it will most likely result in the acquisition, production, and delivery of
35904 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility
35905 located in this state;

35906 (B) long-term and short-term impacts;

35907 (C) risk;

35908 (D) reliability;

35909 (E) financial impacts on the affected electrical utility; and

35910 (F) other factors determined by the commission to be relevant.

35911 (d) Before approving a solicitation process under this section the commission:

35912 (i) may hold a public hearing; and

35913 (ii) shall provide an opportunity for public comment.

35914 (e) As part of its review of a solicitation process, the commission may provide the
35915 affected electrical utility guidance on any additions or changes to its proposed solicitation
35916 process.

35917 (f) Unless the commission determines that additional time to analyze a solicitation
35918 process is warranted and is in the public interest, within 90 days of the day on which the
35919 affected electrical utility files a request for approval of the solicitation process, the commission
35920 shall:

35921 (i) approve a proposed solicitation process;

35922 (ii) suggest modifications to a proposed solicitation process; or

35923 (iii) reject a proposed solicitation process.

35924 (3) Notwithstanding Subsection (2), an affected electrical utility may acquire or
35925 construct a significant energy resource without conducting a solicitation process if it obtains a

35926 waiver of the solicitation requirement in accordance with Section 54-17-501.

35927 (4) In accordance with the commission's authority under Subsection 54-12-2(2), the
35928 commission shall determine:

35929 (a) whether this chapter or another competitive bidding procedure shall apply to a
35930 purchase of a significant energy resource by an affected electrical utility from a small power
35931 producer or cogenerator; and

35932 (b) if this chapter applies as provided in Subsection (4)(a), the manner in which this
35933 chapter applies to a purchase of a significant energy resource by an affected electrical utility
35934 from a small power producer or cogenerator.

35935 Section 803. Section **54-17-202** is amended to read:

35936 **54-17-202. Requirements for solicitation.**

35937 (1) The commission shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title
35938 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining the requirements for a
35939 solicitation process. The rules required by this Subsection (1) shall include:

35940 (a) the type of screening criteria an affected electrical utility may use in a solicitation
35941 process including the risks an affected electrical utility may consider;

35942 (b) the required disclosures by an affected electrical utility if a solicitation includes a
35943 benchmark option;

35944 (c) the required disclosures by an affected electrical utility related to the methodology
35945 the affected electrical utility uses to evaluate bids; and

35946 (d) the participation of an independent evaluator in a manner consistent with Section
35947 54-17-203.

35948 (2) If an affected electrical utility is subject to regulation in more than one state
35949 regarding the acquisition, construction, or cost recovery of a significant energy resource, in
35950 making the rules required by Subsection (1), the commission may consider the impact of the
35951 multistate regulation including requirements imposed by other states as to:

35952 (a) the solicitation process;

35953 (b) cost recovery of resources; and

35954 (c) methods by which the affected electrical utility may be able to mitigate the potential
35955 for cost disallowances.

35956 Section 804. Section **54-17-203** is amended to read:

35957 **54-17-203. Independent evaluator.**

35958 (1) (a) The commission shall:

35959 (i) appoint an independent evaluator to monitor any solicitation conducted by an
35960 affected electrical utility under this chapter; and

35961 (ii) oversee or direct the division to oversee the independent evaluator in monitoring
35962 any solicitation conducted by an affected electrical utility under this chapter.

35963 (b) The commission, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
35964 Utah Administrative Procedures Act, shall make rules setting the qualifications of an
35965 independent evaluator.

35966 (2) The commission shall determine the method used to pay the fees and expenses for
35967 the independent evaluator which may include:

35968 (a) the payment of a bid fee by bidders to a solicitation; or

35969 (b) (i) requiring the affected electrical utility to pay the fees and expenses; and

35970 (ii) permitting an affected electrical utility to recover the amounts paid under this
35971 Subsection (2)(b).

35972 (3) (a) The independent evaluator may not make the decision as to which bid should be
35973 awarded under the solicitation.

35974 (b) The independent evaluator shall:

35975 (i) actively monitor the solicitation process for fairness and compliance with
35976 commission rules;

35977 (ii) report regularly to:

35978 (A) the commission; and

35979 (B) others as directed by the commission;

35980 (iii) develop one or more reports addressing:

35981 (A) the solicitation process;

35982 (B) any concerns of the independent evaluator related to the solicitation process; and

35983 (C) the ultimate results of the solicitation process, including the opinions and
35984 conclusions of the independent evaluator;

35985 (iv) provide ongoing input regarding issues, concerns, and improvements in the
35986 solicitation process with the objective of correcting ongoing deficiencies in the solicitation
35987 process to the following:

35988 (A) the commission;

35989 (B) the affected electrical utility; and

35990 (C) others as directed by the commission;

35991 (v) render an opinion as to whether:

35992 (A) the solicitation process is:

35993 (I) fair; and

35994 (II) in compliance with this part; and

35995 (B) any modeling used by the affected electrical utility to evaluate bids is sufficient;

35996 (vi) testify in any proceeding under Section 54-17-302; and

35997 (vii) perform other functions and provide other input and reports as the commission
35998 may direct, including periodic presentations to interested parties regarding the solicitation
35999 process.

36000 Section 805. Section **54-17-301** is amended to read:

36001 **54-17-301. Review of integrated resource plan action plans.**

36002 (1) An affected electrical utility shall file with the commission any action plan developed
36003 as part of the affected electrical utility's integrated resource plan to enable the commission to
36004 review and provide guidance to the affected electrical utility.

36005 (2) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
36006 Administrative Rulemaking Act, the commission shall make rules providing a process for its
36007 review of an action plan.

36008 (b) The rules required under Subsection (2)(a) shall provide sufficient flexibility to
36009 permit changes in an action plan between the periodic filings of the affected electrical utility's

36010 integrated resource plan.

36011 Section 806. Section **54-17-302** is amended to read:

36012 **54-17-302. Approval of a significant energy resource decision required.**

36013 (1) If pursuant to Part 2, Solicitation Process, an affected electrical utility is required to
36014 conduct a solicitation for a significant energy resource or obtains a waiver of the requirement to
36015 conduct a solicitation under Section 54-17-501, but does not obtain a waiver of the requirement
36016 to obtain approval of the significant energy resource decision under Section 54-17-501, the
36017 affected electrical utility shall obtain approval of its significant energy resource decision:

36018 (a) after the completion of the solicitation process, if the affected electrical utility is
36019 required to conduct a solicitation; and

36020 (b) before an affected electrical utility may construct or enter into a binding agreement
36021 to acquire the significant energy resource.

36022 (2) (a) To obtain the approval required by Subsection (1), the affected electrical utility
36023 shall file a request for approval with the commission.

36024 (b) The request for approval required by this section shall include any information
36025 required by the commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
36026 Chapter 3, Utah Administrative Rulemaking Act.

36027 (3) In ruling on a request for approval of a significant energy resource decision, the
36028 commission shall determine whether the significant energy resource decision:

36029 (a) is reached in compliance with this chapter and rules made in accordance with [~~Title~~
36030 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

36031 (b) (i) is reached in compliance with the solicitation process approved by the
36032 commission in accordance with Part 2, Solicitation Process; or

36033 (ii) is reached after the waiver of the solicitation process as provided in Subsection
36034 54-17-201(3); and

36035 (c) is in the public interest, taking into consideration:

36036 (i) whether it will most likely result in the acquisition, production, and delivery of
36037 electricity at the lowest reasonable cost to the retail customers of an affected electrical utility

36038 located in this state;

36039 (ii) long-term and short-term impacts;

36040 (iii) risk;

36041 (iv) reliability;

36042 (v) financial impacts on the affected electrical utility; and

36043 (vi) other factors determined by the commission to be relevant.

36044 (4) The commission may not approve a significant energy resource decision under this

36045 section before holding a public hearing.

36046 (5) Unless the commission determines that additional time to analyze a significant

36047 energy resource decision is warranted and is in the public interest, within 180 days of the day on

36048 which the affected electrical utility files a request for approval, the commission shall:

36049 (a) approve the significant energy resource decision;

36050 (b) approve the significant energy resource decision subject to conditions imposed by

36051 the commission; or

36052 (c) disapprove the significant energy resource decision.

36053 (6) The commission shall include in its order under this section:

36054 (a) findings as to the total projected costs for construction or acquisition of an

36055 approved significant energy resource; and

36056 (b) the basis upon which the findings described in Subsection (6)(a) are made.

36057 (7) Notwithstanding any other provision of this part, an affected electrical utility may

36058 acquire a significant energy resource without obtaining approval pursuant to this section if it

36059 obtains a waiver of the requirement for approval in accordance with Section 54-17-501.

36060 (8) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

36061 Administrative Rulemaking Act, the commission shall make rules regarding the process for

36062 approval of a significant energy resource decision under this section.

36063 Section 807. Section **54-17-304** is amended to read:

36064 **54-17-304. Order to proceed.**

36065 (1) (a) In the event of a change in circumstances or projected costs, an affected

36066 electrical utility may seek a commission review and determination of whether the affected
36067 electrical utility should proceed with the implementation of an approved significant energy
36068 resource decision.

36069 (b) In making a determination under this Subsection (1), the commission shall use the
36070 standards identified in Subsection 54-17-302(3)(c).

36071 (c) Before making a determination under this Subsection (1) the commission:

36072 (i) may hold a public hearing; and

36073 (ii) shall provide an opportunity for public comment.

36074 (2) Unless the commission determines that additional time is warranted and is in the
36075 public interest, within 60 days of the day on which the affected electrical utility files a request
36076 for commission review and determination under this section, the commission shall:

36077 (a) issue an order:

36078 (i) determining that the affected electrical utility should proceed with the
36079 implementation of the significant energy resource decision;

36080 (ii) making findings as to the total projected costs for construction or acquisition of the
36081 approved significant energy resource; and

36082 (iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are
36083 made; or

36084 (b) issue an order determining that the affected electrical utility should not proceed with
36085 the implementation of the significant energy resource decision.

36086 (3) If the commission determines that the affected electrical utility should proceed with
36087 the implementation of the approved significant energy resource decision, the commission shall,
36088 in a general rate case or other appropriate commission proceeding, include in the affected
36089 electrical utility's retail electric rates the state's share of costs:

36090 (a) relevant to that proceeding;

36091 (b) incurred by the affected electrical utility in constructing or acquiring the approved
36092 significant energy resource; and

36093 (c) up to the projected costs as specified in the commission's order issued under

36094 Subsection (2)(a).

36095 (4) If the commission determines that the affected electrical utility should not proceed
36096 with the implementation of the approved significant energy resource decision, the commission
36097 shall, in a general rate case or other appropriate commission proceeding, include in the affected
36098 electrical utility's retail electric rates the state's share of costs:

36099 (a) relevant to that proceeding; and

36100 (b) incurred by the affected electrical utility in constructing or acquiring the approved
36101 significant energy resource before issuance of a determination not to proceed, including any
36102 prudently incurred costs of terminating the approved significant energy resource decision.

36103 (5) A commission order under this section not to proceed with the implementation of a
36104 significant energy resource may not prejudice:

36105 (a) the right of an affected electrical utility to:

36106 (i) continue to implement the significant energy resource decision; and

36107 (ii) seek recovery of costs incurred after a determination not to proceed in a future rate
36108 proceeding; or

36109 (b) the right of any other party to support or oppose recovery of costs sought under

36110 Subsection (5)(a)(ii).

36111 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
36112 Administrative Rulemaking Act, the commission shall make rules regarding the process for the
36113 commission's review and determination on a request for an order to proceed under this section.

36114 Section 808. Section **54-17-401** is amended to read:

36115 **54-17-401. Definitions.**

36116 As used in this part:

36117 (1) "Energy utility" means one of the following with 200,000 retail customers in the
36118 state:

36119 (a) an electrical corporation; or

36120 (b) a gas corporation.

36121 (2) (a) "Resource decision" means a decision, other than a decision to construct or

36122 acquire a significant energy resource, involving:

36123 (i) an energy utility's acquisition, management, or operation of energy production,
36124 processing, transmission, or distribution facilities or processes including:

36125 (A) a facility or process for the efficient, reliable, or safe provision of energy to retail
36126 customers; or

36127 (B) an energy efficiency and conservation program; or

36128 (ii) a decision determined by the commission to be appropriate for review under this
36129 part.

36130 (b) The commission may adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
36131 63G, Chapter 3, Utah Administrative Rulemaking Act, to specify the nature of resource
36132 decisions subject to approval under Section 54-17-402.

36133 Section 809. Section **54-17-402** is amended to read:

36134 **54-17-402. Request for review of resource decision.**

36135 (1) Beginning on February 25, 2005, before implementing a resource decision, an
36136 energy utility may request that the commission approve all or part of a resource decision in
36137 accordance with this part.

36138 (2) (a) To obtain the approval permitted by Subsection (1), the energy utility shall file a
36139 request for approval with the commission.

36140 (b) The request for approval required by this section shall include any information
36141 required by the commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
36142 Chapter 3, Utah Administrative Rulemaking Act.

36143 (3) In ruling on a request for approval of a resource decision, the commission shall
36144 determine whether the decision:

36145 (a) is reached in compliance with this chapter and rules made in accordance with [~~Title~~
36146 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

36147 (b) is in the public interest, taking into consideration:

36148 (i) whether it will most likely result in the acquisition, production, and delivery of utility
36149 services at the lowest reasonable cost to the retail customers of an energy utility located in this

36150 state;

36151 (ii) long-term and short-term impacts;

36152 (iii) risk;

36153 (iv) reliability;

36154 (v) financial impacts on the energy utility; and

36155 (vi) other factors determined by the commission to be relevant.

36156 (4) (a) If the commission approves a proposed resource decision only in part, the

36157 commission shall explain in the order issued under this section why the commission does not

36158 approve the resource decision in total.

36159 (b) Recovery of expenses incurred in connection with parts of a resource decision that

36160 are not approved is subject to the review of the commission as part of a rate hearing under

36161 Section 54-7-12.

36162 (5) The commission may not approve a resource decision in whole or in part under this

36163 section before holding a public hearing.

36164 (6) Unless the commission determines that additional time to analyze a resource

36165 decision is warranted and is in the public interest, within 180 days of the day on which the

36166 energy utility files a request for approval, the commission shall:

36167 (a) approve all or part of the resource decision;

36168 (b) approve all or part of the resource decision subject to conditions imposed by the

36169 commission; or

36170 (c) disapprove all or part of the resource decision.

36171 (7) The commission shall include in its order under this section:

36172 (a) findings as to the approved projected costs of a resource decision; and

36173 (b) the basis upon which the findings described in Subsection (7)(a) are made.

36174 (8) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

36175 Administrative Rulemaking Act, the commission shall make rules regarding the process for

36176 approval of a resource decision under this section.

36177 Section 810. Section **54-17-404** is amended to read:

36178 **54-17-404. Order to proceed.**

36179 (1) (a) In the event of a change in circumstances or projected costs, an energy utility
36180 may seek a commission review and determination of whether the energy utility should proceed
36181 with the implementation of an approved resource decision.

36182 (b) In making a determination under this Subsection (1), the commission shall use the
36183 standards identified in Subsection 54-17-402(3)(b).

36184 (c) Before making a determination under this Subsection (1) the commission:

36185 (i) may hold a public hearing; and

36186 (ii) shall provide an opportunity for public comment.

36187 (2) Unless the commission determines that additional time is warranted and is in the
36188 public interest, within 60 days of the day on which the energy utility files a request for
36189 commission review and determination under this section, the commission shall:

36190 (a) issue an order:

36191 (i) determining that the energy utility should proceed with the implementation of the
36192 resource decision;

36193 (ii) making findings as to the total projected costs of the approved resource decision;

36194 and

36195 (iii) stating the basis upon which the findings described in Subsection (2)(a)(ii) are
36196 made; or

36197 (b) issue an order determining that the energy utility should not proceed with the
36198 implementation of the resource decision.

36199 (3) If the commission determines that the energy utility should proceed with the
36200 implementation of the approved resource decision, the commission shall, in a general rate case
36201 or other appropriate commission proceeding, include in the energy utility's retail rates the state's
36202 share of costs:

36203 (a) relevant to that proceeding;

36204 (b) incurred by the energy utility in implementing the approved resource decision; and

36205 (c) up to the projected costs as specified in the commission's order issued under

36206 Subsection (2)(a).

36207 (4) If the commission determines that the energy utility should not proceed with the
36208 implementation of the approved resource decision, the commission shall, in a general rate case
36209 or other appropriate commission proceeding, include in the energy utility's retail rates the state's
36210 share of costs:

36211 (a) relevant to that proceeding; and

36212 (b) incurred by the energy utility in implementing the approved resource decision before
36213 issuance of a determination not to proceed, including any prudently incurred costs of
36214 terminating the approved resource decision.

36215 (5) A commission order under this section not to proceed with the implementation of a
36216 resource decision may not prejudice:

36217 (a) the right of an energy utility to:

36218 (i) continue to implement the resource decision; and

36219 (ii) seek recovery of costs incurred after a determination not to proceed in a future rate
36220 proceeding; or

36221 (b) the right of any other party to support or oppose the recovery sought under

36222 Subsection (5)(a)(ii).

36223 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

36224 Administrative Rulemaking Act, the commission shall make rules regarding the process for the
36225 commission's review and determination on a request for an order to proceed under this section.

36226 Section 811. Section **54-17-501** is amended to read:

36227 **54-17-501. Waiver of requirement for solicitation or approval.**

36228 (1) An affected electrical utility may obtain a waiver of the requirement that it conduct a
36229 solicitation process under Part 2, Solicitation Process, or the requirement that it obtain approval
36230 of a significant energy resource decision under Part 3, Resource Plans and Significant Energy
36231 Resource Approval, if the commission determines that waiving the requirement is in the public
36232 interest because there exists:

36233 (a) a clear emergency;

36234 (b) a time-limited commercial or technical opportunity that provides value to the
36235 customers of the affected electrical utility; or

36236 (c) any other factor that makes waiving the requirement in the public interest.

36237 (2) To obtain a finding from the commission under Subsection (1), the affected
36238 electrical utility shall, as soon as practicable after learning of the existence of a circumstance
36239 specified in Subsection (1):

36240 (a) file a verified application with the commission; and

36241 (b) serve an electronic and paper copy of the verified application, including all
36242 associated exhibits and attachments, on each person reflected on a list to be maintained and
36243 published by the commission on its Internet website that has requested service of waiver
36244 requests and has signed a generic protective order issued by the commission limiting the use of
36245 information contained in or attached to a waiver request.

36246 (3) A verified application filed pursuant to Subsection (2) shall:

36247 (a) identify any waiver requested;

36248 (b) explain the basis for each waiver requested;

36249 (c) specify any time sensitivity associated with the verified application;

36250 (d) explain why the waiver requested is in the public interest; and

36251 (e) contain other information required by the commission by rule made in accordance
36252 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

36253 (4) Upon receipt of a verified application filed under Subsection (2), the commission
36254 shall, before the end of the next business day, provide public notice of a technical conference to
36255 be held no sooner than three business days and no later than seven calendar days following the
36256 day on which the verified application is filed and served.

36257 (5) (a) At the technical conference held under Subsection (4), the affected electrical
36258 utility shall provide adequate support for its verified application and shall respond to questions
36259 of the commission, an independent evaluator if one is participating, and any other interested
36260 person.

36261 (b) The commission shall prepare and retain a transcript of the technical conference.

36262 (6) No less than three business days and no more than seven calendar days following
36263 the technical conference, the independent evaluator and any interested person may file and serve
36264 comments concerning the verified application.

36265 (7) The commission shall issue a written decision either granting, granting with
36266 conditions, or denying each waiver requested no later than seven calendar days following the
36267 deadline for the independent evaluator and any interested person to file comments under
36268 Subsection (6).

36269 (8) (a) If confidential or trade secret information is provided or used in the verified
36270 application, in the technical conference, in comments filed on the verified application or
36271 otherwise in the process, that information shall be clearly identified by the providing person as
36272 confidential and shall be provided on a confidential basis subject to the terms of a protective
36273 order issued by the commission.

36274 (b) (i) The commission shall issue a generic protective order to govern access to and
36275 use of confidential information in connection with a request for waiver under this part.

36276 (ii) Upon request by the affected electrical utility or any interested person, the
36277 commission may issue a supplemental protective order in connection with any verified
36278 application.

36279 (c) (i) The generic protective order and any supplemental protective order restrict use
36280 of confidential information to the proceeding on the verified application, however, use of the
36281 confidential information in the proceeding is not considered a competitive purpose under
36282 Subsection (8)(c)(ii).

36283 (ii) The generic protective order and any supplemental protective order shall forbid the
36284 use of confidential information for competitive purposes.

36285 (d) An interested person may gain access to and use confidential information in
36286 accordance with the terms of a protective order issued by the commission.

36287 (9) Notwithstanding the time frames in Subsections (4), (6), and (7), the commission:

36288 (a) shall take action or schedule proceedings as soon as reasonably practicable in light
36289 of the circumstances and urgency demonstrated by the verified application and any subsequent

36290 information provided during the process; and

36291 (b) may shorten or lengthen the time frames if the commission determines that changing
36292 them is warranted and in the public interest, except that a time frame may not be lengthened
36293 solely because an independent evaluator is not available to participate or to complete a
36294 recommendation.

36295 (10) If an affected electrical utility is granted a waiver to acquire or construct a
36296 significant energy resource in accordance with this section:

36297 (a) the provisions of Sections 54-17-303 and 54-17-304 do not apply to the significant
36298 energy resource decision;

36299 (b) any cost recovery that an affected electrical utility seeks in connection with that
36300 significant energy resource is subject to a future prudence review by the commission under
36301 Subsection 54-4-4(4); and

36302 (c) the waiver grant does not create any presumption that the affected electrical utility's
36303 action in acquiring or constructing a significant energy resource was prudent.

36304 (11) (a) Subject to Subsection (11)(b), the commission shall use reasonable efforts to
36305 have an independent evaluator available to participate in any application for a waiver under this
36306 part.

36307 (b) The commission may decline to use an independent evaluator in the consideration of
36308 a waiver application if the commission determines the use of an independent evaluator is:

36309 (i) not appropriate under the circumstances;

36310 (ii) not available under terms or conditions the commission considers reasonable; or

36311 (iii) not available to participate or complete a recommendation within any time frame
36312 established under Subsection (4), (6), (7), or (9).

36313 (c) The validity of an order entered under this part is not affected by:

36314 (i) the unavailability of an independent evaluator; or

36315 (ii) the failure of an independent evaluator to participate or complete a recommendation
36316 within any time frame established under Subsection (4), (6), (7), or (9).

36317 (12) The commission shall issue a generic protective order as provided in Subsections

36318 (2)(b) and (8)(b).

36319 (13) By September 1, 2007, the commission shall, in accordance with [~~Title 63, Chapter~~
36320 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, make rules concerning the
36321 process for obtaining a waiver of the solicitation or approval process consistent with this
36322 section.

36323 Section 812. Section **56-1-22.5** is amended to read:

36324 **56-1-22.5. Procedures -- Adjudicative proceedings.**

36325 The Public Service Commission shall comply with the procedures and requirements of
36326 [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
36327 proceedings.

36328 Section 813. Section **56-2-8** is amended to read:

36329 **56-2-8. Contents of livestock owners' application for fencing.**

36330 In addition to the information required by [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4,
36331 Administrative Procedures Act, the request for agency action shall:

36332 (1) identify the lands;

36333 (2) identify the name and address of the owner of the lands;

36334 (3) if any of the lands are owned by the United States or the state of Utah, designate the
36335 agency or department of government that administers the lands;

36336 (4) identify the nature of the right of each petitioner to drive, range, or graze sheep,
36337 cattle, horses, or mules on the lands; and

36338 (5) specify the ownership of the railroad sought to be fenced.

36339 Section 814. Section **57-11-3.5** is amended to read:

36340 **57-11-3.5. Procedures -- Adjudicative proceedings.**

36341 The Division of Real Estate shall comply with the procedures and requirements of [~~Title~~
36342 ~~63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
36343 proceedings.

36344 Section 815. Section **57-11-10** is amended to read:

36345 **57-11-10. Renewal report -- Renewal fee -- Examination by division -- Annual**

36346 reports.

36347 (1) (a) Within 30 days after each annual anniversary date of the division's registration of
36348 subdivided lands, the subdivider shall file a renewal report in the form prescribed by the division
36349 together with a renewal fee of \$200.

36350 (b) The report shall reflect any material changes in information contained in the original
36351 application for registration, including any change in ownership of the subdivider.

36352 (c) The report shall also indicate the number of units in the subdivision that have been
36353 disposed of since the division registered the subdivided lands.

36354 (2) (a) The division may, upon the filing of a renewal report, initiate a renewal
36355 examination of the kind described in Section 57-11-8.

36356 (b) If the division determines upon inquiry and examination that any of the requirements
36357 of Section 57-11-8 have not been met, it shall notify the subdivider that the report, the
36358 promotional plan, or the plan of disposition must be corrected within 20 days or any additional
36359 time allowed by the division.

36360 (c) If the requirements are not met within the time allowed, the division may,
36361 notwithstanding the provisions of Section 57-11-13 and without further notice, issue a cease
36362 and desist order according to the emergency procedures of [~~Title 63, Chapter 46b~~] Title 63G,
36363 Chapter 4, Administrative Procedures Act, barring further sale of the subdivided lands.

36364 (3) The division may permit the filing of annual reports within 30 days after the
36365 anniversary date of the consolidated registration in lieu of the anniversary date of the original
36366 registration.

36367 Section 816. Section **57-11-13** is amended to read:

36368 **57-11-13. Enforcement powers of division -- Cease and desist orders.**

36369 (1) (a) If the director has reason to believe that any person has been or is engaging in
36370 conduct violating this chapter, or has violated any lawful order or rule of the division, [~~he~~] the
36371 director shall issue and serve upon the person a cease and desist order and may also order the
36372 person to take such affirmative actions the director determines will carry out the purposes of
36373 this chapter.

36374 (b) The person served may request an adjudicative proceeding within ten days after
36375 receiving the order.

36376 (c) The cease and desist order remains in effect pending the hearing.

36377 (d) The division shall follow the procedures and requirements of [~~Title 63, Chapter 46b~~]
36378 Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.

36379 (2) (a) After the hearing the director may issue an order making the cease and desist
36380 order permanent if the director finds there has been a violation of this chapter.

36381 (b) If no hearing is requested and the person served does not obey the director's order,
36382 the director shall file suit in the name of the Department of Commerce and the Division of Real
36383 Estate to enjoin the person from violating this chapter. The action shall be filed in the district
36384 court in the county in which the conduct occurred or where the person resides or carries on
36385 business.

36386 (3) The remedies and action provided in this section may not interfere with or prevent
36387 the prosecution of any other remedies or actions including criminal prosecutions.

36388 Section 817. Section **57-11-14** is amended to read:

36389 **57-11-14. Revocation, suspension, or denial of registration -- Grounds --**
36390 **Suspension or revocation of real estate license.**

36391 (1) (a) The division may deny an application for registration or may revoke, suspend, or
36392 deny reissuance of a registration, or may impose a fine of not more than \$500 per violation, by
36393 following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
36394 Administrative Procedures Act, and by making a written finding of fact that the subdivider has:

36395 (i) failed to comply with the terms of a cease and desist order;

36396 (ii) been convicted in any court prior or subsequent to the filing of the application for
36397 registration of a crime involving fraud, deception, false pretenses, misrepresentation, false
36398 advertising, or dishonest dealing in real estate transactions, or has been subject to any injunction
36399 or administrative order restraining a false or misleading promotional plan involving land
36400 dispositions, and that the public interest requires revocation;

36401 (iii) disposed of, concealed, or diverted any funds or assets of any person so as to defeat

36402 the rights of subdivision purchasers;

36403 (iv) failed to perform faithfully any stipulation or agreement made with the division as
 36404 an inducement to grant any registration, to reinstate any registration, to revoke any cease and
 36405 desist order, or to approve any promotional plan or public offering statement;

36406 (v) made intentional misrepresentations, or concealed material facts, in an application
 36407 for registration;

36408 (vi) violated any provision of this chapter or the rules adopted under this chapter;

36409 (vii) directly or through an agent or employee knowingly engaged in any false,
 36410 deceptive, or misleading advertising, promotional, or sales methods to offer or dispose of an
 36411 interest in subdivided lands;

36412 (viii) engaged in the offering of subdivided lands which has constituted or which may
 36413 constitute a fraud upon purchasers or prospective purchasers of the lands; or

36414 (ix) engaged in dishonest practices in any industry involving sales to consumers.

36415 (b) Findings of fact shall be accompanied by a concise and explicit statement of the
 36416 underlying facts supporting the findings.

36417 (2) As an alternative to revoking the registration of a subdivider, the director may issue
 36418 a cease and desist order if after notice and a hearing [~~he~~] the director finds that the subdivider is
 36419 guilty of a violation for which revocation may be ordered.

36420 (3) Any real estate broker or salesman violating any provisions of this chapter shall have
 36421 [~~his~~] the real estate broker or salesman's license suspended or revoked by the division for the
 36422 period of time the director determines to be justified under the circumstances. The suspension
 36423 or revocation shall be in addition to any other penalty which may be imposed under this chapter,
 36424 subject to the provisions of Section 61-2-12.

36425 Section 818. Section **57-12-9** is amended to read:

36426 **57-12-9. Rules of displacing agency.**

36427 (1) (a) A displacing agency may enact rules to assure that:

36428 (i) the payments and assistance authorized by this chapter are administered in a manner
 36429 that is fair, reasonable, and as uniform as practicable;

36430 (ii) a displaced person who makes proper application for a payment authorized by this
36431 chapter is paid promptly after a move or, in hardship cases, is paid in advance; and

36432 (iii) any person aggrieved by a determination as to eligibility for a payment authorized
36433 by this chapter, or the amount of a payment, may have the person's application reviewed by the
36434 head of the displacing agency.

36435 (b) Each displacing agency that has not adopted rules under Subsection (1)(a) shall
36436 comply with the rules promulgated by the Utah Department of Transportation relating to
36437 displaced persons in right-of-way acquisitions.

36438 (2) Each displacing agency shall comply with the procedures and requirements of [~~Title~~
36439 ~~63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
36440 proceedings.

36441 Section 819. Section **57-19-20** is amended to read:

36442 **57-19-20. Injunctive relief -- Cease and desist order.**

36443 (1) Whenever it appears to the director that any person has engaged or is about to
36444 engage in any act or practice constituting a violation of any provision of this chapter, and that it
36445 would be in the public interest to stop those acts or practices, the director may either:

36446 (a) seek injunctive relief as provided in Rule 65A, Utah Rules of Civil Procedure; or

36447 (b) issue an administrative cease and desist order.

36448 (2) If an administrative cease and desist order is issued pursuant to Subsection (1), the
36449 person upon whom the order is served may, within ten days after receiving the order, request
36450 that a hearing be held before an administrative law judge. If a request for a hearing is made, the
36451 division shall follow the procedures and requirements of [~~Title 63, Chapter 46b]~~ Title 63G,
36452 Chapter 4, Administrative Procedures Act. Pending the hearing, the order remains in effect.

36453 (3) If, at the hearing, a finding is made that there has been a violation of this chapter,
36454 the director, with the concurrence of the executive director, may issue an order making the
36455 cease and desist order permanent. If no hearing is requested, and if the person fails to cease the
36456 act or practice, or after discontinuing the act or practice again commences it, the director shall
36457 file suit in the district court of the county in which the act or practice occurred, or where the

36458 person resides or carries on business, to enjoin and restrain the person from violating this
36459 chapter.

36460 (4) Whether or not the director has issued a cease and desist order, the attorney
36461 general, in the name of the state or of the director, may bring an action in any court of
36462 competent jurisdiction to enjoin any act or practice constituting a violation of any provision of
36463 this chapter, and to enforce compliance with this chapter or any rule or order under this chapter.
36464 Upon a proper showing, a permanent or temporary injunction, restraining order, or writ of
36465 mandamus shall be granted.

36466 Section 820. Section **57-21-2** is amended to read:

36467 **57-21-2. Definitions.**

36468 As used in this chapter:

36469 (1) "Aggrieved person" includes any person who:

36470 (a) claims to have been injured by a discriminatory housing practice; or

36471 (b) believes that ~~he~~ the person will be injured by a discriminatory housing practice that
36472 is about to occur.

36473 (2) "Commission" means the Labor Commission.

36474 (3) "Complainant" means an aggrieved person, including the director, who has
36475 commenced a complaint with the division.

36476 (4) "Conciliation" means the attempted resolution of issues raised by a complaint of
36477 discriminatory housing practices by the investigation of the complaint through informal
36478 negotiations involving the complainant, the respondent, and the division.

36479 (5) "Conciliation agreement" means a written agreement setting forth the resolution of
36480 the issues in conciliation.

36481 (6) "Conciliation conference" means the attempted resolution of issues raised by a
36482 complaint or by the investigation of a complaint through informal negotiations involving the
36483 complainant, the respondent, and the division. The conciliation conference is not subject to
36484 ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

36485 (7) "Covered multifamily dwellings" means:

36486 (a) buildings consisting of four or more dwelling units if the buildings have one or more
36487 elevators; and

36488 (b) ground floor units in other buildings consisting of four or more dwelling units.

36489 (8) "Director" means the director of the division or a designee.

36490 (9) (a) "Disability" means a physical or mental impairment that substantially limits one
36491 or more of a person's major life activities, including a person having a record of such an
36492 impairment or being regarded as having such an impairment.

36493 (b) "Disability" does not include current illegal use of, or addiction to, any federally
36494 controlled substance, as defined in Section 102 of the Controlled Substances Act, 21 U.S.C.
36495 802.

36496 (10) "Discriminate" includes segregate or separate.

36497 (11) "Discriminatory housing practice" means an act that is unlawful under this chapter.

36498 (12) "Division" means the Division of Antidiscrimination and Labor established under
36499 the commission.

36500 (13) (a) "Dwelling" means any building or structure, or a portion of a building or
36501 structure, occupied as, or designed or intended for occupancy as, a residence of one or more
36502 families.

36503 (b) "Dwelling" also includes vacant land that is offered for sale or lease for the
36504 construction or location of a dwelling as described in Subsection (13)(a).

36505 (14) (a) "Familial status" means one or more individuals who have not attained the age
36506 of 18 years being domiciled with:

36507 (i) a parent or another person having legal custody of the individual or individuals; or

36508 (ii) the designee of the parent or other person having custody, with the written
36509 permission of the parent or other person.

36510 (b) The protections afforded against discrimination on the basis of familial status shall
36511 apply to any person who:

36512 (i) is pregnant;

36513 (ii) is in the process of securing legal custody of any individual who has not attained the

36514 age of 18 years; or

36515 (iii) is a single individual.

36516 (15) "National origin" means the place of birth of an individual or of any lineal
36517 ancestors.

36518 (16) "Person" includes one or more individuals, corporations, limited liability
36519 companies, partnerships, associations, labor organizations, legal representatives, mutual
36520 companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in
36521 cases under the United States Bankruptcy Code, receivers, and fiduciaries.

36522 (17) "Presiding officer" has the same meaning as provided in Section [~~63-46b-2~~]
36523 63G-4-103.

36524 (18) "Real estate broker" or "salesperson" means a principal real estate broker, an
36525 associate real estate broker, or a real estate sales agent as those terms are defined in Section
36526 61-2-2.

36527 (19) "Respondent" means a person against whom a complaint of housing discrimination
36528 has been initiated.

36529 (20) "Sex" means gender and includes pregnancy, childbirth, and disabilities related to
36530 pregnancy or childbirth.

36531 (21) "Source of income" means the verifiable condition of being a recipient of federal,
36532 state, or local assistance, including medical assistance, or of being a tenant receiving federal,
36533 state, or local subsidies, including rental assistance or rent supplements.

36534 Section 821. Section **57-21-8** is amended to read:

36535 **57-21-8. Jurisdiction -- Department -- Division.**

36536 (1) The commission has jurisdiction over the subject of housing discrimination under
36537 this chapter and may delegate the responsibility of receiving, processing, and investigating
36538 allegations of discriminatory housing practices and enforcing this chapter to the division.

36539 (2) The commission may:

36540 (a) adopt rules necessary to administer this chapter in accordance with [~~Title 63,~~
36541 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

36542 (b) appoint and prescribe the duties of investigators, legal counsel, and other employees
36543 and agents that it considers necessary for the enforcement of this chapter; and

36544 (c) issue subpoenas to compel the attendance of witnesses or the production of
36545 evidence for use in any investigation, conference, or hearing conducted by the division, and if a
36546 person fails to comply with such a subpoena, petition a court of competent jurisdiction for an
36547 order to show cause why that person should not be held in contempt.

36548 (3) The division:

36549 (a) may receive, reject, investigate, and determine complaints alleging discriminatory
36550 housing practices prohibited by this chapter;

36551 (b) shall attempt conciliation between the parties through informal efforts, conference,
36552 persuasion, or other reasonable methods for the purposes of resolving the complaint;

36553 (c) may seek prompt judicial action for appropriate temporary or preliminary relief
36554 pending final disposition of a complaint if the division and the commission conclude that such an
36555 action is necessary to carry out the purposes of this chapter;

36556 (d) may, with the commission, initiate a civil action in a court of competent jurisdiction
36557 to:

36558 (i) enforce the rights granted or protected under this chapter;

36559 (ii) seek injunctive or other equitable relief, including temporary restraining orders,
36560 preliminary injunctions, or permanent injunctions;

36561 (iii) seek damages; and

36562 (iv) enforce final commission orders on the division's own behalf or on behalf of another
36563 person in order to carry out the purposes of this chapter;

36564 (e) may initiate formal agency action under [~~Title 63, Chapter 46b~~] Title 63G, Chapter
36565 4, Administrative Procedures Act; and

36566 (f) may promote public awareness of the rights and remedies under this chapter by
36567 implementing programs to increase the awareness of landlords, real estate agents, and other
36568 citizens of their rights and responsibilities under the Utah Fair Housing Act, but may not solicit
36569 fair housing complaints or cases.

36570 Section 822. Section **57-21-9** is amended to read:

36571 **57-21-9. Procedure for an aggrieved person to file a complaint -- Conciliation --**
36572 **Investigation -- Determination.**

36573 (1) Any aggrieved person may file a written verified complaint with the division within
36574 180 days after an alleged discriminatory housing practice occurs.

36575 (2) (a) The commission shall adopt rules consistent with the provisions of 24 C.F.R.
36576 Sec. 115.3 (1990), relating to procedures under related federal law, to govern:

36577 (i) the form of the complaint;

36578 (ii) the form of any answer to the complaint;

36579 (iii) procedures for filing or amending a complaint or answer; and

36580 (iv) the form of notice to parties accused of the acts or omissions giving rise to the
36581 complaint.

36582 (b) The commission may, by rule, prescribe any other procedure pertaining to the
36583 division's processing of the complaint.

36584 (3) During the period beginning with the filing of the complaint and ending with the
36585 director's determination, the division shall, to the extent feasible, engage in conciliation with
36586 respect to the complaint.

36587 (4) The division shall commence proceedings to investigate and conciliate a complaint
36588 alleging a discriminatory housing practice within 30 days after the filing of the complaint. After
36589 the commencement of an investigation, any party may request that the commission review the
36590 proceedings to insure compliance with the requirements of this chapter.

36591 (5) The division shall complete the investigation within 100 days after the filing of the
36592 complaint, unless it is impracticable to do so. If the division is unable to complete the
36593 investigation within 100 days after the filing of the complaint, the division shall notify the
36594 complainant and respondent in writing of the reasons for the delay.

36595 (6) (a) If, as a result of the division's investigation, the director determines that there is
36596 no reasonable cause to support the allegations in the complaint, the director shall issue a written
36597 determination dismissing the complaint.

36598 (b) If the director dismisses the complaint pursuant to Subsection (6)(a), the
36599 complainant may request that the director reconsider the dismissal pursuant to Section
36600 [~~63-46b-13~~] 63G-4-302.

36601 (c) Notwithstanding the provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
36602 Administrative Procedures Act, the director's determination to dismiss a complaint or, in the
36603 case of a request for reconsideration, the director's order denying reconsideration is not subject
36604 to further agency action or direct judicial review. However, the complainant may commence a
36605 private action pursuant to Section 57-21-12.

36606 (7) If, as a result of the division's investigation of a complaint, the director determines
36607 that there is reasonable cause to support the allegations in the complaint, all of the following
36608 apply:

36609 (a) The division shall informally endeavor to eliminate or correct the discriminatory
36610 housing practice through a conciliation conference between the parties, presided over by the
36611 division. Nothing said or done in the course of the conciliation conference may be made public
36612 or admitted as evidence in a subsequent proceeding under this chapter without the written
36613 consent of the parties concerned.

36614 (b) If the conciliation conference results in voluntary compliance with this chapter, a
36615 conciliation agreement setting forth the resolution of the issues shall be executed by the parties
36616 and approved by the division. The parties may enforce the conciliation agreement in an action
36617 filed in a court of competent jurisdiction.

36618 (c) If the division is unable to obtain a conciliation agreement, the director shall issue a
36619 written determination stating the director's findings and ordering any appropriate relief under
36620 Section 57-21-11.

36621 Section 823. Section **57-21-10** is amended to read:

36622 **57-21-10. Judicial election or formal adjudicative hearing.**

36623 (1) If, pursuant to Subsection 57-21-9(7)(c), the director issues a written determination
36624 finding reasonable cause to believe that a discriminatory housing practice has occurred, or is
36625 about to occur, a respondent may obtain de novo review of the determination by submitting a

36626 written request for a formal adjudicative hearing to be conducted by the commission's Division
36627 of Adjudication in accordance with Title 34A, Chapter 1, Part 3, Adjudicative Proceedings, to
36628 the director within 30 days from the date of issuance of the determination. If the director does
36629 not receive a timely request for review, the director's determination becomes the final order of
36630 the commission and is not subject to further agency action or direct judicial review.

36631 (2) If a respondent files a timely request for review pursuant to Subsection (1):

36632 (a) any respondent, complainant, or aggrieved party may elect to have the de novo
36633 review take place in a civil action in the district court rather than in a formal adjudicative
36634 hearing with the Division of Adjudication by filing an election with the commission in
36635 accordance with rules established by the commission pursuant to [~~Title 63, Chapter 46a~~] Title
36636 63G, Chapter 3, Utah Administrative Rulemaking Act, regarding the form and time period for
36637 the election;

36638 (b) the complainant shall file a complaint for review in the forum selected pursuant to
36639 Subsection (2)(a) within 30 days after the completion of the forum selection process; and

36640 (c) the commission shall determine whether the director's determination is supported by
36641 substantial evidence.

36642 (3) If, pursuant to Subsection (2)(c), the commission determines that the director's
36643 determination is supported by substantial evidence, the commission shall provide legal
36644 representation on behalf of the aggrieved person, including the filing of a complaint for review
36645 as required by Subsection (2)(b), to support and enforce the director's determination in the de
36646 novo review proceeding. Notwithstanding any provisions of [~~Title 63, Chapter 46b~~] Title 63G,
36647 Chapter 4, Administrative Procedures Act, the commission's determination regarding the
36648 existence or nonexistence of substantial evidence to support the director's determination is not
36649 subject to further agency action or direct judicial review.

36650 (4) Upon timely application, an aggrieved person may intervene with respect to the
36651 issues to be determined in a formal adjudicative hearing or in a civil action brought under this
36652 section.

36653 (5) If a formal adjudicative hearing is elected, all of the following apply:

36654 (a) The presiding officer shall commence the formal adjudicative hearing within 150
36655 days after the respondent files a request for review of the director's determination unless it is
36656 impracticable to do so.

36657 (b) The investigator who investigated the matter may not participate in the formal
36658 adjudicative hearing, except as a witness, nor may the investigator participate in the
36659 deliberations of the presiding officer.

36660 (c) Any party to the complaint may file a written request to the Division of Adjudication
36661 for review of the presiding officer's order in accordance with Section [~~63-46b-12~~] 63G-4-301
36662 and Title 34A, Chapter 1, Part 3, Adjudicative Proceedings.

36663 (d) A final order of the commission under this section is subject to judicial review as
36664 provided in Section [~~63-46b-16~~] 63G-4-403 and Title 34A, Chapter 1, Part 3, Adjudicative
36665 Proceedings.

36666 (6) If a civil action is elected, the commission is barred from continuing or commencing
36667 any adjudicative proceeding in connection with the same claims under this chapter.

36668 (7) The commission shall make final administrative disposition of the complaint alleging
36669 a discriminatory housing practice within one year after the filing of the complaint, unless it is
36670 impracticable to do so. If the commission is unable to make final administrative disposition
36671 within one year, the commission shall notify the complainant, respondent, and any other
36672 interested party in writing of the reasons for the delay.

36673 Section 824. Section **57-23-8** is amended to read:

36674 **57-23-8. Enforcement powers of division -- Cease and desist orders.**

36675 (1) (a) If the director has reason to believe that any person has been or is engaging in
36676 conduct violating this chapter, or has violated any lawful order or rule of the division, [~~he~~] the
36677 director shall issue and serve upon the person a cease and desist order. [~~He~~] The director may
36678 also order the person to take whatever affirmative actions the director determines to be
36679 necessary to carry out the purposes of this chapter.

36680 (b) The person served with an order under Subsection (1)(a) may request an
36681 adjudicative proceeding within ten days after receiving the order. The cease and desist order

36682 remains in effect pending the hearing.

36683 (c) The division shall follow the procedures and requirements of [~~Title 63, Chapter 46b~~]
36684 Title 63G, Chapter 4, Administrative Procedures Act, if the person served requests a hearing.

36685 (2) (a) After the hearing the director may issue a final order making the cease and desist
36686 order permanent if the director finds there has been a violation of this chapter.

36687 (b) If no hearing is requested and the person served does not obey the director's order,
36688 the director may file suit in the name of the Department of Commerce and the Division of Real
36689 Estate to enjoin the person from violating this chapter. The action shall be filed in the district
36690 court in the county in which the conduct occurred, where the person served with the cease and
36691 desist order either resides or carries on business.

36692 (3) The remedies and action provided in this section are not exclusive but are in
36693 addition to any other remedies or actions available under Section 57-23-10.

36694 Section 825. Section **57-24-101** is amended to read:

36695 **57-24-101. Definitions.**

36696 As used in this chapter:

36697 (1) (a) "Flag" means a depiction or emblem:

36698 (i) (A) of the flag of the United States as provided in United States Code Title 4,
36699 Chapter 1, The Flag; or

36700 (B) of the state flag of Utah as provided in Section [~~63-13-5~~] 63G-1-501;

36701 (ii) made from fabric or cloth; and

36702 (iii) with measurements that do not exceed three feet by five feet.

36703 (b) "Flag" does not include a depiction or emblem made from:

36704 (i) lights;

36705 (ii) paint;

36706 (iii) roofing;

36707 (iv) siding;

36708 (v) paving materials;

36709 (vi) flora;

- 36710 (vii) balloons; or
- 36711 (viii) any other building, landscaping, or decorative component.
- 36712 (2) "Resident" means:
- 36713 (a) a renter as defined in Section 57-22-2;
- 36714 (b) a resident as defined in Section 57-16-3; or
- 36715 (c) a unit owner as defined in Section 57-8-3.
- 36716 (3) "Residential property management authority" means:
- 36717 (a) an owner as defined in Section 57-22-2;
- 36718 (b) a mobile home park as defined in Section 57-16-3;
- 36719 (c) a mobile home park residents' association established in accordance with Section
- 36720 57-16-16;
- 36721 (d) an association of unit owners as defined in Section 57-8-3; or
- 36722 (e) a management committee as defined in Section 57-8-3.
- 36723 Section 826. Section **57-25-109** is amended to read:
- 36724 **57-25-109. Duration -- Amendment by court action.**
- 36725 (1) An environmental covenant is perpetual unless it is:
- 36726 (a) (i) limited to a specific duration by its terms; or
- 36727 (ii) terminated by the occurrence of a specific event;
- 36728 (b) terminated by consent under Section 57-25-110;
- 36729 (c) terminated under Subsection (2);
- 36730 (d) terminated by foreclosure of an interest that has priority over the environmental
- 36731 covenant; or
- 36732 (e) terminated or modified in an eminent domain proceeding, but only if:
- 36733 (i) the agency that signed the covenant is a party to the proceeding;
- 36734 (ii) all persons identified in Subsections 57-25-110(1) and (2) are given notice of the
- 36735 pendency of the proceeding; and
- 36736 (iii) the court determines, after hearing, that the termination or modification will not
- 36737 adversely affect human health or the environment.

36738 (2) (a) If the agency that signed an environmental covenant has determined that the
36739 intended benefits of the covenant can no longer be realized, a court, under the doctrine of
36740 changed circumstances, in an action in which all persons identified in Subsections 57-25-110(1)
36741 and (2) have been given notice, may terminate the covenant or reduce its burden on the real
36742 property subject to the covenant.

36743 (b) The Department of Environmental Quality's determination under Subsection (2)(a)
36744 or its failure to make a determination upon request is subject to review under [~~Title 63, Chapter~~
36745 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

36746 (c) A federal agency's determination under Subsection (2)(a) or its failure to make a
36747 determination upon request is subject to review under applicable federal law.

36748 (3) Except as otherwise provided in Subsections (1) and (2), an environmental covenant
36749 may not be extinguished, limited, or impaired through issuance of a tax deed, foreclosure of a
36750 tax lien, or application of the doctrine of adverse possession, prescription, abandonment,
36751 waiver, lack of enforcement, or acquiescence, or a similar doctrine.

36752 (4) An environmental covenant may not be extinguished, limited, or impaired by
36753 application of Title 57, Chapter 9, Marketable Record Title.

36754 Section 827. Section **58-1-106** is amended to read:

36755 **58-1-106. Division -- Duties, functions, and responsibilities.**

36756 (1) The duties, functions, and responsibilities of the division include the following:

36757 (a) prescribing, adopting, and enforcing rules to administer this title;

36758 (b) investigating the activities of any person whose occupation or profession is
36759 regulated or governed by the laws and rules administered and enforced by the division;

36760 (c) subpoenaing witnesses, taking evidence, and requiring by subpoena duces tecum the
36761 production of any books, papers, documents, records, contracts, recordings, tapes,
36762 correspondence, or information relevant to an investigation upon a finding of sufficient need by
36763 the director or by [~~his~~] the director's designee;

36764 (d) taking administrative and judicial action against persons in violation of the laws and
36765 rules administered and enforced by the division, including the issuance of cease and desist

36766 orders;

36767 (e) seeking injunctions and temporary restraining orders to restrain unauthorized

36768 activity;

36769 (f) giving public notice of board meetings;

36770 (g) keeping records of board meetings, proceedings, and actions and making those

36771 records available for public inspection upon request;

36772 (h) issuing, refusing to issue, revoking, suspending, renewing, refusing to renew, or

36773 otherwise acting upon any license;

36774 (i) preparing and submitting to the governor and the Legislature an annual report of the

36775 division's operations, activities, and goals;

36776 (j) preparing and submitting to the executive director a budget of the expenses for the

36777 division;

36778 (k) establishing the time and place for the administration of examinations; and

36779 (l) preparing lists of licensees and making these lists available to the public at cost upon

36780 request unless otherwise prohibited by state or federal law.

36781 (2) The division may not include home telephone numbers or home addresses of

36782 licensees on the lists prepared under Subsection (1)(l), except as otherwise provided by rules of

36783 the division made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

36784 Administrative Rulemaking Act.

36785 (3) (a) The division may provide the home address or home telephone number of a

36786 licensee on a list prepared under Subsection (1) upon the request of an individual who provides

36787 proper identification and the reason for the request, in writing, to the division.

36788 (b) A request under Subsection (3)(a) is limited to providing information on only one

36789 licensee per request.

36790 (c) The division shall provide, by rule, what constitutes proper identification under

36791 Subsection (3)(a).

36792 Section 828. Section **58-1-108** is amended to read:

36793 **58-1-108. Adjudicative proceedings.**

36794 (1) The division and all boards created under the authority of this title shall comply with
36795 the procedures and requirements of Title 13, Chapter 1, Department of Commerce, and [~~Title~~
36796 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in all of their
36797 adjudicative proceedings as defined by Subsection [~~63-46b-2~~] 63G-4-103(1).

36798 (2) Before proceeding under Section [~~63-46b-20~~] 63G-4-502, the division shall review
36799 the proposed action with a committee of no less than three licensees appointed by the chairman
36800 of the licensing board created under this title for the profession of the person against whom the
36801 action is proposed.

36802 (3) Notwithstanding [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
36803 Procedures Act, a warning or final disposition letter which does not constitute disciplinary
36804 action against the addressee, issued in response to a complaint of unprofessional or unlawful
36805 conduct under this title, does not constitute an adjudicative proceeding.

36806 Section 829. Section **58-1-109** is amended to read:

36807 **58-1-109. Presiding officers -- Content of orders -- Recommended orders -- Final**
36808 **orders -- Appeal of orders.**

36809 (1) Unless otherwise specified by statute or rule, the presiding officer for adjudicative
36810 proceedings before the division shall be the director. However, pursuant to [~~Title 63, Chapter~~
36811 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, the director may designate in writing
36812 an individual or body of individuals to act as presiding officer to conduct or to assist the
36813 director in conducting any part or all of an adjudicative proceeding.

36814 (2) Unless otherwise specified by the director, an administrative law judge shall be
36815 designated as the presiding officer to conduct formal adjudicative proceedings in accordance
36816 with Subsection [~~63-46b-1~~] 63G-4-102(4), Sections [~~63-46b-6~~] 63G-4-204 through [~~63-46b-9~~]
36817 63G-4-207, and [~~63-46b-11~~] 63G-4-209.

36818 (3) Unless otherwise specified by the director, the licensing board of the occupation or
36819 profession that is the subject of the proceedings shall be designated as the presiding officer to
36820 serve as fact finder at the evidentiary hearing in a formal adjudicative proceeding.

36821 (4) At the close of an evidentiary hearing in an adjudicative proceeding, unless

36822 otherwise specified by the director, the presiding officer who served as the fact finder at the
36823 hearing shall issue a recommended order based upon the record developed at the hearing
36824 determining all issues pending before the division.

36825 (5) (a) The director shall issue a final order affirming the recommended order or
36826 modifying or rejecting all or any part of the recommended order and entering new findings of
36827 fact, conclusions of law, statement of reasons, and order based upon the director's personal
36828 attendance at the hearing or a review of the record developed at the hearing. Before modifying
36829 or rejecting a recommended order, the director shall consult with the presiding officer who
36830 issued the recommended order.

36831 (b) If the director issues a final order modifying or rejecting a recommended order, the
36832 licensing board of the occupation or profession that is the subject of the proceeding may, by a
36833 two-thirds majority vote of all board members, petition the executive director or designee within
36834 the department to review the director's final order. The executive director's decision shall
36835 become the final order of the division. This subsection does not limit the right of the parties to
36836 appeal the director's final order by filing a request for agency review under Subsection (8).

36837 (6) If the director is unable for any reason to rule upon a recommended order of a
36838 presiding officer, the director may designate another person within the division to issue a final
36839 order.

36840 (7) If the director or ~~his~~ the director's designee does not issue a final order within 20
36841 calendar days after the date of the recommended order of the presiding officer, the
36842 recommended order becomes the final order of the director or ~~his~~ the director's designee.

36843 (8) The final order of the director may be appealed by filing a request for agency review
36844 with the executive director or ~~his~~ the executive director's designee within the department.

36845 (9) The content of all orders shall comply with the requirements of Subsection
36846 ~~[63-46b-5]~~ 63G-4-203(1)(i) and Sections ~~[63-46b-10]~~ 63G-4-208 and ~~[63-46b-11]~~ 63G-4-209.

36847 Section 830. Section **58-1-301** is amended to read:

36848 **58-1-301. License application -- Licensing procedure.**

36849 (1) (a) Each license applicant shall apply to the division in writing upon forms available

36850 from the division. Each completed application shall contain documentation of the particular
36851 qualifications required of the applicant, shall include the applicant's Social Security number,
36852 shall be verified by the applicant, and shall be accompanied by the appropriate fees.

36853 (b) An applicant's Social Security number is a private record under Subsection
36854 [~~63-2-302~~] 63G-2-302(1)(h).

36855 (2) (a) A license shall be issued to an applicant who submits a complete application if
36856 the division determines that the applicant meets the qualifications of licensure.

36857 (b) A written notice of additional proceedings shall be provided to an applicant who
36858 submits a complete application, but who has been, is, or will be placed under investigation by
36859 the division for conduct directly bearing upon ~~[his]~~ the applicant's qualifications for licensure, if
36860 the outcome of additional proceedings is required to determine the division's response to the
36861 application.

36862 (c) A written notice of denial of licensure shall be provided to an applicant who submits
36863 a complete application if the division determines that the applicant does not meet the
36864 qualifications of licensure.

36865 (d) A written notice of incomplete application and conditional denial of licensure shall
36866 be provided to an applicant who submits an incomplete application. This notice shall advise the
36867 applicant that the application is incomplete and that the application is denied, unless the
36868 applicant corrects the deficiencies within the time period specified in the notice and otherwise
36869 meets all qualifications for licensure.

36870 (3) Before any person is issued a license under this title, all requirements for that license
36871 as established under this title and by rule shall be met.

36872 (4) If all requirements are met for the specific license, the division shall issue the license.

36873 Section 831. Section **58-1-308** is amended to read:

36874 **58-1-308. Term of license -- Expiration of license -- Renewal of license --**

36875 **Reinstatement of license -- Application procedures.**

36876 (1) (a) Each license issued under this title shall be issued in accordance with a two-year
36877 renewal cycle established by rule.

36878 (b) A renewal period may be extended or shortened by as much as one year to maintain
36879 established renewal cycles or to change an established renewal cycle.

36880 (2) (a) The expiration date of a license shall be shown on the license.

36881 (b) A license that is not renewed prior to the expiration date shown on the license
36882 automatically expires.

36883 (c) A license automatically expires prior to the expiration date shown on the license
36884 upon the death of a licensee who is a natural person, or upon the dissolution of a licensee that is
36885 a partnership, corporation, or other business entity.

36886 (d) If the existence of a dissolved partnership, corporation, or other business entity is
36887 reinstated prior to the expiration date shown upon the entity's expired license issued by the
36888 division, the division shall, upon written application, reinstate the applicant's license, unless it
36889 finds that the applicant no longer meets the qualifications for licensure.

36890 (e) Expiration of licensure is not an adjudicative proceeding under [~~Title 63, Chapter~~
36891 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

36892 (3) (a) The division shall notify each licensee in accordance with procedures established
36893 by rule that the licensee's license is due for renewal and that unless an application for renewal is
36894 received by the division by the expiration date shown on the license, together with the
36895 appropriate renewal fee and documentation showing completion of or compliance with renewal
36896 qualifications, the license will not be renewed.

36897 (b) Examples of renewal qualifications which by statute or rule the division may require
36898 the licensee to document completion of or compliance with include:

36899 (i) continuing education;

36900 (ii) continuing competency;

36901 (iii) quality assurance;

36902 (iv) utilization plan and protocol;

36903 (v) financial responsibility;

36904 (vi) certification renewal; and

36905 (vii) calibration of equipment.

36906 (4) (a) (i) An application for renewal that complies with Subsection (3) is complete.

36907 (ii) A renewed license shall be issued to applicants who submit a complete application,
36908 unless it is apparent to the division that the applicant no longer meets the qualifications for
36909 continued licensure.

36910 (b) (i) The division may evaluate or verify documentation showing completion of or
36911 compliance with renewal requirements on an entire population or a random sample basis, and
36912 may be assisted by advisory peer committees.

36913 (ii) If necessary, the division may complete its evaluation or verification subsequent to
36914 renewal and, if appropriate, pursue action to suspend or revoke the license of a licensee who no
36915 longer meets the qualifications for continued licensure.

36916 (c) The application procedures specified in Subsection 58-1-301(2), apply to renewal
36917 applications to the extent they are not in conflict with this section.

36918 (5) (a) Any license that is not renewed may be reinstated at any time within two years
36919 after nonrenewal upon submission of an application for reinstatement, payment of the renewal
36920 fee together with a reinstatement fee determined by the department under Section ~~[63-38-3.2]~~
36921 63J-1-303, and upon submission of documentation showing completion of or compliance with
36922 renewal qualifications.

36923 (b) The application procedures specified in Subsection 58-1-301(2) apply to the
36924 reinstatement applications to the extent they are not in conflict with this section.

36925 (c) Except as otherwise provided by rule, a license that is reinstated no later than 120
36926 days after it expires shall be retroactively reinstated to the date it expired.

36927 (6) (a) If not reinstated within two years, the holder may obtain a license only if ~~[he]~~ the
36928 holder meets requirements provided by the division by rule or by statute for a new license.

36929 (b) Each licensee under this title who has been active in the licensed occupation or
36930 profession while in the full-time employ of the United States government or under license to
36931 practice that occupation or profession in any other state or territory of the United States may
36932 reinstate ~~[his]~~ the licensee's license without taking an examination by submitting an application
36933 for reinstatement, paying the current annual renewal fee and the reinstatement fee, and

36934 submitting documentation showing completion of or compliance with any renewal qualifications
36935 at any time within six months after reestablishing domicile within Utah or terminating full-time
36936 government service.

36937 Section 832. Section **58-1-402** is amended to read:

36938 **58-1-402. Administrative review -- Special appeals boards.**

36939 (1) (a) Any applicant who has been denied a license to practice on the basis of
36940 credentials, character, or failure to pass a required examination, or who has been refused
36941 renewal or reinstatement of a license to practice on the basis that the applicant does not meet
36942 qualifications for continued licensure in any occupation or profession under the jurisdiction of
36943 the division may submit a request for agency review to the executive director within 30 days
36944 following notification of the denial of a license or refusal to renew or reinstate a license.

36945 (b) The executive director shall determine whether the circumstances for denying an
36946 application for an initial license or for renewal or reinstatement of a license would justify calling
36947 a special appeals board under Subsection (2). The executive director's decision is not subject to
36948 agency review.

36949 (2) A special appeals board shall consist of three members appointed by the executive
36950 director as follows:

36951 (a) one member from the occupation or profession in question who is not on the board
36952 of that occupation or profession;

36953 (b) one member from the general public who is neither an attorney nor a practitioner in
36954 an occupation or profession regulated by the division; and

36955 (c) one member who is a resident lawyer currently licensed to practice law in this state
36956 who shall serve as chair of the special appeals board.

36957 (3) The special appeals board shall comply with the procedures and requirements of
36958 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in its proceedings.

36959 (4) (a) Within a reasonable amount of time following the conclusion of a hearing before
36960 a special appeals board, the board shall enter an order based upon the record developed at the
36961 hearing. The order shall state whether a legal basis exists for denying the application for an

36962 initial license or for renewal or reinstatement of a license that is the subject of the appeal. The
36963 order is not subject to further agency review.

36964 (b) The division or the applicant may obtain judicial review of the decision of the special
36965 appeals board in accordance with Sections [~~63-46b-14~~] 63G-4-401 and [~~63-46b-16~~]
36966 63G-4-403.

36967 (5) (a) Members shall receive no compensation or benefits for their services, but may
36968 receive per diem and expenses incurred in the performance of the member's official duties at the
36969 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

36970 (b) Members may decline to receive per diem and expenses for their service.

36971 (6) If an applicant under Subsection (1) is not given a special appeals board, the
36972 applicant shall be given agency review under the ordinary agency review procedures specified
36973 by rule.

36974 Section 833. Section **58-1-404** is amended to read:

36975 **58-1-404. Diversion -- Procedure.**

36976 (1) As used in this section, "diversion" means suspending action to discipline a licensee
36977 who is or could be charged in a Notice of Agency Action with certain offenses within the
36978 category of unprofessional or unlawful conduct on the condition that the licensee agrees to
36979 participate in an educational or rehabilitation program or fulfill some other condition.

36980 (2) (a) (i) The director may establish, as circumstances require, a diversion advisory
36981 committee for each occupation or profession or similar groups of occupations or professions
36982 licensed by the division.

36983 (ii) The committees shall assist the director in the administration of this section.

36984 (b) (i) Each committee shall consist of at least three licensees from the same or similar
36985 occupation or profession as the person whose conduct is the subject of the committee's
36986 consideration.

36987 (ii) The director shall appoint the members of a diversion advisory committee from
36988 nominations submitted by the corresponding board established for the same or similar
36989 occupation or profession under Section 58-1-201 or from other qualified nominees developed

36990 by or submitted to the division.

36991 (iii) Committee members may not serve concurrently as members of the corresponding
36992 board.

36993 (iv) Committee members shall serve voluntarily without remuneration.

36994 (v) The director may:

36995 (A) dissolve any diversion advisory committee;

36996 (B) remove or request the replacement of any member of a committee; and

36997 (C) establish any procedure that is necessary and proper for a committee's
36998 administration.

36999 (3) The director may, after consultation with the appropriate diversion advisory
37000 committee and by written agreement with the licensee, divert the licensee to a diversion
37001 program:

37002 (a) at any time after receipt by the division of a complaint against the licensee when no
37003 adjudicative proceeding has been commenced;

37004 (b) at any time prior to the conclusion of a hearing under Section [~~63-46b-8~~]
37005 63G-4-206 when an adjudicative proceeding has been commenced against the licensee; or

37006 (c) after a self-referral by a licensee who is not the subject of a current investigation,
37007 complaint, or adjudicative proceeding.

37008 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
37009 Administrative Rulemaking Act, the division shall define by rule the particular offenses within
37010 the category of unprofessional or unlawful conduct which may be subject to diversion.

37011 (b) A licensee may be eligible for a diversion program only once for the same or similar
37012 offense, whether the diversion program was in this state or another jurisdiction, and is not
37013 eligible if previously disciplined by the division, by a licensing agency of another state, or by a
37014 federal government agency for the same or a similar offense.

37015 (c) The term of a diversion agreement shall be five years or less, but may be extended
37016 for an additional period of time as agreed to by the parties in writing.

37017 (d) A decision by the director not to divert a licensee is not subject to appeal or judicial

37018 review.

37019 (5) A licensee may be represented by counsel:

37020 (a) during the negotiations for diversion;

37021 (b) at the time of the execution of the diversion agreement; and

37022 (c) at any hearing before the director relating to a diversion program.

37023 (6) (a) As used in this section, "diversion agreement" means a written agreement

37024 between the division, through its director, and the licensee, which specifies formal terms and

37025 conditions the licensee must fulfill in order to comply with the diversion program.

37026 (b) (i) A diversion agreement shall contain a full detailed statement of the requirements

37027 agreed to by the licensee and a full detailed stipulation of the facts upon which the diversion

37028 agreement is premised.

37029 (ii) The facts stipulated in the diversion agreement shall constitute binding admissions of

37030 the licensee:

37031 (A) in any proceeding under Subsection (6)(c) or (6)(d) to terminate the diversion

37032 agreement and impose disciplinary sanctions against the licensee; and

37033 (B) in any disciplinary proceeding based on unprofessional or unlawful conduct that is

37034 not the basis of the diversion agreement.

37035 (c) The diversion agreement shall provide that if the licensee makes an intentional

37036 material misrepresentation of fact in the stipulation of facts contained in the diversion

37037 agreement, the director shall initiate the procedures set forth in Subsection (13) to terminate the

37038 diversion agreement and issue an order of license revocation.

37039 (d) (i) The diversion agreement shall provide that if the licensee fails to comply with its

37040 terms, the director shall initiate the procedures set forth in Subsection (14) to terminate the

37041 diversion agreement and issue an order of license suspension, which shall be stayed in favor of

37042 an order of probation having the same terms as those which comprised the diversion agreement.

37043 (ii) The division may waive and not include as probationary requirements any terms of

37044 the diversion agreement it does not consider necessary to protect the public.

37045 (iii) The term of the order of probation shall be as provided in Subsection (14)(c)(ii).

37046 (e) The division director may not approve a diversion agreement unless the licensee, as
37047 part of the diversion agreement:

37048 (i) knowingly and intelligently waives the right to a hearing under [~~Title 63, Chapter~~
37049 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, for the conduct upon which the
37050 diversion agreement was premised;

37051 (ii) agrees to be subject to the procedures and remedies set forth in this section;

37052 (iii) acknowledges an understanding of the consequences of making an intentional
37053 misrepresentation of fact in the stipulation of facts contained in the diversion agreement; and

37054 (iv) acknowledges an understanding of the consequences of failing to comply with the
37055 terms of the diversion agreement.

37056 (7) (a) If the division and the licensee enter into a diversion agreement after the division
37057 has commenced an adjudicative proceeding against the licensee, the director shall stay that
37058 proceeding pending completion of the diversion agreement.

37059 (b) The order staying the adjudicative proceeding shall be filed in that proceeding and
37060 may reference the diversion agreement.

37061 (8) (a) Upon successful completion of a diversion agreement, the director shall dismiss
37062 any charges under the director's jurisdiction of unprofessional or unlawful conduct that were
37063 filed against the licensee.

37064 (b) Whether or not an adjudicative proceeding had been commenced against the
37065 licensee, the division may not thereafter subject the licensee to disciplinary action for the
37066 conduct which formed the basis of the completed diversion agreement.

37067 (c) Neither the execution of a diversion agreement nor the dismissal of filed charges
37068 constitute disciplinary action, and no report of either may be made to disciplinary databases.

37069 (d) The division may consider the completion of a diversion program and the contents
37070 of the diversion agreement in determining the appropriate disciplinary action if the licensee is
37071 charged in the future with the same or similar conduct.

37072 (e) The order of dismissal shall be filed in the adjudicative proceeding in which the
37073 misconduct was charged and may reference the diversion agreement.

37074 (9) (a) Acceptance of the licensee into diversion does not preclude the division from
37075 investigating or continuing to investigate the licensee for any unlawful or unprofessional
37076 conduct committed before, during, or after participation in the diversion program.

37077 (b) Acceptance of the licensee into diversion does not preclude the division from taking
37078 disciplinary action or continuing to take disciplinary action against the licensee for unlawful or
37079 unprofessional conduct committed before, during, or after participation in the diversion
37080 program, except for that conduct which formed the basis for the diversion agreement.

37081 (c) Any licensee terminated from the diversion program for failure to comply with the
37082 diversion agreement is subject to disciplinary action by the division for acts committed before,
37083 during, and after participation in the diversion program, including violations identified in the
37084 diversion agreement.

37085 (10) The classification, retention, and disclosure of records relating to a licensee's
37086 participation in the diversion program is governed by [~~Title 63, Chapter 2~~] Title 63G, Chapter
37087 2, Government Records Access and Management Act, except that any provision in the diversion
37088 agreement which addresses access to or release of diversion records regarding the licensee shall
37089 govern the access to and release of those records.

37090 (11) Notwithstanding any other provision of this section, the fact that the licensee
37091 completed a diversion program and the contents of the diversion agreement itself may be
37092 considered by the division in determining the appropriate disciplinary action if the licensee is
37093 charged in the future with the same or similar conduct.

37094 (12) Meetings regarding the diversion program are not subject to Title 52, Chapter 4,
37095 Open and Public Meetings Act.

37096 (13) (a) If, during the course of the diversion agreement, information is brought to the
37097 attention of the director that the licensee made an intentional material misrepresentation of fact
37098 in the stipulation of facts contained in the diversion agreement, the director shall cause to be
37099 served upon the licensee an order to show cause specifying the information relied upon by the
37100 director and setting a time and place for hearing to determine whether or not the licensee made
37101 the intentional material misrepresentation of fact and whether the agreement should be

37102 terminated on that ground.

37103 (b) Proceedings to terminate a diversion agreement on the grounds that the licensee
37104 made an intentional material misrepresentation of fact in the stipulation of facts contained in the
37105 diversion agreement and to issue an order of license revocation shall comply with [~~Title 63,~~
37106 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, except as follows:

37107 (i) the notice of agency action shall be in the form of an order to show cause, which
37108 shall contain all of the information specified in Subsection [~~63-46b-3]~~ 63G-4-201(2), except a
37109 statement that a written response to the order to show cause is required;

37110 (ii) no written response to the order to show cause is required;

37111 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to
37112 compel production of necessary evidence on behalf of either party and all parties shall have
37113 access to information contained in the division's diversion file to the extent permitted by law;

37114 (iv) the hearing shall be held only after timely notice to all parties; and

37115 (v) any agency review or reconsideration of an order terminating a diversion agreement
37116 or of an order of license revocation pursuant to this Subsection (13) shall be limited to the
37117 division director's findings of fact, conclusions of law, and order which arose out of the order to
37118 show cause proceeding.

37119 (c) Upon finding the licensee made an intentional material misrepresentation of fact in
37120 the stipulation of facts contained in the diversion agreement and that terminating the agreement
37121 is in the best interest of the public, and issuing an order to that effect, the director shall issue an
37122 order of license revocation, revoking the licensee's professional license.

37123 (d) The order terminating the diversion agreement and the order of license revocation
37124 shall include findings of fact and conclusions of law as determined by the director following the
37125 hearing or as otherwise stipulated and agreed to by the parties.

37126 (e) If the diversion agreement being terminated was entered into after the division had
37127 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall
37128 be considered to be merged into the order of license revocation and it may not constitute a basis
37129 for any separate disciplinary action against the licensee.

37130 (f) The order terminating the diversion agreement and the order of license revocation
37131 shall notify the licensee of the right to request agency review or reconsideration.

37132 (14) (a) If, during the course of the diversion agreement, information is brought to the
37133 attention of the director that the licensee has violated the diversion agreement and if it appears
37134 in the best interest of the public to proceed with charges, the director, after consultation with
37135 the diversion advisory committee, shall cause to be served upon the licensee an order to show
37136 cause specifying the facts relied upon by the director and setting a time and place for hearing to
37137 determine whether or not the licensee has violated the diversion agreement and whether the
37138 agreement should be terminated.

37139 (b) Proceedings to terminate a diversion agreement and to issue an order of license
37140 suspension and probation, and proceedings to terminate the probation and lift the stay of a
37141 license suspension, shall comply with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
37142 Administrative Procedures Act, except as follows:

37143 (i) the notice of agency action shall be in the form of an order to show cause, which
37144 shall contain all of the information specified in Subsection [~~63-46b-3~~] 63G-4-201(2), except a
37145 statement that a written response to the order to show cause is required;

37146 (ii) no written response to the order to show cause shall be required;

37147 (iii) discovery is prohibited, but the division may issue subpoenas or other orders to
37148 compel production of necessary evidence on behalf of either party and all parties shall have
37149 access to information contained in the division's diversion file to the extent permitted by law;

37150 (iv) the hearing shall be held only after timely notice to all parties; and

37151 (v) any agency review or reconsideration of an order terminating a diversion agreement
37152 or of an order of license suspension and probation pursuant to this Subsection (14) shall be
37153 limited to the division director's findings of fact, conclusions of law, and order which arose out
37154 of the order to show cause proceeding.

37155 (c) (i) Upon finding the licensee has violated the diversion agreement and that
37156 terminating the agreement is in the best interest of the public, and issuing an order to that effect,
37157 the director shall issue an order of license suspension, suspending the licensee's professional

37158 license, but shall stay that suspension in favor of an order of probation, consisting of the same
37159 terms as those which comprised the diversion agreement.

37160 (ii) The period of probation shall be the time period which remained under the diversion
37161 agreement, or five years from the date of the order of license suspension and probation,
37162 whichever is longer, unless otherwise agreed by the parties.

37163 (iii) The period of probation is tolled during any time in which the licensee does not
37164 have an active license in the state.

37165 (d) (i) The order terminating the diversion agreement and the order of license
37166 suspension and probation shall include findings of fact and conclusions of law as determined by
37167 the director following the hearing or as otherwise stipulated and agreed to by the parties.

37168 (ii) The findings of fact may include those facts to which the licensee stipulated in the
37169 diversion agreement and any additional facts as the director may determine in the course of the
37170 hearing.

37171 (e) If the diversion agreement being terminated was entered into after the division had
37172 commenced an adjudicative proceeding against the licensee, that adjudicative proceeding shall
37173 be considered to be merged into the order of license suspension and probation and it may not
37174 constitute a basis for any separate disciplinary action against the licensee.

37175 (f) The order terminating the diversion agreement and the order of license suspension
37176 and probation shall notify the licensee of the right to request agency review or reconsideration.

37177 (g) (i) The terms and conditions of the order of license suspension and probation may
37178 be amended by order of the director, pursuant to motion or stipulation of the parties.

37179 (ii) The order of the director on the motion shall not be subject to agency review, but is
37180 subject to agency reconsideration under Section [~~63-46b-13~~] 63G-4-302.

37181 (h) (i) If, during the course of probation, the director has reason to believe the licensee
37182 has violated the order of suspension and probation, the director shall cause to be served upon
37183 the licensee an order to show cause why the probation should not be terminated and the stay of
37184 suspension lifted.

37185 (ii) The order to show cause shall specify the facts relied upon by the director and shall

37186 set a time and place for hearing before the director to determine whether or not the licensee has
 37187 violated the order of suspension and probation and whether that order should be terminated and
 37188 the stay of suspension lifted.

37189 (15) (a) Nothing in this section precludes the division from issuing an emergency order
 37190 pursuant to Section [~~63-46b-20~~] 63G-4-502.

37191 (b) If the division issues an emergency order against a licensee who is subject to a
 37192 diversion agreement with the division, that diversion agreement shall be immediately and
 37193 automatically terminated upon the issuance of the emergency order, without compliance with
 37194 the provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

37195 (c) (i) A licensee whose diversion agreement has been terminated pursuant to
 37196 Subsection (15)(b) is entitled, upon request, to a posttermination hearing to challenge the
 37197 termination of the diversion agreement.

37198 (ii) The request shall be considered a request for agency action and shall comply with
 37199 the requirements of Subsection [~~63-46b-3~~] 63G-4-201(3).

37200 (iii) The division shall uphold the termination of the diversion agreement if it finds that:

37201 (A) the licensee violated the diversion agreement; and

37202 (B) it is in the best interest of the public to terminate the diversion agreement.

37203 (16) The administrative statute of limitations for taking disciplinary action described in
 37204 Subsection 58-1-401(5) shall be tolled during a diversion program.

37205 Section 834. Section **58-3a-103** is amended to read:

37206 **58-3a-103. Education and enforcement fund.**

37207 (1) There is created a restricted special revenue fund known as the "Architects
 37208 Education and Enforcement Fund."

37209 (2) The fund consists of monies from:

37210 (a) a surcharge fee placed on initial, renewal, and reinstatement licensure fees under this
 37211 chapter in accordance with the following:

37212 (i) the surcharge fee shall be determined by the department in accordance with Section
 37213 [~~63-38-3.2~~] 63J-1-303; and

- 37214 (ii) the surcharge fee shall not exceed 50% of the respective initial, renewal, or
37215 reinstatement licensure fee; and
- 37216 (b) administrative penalties collected pursuant to this chapter.
- 37217 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
37218 into the fund.
- 37219 (4) The director may, with concurrence of the board, make distributions from the fund
37220 for the following purposes:
- 37221 (a) education and training of licensees under this chapter;
- 37222 (b) education and training of the public or other interested persons in matters
37223 concerning architectural laws and practices; and
- 37224 (c) enforcement of this chapter by:
- 37225 (i) investigating unprofessional or unlawful conduct; and
- 37226 (ii) providing legal representation to the division when the division takes legal action
37227 against a person engaging in unprofessional or unlawful conduct.
- 37228 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
37229 shall be transferred to the General Fund.
- 37230 (6) The division shall report annually to the appropriate appropriations subcommittee of
37231 the Legislature concerning the fund.
- 37232 Section 835. Section **58-3a-302** is amended to read:
- 37233 **58-3a-302. Qualifications for licensure.**
- 37234 (1) Except as provided in Subsection (2), each applicant for licensure as an architect
37235 shall:
- 37236 (a) submit an application in a form prescribed by the division;
- 37237 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37238 (c) provide satisfactory evidence of good moral character;
- 37239 (d) have graduated and received an earned bachelors or masters degree from an
37240 architecture program meeting criteria established by rule by the division in collaboration with
37241 the board;

37242 (e) have successfully completed a program of diversified practical experience
37243 established by rule by the division in collaboration with the board;

37244 (f) have successfully passed examinations established by rule by the division in
37245 collaboration with the board; and

37246 (g) meet with the board or representative of the division upon request for the purpose
37247 of evaluating the applicant's qualifications for license.

37248 (2) Each applicant for licensure as an architect by endorsement shall:

37249 (a) submit an application in a form prescribed by the division;

37250 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37251 (c) provide satisfactory evidence of good moral character;

37252 (d) submit satisfactory evidence of:

37253 (i) current licensure in good standing in a jurisdiction recognized by rule by the division
37254 in collaboration with the board; and

37255 (ii) current certification from the National Council of Architectural Registration Boards;
37256 or

37257 (iii) current license in good standing in a jurisdiction recognized by rule by the division
37258 in collaboration with the board; and

37259 (iv) full-time employment as a licensed architect as a principal for at least five of the last
37260 seven years immediately preceding the date of the application; and

37261 (e) have successfully passed any examination established by rule by the division in
37262 collaboration with the board; and

37263 (f) meet with the board or representative of the division upon request for the purpose of
37264 evaluating the applicant's qualifications for license.

37265 Section 836. Section **58-3a-502** is amended to read:

37266 **58-3a-502. Penalty for unlawful conduct.**

37267 (1) (a) If upon inspection or investigation, the division concludes that a person has
37268 violated Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501 or any rule or order
37269 issued with respect to Section 58-3a-501, and that disciplinary action is appropriate, the director

37270 or ~~[his]~~ the director's designee from within the division for each alternative respectively, shall
37271 promptly issue a citation to the person according to this chapter and any pertinent rules, attempt
37272 to negotiate a stipulated settlement, or notify the person to appear before an adjudicative
37273 proceeding conducted under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative
37274 Procedures Act.

37275 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-3a-501
37276 or any rule or order issued with respect to Section 58-3a-501, as evidenced by an uncontested
37277 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
37278 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
37279 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section
37280 58-3a-501 or any rule or order issued with respect to this section.

37281 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
37282 58-3a-401 may not be assessed through a citation.

37283 (b) A citation shall:

37284 (i) be in writing;

37285 (ii) describe with particularity the nature of the violation, including a reference to the
37286 provision of the chapter, rule, or order alleged to have been violated;

37287 (iii) clearly state that the recipient must notify the division in writing within 20 calendar
37288 days of service of the citation if the recipient wishes to contest the citation at a hearing
37289 conducted under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act;
37290 and

37291 (iv) clearly explain the consequences of failure to timely contest the citation or to make
37292 payment of any fines assessed by the citation within the time specified in the citation.

37293 (c) The division may issue a notice in lieu of a citation.

37294 (d) Each citation issued under this section, or a copy of each citation, may be served
37295 upon any person whom a summons may be served in accordance with the Utah Rules of Civil
37296 Procedure and may be made personally or upon ~~[his]~~ the person's agent by a division
37297 investigator or by any person specially designated by the director or by mail.

37298 (e) If within 20 calendar days from the service of the citation, the person to whom the
37299 citation was issued fails to request a hearing to contest the citation, the citation becomes the
37300 final order of the division and is not subject to further agency review. The period to contest a
37301 citation may be extended by the division for cause.

37302 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
37303 the license of a licensee who fails to comply with a citation after it becomes final.

37304 (g) The failure of an applicant for licensure to comply with a citation after it becomes
37305 final is a ground for denial of license.

37306 (h) No citation may be issued under this section after the expiration of six months
37307 following the occurrence of any violation.

37308 (i) The director or ~~[his]~~ the director's designee shall assess fines according to the
37309 following:

37310 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

37311 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

37312 and

37313 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
37314 \$2,000 for each day of continued offense.

37315 (2) An action initiated for a first or second offense which has not yet resulted in a final
37316 order of the division shall not preclude initiation of any subsequent action for a second or
37317 subsequent offense during the pendency of any preceding action. The final order on a
37318 subsequent action shall be considered a second or subsequent offense, respectively, provided the
37319 preceding action resulted in a first or second offense, respectively.

37320 (3) Any penalty which is not paid may be collected by the director by either referring
37321 the matter to a collection agency or bringing an action in the district court of the county in
37322 which the person against whom the penalty is imposed resides or in the county where the office
37323 of the director is located. Any county attorney or the attorney general of the state shall provide
37324 legal assistance and advice to the director in any action to collect the penalty. In any action
37325 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be

37326 awarded to the division.

37327 Section 837. Section **58-5a-302** is amended to read:

37328 **58-5a-302. Qualifications to practice podiatry.**

37329 An applicant for licensure to practice podiatry shall:

37330 (1) submit an application in a form as prescribed by the division;

37331 (2) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37332 (3) be of good moral character;

37333 (4) be a graduate of a college of podiatric medicine accredited by the Council of

37334 Podiatric Education;

37335 (5) have completed one year of postgraduate training in a residency program

37336 recognized by the board; and

37337 (6) pass examinations required by rule.

37338 Section 838. Section **58-9-302** is amended to read:

37339 **58-9-302. Qualifications for licensure.**

37340 (1) Each applicant for licensure as a funeral service director shall:

37341 (a) submit an application in a form prescribed by the division;

37342 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37343 (c) be of good moral character in that the applicant has not been convicted of:

37344 (i) a first or second degree felony;

37345 (ii) a misdemeanor involving moral turpitude; or

37346 (iii) any other crime that when considered with the duties and responsibilities of a

37347 funeral service director is considered by the division and the board to indicate that the best

37348 interests of the public are not served by granting the applicant a license;

37349 (d) have obtained a high school diploma or its equivalent or a higher education degree;

37350 (e) have obtained an associate degree, or its equivalent, in mortuary science from a

37351 school of funeral service accredited by the American Board of Funeral Service Education or

37352 other accrediting body recognized by the U.S. Department of Education;

37353 (f) have completed not less than 2,000 hours and 50 embalmings, over a period of not

37354 less than one year, of satisfactory performance in training as a licensed funeral service intern
37355 under the supervision of a licensed funeral service director; and

37356 (g) obtain a passing score on examinations approved by the division in collaboration
37357 with the board.

37358 (2) Each applicant for licensure as a funeral service intern shall:

37359 (a) submit an application in a form prescribed by the division;

37360 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37361 (c) be of good moral character in that the applicant has not been convicted of:

37362 (i) a first or second degree felony;

37363 (ii) a misdemeanor involving moral turpitude; or

37364 (iii) any other crime that when considered with the duties and responsibilities of a

37365 funeral service intern is considered by the division and the board to indicate that the best

37366 interests of the public are not served by granting the applicant a license;

37367 (d) have obtained a high school diploma or its equivalent or a higher education degree;

37368 and

37369 (e) obtain a passing score on an examination approved by the division in collaboration

37370 with the board.

37371 (3) Each applicant for licensure as a funeral service establishment and each funeral
37372 service establishment licensee shall:

37373 (a) submit an application in a form prescribed by the division;

37374 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37375 (c) have in place:

37376 (i) an embalming room for preparing dead human bodies for burial or final disposition,

37377 which may serve one or more facilities operated by the applicant;

37378 (ii) a refrigeration room that maintains a temperature of not more than 40 degrees

37379 fahrenheit for preserving dead human bodies prior to burial or final disposition, which may serve

37380 one or more facilities operated by the applicant; and

37381 (iii) maintain at all times a licensed funeral service director who is responsible for the

37382 day-to-day operation of the funeral service establishment and who is personally available to
37383 perform the services for which the license is required;

37384 (d) affiliate with a licensed preneed funeral arrangement sales agent or funeral service
37385 director if the funeral service establishment sells preneed funeral arrangements;

37386 (e) file with the completed application a copy of each form of contract or agreement the
37387 applicant will use in the sale of preneed funeral arrangements; and

37388 (f) provide evidence of appropriate licensure with the Insurance Department if the
37389 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or
37390 in part by an insurance policy or product to be sold by the provider or the provider's sales agent.

37391 (4) Each applicant for licensure as a preneed funeral arrangement sales agent shall:

37392 (a) submit an application in a form prescribed by the division;

37393 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37394 (c) be of good moral character in that the applicant has not been convicted of:

37395 (i) a first or second degree felony;

37396 (ii) a misdemeanor involving moral turpitude; or

37397 (iii) any other crime that when considered with the duties and responsibilities of a
37398 preneed funeral sales agent is considered by the division and the board to indicate that the best
37399 interests of the public are not served by granting the applicant a license;

37400 (d) have obtained a high school diploma or its equivalent or a higher education degree;

37401 (e) have obtained a passing score on an examination approved by the division in
37402 collaboration with the board;

37403 (f) affiliate with a licensed funeral service establishment; and

37404 (g) provide evidence of appropriate licensure with the Insurance Department if the
37405 applicant intends to engage in the sale of any preneed funeral arrangements funded in whole or
37406 in part by an insurance policy or product.

37407 Section 839. Section **58-9-504** is amended to read:

37408 **58-9-504. Authority to promulgate rules.**

37409 In addition to the authority granted under Section 58-1-106, in accordance with [Title

37410 ~~63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the division in
37411 collaboration with the board shall establish by rule:

37412 (1) the minimum requirements for a licensed funeral establishment for the following:

37413 (a) physical facilities;

37414 (b) equipment;

37415 (c) instruments; and

37416 (d) supplies;

37417 (2) license cycles under Section 58-9-303;

37418 (3) standards to protect the interests of buyers and potential buyers of preneed funeral
37419 arrangements under Section 58-9-701; and

37420 (4) standards for preneed funeral arrangement trusts.

37421 Section 840. Section **58-9-701** is amended to read:

37422 **58-9-701. Preneed contract requirements.**

37423 (1) (a) Every preneed funeral arrangement sold in Utah shall be evidenced by a written
37424 contract.

37425 (b) The funeral service establishment shall maintain a copy of the contract until five
37426 years after all of its obligations under the contract have been executed.

37427 (2) Each preneed contract form shall:

37428 (a) be written in clear and understandable language printed in an easy-to-read type size
37429 and style;

37430 (b) bear the preprinted name, address, telephone number, and license number of the
37431 funeral service establishment obligated to provide the services under the contract terms;

37432 (c) be sequentially numbered by contract form;

37433 (d) clearly identify that the contract is a guaranteed product contract;

37434 (e) provide that a trust is established in accordance with the provisions of Section
37435 58-9-702;

37436 (f) if the contract is funded by an insurance policy or product, provide that the insurance
37437 policy or product is filed with the Insurance Department and meets the requirements of Title

37438 31A, Insurance Code; and

37439 (g) conform to other standards created by rule under [~~Title 63, Chapter 46a~~] Title 63G,

37440 Chapter 3, Utah Administrative Rulemaking Act, to protect the interests of buyers and potential

37441 buyers.

37442 (3) A preneed contract shall provide for payment by the buyer in a form which may be

37443 liquidated by the funeral service establishment within 30 days after the day the funeral service

37444 establishment or sales agent receives the payment.

37445 (4) A preneed contract may not be revocable by the funeral service establishment

37446 except:

37447 (a) in the event of nonpayment; and

37448 (b) under terms and conditions clearly set forth in the contract.

37449 (5) (a) A preneed contract may not be revocable by the buyer or beneficiary except:

37450 (i) in the event of:

37451 (A) a substantial contract breach by the funeral service establishment; or

37452 (B) substantial evidence that the funeral service establishment is or will be unable to

37453 provide the personal property or services to the beneficiary as provided under the contract; or

37454 (ii) under terms and conditions clearly set forth in the contract.

37455 (b) The contract shall contain a clear statement of the manner in which payments made

37456 on the contract shall be refunded to the buyer or beneficiary upon revocation by the beneficiary.

37457 (6) (a) A preneed contract shall provide the buyer the option to require the funeral

37458 service establishment to furnish a written disclosure to a person who does not live at the same

37459 residence as the buyer.

37460 (b) The buyer may choose:

37461 (i) a full disclosure containing a copy of the entire preneed contract;

37462 (ii) a partial disclosure informing the recipient of:

37463 (A) the existence of a preneed contract; and

37464 (B) the name, address, telephone number, and license number of the funeral service

37465 establishment obligated to provide the services under the preneed contract; or

37466 (iii) not to require the funeral service establishment to furnish a written disclosure to
37467 another person.

37468 Section 841. Section **58-11a-102** is amended to read:

37469 **58-11a-102. Definitions.**

37470 (1) "Approved barber or cosmetologist/barber apprenticeship" means an apprenticeship
37471 that meets the requirements of Subsection 58-11a-306(1) for barbers or Subsection
37472 58-11a-306(2) for cosmetologist/barbers and the requirements established by rule by the
37473 division in collaboration with the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
37474 Chapter 3, Utah Administrative Rulemaking Act.

37475 (2) "Approved esthetician apprenticeship" means an apprenticeship that meets the
37476 requirements of Subsection 58-11a-306(3) and the requirements established by rule by the
37477 division in collaboration with the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
37478 Chapter 3, Utah Administrative Rulemaking Act.

37479 (3) "Approved master esthetician apprenticeship" means an apprenticeship that meets
37480 the requirements of Subsection 58-11a-306(4) and the requirements established by rule by the
37481 division in collaboration with the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
37482 Chapter 3, Utah Administrative Rulemaking Act.

37483 (4) "Approved nail technician apprenticeship" means an apprenticeship that meets the
37484 requirements of Subsection 58-11a-306(5) and the requirements established by rule by the
37485 division in collaboration with the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
37486 Chapter 3, Utah Administrative Rulemaking Act.

37487 (5) "Barber" means a person who is licensed under this chapter to engage in the practice
37488 of barbering.

37489 (6) "Barber instructor" means a barber who is licensed under this chapter to teach
37490 barbering at a licensed barber school.

37491 (7) "Board" means the Barber, Cosmetology/Barbering, Esthetics, Electrology, and Nail
37492 Technology Licensing Board created in Section 58-11a-201.

37493 (8) "Cosmetologist/barber" means a person who is licensed under this chapter to

37494 engage in the practice of cosmetology/barbering.

37495 (9) "Cosmetologist/barber instructor" means a cosmetologist/barber who is licensed
37496 under this chapter to teach cosmetology/barbering at a licensed cosmetology/barber school.

37497 (10) "Direct supervision" means that the supervisor of an apprentice or the instructor of
37498 a student is immediately available for consultation, advice, instruction, and evaluation.

37499 (11) "Electrologist" means a person who is licensed under this chapter to engage in the
37500 practice of electrology.

37501 (12) "Electrologist instructor" means an electrologist who is licensed under this chapter
37502 to teach electrology at a licensed electrology school.

37503 (13) "Esthetician" means a person who is licensed under this chapter to engage in the
37504 practice of esthetics.

37505 (14) "Esthetician instructor" means a master esthetician who is licensed under this
37506 chapter to teach the practice of esthetics and the practice of master-level esthetics at a licensed
37507 esthetics school.

37508 (15) "Fund" means the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and
37509 Nail Technician Education and Enforcement Fund created in Section 58-11a-103.

37510 (16) "Licensed barber or cosmetology/barber school" means a barber or
37511 cosmetology/barber school licensed under this chapter.

37512 (17) "Licensed electrology school" means an electrology school licensed under this
37513 chapter.

37514 (18) "Licensed esthetics school" means an esthetics school licensed under this chapter.

37515 (19) "Licensed nail technology school" means a nail technology school licensed under
37516 this chapter.

37517 (20) "Master esthetician" means an individual who is licensed under this chapter to
37518 engage in the practice of master-level esthetics.

37519 (21) "Nail technician" means an individual who is licensed under this chapter to engage
37520 in the practice of nail technology.

37521 (22) "Nail technician instructor" means a nail technician licensed under this chapter to

37522 teach the practice of nail technology in a licensed nail technology school.

37523 (23) "Practice of barbering" means:

37524 (a) cutting, clipping, or trimming the hair of the head of any person by the use of
37525 scissors, shears, clippers, or other appliances; and

37526 (b) removing hair from the face or neck of a person by the use of shaving equipment.

37527 (24) "Practice of barbering instruction" means instructing barbering in a licensed barber
37528 school.

37529 (25) "Practice of basic esthetics" means any one of the following skin care procedures
37530 done on the head, face, neck, arms, hands, legs, feet, eyebrows, or eyelashes for cosmetic
37531 purposes and not for the treatment of medical, physical, or mental ailments:

37532 (a) cleansing, stimulating, manipulating, exercising, applying oils, antiseptics, clays, or
37533 masks, manual extraction, including a comedone extractor, depilatories, waxes, tweezing,
37534 natural nail manicures or pedicures, or callous removal by buffing or filing;

37535 (b) limited chemical exfoliation as defined by rule;

37536 (c) removing superfluous hair by means other than electrolysis or laser procedures; or

37537 (d) other esthetic preparations or procedures with the use of the hands, a
37538 high-frequency or galvanic electrical apparatus, or a heat lamp for cosmetic purposes and not
37539 for the treatment of medical, physical, or mental ailments.

37540 (26) (a) "Practice of cosmetology/barbering" means:

37541 (i) styling, arranging, dressing, curling, waving, permanent waving, cleansing, singeing,
37542 bleaching, dyeing, tinting, coloring, or similarly treating the hair of the head of a person;

37543 (ii) cutting, clipping, or trimming the hair by the use of scissors, shears, clippers, or
37544 other appliances;

37545 (iii) arching eyebrows, or tinting eyebrows or eyelashes, or both;

37546 (iv) removing hair from the face, neck, shoulders, arms, back, torso, feet, bikini line, or
37547 legs of a person by the use of depilatories, waxing, or shaving equipment;

37548 (v) cutting, curling, styling, fitting, measuring, or forming caps for wigs or hairpieces
37549 or both on the human head; or

37550 (vi) practicing hair weaving or hair fusing or servicing previously medically implanted
37551 hair.

37552 (b) The term "practice of cosmetology/barbering" includes:

37553 (i) the practice of basic esthetics; and

37554 (ii) the practice of nail technology.

37555 (27) "Practice of cosmetology/barbering instruction" means instructing
37556 cosmetology/barbering in a licensed cosmetology/barber school.

37557 (28) "Practice of electrolysis" means the removal of superfluous hair from the body of a
37558 person by the use of electricity.

37559 (29) "Practice of electrolysis instruction" means instructing electrolysis in a licensed
37560 electrolysis school.

37561 (30) "Practice of esthetics instruction" means instructing esthetics or master-level
37562 esthetics in a licensed esthetics school.

37563 (31) (a) "Practice of master-level esthetics" means:

37564 (i) any of the following when done for cosmetic purposes on the head, face, neck, torso,
37565 abdomen, back, arms, hands, legs, feet, eyebrows, or eyelashes and not for the treatment of
37566 medical, physical, or mental ailments:

37567 (A) body wraps as defined by rule;

37568 (B) hydrotherapy as defined by rule;

37569 (C) chemical exfoliation as defined by rule;

37570 (D) advanced pedicures as defined by rule;

37571 (E) sanding, including microdermabrasion;

37572 (F) advanced extraction; or

37573 (G) other esthetic preparations or procedures with the use of:

37574 (I) the hands; or

37575 (II) a mechanical or electrical apparatus which is approved for use by division rule for
37576 beautifying or similar work performed on the body for cosmetic purposes and not for the
37577 treatment of a medical, physical, or mental ailment; and

37578 (ii) lymphatic massage by manual or other means.

37579 (b) Notwithstanding the provisions of Subsection (31)(a), a master-level esthetician may
37580 perform procedures listed in Subsection (31)(a)(i) for noncosmetic purposes if done under the
37581 supervision of a licensed health care practitioner acting within the scope of ~~his or her~~ the
37582 licensed health care practitioner's license.

37583 (c) The term "practice of master-level esthetics" includes the practice of esthetics.

37584 (32) "Practice of nail technology" means to trim, cut, clean, manicure, shape, massage,
37585 or enhance the appearance of the hands, feet, and nails of an individual by the use of hands,
37586 mechanical, or electrical preparation, antiseptic, lotions, or creams, including the application and
37587 removal of sculptured or artificial nails.

37588 (33) "Practice of nail technology instruction" means instructing nail technology in a
37589 licensed nail technician school.

37590 (34) "Recognized barber school" means a barber school located in a state other than
37591 Utah, whose students, upon graduation, are recognized as having completed the educational
37592 requirements for licensure in that state.

37593 (35) "Recognized cosmetology/barber school" means a cosmetology/barber school
37594 located in a state other than Utah, whose students, upon graduation, are recognized as having
37595 completed the educational requirements for licensure in that state.

37596 (36) "Recognized electrology school" means an electrology school located in a state
37597 other than Utah, whose students, upon graduation, are recognized as having completed the
37598 educational requirements for licensure in that state.

37599 (37) "Recognized esthetics school" means an esthetics school located in a state other
37600 than Utah, whose students, upon graduation, are recognized as having completed the
37601 educational requirements for licensure in that state.

37602 (38) "Recognized nail technology school" means a nail technology school located in a
37603 state other than Utah, whose students, upon graduation, are recognized as having completed the
37604 educational requirements for licensure in that state.

37605 (39) "Salon" means a place, shop, or establishment in which cosmetology/barbering,

37606 esthetics, electrology, or nail technology is practiced.

37607 (40) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-11a-502.

37608 (41) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-11a-501 and
37609 as may be further defined by rule by the division in collaboration with the board in accordance
37610 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

37611 Section 842. Section **58-11a-302** is amended to read:

37612 **58-11a-302. Qualifications for licensure.**

37613 (1) Each applicant for licensure as a barber shall:

37614 (a) submit an application in a form prescribed by the division;

37615 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37616 (c) be of good moral character;

37617 (d) provide satisfactory documentation of:

37618 (i) graduation from a licensed or recognized barber school whose curriculum consists of
37619 a minimum of 1,000 hours of instruction or the equivalent number of credit hours over a period
37620 of not less than six months;

37621 (ii) (A) having graduated from a recognized barber school whose curriculum consists of
37622 less than 1,000 hours of instruction or the equivalent number of credit hours; and

37623 (B) having practiced as a licensed barber for a period of not less than 2,000 hours; or

37624 (iii) having completed an approved barber apprenticeship; and

37625 (e) meet the examination requirement established by rule.

37626 (2) Each applicant for licensure as a barber instructor shall:

37627 (a) submit an application in a form prescribed by the division;

37628 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

37629 (c) provide satisfactory documentation that the applicant is currently licensed as a
37630 barber;

37631 (d) be of good moral character;

37632 (e) provide satisfactory documentation of completion of:

37633 (i) an instructor training program conducted by a barber school consisting of a minimum

- 37634 of 500 hours or the equivalent number of credit hours; or
- 37635 (ii) a minimum of 2,000 hours of experience as a barber; and
- 37636 (f) meet the examination requirement established by rule.
- 37637 (3) Each applicant for licensure as a barber school shall:
- 37638 (a) submit an application in a form prescribed by the division;
- 37639 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and
- 37640 (c) provide satisfactory documentation:
- 37641 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 37642 (ii) of business licensure from the city, town, or county in which the school is located;
- 37643 (iii) that the applicant's physical facilities comply with the requirements established by
- 37644 rule; and
- 37645 (iv) that the applicant meets the standards for barber schools, including staff and
- 37646 accreditation requirements, established by rule.
- 37647 (4) Each applicant for licensure as a cosmetologist/barber shall:
- 37648 (a) submit an application in a form prescribed by the division;
- 37649 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37650 (c) be of good moral character;
- 37651 (d) provide satisfactory documentation of:
- 37652 (i) graduation from a licensed or recognized cosmetology/barber school whose
- 37653 curriculum consists of a minimum of 2,000 hours of instruction, with full flexibility within the
- 37654 2,000 hours, or the equivalent number of credit hours over a period of not less than 12 months;
- 37655 (ii) (A) having graduated from a recognized cosmetology/barber school whose
- 37656 curriculum consists of less than 2,000 hours of instruction, with full flexibility within the 2,000
- 37657 hours, or the equivalent number of credit hours; and
- 37658 (B) having practiced as a licensed cosmetologist/barber for a period of not less than
- 37659 4,000 hours; or
- 37660 (iii) having completed an approved cosmetology/barber apprenticeship; and
- 37661 (e) meet the examination requirement established by rule.

- 37662 (5) Each applicant for licensure as a cosmetologist/barber instructor shall:
- 37663 (a) submit an application in a form prescribed by the division;
- 37664 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37665 (c) provide satisfactory documentation that the applicant is currently licensed as a
- 37666 cosmetologist/barber;
- 37667 (d) be of good moral character;
- 37668 (e) provide satisfactory documentation of completion of:
- 37669 (i) an instructor training program conducted by a cosmetology/barber school consisting
- 37670 of a minimum of 1,000 hours or the equivalent number of credit hours; or
- 37671 (ii) a minimum of 4,000 hours of experience as a cosmetologist/barber; and
- 37672 (f) meet the examination requirement established by rule.
- 37673 (6) Each applicant for licensure as a cosmetologist/barber school shall:
- 37674 (a) submit an application in a form prescribed by the division;
- 37675 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and
- 37676 (c) provide satisfactory documentation:
- 37677 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 37678 (ii) of business licensure from the city, town, or county in which the school is located;
- 37679 (iii) that the applicant's physical facilities comply with the requirements established by
- 37680 rule; and
- 37681 (iv) that the applicant meets the standards for cosmetology schools, including staff and
- 37682 accreditation requirements, established by rule.
- 37683 (7) Each applicant for licensure as an electrologist shall:
- 37684 (a) submit an application in a form prescribed by the division;
- 37685 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37686 (c) be of good moral character;
- 37687 (d) provide satisfactory documentation of having graduated from a licensed or
- 37688 recognized electrology school after completing a curriculum of 600 hours of instruction or the
- 37689 equivalent number of credit hours; and

- 37690 (e) meet the examination requirement established by rule.
- 37691 (8) Each applicant for licensure as an electrologist instructor shall:
- 37692 (a) submit an application in a form prescribed by the division;
- 37693 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37694 (c) provide satisfactory documentation that the applicant is currently licensed as an
- 37695 electrologist;
- 37696 (d) be of good moral character;
- 37697 (e) provide satisfactory documentation of completion of:
- 37698 (i) an instructor training program conducted by an electrology school consisting of a
- 37699 minimum of 175 hours or the equivalent number of credit hours; or
- 37700 (ii) a minimum of 1,000 hours of experience as an electrologist; and
- 37701 (f) meet the examination requirement established by rule.
- 37702 (9) Each applicant for licensure as an electrologist school shall:
- 37703 (a) submit an application in a form prescribed by the division;
- 37704 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and
- 37705 (c) provide satisfactory documentation:
- 37706 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 37707 (ii) of business licensure from the city, town, or county in which the school is located;
- 37708 (iii) that the applicant's facilities comply with the requirements established by rule; and
- 37709 (iv) that the applicant meets the standards for electrologist schools, including staff,
- 37710 curriculum, and accreditation requirements, established by rule.
- 37711 (10) Each applicant for licensure as an esthetician shall:
- 37712 (a) submit an application in a form prescribed by the division;
- 37713 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37714 (c) be of good moral character; and
- 37715 (d) provide satisfactory documentation of one of the following:
- 37716 (i) (A) graduation from a licensed or recognized esthetic school whose curriculum
- 37717 consists of not less than 15 weeks of esthetic instruction with a minimum of 600 hours or the

- 37718 equivalent number of credit hours; and
- 37719 (B) having met the examination requirement established by division rule;
- 37720 (ii) (A) completion of an approved esthetician apprenticeship; and
- 37721 (B) having met the examination requirement established by division rule; or
- 37722 (iii) having met the examination requirement established by division rule prior to
- 37723 December 31, 2001.
- 37724 (11) Each applicant for licensure as a master esthetician shall:
- 37725 (a) submit an application in a form prescribed by the division;
- 37726 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37727 (c) be of good moral character; and
- 37728 (d) provide satisfactory documentation of one of the following:
- 37729 (i) (A) completion of 1,200 hours of training or the equivalent number of credit hours at
- 37730 a licensed or recognized esthetics school;
- 37731 (B) having met the examination requirement established by division rule; and
- 37732 (C) for practice of lymphatic massage, provide satisfactory documentation to show
- 37733 completion of 200 hours of training or equivalent number of credit hours in lymphatic massage;
- 37734 (ii) (A) completion of an approved master esthetician apprenticeship; and
- 37735 (B) having met the examination requirement established by division rule; or
- 37736 (iii) having met the examination requirement established by division rule prior to
- 37737 December 31, 2001.
- 37738 (12) Each applicant for licensure as an esthetician instructor shall:
- 37739 (a) submit an application in a form prescribed by the division;
- 37740 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37741 (c) provide satisfactory documentation that the applicant is currently licensed as a
- 37742 master esthetician;
- 37743 (d) be of good moral character;
- 37744 (e) provide satisfactory documentation of completion of:
- 37745 (i) an instructor training program conducted by a licensed or recognized esthetics

- 37746 school consisting of a minimum of 300 hours or the equivalent number of credit hours; or
- 37747 (ii) a minimum of 1,000 hours of experience in esthetics; and
- 37748 (f) meet the examination requirement established by rule.
- 37749 (13) Each applicant for licensure as an esthetics school shall:
- 37750 (a) submit an application in a form prescribed by the division;
- 37751 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and
- 37752 (c) provide satisfactory documentation:
- 37753 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 37754 (ii) of business licensure from the city, town, or county in which the school is located;
- 37755 (iii) that the applicant's physical facilities comply with the requirements established by
- 37756 rule; and
- 37757 (iv) that the applicant meets the standards for esthetics schools, including staff,
- 37758 curriculum, and accreditation requirements, established by division rule made in collaboration
- 37759 with the board.
- 37760 (14) Each applicant for licensure as a nail technician shall:
- 37761 (a) submit an application in a form prescribed by the division;
- 37762 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37763 (c) be of good moral character; and
- 37764 (d) provide satisfactory documentation of one of the following:
- 37765 (i) (A) graduation from a licensed or recognized nail technology school whose
- 37766 curriculum consists of not less than 300 hours or the equivalent number of credit hours of not
- 37767 more than eight hours a day and six days a week during the program; and
- 37768 (B) having met the examination requirement established by division rule;
- 37769 (ii) (A) having completed an approved nail technician apprenticeship; and
- 37770 (B) having met the examination requirement established by division rule; or
- 37771 (iii) having met the examination requirement established by division rule prior to
- 37772 December 31, 2001.
- 37773 (15) Each applicant for licensure as a nail technician instructor shall:

- 37774 (a) submit an application in a form prescribed by the division;
- 37775 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37776 (c) provide satisfactory documentation that the applicant is currently licensed as a nail
- 37777 technician;
- 37778 (d) be of good moral character;
- 37779 (e) provide satisfactory documentation of completion of:
- 37780 (i) an instructor training program conducted by a licensed or recognized nail technology
- 37781 school consisting of a minimum of 150 hours or the equivalent number of credit hours; or
- 37782 (ii) a minimum of 600 hours of experience in nail technology; and
- 37783 (f) meet the examination requirement established by rule.

37784 (16) Each applicant for licensure as a nail technology school shall:

- 37785 (a) submit an application in a form prescribed by the division;
- 37786 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and
- 37787 (c) provide satisfactory documentation:
- 37788 (i) of appropriate registration with the Division of Corporations and Commercial Code;
- 37789 (ii) of business licensure from the city, town, or county in which the school is located;
- 37790 (iii) that the applicant's facilities comply with the requirements established by rule; and
- 37791 (iv) that the applicant meets the standards for nail technology schools, including staff,
- 37792 curriculum, and accreditation requirements, established by rule.

37793 (17) Each applicant for licensure under this chapter whose education in the field for
37794 which a license is sought was completed at a foreign school may satisfy the educational
37795 requirement for licensure by demonstrating, to the satisfaction of the division, the educational
37796 equivalency of the foreign school education with a licensed school under this chapter.

37797 Section 843. Section **58-11a-503** is amended to read:

37798 **58-11a-503. Penalties.**

37799 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful
37800 conduct under Section 58-11a-502 or who fails to comply with a citation issued under this
37801 section after it is final is guilty of a class A misdemeanor.

37802 (2) Sexual conduct that violates Section 58-11a-502 and Title 76, Utah Criminal Code,
37803 shall be subject to the applicable penalties in Title 76.

37804 (3) Grounds for immediate suspension of a licensee's license by the division include the
37805 issuance of a citation for violation of Subsection 58-11a-502(1), (2), or (4).

37806 (4) (a) If upon inspection or investigation, the division concludes that a person has
37807 violated the provisions of Subsection 58-11a-502(1), (2), or (4), or a rule or order issued with
37808 respect to Subsection 58-11a-502(1), (2), or (4), and that disciplinary action is appropriate, the
37809 director or the director's designee from within the division shall promptly issue a citation to the
37810 person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
37811 settlement, or notify the person to appear before an adjudicative proceeding conducted under
37812 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

37813 (i) A person who is in violation of Subsection 58-11a-502(1), (2), or (4), as evidenced
37814 by an uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
37815 proceeding, may be assessed a fine pursuant to this Subsection (4) and may, in addition to or in
37816 lieu of, be ordered to cease and desist from violating Subsection 58-11a-502(1), (2), or (4).

37817 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
37818 58-11a-401 may not be assessed through a citation.

37819 (b) (i) Each citation shall be in writing and describe with particularity the nature of the
37820 violation, including a reference to the provision of the chapter, rule, or order alleged to have
37821 been violated.

37822 (ii) The citation shall clearly state that the recipient must notify the division in writing
37823 within 20 calendar days of service of the citation if the recipient wishes to contest the citation at
37824 a hearing conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
37825 Procedures Act.

37826 (iii) The citation shall clearly explain the consequences of failure to timely contest the
37827 citation or to make payment of a fine assessed by the citation within the time specified in the
37828 citation.

37829 (c) Each citation issued under this section, or a copy of each citation, may be served

37830 upon a person upon whom a summons may be served in accordance with the Utah Rules of
37831 Civil Procedure and may be made personally or upon the person's agent by a division
37832 investigator or by a person specially designated by the director or by mail.

37833 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
37834 citation was issued fails to request a hearing to contest the citation, the citation becomes the
37835 final order of the division and is not subject to further agency review.

37836 (ii) The period to contest a citation may be extended by the division for cause.

37837 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
37838 the license of a licensee who fails to comply with a citation after it becomes final.

37839 (f) The failure of an applicant for licensure to comply with a citation after it becomes
37840 final is a ground for denial of license.

37841 (g) No citation may be issued under this section after the expiration of six months
37842 following the occurrence of a violation.

37843 (h) Fines shall be assessed by the director or the director's designee according to the
37844 following:

37845 (i) for a first offense under Subsection (4)(a), a fine of up to \$1,000;

37846 (ii) for a second offense under Subsection (4)(a), a fine of up to \$2,000; and

37847 (iii) for any subsequent offense under Subsection (4)(a), a fine of up to \$2,000 for each
37848 day of continued offense.

37849 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
37850 Subsection (4)(h), an offense constitutes a second or subsequent offense if:

37851 (A) the division previously issued a final order determining that a person committed a
37852 first or second offense in violation of Subsection 58-11a-502(1), (2), or (4); or

37853 (B) (I) the division initiated an action for a first or second offense;

37854 (II) no final order has been issued by the division in the action initiated under
37855 Subsection (4)(i)(i)(B)(I);

37856 (III) the division determines during an investigation that occurred after the initiation of
37857 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent

37858 violation of Subsection 58-11a-502(1), (2), or (4); and

37859 (IV) after determining that the person committed a second or subsequent offense under
37860 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
37861 Subsection (4)(i)(i)(B)(I).

37862 (ii) In issuing a final order for a second or subsequent offense under Subsection
37863 (4)(i)(i), the division shall comply with the requirements of this section.

37864 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
37865 into the Barber, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician
37866 Education and Enforcement Fund.

37867 (b) A penalty which is not paid may be collected by the director by either referring the
37868 matter to a collection agency or bringing an action in the district court of the county in which
37869 the person against whom the penalty is imposed resides or in the county where the office of the
37870 director is located.

37871 (c) A county attorney or the attorney general of the state is to provide legal assistance
37872 and advice to the director in an action to collect the penalty.

37873 (d) A court shall award reasonable attorney fees and costs in an action brought to
37874 enforce the provisions of this section.

37875 Section 844. Section **58-13-5** is amended to read:

37876 **58-13-5. Information relating to adequacy and quality of medical care --**
37877 **Immunity from liability.**

37878 (1) As used in this section, "health care provider" has the same meaning as defined in
37879 Section 78-14-3.

37880 (2) (a) The division, and the boards within the division that act regarding the health care
37881 providers defined in this section, shall adopt rules to establish procedures to obtain information
37882 concerning the quality and adequacy of health care rendered to patients by those health care
37883 providers.

37884 (b) It is the duty of an individual licensed under Title 58, Occupations and Professions,
37885 as a health care provider to furnish information known to him with respect to health care

37886 rendered to patients by any health care provider licensed under Title 58, Occupations and
37887 Professions, as the division or a board may request during the course of the performance of its
37888 duties.

37889 (3) A health care facility as defined in Section 26-21-2 which employs, grants privileges
37890 to, or otherwise permits a licensed health care provider to engage in licensed practice within the
37891 health care facility, and any professional society of licensed health care providers, shall report
37892 any of the following events in writing to the division within sixty days after the event occurs
37893 regarding the licensed health care provider:

37894 (a) terminating employment of an employee for cause related to the employee's practice
37895 as a licensed health care provider;

37896 (b) terminating or restricting privileges for cause to engage in any act or practice related
37897 to practice as a licensed health care provider;

37898 (c) terminating, suspending, or restricting membership or privileges associated with
37899 membership in a professional association for acts of unprofessional, unlawful, incompetent, or
37900 negligent conduct related to practice as a licensed health care provider;

37901 (d) subjecting a licensed health care provider to disciplinary action for a period of more
37902 than 30 days;

37903 (e) a finding that a licensed health care provider has violated professional standards or
37904 ethics;

37905 (f) a finding of incompetence in practice as a licensed health care provider;

37906 (g) a finding of acts of moral turpitude by a licensed health care provider; or

37907 (h) a finding that a licensed health care provider is engaged in abuse of alcohol or drugs.

37908 (4) This section does not prohibit any action by a health care facility, or professional
37909 society comprised primarily of licensed health care providers to suspend, restrict, or revoke the
37910 employment, privileges, or membership of a health care provider.

37911 (5) The data and information obtained in accordance with this section is classified as a
37912 "protected" record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
37913 Access and Management Act.

37914 (6) (a) Any person or organization furnishing information in accordance with this
37915 section in response to the request of the division or a board, or voluntarily, is immune from
37916 liability with respect to information provided in good faith and without malice, which good faith
37917 and lack of malice is presumed to exist absent clear and convincing evidence to the contrary.

37918 (b) The members of the board are immune from liability for any decisions made or
37919 actions taken in response to information acquired by the board if those decisions or actions are
37920 made in good faith and without malice, which good faith and lack of malice is presumed to exist
37921 absent clear and convincing evidence to the contrary.

37922 (7) An individual who is a member of a hospital administration, board, committee,
37923 department, medical staff, or professional organization of health care providers is, and any
37924 hospital, other health care entity, or professional organization conducting or sponsoring the
37925 review, immune from liability arising from participation in a review of a health care provider's
37926 professional ethics, medical competence, moral turpitude, or substance abuse.

37927 (8) This section does not exempt a person licensed under Title 58, Occupations and
37928 Professions, from complying with any reporting requirements established under state or federal
37929 law.

37930 Section 845. Section **58-15-4** is amended to read:

37931 **58-15-4. Licensure requirements.**

37932 (1) An applicant for a license under this chapter shall submit a written application to the
37933 division, verified under oath, that the applicant is of good moral character as it relates to the
37934 functions and responsibilities of the practice of administration of a health facility.

37935 (2) After July 1, 1985, all new applicants are required to have, in addition to Subsection
37936 (1), the education or experience requirements as established by rule and as approved by the
37937 division.

37938 (3) The applicant shall pay a fee to the Department of Commerce determined by it
37939 pursuant to Section [~~63-38-3.2~~] 63J-1-303 for admission to the examination, for an initial
37940 license, and for a renewal license.

37941 (4) The applicant shall pass a written examination in subjects determined by the board.

37942 Upon passing the examination and payment of the license fee, the board shall recommend
37943 issuance to the applicant of a license to practice as a health facility administrator.

37944 (5) A temporary license may be issued without examination to a person who meets the
37945 requirements established by statute and by rule for an administrator. The temporary license may
37946 be issued only to fill a position of administrator that unexpectedly becomes vacant and may be
37947 issued for only a single period not to exceed six months.

37948 (6) A license may be granted to an applicant who is a licensed nursing home
37949 administrator in another state if the standards for licensure in the other state are equivalent to
37950 those criteria set forth in Subsections (1) and (2), and if the applicant is otherwise qualified.

37951 Section 846. Section **58-16a-302** is amended to read:

37952 **58-16a-302. Qualifications for licensure.**

37953 (1) Each applicant for licensure as an optometrist shall:

37954 (a) submit an application in a form prescribed by the division;

37955 (b) pay a fee as determined by the division under Section [~~63-38-3.2~~] 63J-1-303;

37956 (c) be of good moral character;

37957 (d) (i) be a doctoral graduate of a recognized school of optometry accredited by:

37958 (A) a regional accrediting body recognized by the Council on Post-Secondary
37959 Education; and

37960 (B) the American Optometric Association's Council on Optometric Education; or

37961 (ii) be a graduate of a school of optometry located outside the United States that meets
37962 the criteria that would qualify the school for accreditation under Subsection (1)(d)(i), as
37963 demonstrated by the applicant for licensure;

37964 (e) if the applicant graduated from a recognized school of optometry prior to July 1,
37965 1996, have successfully completed a course of study satisfactory to the division, in consultation
37966 with the board, in general and ocular pharmacology and emergency medical care;

37967 (f) have passed examinations approved by the division in consultation with the board
37968 that include:

37969 (i) a standardized national optometry examination;

- 37970 (ii) a standardized clinical examination;
- 37971 (iii) a standardized national therapeutics examination; and
- 37972 (iv) the Utah Optometry Law Examination; and
- 37973 (g) meet with the board and representatives of the division, if requested by either party,
- 37974 for the purpose of evaluating the applicant's qualifications for licensure.
- 37975 (2) An applicant for licensure as an optometrist qualifying under the endorsement
- 37976 provision of Section 58-1-302 shall:
- 37977 (a) be currently licensed in good standing in any state of the United States; and
- 37978 (b) have been actively engaged in the legal practice of optometry for not less than 3,200
- 37979 hours in the immediately preceding two years, in a manner that is consistent with the legal
- 37980 practice of optometry in this state.
- 37981 Section 847. Section **58-17b-303** is amended to read:
- 37982 **58-17b-303. Qualifications for licensure as a pharmacist.**
- 37983 (1) Each applicant for licensure as a pharmacist shall:
- 37984 (a) submit an application in a form prescribed by the division;
- 37985 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 37986 (c) produce satisfactory evidence of good moral character as it relates to the applicant's
- 37987 ability to practice pharmacy;
- 37988 (d) complete a criminal background check and be free from criminal convictions as
- 37989 required by Section 58-17b-307, or as described in Section 58-1-501;
- 37990 (e) have no physical or mental condition of a nature which prevents the applicant from
- 37991 engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;
- 37992 (f) have graduated and received a professional entry degree from a school or college of
- 37993 pharmacy which is accredited by the Accreditation Council on Pharmacy Education;
- 37994 (g) have completed an internship meeting standards established by division rule made in
- 37995 collaboration with the board; and
- 37996 (h) have successfully passed examinations required by division rule made in
- 37997 collaboration with the board.

37998 (2) Each applicant for licensure as a pharmacist whose pharmacy education was
37999 completed at a foreign pharmacy school shall, in addition to the requirements under Subsections
38000 (1)(a) through (e), (g), and (h), obtain a certification of equivalency from a credentialing agency
38001 required by division rule made in collaboration with the board.

38002 (3) Each applicant for a license by endorsement as a pharmacist under this section shall:

38003 (a) submit a written application in the form prescribed by the division;

38004 (b) pay the fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38005 (c) be of good moral character as required of applicants for licensure as pharmacists
38006 under Subsection (1);

38007 (d) complete a criminal background check and be free from criminal convictions as
38008 required by Section 58-17b-307, or as otherwise described in Section 58-1-501;

38009 (e) have no physical or mental condition of a nature which prevents the applicant from
38010 engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;

38011 (f) have lawfully practiced as a licensed pharmacist a minimum of 2,000 hours in the
38012 four years immediately preceding the date of application;

38013 (g) produce satisfactory evidence of completing the professional education required
38014 under Subsection (1);

38015 (h) be currently licensed in good standing as a pharmacist in another state, territory, or
38016 possession of the United States;

38017 (i) produce satisfactory evidence that the examination requirements are or were at the
38018 time the license was issued, equal to those of this state; and

38019 (j) pass the jurisprudence examination prescribed by division rule made in collaboration
38020 with the board.

38021 Section 848. Section **58-17b-304** is amended to read:

38022 **58-17b-304. Qualifications for licensure of pharmacy intern.**

38023 Each applicant for licensure as a pharmacy intern shall:

38024 (1) submit an application in a form prescribed by the division;

38025 (2) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38026 (3) produce satisfactory evidence of good moral character as it relates to the applicant's
38027 ability to practice pharmacy;

38028 (4) complete a criminal background check and be free from criminal convictions as
38029 required by Section 58-17b-307, or as otherwise described in Section 58-1-501;

38030 (5) have no physical or mental condition of a nature which prevents the applicant from
38031 engaging in the practice of pharmacy with reasonable skill, competency, and safety to the public;

38032 (6) meet the preliminary educational qualifications required by division rule made in
38033 collaboration with the board; and

38034 (7) meet one of the following educational criteria:

38035 (a) be a current pharmacy student, a resident, or fellow in a program approved by
38036 division rule made in collaboration with the board;

38037 (b) have graduated and received a pharmacy degree from a school or college of
38038 pharmacy which is accredited by the Accreditation Council on Pharmacy Education but not
38039 completed the internship hours required by division rule for licensure as a pharmacist; or

38040 (c) have graduated from a foreign pharmacy school and received certification of
38041 equivalency from a credentialing agency approved by division rule made in collaboration with
38042 the board.

38043 Section 849. Section **58-17b-305** is amended to read:

38044 **58-17b-305. Qualifications for licensure of pharmacy technician.**

38045 (1) Each applicant for licensure as a pharmacy technician shall:

38046 (a) submit an application in a form prescribed by the division;

38047 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38048 (c) produce satisfactory evidence of good moral character as it relates to the applicant's
38049 ability to practice pharmacy;

38050 (d) complete a criminal background check and be free from criminal convictions as
38051 required by Section 58-17b-307, or as otherwise permitted by Section 58-1-501;

38052 (e) have no physical or mental condition of a nature which prevents the applicant from
38053 engaging in practice as a pharmacy technician with reasonable skill, competency, and safety to

38054 the public;

38055 (f) have completed a board approved program and curriculum of education and training,
38056 meeting standards established by division rule made in collaboration with the board; and

38057 (g) successfully complete the examinations requirement within the time periods
38058 established by division rule made in collaboration with the board.

38059 (2) A pharmacist whose license has been denied, revoked, suspended, or restricted for
38060 disciplinary purposes shall not be eligible to be a licensed pharmacy technician while on
38061 probation with the division.

38062 Section 850. Section **58-17b-306** is amended to read:

38063 **58-17b-306. Qualifications for licensure as a pharmacy.**

38064 (1) Each applicant for licensure under this section, except for those applying for a class
38065 D license, shall:

38066 (a) submit a written application in the form prescribed by the division;

38067 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38068 (c) satisfy the division that the applicant, and each owner, officer, or manager of the
38069 applicant have not engaged in any act, practice, or omission, which when considered with the
38070 duties and responsibilities of a licensee under this section indicates there is cause to believe that
38071 issuing a license to the applicant is inconsistent with the interest of the public's health, safety, or
38072 welfare;

38073 (d) demonstrate the licensee's operations will be in accordance with all federal, state,
38074 and local laws relating to the type of activity engaged in by the licensee, including regulations of
38075 the Federal Drug Enforcement Administration and Food and Drug Administration;

38076 (e) maintain operating standards established by division rule made in collaboration with
38077 the board; and

38078 (f) acknowledge the division's authority to inspect the licensee's business premises
38079 pursuant to Section 58-17b-103.

38080 (2) Each applicant applying for a class D license shall:

38081 (a) submit a written application in the form prescribed by the division;

- 38082 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 38083 (c) present to the division verification of licensure in the state where physically located
- 38084 and verification that such license is in good standing;
- 38085 (d) provide a statement of the scope of pharmacy services that will be provided and a
- 38086 detailed description of the protocol as described by rule by which pharmacy care will be
- 38087 provided, including any collaborative practice arrangements with other health care practitioners;
- 38088 (e) sign an affidavit attesting that any healthcare practitioners employed by the applicant
- 38089 and physically located in Utah have the appropriate license issued by the division and in good
- 38090 standing; and
- 38091 (f) sign an affidavit attesting that the applicant will abide by the pharmacy laws and
- 38092 regulations of the jurisdiction in which the pharmacy is located.

38093 (3) Each license issued under this section shall be issued for a single, specific address,

38094 and is not transferable or assignable.

38095 Section 851. Section **58-17b-307** is amended to read:

38096 **58-17b-307. Qualification for licensure -- Criminal background checks.**

38097 (1) An applicant for licensure under this chapter shall submit fingerprint cards in a form

38098 acceptable to the division at the time the license application is filed and shall consent to a

38099 fingerprint background check by the Utah Bureau of Criminal Identification and the Federal

38100 Bureau of Investigation regarding the application.

38101 (2) The division shall request the Department of Public Safety to complete a Federal

38102 Bureau of Investigation criminal background check for each applicant through the National

38103 Criminal History System (NCIC) or any successor system.

38104 (3) If convicted of one or more felonies, an applicant must receive an absolute

38105 discharge from the sentences for all felony convictions five or more years prior to the date of

38106 filing an application for licensure under this chapter.

38107 (4) For purposes of conducting the criminal background check required in Subsection

38108 (1), the division shall have direct access to criminal background information maintained

38109 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

38110 (5) Any new pharmacist, pharmacy intern, or pharmacy technician license issued under
38111 this section shall be conditional, pending completion of the criminal background check.
38112 Notwithstanding [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act,
38113 if the criminal background check discloses the applicant has failed to accurately disclose a
38114 criminal history, the license shall be immediately and automatically revoked upon notice to the
38115 licensee.

38116 (6) Any person whose conditional license has been revoked under Subsection (5) shall
38117 be entitled to a postrevocation hearing to challenge the revocation. The hearing shall be
38118 conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
38119 Procedures Act.

38120 Section 852. Section **58-17b-504** is amended to read:

38121 **58-17b-504. Penalty for unlawful or unprofessional conduct -- Fines -- Citations.**

38122 (1) Any person who violates any of the unlawful conduct provisions of Subsection
38123 58-1-501(1)(a)(i) and Subsections 58-17b-501(7) and (11) is guilty of a third degree felony.

38124 (2) Any person who violates any of the unlawful conduct provisions of Subsection
38125 58-1-501(1)(a)(ii), Subsections 58-1-501(1)(b) through (e), and Section 58-17b-501, except
38126 Subsections 58-17b-501(7) and (11), is guilty of a class A misdemeanor.

38127 (3) (a) Subject to Subsection (5) and in accordance with Section 58-17b-401, for acts
38128 of unprofessional or unlawful conduct, the division may:

- 38129 (i) assess administrative penalties; and
- 38130 (ii) take any other appropriate administrative action.

38131 (b) An administrative penalty imposed pursuant to this section shall be deposited in the
38132 General Fund as a dedicated credit to be used by the division for pharmacy licensee education
38133 and enforcement as provided in Section 58-17b-505.

38134 (4) If a licensee has been convicted of violating Section 58-17b-501 prior to an
38135 administrative finding of a violation of the same section, the licensee may not be assessed an
38136 administrative fine under this chapter for the same offense for which the conviction was
38137 obtained.

38138 (5) (a) If upon inspection or investigation, the division concludes that a person has
38139 violated the provisions of Section 58-17b-501 or 58-17b-502, Chapter 37, Utah Controlled
38140 Substances Act, Chapter 1, Division of Occupational and Professional Licensing Act, or any
38141 rule or order issued with respect to these provisions, and that disciplinary action is appropriate,
38142 the director or the director's designee from within the division shall promptly issue a citation to
38143 the person according to this chapter and any pertinent rules, attempt to negotiate a stipulated
38144 settlement, or notify the person to appear before an adjudicative proceeding conducted under
38145 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

38146 (b) Any person who is in violation of the provisions of Section 58-17b-501 or
38147 58-17b-502, Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Occupational
38148 and Professional Licensing Act, or any rule or order issued with respect to these provisions, as
38149 evidenced by an uncontested citation, a stipulated settlement, or a finding of violation in an
38150 adjudicative proceeding, may be assessed a fine pursuant to this Subsection (5) of up to \$10,000
38151 per single violation or up to \$2,000 per day of ongoing violation, whichever is greater, in
38152 accordance with a fine schedule established by rule, and may, in addition to or in lieu of, be
38153 ordered to cease and desist from violating the provisions of Section 58-17b-501 or 58-17b-502,
38154 Chapter 37, Utah Controlled Substances Act, Chapter 1, Division of Occupational and
38155 Professional Licensing Act, or any rule or order issued with respect to these provisions.

38156 (c) Except for an administrative fine and a cease and desist order, the licensure
38157 sanctions cited in Section 58-17b-401 may not be assessed through a citation.

38158 (d) Each citation shall be in writing and specifically describe with particularity the
38159 nature of the violation, including a reference to the provision of the chapter, rule, or order
38160 alleged to have been violated. The citation shall clearly state that the recipient must notify the
38161 division in writing within 20 calendar days of service of the citation in order to contest the
38162 citation at a hearing conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
38163 Administrative Procedures Act. The citation shall clearly explain the consequences of failure to
38164 timely contest the citation or to make payment of any fines assessed by the citation within the
38165 time specified in the citation.

38166 (e) Each citation issued under this section, or a copy of each citation, may be served
38167 upon any person upon whom a summons may be served:

38168 (i) in accordance with the Utah Rules of Civil Procedure;

38169 (ii) personally or upon the person's agent by a division investigator or by any person
38170 specially designated by the director; or

38171 (iii) by mail.

38172 (f) If within 20 calendar days from the service of a citation, the person to whom the
38173 citation was issued fails to request a hearing to contest the citation, the citation becomes the
38174 final order of the division and is not subject to further agency review. The period to contest the
38175 citation may be extended by the division for cause.

38176 (g) The division may refuse to issue or renew, suspend, revoke, or place on probation
38177 the license of a licensee who fails to comply with the citation after it becomes final.

38178 (h) The failure of an applicant for licensure to comply with a citation after it becomes
38179 final is a ground for denial of license.

38180 (i) No citation may be issued under this section after the expiration of six months
38181 following the occurrence of any violation.

38182 Section 853. Section **58-17b-701** is amended to read:

38183 **58-17b-701. Mentally incompetent or incapacitated pharmacist -- Division action**
38184 **and procedures.**

38185 (1) As used in this section:

38186 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

38187 (b) "Mentally ill" has the same definition as in Section 62A-15-602.

38188 (2) If a court of competent jurisdiction determines a pharmacist is an incapacitated
38189 person, or that ~~he~~ the pharmacist is mentally ill and unable to safely engage in the practice of
38190 pharmacy, the director shall immediately suspend the license of the pharmacist upon the entry of
38191 the judgment of the court, without further proceedings under ~~[Title 63, Chapter 46b]~~ Title 63G,
38192 Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's
38193 ruling is pending. The director shall promptly notify the pharmacist, in writing, of the

38194 suspension.

38195 (3) (a) If the division and a majority of the board find reasonable cause to believe a
38196 pharmacist, who is not determined judicially to be an incapacitated person or to be mentally ill,
38197 is incapable of practicing pharmacy with reasonable skill regarding the safety of patients,
38198 because of illness, excessive use of drugs or alcohol, or as a result of any mental or physical
38199 condition, the board shall recommend that the director file a petition with the division, and
38200 cause the petition to be served upon the pharmacist with a notice of hearing on the sole issue of
38201 the capacity of the pharmacist to competently and safely engage in the practice of pharmacy.

38202 (b) The hearing shall be conducted under Section 58-1-109 and [~~Title 63, Chapter 46b~~]
38203 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

38204 (4) (a) Every pharmacist who accepts the privilege of being licensed under this chapter
38205 gives consent to:

38206 (i) submitting at [~~his~~] the pharmacist's own expense to an immediate mental or physical
38207 examination when directed in writing by the division, with the consent of a majority of the
38208 board, to do so; and

38209 (ii) the admissibility of the reports of the examining practitioner's testimony or
38210 examination in any proceeding regarding the license of the pharmacist, and waives all objections
38211 on the ground the reports constitute a privileged communication.

38212 (b) The examination may be ordered by the division, with the consent of a majority of
38213 the board, only upon a finding of reasonable cause to believe:

38214 (i) the pharmacist is mentally ill or incapacitated or otherwise unable to practice
38215 pharmacy with reasonable skill and safety; and

38216 (ii) immediate action by the division and the board is necessary to prevent harm to the
38217 pharmacist's patients or the general public.

38218 (c) (i) Failure of a pharmacist to submit to the examination ordered under this section is
38219 a ground for the division's immediate suspension of the pharmacist's license by written order of
38220 the director.

38221 (ii) The division may enter the order of suspension without further compliance with

38222 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, unless the
38223 division finds the failure to submit to the examination ordered under this section was due to
38224 circumstances beyond the control of the pharmacist and was not related directly to the illness or
38225 incapacity of the pharmacist.

38226 (5) (a) A pharmacist whose license is suspended under Subsection (2) or (4) has the
38227 right to a hearing to appeal the suspension within ten days after the license is suspended.

38228 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
38229 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
38230 the continuance of the order of suspension in order to prevent harm to the pharmacist's patients
38231 or the general public.

38232 (6) A pharmacist whose license is revoked, suspended, or in any way restricted under
38233 this section may request the division and the board to consider, at reasonable intervals, evidence
38234 presented by the pharmacist, under procedures established by division rule, regarding any
38235 change in the pharmacist's condition, to determine whether:

38236 (a) ~~he~~ the pharmacist is or is not able to safely and competently engage in the practice
38237 of pharmacy; and

38238 (b) ~~he~~ the pharmacist is qualified to have ~~his~~ the pharmacist's licensure to practice
38239 under this chapter restored completely or in part.

38240 Section 854. Section **58-20a-302** is amended to read:

38241 **58-20a-302. Qualifications for licensure.**

38242 (1) Except as provided in Subsection (2), an applicant for licensure as an environmental
38243 health scientist shall:

38244 (a) submit an application in a form prescribed by the division;

38245 (b) pay a fee determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;

38246 (c) be of good moral character;

38247 (d) hold a bachelor's degree from an accredited program in a university or college,
38248 which degree includes completion of specific coursework as defined by rule;

38249 (e) pass an examination as determined by division rule in collaboration with the board;

38250 and

38251 (f) pass the Utah Law and Rules Examination for Environmental Health Scientists
38252 administered by the division.

38253 (2) An applicant for licensure who is currently actively engaged in the practice of
38254 environmental health science in Utah on July 1, 1995, and has been practicing in Utah for at
38255 least three consecutive months immediately prior to July 1, 1995, shall:

38256 (a) submit an application in a form prescribed by the division;

38257 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38258 (c) be of good moral character;

38259 (d) hold a bachelor's degree from an accredited program in a university or college,
38260 which degree includes completion of specific coursework as defined by rule;

38261 (e) pass the Utah Law and Rules Examination for Environmental Health Scientists
38262 administered by the division; and

38263 (f) submit an affidavit from the applicant's immediate supervisor in [~~his~~] the applicant's
38264 employment, attesting to the applicant's competence to practice environmental health science.

38265 (3) An applicant for licensure as an environmental health scientist-in-training shall:

38266 (a) submit an application in a form prescribed by the division;

38267 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38268 (c) be of good moral character;

38269 (d) hold a bachelor's degree from an accredited program in a university or college,
38270 which degree includes completion of specific coursework as defined by rule;

38271 (e) pass the Utah Law and Rules Examination for Environmental Health Scientists
38272 administered by the division; and

38273 (f) present evidence acceptable to the division and the board that the applicant, when
38274 licensed, will practice as an environmental health scientist-in-training only under the general
38275 supervision of a supervising environmental health scientist licensed under this chapter.

38276 Section 855. Section **58-22-103** is amended to read:

38277 **58-22-103. Education and enforcement fund.**

38278 (1) There is created a restricted special revenue fund known as the "Professional
38279 Engineer, Professional Structural Engineer, and Professional Land Surveyor Education and
38280 Enforcement Fund."

38281 (2) The fund consists of monies from:

38282 (a) a surcharge fee placed on initial, renewal, and reinstatement licensure fees under this
38283 chapter in accordance with the following:

38284 (i) the surcharge fee shall be established by the department in accordance with Section
38285 ~~[63-38-3.2]~~ 63J-1-303; and

38286 (ii) the surcharge fee shall not exceed 50% of the respective initial, renewal, or
38287 reinstatement licensure fee; and

38288 (b) administrative penalties collected pursuant to this chapter.

38289 (3) The fund shall earn interest and all interest earned on fund monies shall be deposited
38290 into the fund.

38291 (4) The director may, with concurrence of the board, make distributions from the fund
38292 for the following purposes:

38293 (a) education and training of licensees under this chapter;

38294 (b) education and training of the public or other interested persons in matters
38295 concerning engineering, structural engineering, and land surveying laws and practices; and

38296 (c) enforcement of this chapter by:

38297 (i) investigating unprofessional or unlawful conduct; and

38298 (ii) providing legal representation to the division when the division takes legal action
38299 against a person engaging in unprofessional or unlawful conduct.

38300 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
38301 shall be transferred to the General Fund.

38302 (6) The division shall report annually to the appropriate appropriations subcommittee of
38303 the Legislature concerning the fund.

38304 Section 856. Section **58-22-302** is amended to read:

38305 **58-22-302. Qualifications for licensure.**

- 38306 (1) Each applicant for licensure as a professional engineer shall:
- 38307 (a) submit an application in a form prescribed by the division;
- 38308 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 38309 (c) provide satisfactory evidence of good moral character;
- 38310 (d) (i) have graduated and received a bachelors or masters degree from an engineering
- 38311 program meeting criteria established by rule by the division in collaboration with the board; or
- 38312 (ii) have completed the Transportation Engineering Technology and Fundamental
- 38313 Engineering College Program prior to July 1, 1998, under the direction of the Utah Department
- 38314 of Transportation and as certified by the Utah Department of Transportation;
- 38315 (e) have successfully completed a program of qualifying experience established by rule
- 38316 by the division in collaboration with the board;
- 38317 (f) have successfully passed examinations established by rule by the division in
- 38318 collaboration with the board; and
- 38319 (g) meet with the board or representative of the division upon request for the purpose
- 38320 of evaluating the applicant's qualification for licensure.
- 38321 (2) Each applicant for licensure as a professional structural engineer shall:
- 38322 (a) submit an application in a form prescribed by the division;
- 38323 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 38324 (c) provide satisfactory evidence of good moral character;
- 38325 (d) have graduated and received an earned bachelors or masters degree from an
- 38326 engineering program meeting criteria established by rule by the division in collaboration with the
- 38327 board;
- 38328 (e) have successfully completed three years of licensed professional engineering
- 38329 experience established by rule by the division in collaboration with the board;
- 38330 (f) have successfully passed examinations established by rule by the division in
- 38331 collaboration with the board; and
- 38332 (g) meet with the board or representative of the division upon request for the purpose
- 38333 of evaluating the applicant's qualification for licensure.

- 38334 (3) Each applicant for licensure as a professional land surveyor shall:
- 38335 (a) submit an application in a form prescribed by the division;
- 38336 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 38337 (c) provide satisfactory evidence of good moral character;
- 38338 (d) (i) have graduated and received an associates, bachelors, or masters degree from a
- 38339 land surveying program, or an equivalent land surveying program, such as a program offered by
- 38340 the Utah College of Applied Technology as approved by the State Board of Regents,
- 38341 established by rule by the division in collaboration with the board, and have successfully
- 38342 completed a program of qualifying experience in land surveying established by rule by the
- 38343 division in collaboration with the board; or
- 38344 (ii) have successfully completed a program of qualifying experience in land surveying
- 38345 prior to January 1, 2007, in accordance with rules established by the division in collaboration
- 38346 with the board;
- 38347 (e) have successfully passed examinations established by rule by the division in
- 38348 collaboration with the board; and
- 38349 (f) meet with the board or representative of the division upon request for the purpose of
- 38350 evaluating the applicant's qualification for licensure.
- 38351 (4) Each applicant for licensure by endorsement shall:
- 38352 (a) submit an application in a form prescribed by the division;
- 38353 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 38354 (c) provide satisfactory evidence of good moral character;
- 38355 (d) submit satisfactory evidence of:
- 38356 (i) current licensure in good standing in a jurisdiction recognized by rule by the division
- 38357 in collaboration with the board;
- 38358 (ii) having successfully passed any examination established by rule by the division in
- 38359 collaboration with the board; and
- 38360 (iii) full-time employment as a licensed professional engineer, professional structural
- 38361 engineer, or professional land surveyor as a principal for at least five of the last seven years

38362 immediately preceding the date of the application; and

38363 (e) meet with the board or representative of the division upon request for the purpose
38364 of evaluating the applicant's qualifications for license.

38365 (5) The rules made to implement this section shall be in accordance with [~~Title 63,~~
38366 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

38367 Section 857. Section **58-22-503** is amended to read:

38368 **58-22-503. Penalty for unlawful conduct.**

38369 (1) (a) If upon inspection or investigation, the division concludes that a person has
38370 violated Subsections 58-1-501(1)(a) through (d) or Section 58-22-501 or any rule or order
38371 issued with respect to Section 58-22-501, and that disciplinary action is appropriate, the
38372 director or [~~his~~] the director's designee from within the division for each alternative
38373 respectively, shall promptly issue a citation to the person according to this chapter and any
38374 pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear
38375 before an adjudicative proceeding conducted under [~~Title 63, Chapter 46b]~~ Title 63G, Chapter
38376 4, Administrative Procedures Act.

38377 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-22-501
38378 or any rule or order issued with respect to Section 58-22-501, as evidenced by an uncontested
38379 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
38380 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be ordered
38381 to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-22-501
38382 or any rule or order issued with respect to this section.

38383 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
38384 58-22-401 may not be assessed through a citation.

38385 (b) A citation shall:

38386 (i) be in writing;

38387 (ii) describe with particularity the nature of the violation, including a reference to the
38388 provision of the chapter, rule, or order alleged to have been violated;

38389 (iii) clearly state that the recipient must notify the division in writing within 20 calendar

38390 days of service of the citation if the recipient wishes to contest the citation at a hearing
38391 conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;
38392 and

38393 (iv) clearly explain the consequences of failure to timely contest the citation or to make
38394 payment of any fines assessed by the citation within the time specified in the citation.

38395 (c) The division may issue a notice in lieu of a citation.

38396 (d) Each citation issued under this section, or a copy of each citation, may be served
38397 upon any person whom a summons may be served in accordance with the Utah Rules of Civil
38398 Procedure and may be made personally or upon [~~his~~] the person's agent by a division
38399 investigator or by any person specially designated by the director or by mail.

38400 (e) If within 20 calendar days from the service of the citation, the person to whom the
38401 citation was issued fails to request a hearing to contest the citation, the citation becomes the
38402 final order of the division and is not subject to further agency review. The period to contest a
38403 citation may be extended by the division for cause.

38404 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
38405 the license of a licensee who fails to comply with a citation after it becomes final.

38406 (g) The failure of an applicant for licensure to comply with a citation after it becomes
38407 final is a ground for denial of license.

38408 (h) No citation may be issued under this section after the expiration of six months
38409 following the occurrence of any violation.

38410 (i) The director or [~~his~~] the director's designee shall assess fines according to the
38411 following:

38412 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

38413 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

38414 and

38415 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
38416 \$2,000 for each day of continued offense.

38417 (2) An action initiated for a first or second offense which has not yet resulted in a final

38418 order of the division shall not preclude initiation of any subsequent action for a second or
38419 subsequent offense during the pendency of any preceding action. The final order on a
38420 subsequent action shall be considered a second or subsequent offense, respectively, provided the
38421 preceding action resulted in a first or second offense, respectively.

38422 (3) Any penalty which is not paid may be collected by the director by either referring
38423 the matter to a collection agency or bringing an action in the district court of the county in
38424 which the person against whom the penalty is imposed resides or in the county where the office
38425 of the director is located. Any county attorney or the attorney general of the state shall provide
38426 legal assistance and advice to the director in any action to collect the penalty. In any action
38427 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
38428 awarded to the division.

38429 Section 858. Section **58-26a-102** is amended to read:

38430 **58-26a-102. Definitions.**

38431 In addition to the definitions in Section 58-1-102, as used in this chapter:

38432 (1) "Accounting experience" means applying accounting and auditing skills and
38433 principles that are taught as a part of the professional education qualifying a person for licensure
38434 under this chapter and generally accepted by the profession, under the supervision of a licensed
38435 certified public accountant.

38436 (2) "Board" means the Utah Board of Accountancy created in Section 58-26a-201.

38437 (3) "Certified Public Accountant" or "CPA" means an individual currently licensed by
38438 this state or any other state to practice public accountancy or who has been granted a certificate
38439 as a certified public accountant under prior law or this chapter.

38440 (4) "Certified Public Accountant firm" or "CPA firm" means a qualified business entity
38441 holding a valid registration as a Certified Public Accountant firm under this chapter.

38442 (5) "Client" means the person who retains a licensee for the performance of one or
38443 more of the services included in the definition of the practice of public accountancy. "Client"
38444 does not include a CPA's employer when the licensee works in a salaried or hourly rate position.

38445 (6) "Compilation of financial statements" means the presentation in the form of financial

38446 statements of information that is the representation of management or owners accompanied by a
38447 report stating the compilation has been performed in accordance with standards established by
38448 the American Institute of Certified Public Accountants.

38449 (7) "Experience" means:

38450 (a) accounting experience;

38451 (b) professional experience; or

38452 (c) qualifying experience.

38453 (8) "Licensee" means the holder of a current valid license issued under this chapter.

38454 (9) "Practice of public accounting" means the offer to perform or the performance by a
38455 person holding himself out as a certified public accountant of one or more kinds of services
38456 involving the use of auditing or accounting skills including the issuance of reports or opinions
38457 on financial statements, performing attestation engagements, the performance of one or more
38458 kinds of advisory or consulting services, or the preparation of tax returns or the furnishing of
38459 advice on tax matters for a client.

38460 (10) "Peer review" means a study, appraisal, or review of one or more aspects of the
38461 professional work of a person or qualified business entity in the practice of public accountancy,
38462 by a licensee or any other qualified person in accordance with rules adopted pursuant to this
38463 chapter and who is not affiliated with the person or qualified business entity being reviewed.

38464 (11) "Professional experience" means experience lawfully obtained while licensed as a
38465 certified public accountant in another jurisdiction, recognized by rule, in the practice of public
38466 accountancy performed for a client, which includes expression of assurance or opinion, for at
38467 least 300 hours collectively in the following areas:

38468 (a) applying Generally Accepted Auditing Standards (GAAS) to the usual and
38469 customary financial transactions recorded in the accounting records;

38470 (b) preparing audit working papers in accordance with GAAS covering the examination
38471 of the accounts usually found in accounting records;

38472 (c) planning the audit scope in accordance with GAAS, including the audit program to
38473 be followed;

38474 (d) preparing written explanations and comments on the findings of the examination and
38475 on the content of the accounting records; and

38476 (e) preparing and analyzing financial statements in accordance with GAAS.

38477 (12) "Qualified business entity" means a sole proprietorship, corporation, limited
38478 liability company, or partnership engaged in the practice of public accountancy.

38479 (13) "Qualified continuing professional education" means a formal program of
38480 education that contributes directly to the professional competence of a certified public
38481 accountant.

38482 (14) "Qualifying examinations" means:

38483 (a) the AICPA Uniform CPA Examination;

38484 (b) the AICPA Examination of Professional Ethics for CPAs;

38485 (c) the Utah Laws and Rules Examination; and

38486 (d) any other examination approved by the board and adopted by the division by rule in
38487 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
38488 Act.

38489 (15) "Qualifying experience" means experience in the practice of public accountancy
38490 under the direction and supervision of a licensed certified public accountant performed for a
38491 client, which includes expression of assurance or opinion, for at least 300 hours collectively in
38492 the following areas:

38493 (a) applying Generally Accepted Auditing Standards (GAAS) to the usual and
38494 customary financial transactions recorded in the accounting records;

38495 (b) preparing audit working papers in accordance with GAAS covering the examination
38496 of the accounts usually found in accounting records;

38497 (c) planning the audit scope in accordance with GAAS, including the audit program to
38498 be followed;

38499 (d) preparing written explanations and comments on the findings of the examination and
38500 on the content of the accounting records; and

38501 (e) preparing and analyzing financial statements in accordance with GAAS.

38502 (16) (a) "Report" means:

38503 (i) when used with reference to financial statements, an opinion, report or other form of
38504 language that:

38505 (A) states or implies assurance as to the reliability of any financial statements; or

38506 (B) implies that the person or firm issuing it has special knowledge or competence in
38507 accounting or auditing and specifically includes compilations and reviews; such an implication of
38508 special knowledge or competence may arise from use by the issuer of the report of names or
38509 titles indicating that the person or firm is a public accountant or auditor, or from the language of
38510 the report itself; or

38511 (ii) any disclaimer of opinion when it is conventionally understood to imply any positive
38512 assurance as to the reliability of the financial statements referred to or language suggesting
38513 special competence on the part of the person or firm issuing such language; and it includes any
38514 other form of language that is conventionally understood to imply such assurance or such
38515 special knowledge or competence.

38516 (b) "Report" does not include a financial statement prepared by an unlicensed person if:

38517 (i) that financial statement has a cover page which includes essentially the following
38518 language: "I (we) have prepared the accompanying financial statements of (name of entity) as of
38519 (time period) for the (period) then ended. This presentation is limited to preparing, in the form
38520 of financial statements, information that is the representation of management (owners). I (we)
38521 have not audited or reviewed the accompanying financial statements and accordingly do not
38522 express an opinion or any other form of assurance on them."; and

38523 (ii) the cover page and any related footnotes do not use the terms "compilation,"
38524 "review," "audit," "generally accepted auditing standards," "generally accepted accounting
38525 principles," or other similar terms.

38526 (17) "Review of financial statements" means performing inquiry and analytical
38527 procedures which provide a reasonable basis for expressing limited assurance that there are no
38528 material modifications that should be made to the statements in order for them to be in
38529 conformity with generally accepted accounting principles or, if applicable, with another

38530 comprehensive basis of accounting; and, the issuance of a report on the financial statements
38531 stating that a review was performed in accordance with the standards established by the
38532 American Institute of Certified Public Accountants.

38533 (18) (a) "Substantial equivalency" means that the education, examination, and
38534 experience required by another jurisdiction are comparable to or exceed the education,
38535 examination, and experience requirements of this chapter, or that an individual's education,
38536 examination, and experience qualifications are comparable to or exceed the education,
38537 examination, and experience requirements of this chapter.

38538 (b) "Substantial equivalency" is determined by the board in accordance with rules made
38539 by the division in collaboration with the board.

38540 (19) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-26a-501.

38541 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-26a-502 and
38542 as may be further defined by rule.

38543 (21) "Year of experience" means 2,000 hours of cumulative experience.

38544 Section 859. Section **58-26a-302** is amended to read:

38545 **58-26a-302. Qualifications for licensure and registration -- Licensure by**
38546 **endorsement -- Transitional provisions.**

38547 (1) Each applicant for licensure under this chapter as a certified public accountant shall:

38548 (a) submit an application in a form prescribed by the division;

38549 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38550 (c) show evidence of good moral character;

38551 (d) submit a certified transcript of credits from an accredited institution acceptable to
38552 the board showing:

38553 (i) successful completion of a total of 150 semester hours or 225 quarter hours of
38554 collegiate level education with a concentration in accounting, auditing, and business;

38555 (ii) a baccalaureate degree or its equivalent at a college or university approved by the
38556 board; and

38557 (iii) compliance with any other education requirements established by rule by the

38558 division in collaboration with the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
38559 Chapter 3, Utah Administrative Rulemaking Act;

38560 (e) submit evidence of one year of accounting experience in a form prescribed by the
38561 division;

38562 (f) submit evidence of having successfully completed the qualifying examinations in
38563 accordance with Section 58-26a-306; and

38564 (g) submit to an interview by the board, if requested, for the purpose of examining the
38565 applicant's competence and qualifications for licensure.

38566 (2) The division may issue a license under this chapter to a person who holds a license
38567 as a certified public accountant issued by any other jurisdiction of the United States if the
38568 applicant for licensure by endorsement:

38569 (a) submits an application in a form prescribed by the division;

38570 (b) pays a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38571 (c) shows evidence of good moral character;

38572 (d) submits to an interview by the board, if requested, for the purpose of examining the
38573 applicant's competence and qualifications for licensure; and

38574 (e) (i) (A) shows evidence of having passed the qualifying examinations; and

38575 (B) (I) meets the requirements for licensure which were applicable in this state at the
38576 time of the issuance of the applicant's license by the jurisdiction from which the original
38577 licensure by satisfactorily passing the AICPA Uniform CPA Examination was issued; or

38578 (II) had five years of professional experience after passing the AICPA Uniform CPA
38579 Examination upon which the original license was based, within the ten years immediately
38580 preceding the application for licensure by endorsement; or

38581 (ii) shows evidence that the applicant's education, examination record, and experience
38582 are substantially equivalent to the requirements of Subsection (1), as provided by rule.

38583 (3) (a) Each applicant for registration as a Certified Public Accountant firm shall:

38584 (i) submit an application in a form prescribed by the division;

38585 (ii) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38586 (iii) have a CPA license under this chapter held by:
38587 (A) its proprietor, in the case of a sole proprietorship;
38588 (B) one of its general partners, managers, or members, in the case of a partnership or
38589 limited liability company;
38590 (C) one of its officers or shareholders, in the case of a corporation; or
38591 (D) one of its owners, in the case of any other type of qualified business entity;
38592 (iv) designate a CPA licensee who is responsible for on site supervision of operations of
38593 the CPA firm; and
38594 (v) meet any other requirements established by rule by the division in collaboration with
38595 the board in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
38596 Rulemaking Act;
38597 (b) Each separate location of a qualified business entity within the state seeking
38598 registration as a Certified Public Accountant firm shall register separately.
38599 (c) A Certified Public Accountant firm may include owners who are not licensed under
38600 this chapter provided that:
38601 (i) more than 50% of the ownership of the Certified Public Accountant firm, including
38602 financial interest and voting rights in the firm, is held by individuals who are Certified Public
38603 Accountants, licensed under this chapter or another jurisdiction of the United States; and
38604 (ii) all nonlicensed owners are active individual participants in the CPA firm.
38605 (4) An individual shall have until July 1, 2004, to obtain three years of qualifying
38606 experience for licensure without being required to complete the education requirement if that
38607 individual:
38608 (a) was approved to take the qualifying examinations prior to July 1, 1994, under prior
38609 law without completion of the education requirement; and
38610 (b) (i) passed the AICPA Uniform CPA Examination prior to July 1, 1994; or
38611 (ii) received conditional credits on the AICPA Uniform CPA Examination prior to July
38612 1, 1994, and subsequently passed all parts of the AICPA Uniform CPA Examination within six
38613 immediately successive examination administrations.

38614 Section 860. Section **58-26a-306** is amended to read:

38615 **58-26a-306. Examination requirements.**

38616 (1) Before taking the qualifying examinations, an applicant shall:

38617 (a) submit an application in a form approved by the division;

38618 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38619 (c) demonstrate completion of the education requirement in Subsection

38620 58-26a-302(1)(d); and

38621 (d) be approved by the board to take the qualifying examinations.

38622 (2) A person must sit for and meet the conditioning requirements of the AICPA

38623 Uniform CPA Examination as established by the AICPA.

38624 Section 861. Section **58-26a-307** is amended to read:

38625 **58-26a-307. CPA emeritus status -- Renewal of license.**

38626 (1) A person currently licensed as a certified public accountant may, on any renewal
38627 date of that license, apply for and obtain a transfer of that license to a status of CPA emeritus
38628 registration if:

38629 (a) (i) the licensee is at least 60 years of age as of the date of renewal;

38630 (ii) the licensee is disabled; or

38631 (iii) the board finds other good cause for believing that the licensee will not return to
38632 the practice of public accountancy;

38633 (b) the licensee makes an application for transfer of status and registration and pays a
38634 registration fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38635 (c) the licensee, on application for transfer, certifies that [~~he~~] the licensee will not
38636 engage in the practice of public accountancy while in the status of CPA emeritus registration;
38637 and

38638 (d) the licensee is in good standing as a CPA and not subject to any order of revocation,
38639 suspension, or probation.

38640 (2) Each CPA emeritus registration shall be issued in accordance with a two-year
38641 renewal cycle established by rule.

38642 (3) CPA emeritus registrants may not engage in the practice of public accountancy.

38643 (4) CPA emeritus registrants are not required to fulfill the continuing professional
38644 education or peer review provisions of this chapter.

38645 (5) Each CPA emeritus registrant is responsible for renewing [~~his~~] the registration,
38646 according to procedures that the division establishes by rule in collaboration with the board in
38647 accordance with Section 58-1-308.

38648 (6) A CPA emeritus registrant may reinstate [~~his~~] the CPA license by:

38649 (a) submitting an application in a form prescribed by the division;

38650 (b) paying a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

38651 and

38652 (c) showing evidence of having completed the continuing professional education
38653 requirement established by rule.

38654 Section 862. Section **58-28-302** is amended to read:

38655 **58-28-302. License qualifications.**

38656 (1) Every applicant for a license to practice veterinary medicine, surgery, and dentistry
38657 shall:

38658 (a) be of good moral character as it relates to the functions and duties of a licensed
38659 veterinarian;

38660 (b) pass an examination approved by the board on the theory and practice of the science
38661 of veterinary medicine, surgery, dentistry, and other subjects determined by the board,
38662 knowledge of which is generally required of veterinarians;

38663 (c) (i) graduate from a veterinary college accredited by the AVMA; or

38664 (ii) obtain a certificate issued by the Educational Commission for Foreign Veterinary
38665 Graduates issued by the AVMA;

38666 (d) (i) have practiced under the supervision of a veterinarian licensed to practice in this
38667 state for a period of at least six months;

38668 (ii) have participated in veterinary investigational, educational, or sanitary control work
38669 of a nature and duration as to be the equivalent of the experience of Subsection (1)(d)(i);

38670 (iii) have practiced as a licensed veterinarian outside Utah for a period of at least six
38671 months; or

38672 (iv) have practiced as a veterinarian while employed by the United States government,
38673 its agencies, or the state or its political subdivisions for a period of at least six months; and

38674 (e) pay a fee to the Department of Commerce determined by it pursuant to Section
38675 [~~63-38-3.2~~] 63J-1-303 for the examination, for an initial license, and for a renewal license.

38676 (2) (a) An applicant for licensure as a veterinary intern shall comply with the provisions
38677 of Subsections (1)(a) and (c).

38678 (b) An applicant's license as a veterinary intern is limited to the period of time necessary
38679 to complete clinical training as described in Subsection (1)(d) and extends not more than one
38680 year from the date the minimum requirement for training is completed, unless the individual
38681 presents satisfactory evidence to the division and the board that the individual is making
38682 reasonable progress toward passing the qualifying examination or is otherwise on a course
38683 reasonably expected to lead to licensure as a veterinarian, but the period of time under this
38684 Subsection (2)(b) may not exceed two years past the date the minimum supervised clinical
38685 training has been completed.

38686 Section 863. Section **58-28-503** is amended to read:

38687 **58-28-503. Penalty for unlawful or unprofessional conduct.**

38688 (1) Any person who violates the unlawful conduct provisions of Section 58-28-501 is
38689 guilty of a third degree felony.

38690 (2) After proceeding pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
38691 Administrative Procedures Act, and Chapter 1, Division of Occupational and Professional
38692 Licensing Act, the division may impose administrative penalties of up to \$10,000 for acts of
38693 unprofessional conduct or unlawful conduct under this chapter.

38694 (3) Assessment of a penalty under this section does not affect any other action the
38695 division is authorized to take regarding a license issued under this chapter.

38696 Section 864. Section **58-31b-102** is amended to read:

38697 **58-31b-102. Definitions.**

38698 In addition to the definitions in Section 58-1-102, as used in this chapter:

38699 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
38700 omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine
38701 schedule established by rule and as a result of an adjudicative proceeding conducted in
38702 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

38703 (2) "Applicant" means a person who applies for licensure or certification under this
38704 chapter by submitting a completed application for licensure or certification and the required fees
38705 to the department.

38706 (3) "Approved education program" means a nursing education program that meets the
38707 minimum standards for educational programs established under this chapter and by division rule
38708 in collaboration with the board.

38709 (4) "Board" means the Board of Nursing created in Section 58-31b-201.

38710 (5) "Consultation and referral plan" means a written plan jointly developed by an
38711 advanced practice registered nurse and a consulting physician that permits the advanced practice
38712 registered nurse to prescribe schedule II-III controlled substances in consultation with the
38713 consulting physician.

38714 (6) "Consulting physician" means a physician and surgeon or osteopathic physician and
38715 surgeon licensed in accordance with this title who has agreed to consult with an advanced
38716 practice registered nurse with a controlled substance license, a DEA registration number, and
38717 who will be prescribing schedule II-III controlled substances.

38718 (7) "Diagnosis" means the identification of and discrimination between physical and
38719 psychosocial signs and symptoms essential to the effective execution and management of health
38720 care.

38721 (8) "Examinee" means a person who applies to take or does take any examination
38722 required under this chapter for licensure.

38723 (9) "Licensee" means a person who is licensed or certified under this chapter.

38724 (10) "Long-term care facility" means any of the following facilities licensed by the
38725 Department of Health pursuant to Title 26, Chapter 21, Health Care Facility Licensing and

38726 Inspection Act:

38727 (a) a nursing care facility;

38728 (b) a small health care facility;

38729 (c) an intermediate care facility for the mentally retarded;

38730 (d) an assisted living facility Type I or II; or

38731 (e) a designated swing bed unit in a general hospital.

38732 (11) "Medication aide certified" means a certified nurse aide who:

38733 (a) has a minimum of 2,000 hours experience working as a certified nurse aide;

38734 (b) has received a minimum of 40 hours of classroom and 20 hours of practical training

38735 that is approved by the division in collaboration with the board, in administering routine

38736 medications to patients or residents of long-term care facilities; and

38737 (c) is certified by the division as a medication aide certified.

38738 (12) (a) "Practice as a medication aide certified" means the limited practice of nursing

38739 under the supervision, as defined by the division by administrative rule, of a licensed nurse,

38740 involving routine patient care that requires minimal or limited specialized or general knowledge,

38741 judgment, and skill, to an individual who is ill, injured, infirm, developmentally or physically

38742 disabled, mentally disabled, or mentally retarded, and who is in a regulated long-term care

38743 facility.

38744 (b) "Practice as a medication aide certified" includes:

38745 (i) providing direct personal assistance or care; and

38746 (ii) administering routine medications to patients in accordance with a formulary and

38747 protocols to be defined by the division by rule.

38748 (13) "Practice of advanced practice registered nursing" means the practice of nursing

38749 within the generally recognized scope and standards of advanced practice registered nursing as

38750 defined by rule and consistent with professionally recognized preparation and education

38751 standards of an advanced practice registered nurse by a person licensed under this chapter as an

38752 advanced practice registered nurse. Advanced practice registered nursing includes:

38753 (a) maintenance and promotion of health and prevention of disease;

- 38754 (b) diagnosis, treatment, correction, consultation, and referral for common health
- 38755 problems;
- 38756 (c) prescription or administration of prescription drugs or devices including:
- 38757 (i) local anesthesia;
- 38758 (ii) schedule IV-V controlled substances; and
- 38759 (iii) schedule II-III controlled substances in accordance with a consultation and referral
- 38760 plan; or
- 38761 (d) the provision of preoperative, intraoperative, and postoperative anesthesia care and
- 38762 related services upon the request of a licensed health care professional by an advanced practice
- 38763 registered nurse specializing as a certified registered nurse anesthetist, including:
- 38764 (i) preanesthesia preparation and evaluation including:
- 38765 (A) performing a preanesthetic assessment of the patient;
- 38766 (B) ordering and evaluating appropriate lab and other studies to determine the health of
- 38767 the patient; and
- 38768 (C) selecting, ordering, or administering appropriate medications;
- 38769 (ii) anesthesia induction, maintenance, and emergence, including:
- 38770 (A) selecting and initiating the planned anesthetic technique;
- 38771 (B) selecting and administering anesthetics and adjunct drugs and fluids; and
- 38772 (C) administering general, regional, and local anesthesia;
- 38773 (iii) postanesthesia follow-up care, including:
- 38774 (A) evaluating the patient's response to anesthesia and implementing corrective actions;
- 38775 and
- 38776 (B) selecting, ordering, or administering the medications and studies listed in
- 38777 Subsection (13)(d); and
- 38778 (iv) other related services within the scope of practice of a certified registered nurse
- 38779 anesthetist, including:
- 38780 (A) emergency airway management;
- 38781 (B) advanced cardiac life support; and

38782 (C) the establishment of peripheral, central, and arterial invasive lines; and

38783 (v) for purposes of Subsection (13)(d), "upon the request of a licensed health care
38784 professional":

38785 (A) means a health care professional practicing within the scope of the health care
38786 professional's license, requests anesthesia services for a specific patient; and

38787 (B) does not require an advanced practice registered nurse specializing as a certified
38788 registered nurse anesthetist to enter into a consultation and referral plan or obtain additional
38789 authority to select, administer, or provide preoperative, intraoperative, or postoperative
38790 anesthesia care and services.

38791 (14) "Practice of nursing" means assisting individuals or groups to maintain or attain
38792 optimal health, implementing a strategy of care to accomplish defined goals and evaluating
38793 responses to care and treatment. The practice of nursing requires substantial specialized or
38794 general knowledge, judgment, and skill based upon principles of the biological, physical,
38795 behavioral, and social sciences, and includes:

38796 (a) initiating and maintaining comfort measures;

38797 (b) promoting and supporting human functions and responses;

38798 (c) establishing an environment conducive to well-being;

38799 (d) providing health counseling and teaching;

38800 (e) collaborating with health care professionals on aspects of the health care regimen;

38801 (f) performing delegated procedures only within the education, knowledge, judgment,
38802 and skill of the licensee; and

38803 (g) delegating nurse interventions that may be performed by others and are not in
38804 conflict with this chapter.

38805 (15) "Practice of practical nursing" means the performance of nursing acts in the
38806 generally recognized scope of practice of licensed practical nurses as defined by rule and as
38807 provided in this Subsection (15) by a person licensed under this chapter as a licensed practical
38808 nurse and under the direction of a registered nurse, licensed physician, or other specified health
38809 care professional as defined by rule. Practical nursing acts include:

- 38810 (a) contributing to the assessment of the health status of individuals and groups;
- 38811 (b) participating in the development and modification of the strategy of care;
- 38812 (c) implementing appropriate aspects of the strategy of care;
- 38813 (d) maintaining safe and effective nursing care rendered to a patient directly or
- 38814 indirectly; and
- 38815 (e) participating in the evaluation of responses to interventions.
- 38816 (16) "Practice of registered nursing" means performing acts of nursing as provided in
- 38817 this Subsection (16) by a person licensed under this chapter as a registered nurse within the
- 38818 generally recognized scope of practice of registered nurses as defined by rule. Registered
- 38819 nursing acts include:
 - 38820 (a) assessing the health status of individuals and groups;
 - 38821 (b) identifying health care needs;
 - 38822 (c) establishing goals to meet identified health care needs;
 - 38823 (d) planning a strategy of care;
 - 38824 (e) prescribing nursing interventions to implement the strategy of care;
 - 38825 (f) implementing the strategy of care;
 - 38826 (g) maintaining safe and effective nursing care that is rendered to a patient directly or
 - 38827 indirectly;
 - 38828 (h) evaluating responses to interventions;
 - 38829 (i) teaching the theory and practice of nursing; and
 - 38830 (j) managing and supervising the practice of nursing.
- 38831 (17) "Routine medications":
 - 38832 (a) means established medications administered to a medically stable individual as
 - 38833 determined by a licensed health care practitioner or in consultation with a licensed medical
 - 38834 practitioner; and
 - 38835 (b) is limited to medications that are administered by the following routes:
 - 38836 (i) oral;
 - 38837 (ii) sublingual;

- 38838 (iii) buccal;
- 38839 (iv) eye;
- 38840 (v) ear;
- 38841 (vi) nasal;
- 38842 (vii) rectal;
- 38843 (viii) vaginal;
- 38844 (ix) skin ointments, topical including patches and transdermal;
- 38845 (x) gastronomy or jejunostomy tubes;
- 38846 (xi) premeasured medication delivered by aerosol/nebulizer; and
- 38847 (xii) medications delivered by metered hand-held inhalers.
- 38848 (18) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-31b-501.
- 38849 (19) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
- 38850 to whom tasks are delegated by a licensed nurse as permitted by rule and in accordance with the
- 38851 standards of the profession.
- 38852 (20) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-31b-502 and
- 38853 as may be further defined by rule.
- 38854 Section 865. Section **58-31b-301.6** is amended to read:
- 38855 **58-31b-301.6. Medication aide certified pilot program.**
- 38856 (1) (a) The division shall establish a medication aide certified pilot program, limited to
- 38857 adult patients only, to determine the safety and efficiency of regulating medication aides
- 38858 certified.
- 38859 (b) The pilot program begins on January 1, 2007, and sunsets in accordance with
- 38860 Section [~~63-55b-158~~] 63I-2-258.
- 38861 (c) The division shall collect data regarding the safety and efficiency of medication aides
- 38862 certified and shall make the data available to the public.
- 38863 (d) If the Legislature does not reauthorize the medication aides certified in accordance
- 38864 with Section [~~63-55b-158~~] 63I-2-258, all certifications will automatically expire on the sunset
- 38865 date.

38866 (2) If at any time the division determines the certification pilot program has become a
38867 threat, or potential threat to the public health, safety, or welfare, the division may authorize
38868 emergency rules to place the certification program in abeyance until the next legislative session.

38869 Section 866. Section **58-31b-302** is amended to read:

38870 **58-31b-302. Qualifications for licensure or certification -- Criminal background**
38871 **checks.**

38872 (1) An applicant for certification as a medication aide shall:

38873 (a) submit an application to the division on a form prescribed by the division;

38874 (b) pay a fee to the division as determined under Section [~~63-38-3.2~~] 63J-1-303;

38875 (c) have a high school diploma or its equivalent;

38876 (d) have a current certification as a nurse aide, in good standing, from the Department
38877 of Health;

38878 (e) have a minimum of 2,000 hours of experience within the two years prior to
38879 application, working as a certified nurse aide in a long-term care facility;

38880 (f) obtain letters of recommendation from a long-term care facility administrator and
38881 one licensed nurse familiar with the applicant's work practices as a certified nurse aide;

38882 (g) be in a condition of physical and mental health that will permit the applicant to
38883 practice safely as a medication aide certified;

38884 (h) have completed an approved education program or an equivalent as determined by
38885 the division in collaboration with the board;

38886 (i) have passed the examinations as required by division rule made in collaboration with
38887 the board; and

38888 (j) meet with the board, if requested, to determine the applicant's qualifications for
38889 certification.

38890 (2) An applicant for licensure as a licensed practical nurse shall:

38891 (a) submit to the division an application in a form prescribed by the division;

38892 (b) pay to the division a fee determined under Section [~~63-38-3.2~~] 63J-1-303;

38893 (c) have a high school diploma or its equivalent;

- 38894 (d) be in a condition of physical and mental health that will permit the applicant to
38895 practice safely as a licensed practical nurse;
- 38896 (e) have completed an approved practical nursing education program or an equivalent
38897 as determined by the board;
- 38898 (f) have passed the examinations as required by division rule made in collaboration with
38899 the board; and
- 38900 (g) meet with the board, if requested, to determine the applicant's qualifications for
38901 licensure.
- 38902 (3) An applicant for licensure as a registered nurse shall:
- 38903 (a) submit to the division an application form prescribed by the division;
- 38904 (b) pay to the division a fee determined under Section [~~63-38-3.2~~] 63J-1-303;
- 38905 (c) have a high school diploma or its equivalent;
- 38906 (d) be in a condition of physical and mental health that will allow the applicant to
38907 practice safely as a registered nurse;
- 38908 (e) have completed an approved registered nursing education program;
- 38909 (f) have passed the examinations as required by division rule made in collaboration with
38910 the board; and
- 38911 (g) meet with the board, if requested, to determine the applicant's qualifications for
38912 licensure.
- 38913 (4) Applicants for licensure as an advanced practice registered nurse shall:
- 38914 (a) submit to the division an application on a form prescribed by the division;
- 38915 (b) pay to the division a fee determined under Section [~~63-38-3.2~~] 63J-1-303;
- 38916 (c) be in a condition of physical and mental health which will allow the applicant to
38917 practice safely as an advanced practice registered nurse;
- 38918 (d) hold a current registered nurse license in good standing issued by the state or be
38919 qualified at the time for licensure as a registered nurse;
- 38920 (e) (i) have earned a graduate degree in:
- 38921 (A) an advanced practice registered nurse nursing education program; or

38922 (B) a related area of specialized knowledge as determined appropriate by the division in
38923 collaboration with the board; or

38924 (ii) have completed a nurse anesthesia program in accordance with Subsection (4)(f)(ii);

38925 (f) have completed:

38926 (i) course work in patient assessment, diagnosis and treatment, and
38927 pharmacotherapeutics from an education program approved by the division in collaboration
38928 with the board; or

38929 (ii) a nurse anesthesia program which is approved by the Council on Accreditation of
38930 Nurse Anesthesia Educational Programs;

38931 (g) have successfully completed clinical practice in psychiatric and mental health
38932 nursing, including psychotherapy as defined by division rule, after completion of the masters
38933 degree required for licensure, to practice within the psychiatric and mental health nursing
38934 specialty;

38935 (h) have passed the examinations as required by division rule made in collaboration with
38936 the board;

38937 (i) be currently certified by a program approved by the division in collaboration with the
38938 board and submit evidence satisfactory to the division of the certification; and

38939 (j) meet with the board, if requested, to determine the applicant's qualifications for
38940 licensure.

38941 (5) For each applicant for licensure or certification under this chapter:

38942 (a) the applicant shall:

38943 (i) submit fingerprint cards in a form acceptable to the division at the time the
38944 application is filed; and

38945 (ii) consent to a fingerprint background check by the Utah Bureau of Criminal
38946 Identification and the Federal Bureau of Investigation regarding the application; and

38947 (b) the division shall request the Department of Public Safety to complete a Federal
38948 Bureau of Investigation criminal background check through the national criminal history system
38949 (NCIC) or any successor system.

38950 (6) For purposes of conducting the criminal background checks required in Subsection
38951 (5), the division shall have direct access to criminal background information maintained
38952 pursuant to Title 53, Chapter 10, Part 2, Bureau of Criminal Identification.

38953 (7) (a) (i) Any new nurse license or certification issued under this section shall be
38954 conditional, pending completion of the criminal background check.

38955 (ii) If the criminal background check discloses the applicant has failed to accurately
38956 disclose a criminal history, the license or certification shall be immediately and automatically
38957 revoked.

38958 (b) (i) Any person whose conditional license or certification has been revoked under
38959 Subsection (7)(a) shall be entitled to a postrevocation hearing to challenge the revocation.

38960 (ii) The hearing shall be conducted in accordance with [~~Title 63, Chapter 46b~~] Title
38961 63G, Chapter 4, Administrative Procedures Act.

38962 (8) (a) If a person has been charged with a violent felony, as defined in Subsection
38963 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of guilty or
38964 nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance pending the
38965 successful completion of probation:

38966 (i) the person is disqualified for licensure under this chapter; and

38967 (ii) (A) if the person is licensed under this chapter, the division:

38968 (I) shall act upon the license as required under Section 58-1-401; and

38969 (II) may not renew or subsequently issue a license to the person under this chapter; and

38970 (B) if the person is not licensed under this chapter, the division may not issue a license
38971 to the person under this chapter.

38972 (b) If a person has been charged with a felony other than a violent felony, as defined in
38973 Subsection 76-3-203.5(1)(c), and, as a result, the person has been convicted, entered a plea of
38974 guilty or nolo contendere, or entered a plea of guilty or nolo contendere held in abeyance
38975 pending the successful completion of probation:

38976 (i) if the person is licensed under this chapter, the division shall determine whether the
38977 felony disqualifies the person for licensure under this chapter and act upon the license, as

38978 required, in accordance with Section 58-1-401; and

38979 (ii) if the person is not licensed under this chapter, the person may not file an
 38980 application for licensure under this chapter any sooner than five years after having completed
 38981 the conditions of the sentence or plea agreement.

38982 Section 867. Section **58-31b-304** is amended to read:

38983 **58-31b-304. Qualifications for admission to the examinations.**

38984 (1) To be admitted to the examinations required for certification as a medication aide
 38985 certified, a person shall:

- 38986 (a) submit an application on a form prescribed by the division;
- 38987 (b) pay a fee as determined by the division under Section [~~63-38-3.2~~] 63J-1-303; and
- 38988 (c) meet all requirements of Subsection 58-31b-302(1), except the passing of the
 38989 examination.

38990 (2) To be admitted to the examinations required for licensure as a practical nurse, a
 38991 person shall:

- 38992 (a) submit an application form prescribed by the division;
- 38993 (b) pay a fee as determined by the division under Section [~~63-38-3.2~~] 63J-1-303; and
- 38994 (c) meet all requirements of Subsection 58-31b-302(2), except Subsection (2)(f).

38995 (3) To be admitted to the examinations required for licensure as a registered nurse, a
 38996 person shall:

- 38997 (a) submit an application form prescribed by the division;
- 38998 (b) pay a fee as determined by the division under Section [~~63-38-3.2~~] 63J-1-303; and
- 38999 (c) meet all the requirements of Subsection 58-31b-302(3), except Subsection (3)(f).

39000 Section 868. Section **58-31b-305** is amended to read:

39001 **58-31b-305. Term of license -- Expiration -- Renewal.**

39002 (1) The division shall issue each license or certification under this chapter in accordance
 39003 with a two-year renewal cycle established by rule. The division may by rule extend or shorten a
 39004 renewal period by as much as one year to stagger the renewal cycles it administers.

39005 (2) At the time of renewal, the licensee or person certified under this chapter shall show

39006 satisfactory evidence of each of the following renewal requirements:

39007 (a) complete and submit an application for renewal in a form prescribed by the division
39008 and pay the renewal fee determined under Section ~~[63-38-3.2]~~ 63J-1-303; and

39009 (b) meet continuing competency requirements as established by rule, which shall include
39010 continuing education requirements for medication aide certified established by the board and
39011 adopted by the division by rule.

39012 (3) In addition to the renewal requirements under Subsection (2), a person licensed as a
39013 advanced practice registered nurse shall be currently certified by a program approved by the
39014 division in collaboration with the board and submit evidence satisfactory to the division of that
39015 qualification or if licensed prior to July 1, 1992, meet the requirements established by rule.

39016 (4) Each license or certification automatically expires on the expiration date shown on
39017 the license or certification unless renewed in accordance with Section 58-1-308.

39018 Section 869. Section **58-31b-401** is amended to read:

39019 **58-31b-401. Grounds for denial of licensure or certification and disciplinary**
39020 **proceedings.**

39021 (1) Grounds for refusal to issue a license to an applicant, for refusal to renew the license
39022 of a licensee, to revoke, suspend, restrict, or place on probation the license of a licensee, to
39023 issue a public or private reprimand to a licensee, and to issue cease and desist orders shall be in
39024 accordance with Section 58-1-401.

39025 (2) If a court of competent jurisdiction determines a nurse is an incapacitated person as
39026 defined in Section 75-1-201 or that ~~[he]~~ the nurse is mentally ill as defined in Section
39027 62A-15-602, and unable to safely engage in the practice of nursing, the director shall
39028 immediately suspend the license of the nurse upon the entry of the judgment of the court,
39029 without further proceedings under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative
39030 Procedures Act, regardless of whether an appeal from the court's ruling is pending. The
39031 director shall promptly notify the nurse in writing of the suspension.

39032 (3) (a) If the division and the majority of the board find reasonable cause to believe a
39033 nurse who is not determined judicially to be an incapacitated person or to be mentally ill, is

39034 incapable of practicing nursing with reasonable skill regarding the safety of patients, because of
39035 illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition, the
39036 board shall recommend that the director file a petition with the division, and cause the petition
39037 to be served upon the nurse with a notice of hearing on the sole issue of the capacity of the
39038 nurse to competently, safely engage in the practice of nursing.

39039 (b) The hearing shall be conducted under Section 58-1-109 and [~~Title 63, Chapter 46b~~]
39040 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

39041 (4) (a) Every nurse who accepts the privilege of being licensed under this chapter gives
39042 consent to:

39043 (i) submitting to an immediate mental or physical examination, at the nurse's expense
39044 and by a division-approved practitioner selected by the nurse when directed in writing by the
39045 division and a majority of the board to do so; and

39046 (ii) the admissibility of the reports of the examining practitioner's testimony or
39047 examination, and waives all objections on the ground the reports constitute a privileged
39048 communication.

39049 (b) The examination may be ordered by the division, with the consent of a majority of
39050 the board, only upon a finding of reasonable cause to believe:

39051 (i) the nurse is mentally ill or incapacitated or otherwise unable to practice nursing with
39052 reasonable skill and safety; and

39053 (ii) immediate action by the division and the board is necessary to prevent harm to the
39054 nurse's patients or the general public.

39055 (c) (i) Failure of a nurse to submit to the examination ordered under this section is a
39056 ground for the division's immediate suspension of the nurse's license by written order of the
39057 director.

39058 (ii) The division may enter the order of suspension without further compliance with
39059 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, unless the
39060 division finds the failure to submit to the examination ordered under this section was due to
39061 circumstances beyond the control of the nurse and was not related directly to the illness or

39062 incapacity of the nurse.

39063 (5) (a) A nurse whose license is suspended under Subsection (2), (3), or (4)(c) has the
39064 right to a hearing to appeal the suspension within ten days after the license is suspended.

39065 (b) The hearing held under this Subsection (5) shall be conducted in accordance with
39066 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
39067 the continuance of the order of suspension in order to prevent harm to the nurse's patients or
39068 the general public.

39069 (6) A nurse whose license is revoked, suspended, or in any way restricted under this
39070 section may request the division and the board to consider, at reasonable intervals, evidence
39071 presented by the nurse, under procedures established by division rule, regarding any change in
39072 the nurse's condition, to determine whether:

39073 (a) ~~he~~ the nurse is or is not able to safely and competently engage in the practice of
39074 nursing; and

39075 (b) ~~he~~ the nurse is qualified to have ~~his~~ the nurse's license to practice under this
39076 chapter restored completely or in part.

39077 (7) Nothing in Section ~~[63-2-206]~~ 63G-2-206 may be construed as limiting the
39078 authority of the division to report current significant investigative information to the
39079 coordinated licensure information system for transmission to party states as required of the
39080 division by Article VII of the Nurse Licensure Compact in Section 58-31c-102.

39081 (8) For purposes of this section and Section 58-31b-402:

39082 (a) "licensed" or "license" includes "certified" or "certification" under this chapter; and

39083 (b) any terms or conditions applied to the word "nurse" in this section or Section
39084 58-31b-402 also apply to a medication aide certified.

39085 Section 870. Section **58-31b-402** is amended to read:

39086 **58-31b-402. Authority to assess penalty.**

39087 (1) After a proceeding pursuant to ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4,
39088 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
39089 Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000

39090 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule
39091 established by rule.

39092 (2) The assessment of a penalty under this section does not affect any other action the
39093 division is authorized to take regarding a license issued under this chapter.

39094 (3) The division may impose an administrative penalty of up to \$500 for any violation of
39095 Subsection 58-31b-501(1)(a) or (b), consistent with Section 58-31b-503.

39096 Section 871. Section **58-31b-601** is amended to read:

39097 **58-31b-601. Minimum standards for nursing programs -- Medication aide**
39098 **training.**

39099 (1) A nursing education program shall be affiliated with an accredited institution of
39100 higher education in order to be approved by the division.

39101 (2) The minimum standards a nursing program shall meet to qualify graduates for
39102 licensure under this chapter shall be defined by division rule.

39103 (3) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
39104 Administrative Rulemaking Act, the division shall make rules defining the minimum standards
39105 for a medication aide certified training program to qualify a person for certification under this
39106 chapter as a medication aide certified.

39107 (b) A medication aide certified training program shall include a minimum of 40 hours of
39108 classroom and 20 hours of practical training.

39109 Section 872. Section **58-37-2** is amended to read:

39110 **58-37-2. Definitions.**

39111 (1) As used in this chapter:

39112 (a) "Administer" means the direct application of a controlled substance, whether by
39113 injection, inhalation, ingestion, or any other means, to the body of a patient or research subject
39114 by:

39115 (i) a practitioner or, in [~~his~~] the practitioner's presence, by [~~his~~] the practitioner's
39116 authorized agent; or

39117 (ii) the patient or research subject at the direction and in the presence of the

39118 practitioner.

39119 (b) "Agent" means an authorized person who acts on behalf of or at the direction of a
39120 manufacturer, distributor, or practitioner but does not include a motor carrier, public
39121 warehouseman, or employee of any of them.

39122 (c) "Consumption" means ingesting or having any measurable amount of a controlled
39123 substance in a person's body, but this Subsection (1)(c) does not include the metabolite of a
39124 controlled substance.

39125 (d) "Continuing criminal enterprise" means any individual, sole proprietorship,
39126 partnership, corporation, business trust, association, or other legal entity, and any union or
39127 groups of individuals associated in fact although not a legal entity, and includes illicit as well as
39128 licit entities created or maintained for the purpose of engaging in conduct which constitutes the
39129 commission of episodes of activity made unlawful by Title 58, Chapters 37, 37a, 37b, 37c, or
39130 37d, which episodes are not isolated, but have the same or similar purposes, results,
39131 participants, victims, methods of commission, or otherwise are interrelated by distinguishing
39132 characteristics. Taken together, the episodes shall demonstrate continuing unlawful conduct
39133 and be related either to each other or to the enterprise.

39134 (e) "Control" means to add, remove, or change the placement of a drug, substance, or
39135 immediate precursor under Section 58-37-3.

39136 (f) (i) "Controlled substance" means a drug or substance included in Schedules I, II, III,
39137 IV, or V of Section 58-37-4, and also includes a drug or substance included in Schedules I, II,
39138 III, IV, or V of the federal Controlled Substances Act, Title II, P.L. 91-513, or any controlled
39139 substance analog.

39140 (ii) "Controlled substance" does not include:

39141 (A) distilled spirits, wine, or malt beverages, as those terms are defined or used in Title
39142 32A, Alcoholic Beverage Control Act, regarding tobacco or food;

39143 (B) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
39144 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
39145 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,

39146 transferred, or furnished as an over-the-counter medication without prescription; or

39147 (C) dietary supplements, vitamins, minerals, herbs, or other similar substances including
39148 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally
39149 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant
39150 to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

39151 (g) (i) "Controlled substance analog" means a substance the chemical structure of which
39152 is substantially similar to the chemical structure of a controlled substance listed in Schedules I
39153 and II of Section 58-37-4, or in Schedules I and II of the federal Controlled Substances Act,
39154 Title II, P.L. 91-513:

39155 (A) which has a stimulant, depressant, or hallucinogenic effect on the central nervous
39156 system substantially similar to the stimulant, depressant, or hallucinogenic effect on the central
39157 nervous system of controlled substances in the schedules set forth in Subsection (1)(f); or

39158 (B) which, with respect to a particular individual, is represented or intended to have a
39159 stimulant, depressant, or hallucinogenic effect on the central nervous system substantially similar
39160 to the stimulant, depressant, or hallucinogenic effect on the central nervous system of controlled
39161 substances in the schedules set forth in this Subsection (1).

39162 (ii) "Controlled substance analog" does not include:

39163 (A) a controlled substance currently scheduled in Schedules I through V of Section
39164 58-37-4;

39165 (B) a substance for which there is an approved new drug application;

39166 (C) a substance with respect to which an exemption is in effect for investigational use
39167 by a particular person under Section 505 of the Food, Drug, and Cosmetic Act, 21 U.S.C. 366,
39168 to the extent the conduct with respect to the substance is permitted by the exemption;

39169 (D) any substance to the extent not intended for human consumption before an
39170 exemption takes effect with respect to the substance;

39171 (E) any drug intended for lawful use in the diagnosis, cure, mitigation, treatment, or
39172 prevention of disease in man or other animals, which contains ephedrine, pseudoephedrine,
39173 norpseudoephedrine, or phenylpropanolamine if the drug is lawfully purchased, sold,

39174 transferred, or furnished as an over-the-counter medication without prescription; or

39175 (F) dietary supplements, vitamins, minerals, herbs, or other similar substances including
39176 concentrates or extracts, which are not otherwise regulated by law, which may contain naturally
39177 occurring amounts of chemical or substances listed in this chapter, or in rules adopted pursuant
39178 to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

39179 (h) "Conviction" means a determination of guilt by verdict, whether jury or bench, or
39180 plea, whether guilty or no contest, for any offense proscribed by Title 58, Chapters 37, 37a,
39181 37b, 37c, or 37d, or for any offense under the laws of the United States and any other state
39182 which, if committed in this state, would be an offense under Title 58, Chapters 37, 37a, 37b,
39183 37c, or 37d.

39184 (i) "Counterfeit substance" means:

39185 (i) any substance or container or labeling of any substance that without authorization
39186 bears the trademark, trade name, or other identifying mark, imprint, number, device, or any
39187 likeness of them, of a manufacturer, distributor, or dispenser other than the person or persons
39188 who in fact manufactured, distributed, or dispensed the substance which falsely purports to be a
39189 controlled substance distributed by, any other manufacturer, distributor, or dispenser; or

39190 (ii) any substance that is represented to be a controlled substance.

39191 (j) "Deliver" or "delivery" means the actual, constructive, or attempted transfer of a
39192 controlled substance or a listed chemical, whether or not an agency relationship exists.

39193 (k) "Department" means the Department of Commerce.

39194 (l) "Depressant or stimulant substance" means:

39195 (i) a drug which contains any quantity of barbituric acid or any of the salts of barbituric
39196 acid;

39197 (ii) a drug which contains any quantity of:

39198 (A) amphetamine or any of its optical isomers;

39199 (B) any salt of amphetamine or any salt of an optical isomer of amphetamine; or

39200 (C) any substance which the Secretary of Health and Human Services or the Attorney
39201 General of the United States after investigation has found and by regulation designated

39202 habit-forming because of its stimulant effect on the central nervous system;

39203 (iii) lysergic acid diethylamide; or

39204 (iv) any drug which contains any quantity of a substance which the Secretary of Health
39205 and Human Services or the Attorney General of the United States after investigation has found
39206 to have, and by regulation designated as having, a potential for abuse because of its depressant
39207 or stimulant effect on the central nervous system or its hallucinogenic effect.

39208 (m) "Dispense" means the delivery of a controlled substance by a pharmacist to an
39209 ultimate user pursuant to the lawful order or prescription of a practitioner, and includes
39210 distributing to, leaving with, giving away, or disposing of that substance as well as the
39211 packaging, labeling, or compounding necessary to prepare the substance for delivery.

39212 (n) "Dispenser" means a pharmacist who dispenses a controlled substance.

39213 (o) "Distribute" means to deliver other than by administering or dispensing a controlled
39214 substance or a listed chemical.

39215 (p) "Distributor" means a person who distributes controlled substances.

39216 (q) "Division" means the Division of Occupational and Professional Licensing created in
39217 Section 58-1-103.

39218 (r) "Drug" means:

39219 (i) articles recognized in the official United States Pharmacopoeia, Official
39220 Homeopathic Pharmacopoeia of the United States, or Official National Formulary, or any
39221 supplement to any of them;

39222 (ii) articles intended for use in the diagnosis, cure, mitigation, treatment, or prevention
39223 of disease in man or other animals;

39224 (iii) articles, other than food, intended to affect the structure or function of man or
39225 other animals; and

39226 (iv) articles intended for use as a component of any articles specified in Subsection
39227 (1)(r)(i), (ii), or (iii); but does not include devices or their components, parts, or accessories.

39228 (s) "Drug dependent person" means any individual who unlawfully and habitually uses
39229 any controlled substance to endanger the public morals, health, safety, or welfare, or who is so

39230 dependent upon the use of controlled substances as to have lost the power of self-control with
39231 reference to ~~his~~ the individual's dependency.

39232 (t) "Food" means:

39233 (i) any nutrient or substance of plant, mineral, or animal origin other than a drug as
39234 specified in this chapter, and normally ingested by human beings; and

39235 (ii) foods for special dietary uses as exist by reason of a physical, physiological,
39236 pathological, or other condition including but not limited to the conditions of disease,
39237 convalescence, pregnancy, lactation, allergy, hypersensitivity to food, underweight, and
39238 overweight; uses for supplying a particular dietary need which exist by reason of age including
39239 but not limited to the ages of infancy and childbirth, and also uses for supplementing and for
39240 fortifying the ordinary or unusual diet with any vitamin, mineral, or other dietary property for
39241 use of a food. Any particular use of a food is a special dietary use regardless of the nutritional
39242 purposes.

39243 (u) "Immediate precursor" means a substance which the Attorney General of the United
39244 States has found to be, and by regulation designated as being, the principal compound used or
39245 produced primarily for use in the manufacture of a controlled substance, or which is an
39246 immediate chemical intermediary used or likely to be used in the manufacture of a controlled
39247 substance, the control of which is necessary to prevent, curtail, or limit the manufacture of the
39248 controlled substance.

39249 (v) "Indian" means a member of an Indian tribe.

39250 (w) "Indian religion" means any religion:

39251 (i) the origin and interpretation of which is from within a traditional Indian culture or
39252 community; and

39253 (ii) which is practiced by Indians.

39254 (x) "Indian tribe" means any tribe, band, nation, pueblo, or other organized group or
39255 community of Indians, including any Alaska Native village, which is legally recognized as
39256 eligible for and is consistent with the special programs, services, and entitlements provided by
39257 the United States to Indians because of their status as Indians.

39258 (y) "Manufacture" means the production, preparation, propagation, compounding, or
39259 processing of a controlled substance, either directly or indirectly by extraction from substances
39260 of natural origin, or independently by means of chemical synthesis or by a combination of
39261 extraction and chemical synthesis.

39262 (z) "Manufacturer" includes any person who packages, repackages, or labels any
39263 container of any controlled substance, except pharmacists who dispense or compound
39264 prescription orders for delivery to the ultimate consumer.

39265 (aa) "Marijuana" means all species of the genus cannabis and all parts of the genus,
39266 whether growing or not; the seeds of it; the resin extracted from any part of the plant; and every
39267 compound, manufacture, salt, derivative, mixture, or preparation of the plant, its seeds, or resin.
39268 The term does not include the mature stalks of the plant, fiber produced from the stalks, oil or
39269 cake made from the seeds of the plant, any other compound, manufacture, salt, derivative,
39270 mixture, or preparation of the mature stalks, except the resin extracted from them, fiber, oil or
39271 cake, or the sterilized seed of the plant which is incapable of germination. Any synthetic
39272 equivalents of the substances contained in the plant cannabis sativa or any other species of the
39273 genus cannabis which are chemically indistinguishable and pharmacologically active are also
39274 included.

39275 (bb) "Money" means officially issued coin and currency of the United States or any
39276 foreign country.

39277 (cc) "Narcotic drug" means any of the following, whether produced directly or
39278 indirectly by extraction from substances of vegetable origin, or independently by means of
39279 chemical synthesis, or by a combination of extraction and chemical synthesis:

39280 (i) opium, coca leaves, and opiates;

39281 (ii) a compound, manufacture, salt, derivative, or preparation of opium, coca leaves, or
39282 opiates;

39283 (iii) opium poppy and poppy straw; or

39284 (iv) a substance, and any compound, manufacture, salt, derivative, or preparation of the
39285 substance, which is chemically identical with any of the substances referred to in Subsection

39286 (1)(cc)(i), (ii), or (iii), except narcotic drug does not include decocainized coca leaves or
39287 extracts of coca leaves which do not contain cocaine or ecgonine.

39288 (dd) "Negotiable instrument" means documents, containing an unconditional promise to
39289 pay a sum of money, which are legally transferable to another party by endorsement or delivery.

39290 (ee) "Opiate" means any drug or other substance having an addiction-forming or
39291 addiction-sustaining liability similar to morphine or being capable of conversion into a drug
39292 having addiction-forming or addiction-sustaining liability.

39293 (ff) "Opium poppy" means the plant of the species *papaver somniferum* L., except the
39294 seeds of the plant.

39295 (gg) "Person" means any corporation, association, partnership, trust, other institution or
39296 entity or one or more individuals.

39297 (hh) "Poppy straw" means all parts, except the seeds, of the opium poppy, after
39298 mowing.

39299 (ii) "Possession" or "use" means the joint or individual ownership, control, occupancy,
39300 holding, retaining, belonging, maintaining, or the application, inhalation, swallowing, injection,
39301 or consumption, as distinguished from distribution, of controlled substances and includes
39302 individual, joint, or group possession or use of controlled substances. For a person to be a
39303 possessor or user of a controlled substance, it is not required that ~~he~~ the person be shown to
39304 have individually possessed, used, or controlled the substance, but it is sufficient if it is shown
39305 that the person jointly participated with one or more persons in the use, possession, or control
39306 of any substances with knowledge that the activity was occurring, or the controlled substance is
39307 found in a place or under circumstances indicating that the person had the ability and the intent
39308 to exercise dominion and control over it.

39309 (jj) "Practitioner" means a physician, dentist, veterinarian, pharmacist, scientific
39310 investigator, pharmacy, hospital, or other person licensed, registered, or otherwise permitted to
39311 distribute, dispense, conduct research with respect to, administer, or use in teaching or chemical
39312 analysis a controlled substance in the course of professional practice or research in this state.

39313 (kk) "Prescribe" means to issue a prescription orally or in writing.

39314 (ll) "Prescription" means an order issued by a licensed practitioner, in the course of that
39315 practitioner's professional practice, for a controlled substance, other drug, or device which it
39316 dispenses or administers for use by a patient or an animal. The order may be issued by word of
39317 mouth, written document, telephone, facsimile transmission, computer, or other electronic
39318 means of communication as defined by rule.

39319 (mm) "Production" means the manufacture, planting, cultivation, growing, or harvesting
39320 of a controlled substance.

39321 (nn) "Securities" means any stocks, bonds, notes, or other evidences of debt or of
39322 property.

39323 (oo) "State" means the state of Utah.

39324 (pp) "Ultimate user" means any person who lawfully possesses a controlled substance
39325 for ~~his~~ the person's own use, for the use of a member of ~~his~~ the person's household, or for
39326 administration to an animal owned by ~~him~~ the person or a member of ~~his~~ the person's
39327 household.

39328 (2) If a term used in this chapter is not defined, the definition and terms of Title 76,
39329 Utah Criminal Code, shall apply.

39330 Section 873. Section **58-37-6** is amended to read:

39331 **58-37-6. License to manufacture, produce, distribute, dispense, administer, or**
39332 **conduct research -- Issuance by division -- Denial, suspension, or revocation -- Records**
39333 **required -- Prescriptions.**

39334 (1) (a) The division may adopt rules relating to the licensing and control of the
39335 manufacture, distribution, production, prescription, administration, dispensing, conducting of
39336 research with, and performing of laboratory analysis upon controlled substances within this
39337 state.

39338 (b) The division may assess reasonable fees to defray the cost of issuing original and
39339 renewal licenses under this chapter pursuant to Section ~~[63-38-3.2]~~ 63J-1-303.

39340 (2) (a) (i) Every person who manufactures, produces, distributes, prescribes, dispenses,
39341 administers, conducts research with, or performs laboratory analysis upon any controlled

39342 substance in Schedules II through V within this state, or who proposes to engage in
39343 manufacturing, producing, distributing, prescribing, dispensing, administering, conducting
39344 research with, or performing laboratory analysis upon controlled substances included in
39345 Schedules II through V within this state shall obtain a license issued by the division.

39346 (ii) The division shall issue each license under this chapter in accordance with a
39347 two-year renewal cycle established by rule. The division may by rule extend or shorten a
39348 renewal period by as much as one year to stagger the renewal cycles it administers.

39349 (b) Persons licensed to manufacture, produce, distribute, prescribe, dispense,
39350 administer, conduct research with, or perform laboratory analysis upon controlled substances in
39351 Schedules II through V within this state may possess, manufacture, produce, distribute,
39352 prescribe, dispense, administer, conduct research with, or perform laboratory analysis upon
39353 those substances to the extent authorized by their license and in conformity with this chapter.

39354 (c) The following persons are not required to obtain a license and may lawfully possess
39355 controlled substances under this section:

39356 (i) an agent or employee, except a sales representative, of any registered manufacturer,
39357 distributor, or dispenser of any controlled substance, if the agent or employee is acting in the
39358 usual course of [his] the person's business or employment; however, nothing in this subsection
39359 shall be interpreted to permit an agent, employee, sales representative, or detail man to maintain
39360 an inventory of controlled substances separate from the location of [his] the person's employer's
39361 registered and licensed place of business;

39362 (ii) a motor carrier or warehouseman, or an employee of a motor carrier or
39363 warehouseman, who possesses any controlled substance in the usual course of [his] the person's
39364 business or employment; and

39365 (iii) an ultimate user, or any person who possesses any controlled substance pursuant to
39366 a lawful order of a practitioner.

39367 (d) The division may enact rules waiving the license requirement for certain
39368 manufacturers, producers, distributors, prescribers, dispensers, administrators, research
39369 practitioners, or laboratories performing analysis if consistent with the public health and safety.

39370 (e) A separate license is required at each principal place of business or professional
39371 practice where the applicant manufactures, produces, distributes, dispenses, conducts research
39372 with, or performs laboratory analysis upon controlled substances.

39373 (f) The division may enact rules providing for the inspection of a licensee or applicant's
39374 establishment, and may inspect the establishment according to those rules.

39375 (3) (a) Upon proper application, the division shall license a qualified applicant to
39376 manufacture, produce, distribute, conduct research with, or perform laboratory analysis upon
39377 controlled substances included in Schedules I through V, unless it determines that issuance of a
39378 license is inconsistent with the public interest. The division shall not issue a license to any
39379 person to prescribe, dispense, or administer a Schedule I controlled substance. In determining
39380 public interest, the division shall consider whether or not the applicant has:

39381 (i) maintained effective controls against diversion of controlled substances and any
39382 Schedule I or II substance compounded from any controlled substance into other than legitimate
39383 medical, scientific, or industrial channels;

39384 (ii) complied with applicable state and local law;

39385 (iii) been convicted under federal or state laws relating to the manufacture, distribution,
39386 or dispensing of substances;

39387 (iv) past experience in the manufacture of controlled dangerous substances;

39388 (v) established effective controls against diversion; and

39389 (vi) complied with any other factors that the division establishes that promote the public
39390 health and safety.

39391 (b) Licenses granted under Subsection (3)(a) do not entitle a licensee to manufacture,
39392 produce, distribute, conduct research with, or perform laboratory analysis upon controlled
39393 substances in Schedule I other than those specified in the license.

39394 (c) (i) Practitioners shall be licensed to administer, dispense, or conduct research with
39395 substances in Schedules II through V if they are authorized to administer, dispense, or conduct
39396 research under the laws of this state.

39397 (ii) The division need not require a separate license for practitioners engaging in

39398 research with nonnarcotic controlled substances in Schedules II through V where the licensee is
39399 already licensed under this act in another capacity.

39400 (iii) With respect to research involving narcotic substances in Schedules II through V,
39401 or where the division by rule requires a separate license for research of nonnarcotic substances
39402 in Schedules II through V, a practitioner shall apply to the division prior to conducting research.

39403 (iv) Licensing for purposes of bona fide research with controlled substances by a
39404 practitioner considered qualified may be denied only on a ground specified in Subsection (4), or
39405 upon evidence that the applicant will abuse or unlawfully transfer or fail to safeguard adequately
39406 [his] the practitioner's supply of substances against diversion from medical or scientific use.

39407 (v) Practitioners registered under federal law to conduct research in Schedule I
39408 substances may conduct research in Schedule I substances within this state upon furnishing the
39409 division evidence of federal registration.

39410 (d) Compliance by manufacturers, producers, and distributors with the provisions of
39411 federal law respecting registration, excluding fees, entitles them to be licensed under this
39412 chapter.

39413 (e) The division shall initially license those persons who own or operate an
39414 establishment engaged in the manufacture, production, distribution, dispensation, or
39415 administration of controlled substances prior to April 3, 1980, and who are licensed by the state.

39416 (4) (a) Any license pursuant to Subsection (2) or (3) may be denied, suspended, placed
39417 on probation, or revoked by the division upon finding that the applicant or licensee has:

39418 (i) materially falsified any application filed or required pursuant to this chapter;

39419 (ii) been convicted of an offense under this chapter or any law of the United States, or
39420 any state, relating to any substance defined as a controlled substance;

39421 (iii) been convicted of a felony under any other law of the United States or any state
39422 within five years of the date of the issuance of the license;

39423 (iv) had a federal license denied, suspended, or revoked by competent federal authority
39424 and is no longer authorized to engage in the manufacturing, distribution, or dispensing of
39425 controlled substances;

39426 (v) had [his] the licensee's license suspended or revoked by competent authority of
39427 another state for violation of laws or regulations comparable to those of this state relating to the
39428 manufacture, distribution, or dispensing of controlled substances;

39429 (vi) violated any division rule that reflects adversely on the licensee's reliability and
39430 integrity with respect to controlled substances;

39431 (vii) refused inspection of records required to be maintained under this chapter by a
39432 person authorized to inspect them; or

39433 (viii) prescribed, dispensed, administered, or injected an anabolic steroid for the purpose
39434 of manipulating human hormonal structure so as to:

39435 (A) increase muscle mass, strength, or weight without medical necessity and without a
39436 written prescription by any practitioner in the course of [his] the practitioner's professional
39437 practice; or

39438 (B) improve performance in any form of human exercise, sport, or game.

39439 (b) The division may limit revocation or suspension of a license to a particular
39440 controlled substance with respect to which grounds for revocation or suspension exist.

39441 (c) (i) Proceedings to deny, revoke, or suspend a license shall be conducted pursuant to
39442 this section and in accordance with the procedures set forth in Title 58, Chapter 1, Division of
39443 Occupational and Professional Licensing Act, and conducted in conjunction with the
39444 appropriate representative committee designated by the director of the department.

39445 (ii) Nothing in this Subsection (4)(c) gives the Division of Occupational and
39446 Professional Licensing exclusive authority in proceedings to deny, revoke, or suspend licenses,
39447 except where the division is designated by law to perform those functions, or, when not
39448 designated by law, is designated by the executive director of the Department of Commerce to
39449 conduct the proceedings.

39450 (d) (i) The division may suspend any license simultaneously with the institution of
39451 proceedings under this section if it finds there is an imminent danger to the public health or
39452 safety.

39453 (ii) Suspension shall continue in effect until the conclusion of proceedings, including

39454 judicial review, unless withdrawn by the division or dissolved by a court of competent
39455 jurisdiction.

39456 (e) (i) If a license is suspended or revoked under this Subsection (4), all controlled
39457 substances owned or possessed by the licensee may be placed under seal in the discretion of the
39458 division.

39459 (ii) Disposition may not be made of substances under seal until the time for taking an
39460 appeal has lapsed, or until all appeals have been concluded, unless a court, upon application,
39461 orders the sale of perishable substances and the proceeds deposited with the court.

39462 (iii) If a revocation order becomes final, all controlled substances shall be forfeited.

39463 (f) The division shall notify promptly the Drug Enforcement Administration of all orders
39464 suspending or revoking a license and all forfeitures of controlled substances.

39465 (5) (a) Persons licensed under Subsection (2) or (3) shall maintain records and
39466 inventories in conformance with the record keeping and inventory requirements of federal and
39467 state law and any additional rules issued by the division.

39468 (b) (i) Every physician, dentist, veterinarian, practitioner, or other person who is
39469 authorized to administer or professionally use a controlled substance shall keep a record of the
39470 drugs received by him and a record of all drugs administered, dispensed, or professionally used
39471 by him otherwise than by a prescription.

39472 (ii) A person using small quantities or solutions or other preparations of those drugs for
39473 local application has complied with this Subsection (5)(b) if ~~he~~ the person keeps a record of
39474 the quantity, character, and potency of those solutions or preparations purchased or prepared by
39475 him, and of the dates when purchased or prepared.

39476 (6) Controlled substances in Schedules I through V may be distributed only by a
39477 licensee and pursuant to an order form prepared in compliance with division rules or a lawful
39478 order under the rules and regulations of the United States.

39479 (7) (a) A person may not write or authorize a prescription for a controlled substance
39480 unless ~~he~~ the person is:

39481 (i) a practitioner authorized to prescribe drugs and medicine under the laws of this state

39482 or under the laws of another state having similar standards; and

39483 (ii) licensed under this chapter or under the laws of another state having similar
39484 standards.

39485 (b) A person other than a pharmacist licensed under the laws of this state, or [~~his~~] the
39486 pharmacist's licensed intern, as required by Sections 58-17b-303 and 58-17b-304, may not
39487 dispense a controlled substance.

39488 (c) (i) A controlled substance may not be dispensed without the written prescription of
39489 a practitioner, if the written prescription is required by the federal Controlled Substances Act.

39490 (ii) That written prescription shall be made in accordance with Subsection (7)(a) and in
39491 conformity with Subsection (7)(d).

39492 (iii) In emergency situations, as defined by division rule, controlled substances may be
39493 dispensed upon oral prescription of a practitioner, if reduced promptly to writing on forms
39494 designated by the division and filed by the pharmacy.

39495 (iv) Prescriptions reduced to writing by a pharmacist shall be in conformity with
39496 Subsection (7)(d).

39497 (d) Except for emergency situations designated by the division, a person may not issue,
39498 fill, compound, or dispense a prescription for a controlled substance unless the prescription is
39499 signed by the prescriber in ink or indelible pencil or is signed with an electronic signature of the
39500 prescriber as authorized by division rule, and contains the following information:

39501 (i) the name, address, and registry number of the prescriber;

39502 (ii) the name, address, and age of the person to whom or for whom the prescription is
39503 issued;

39504 (iii) the date of issuance of the prescription; and

39505 (iv) the name, quantity, and specific directions for use by the ultimate user of the
39506 controlled substance.

39507 (e) A prescription may not be written, issued, filled, or dispensed for a Schedule I
39508 controlled substance.

39509 (f) Except when administered directly to an ultimate user by a licensed practitioner,

39510 controlled substances are subject to the following restrictions:

39511 (i) (A) A prescription for a Schedule II substance may not be refilled.

39512 (B) A Schedule II controlled substance may not be filled in a quantity to exceed a
39513 one-month's supply, as directed on the daily dosage rate of the prescriptions.

39514 (ii) A Schedule III or IV controlled substance may be filled only within six months of
39515 issuance, and may not be refilled more than six months after the date of its original issuance or
39516 be refilled more than five times after the date of the prescription unless renewed by the
39517 practitioner.

39518 (iii) All other controlled substances in Schedule V may be refilled as the prescriber's
39519 prescription directs, but they may not be refilled one year after the date the prescription was
39520 issued unless renewed by the practitioner.

39521 (iv) Any prescription for a Schedule II substance may not be dispensed if it is not
39522 presented to a pharmacist for dispensing by a pharmacist or a pharmacy intern within 30 days
39523 after the date the prescription was issued, or 30 days after the dispensing date, if that date is
39524 specified separately from the date of issue.

39525 (v) A practitioner may issue more than one prescription at the same time for the same
39526 Schedule II controlled substance, but only under the following conditions:

39527 (A) no more than three prescriptions for the same Schedule II controlled substance may
39528 be issued at the same time;

39529 (B) no one prescription may exceed a 30-day supply;

39530 (C) a second or third prescription shall include the date of issuance and the date for
39531 dispensing; and

39532 (D) unless the practitioner determines there is a valid medical reason to the contrary,
39533 the date for dispensing a second or third prescription may not be fewer than 30 days from the
39534 dispensing date of the previous prescription.

39535 (vi) Each prescription for a controlled substance may contain only one controlled
39536 substance per prescription form and may not contain any other legend drug or prescription item.

39537 (g) An order for a controlled substance in Schedules II through V for use by an

39538 inpatient or an outpatient of a licensed hospital is exempt from all requirements of this
39539 Subsection (7) if the order is:

39540 (i) issued or made by a prescribing practitioner who holds an unrestricted registration
39541 with the federal Drug Enforcement Administration, and an active Utah controlled substance
39542 license in good standing issued by the division under this section, or a medical resident who is
39543 exempted from licensure under Subsection 58-1-307(1)(c);

39544 (ii) authorized by the prescribing practitioner treating the patient and the prescribing
39545 practitioner designates the quantity ordered;

39546 (iii) entered upon the record of the patient, the record is signed by the prescriber
39547 affirming [~~his~~] the prescriber's authorization of the order within 48 hours after filling or
39548 administering the order, and the patient's record reflects the quantity actually administered; and

39549 (iv) filled and dispensed by a pharmacist practicing [~~his~~] the pharmacist's profession
39550 within the physical structure of the hospital, or the order is taken from a supply lawfully
39551 maintained by the hospital and the amount taken from the supply is administered directly to the
39552 patient authorized to receive it.

39553 (h) A practitioner licensed under this chapter may not prescribe, administer, or dispense
39554 a controlled substance to a child, without first obtaining the consent required in Section 78-14-5
39555 of a parent, guardian, or person standing in loco parentis of the child except in cases of an
39556 emergency. For purposes of this Subsection (7)(h), "child" has the same meaning as defined in
39557 Section 78-3a-103, and "emergency" means any physical condition requiring the administration
39558 of a controlled substance for immediate relief of pain or suffering.

39559 (i) A practitioner licensed under this chapter may not prescribe or administer dosages of
39560 a controlled substance in excess of medically recognized quantities necessary to treat the
39561 ailment, malady, or condition of the ultimate user.

39562 (j) A practitioner licensed under this chapter may not prescribe, administer, or dispense
39563 any controlled substance to another person knowing that the other person is using a false name,
39564 address, or other personal information for the purpose of securing the controlled substance.

39565 (k) A person who is licensed under this chapter to manufacture, distribute, or dispense a

39566 controlled substance may not manufacture, distribute, or dispense a controlled substance to
39567 another licensee or any other authorized person not authorized by this license.

39568 (l) A person licensed under this chapter may not omit, remove, alter, or obliterate a
39569 symbol required by this chapter or by a rule issued under this chapter.

39570 (m) A person licensed under this chapter may not refuse or fail to make, keep, or
39571 furnish any record notification, order form, statement, invoice, or information required under
39572 this chapter.

39573 (n) A person licensed under this chapter may not refuse entry into any premises for
39574 inspection as authorized by this chapter.

39575 (o) A person licensed under this chapter may not furnish false or fraudulent material
39576 information in any application, report, or other document required to be kept by this chapter or
39577 willfully make any false statement in any prescription, order, report, or record required by this
39578 chapter.

39579 (8) (a) (i) Any person licensed under this chapter who is found by the division to have
39580 violated any of the provisions of Subsections (7)(k) through (7)(o) is subject to a penalty not to
39581 exceed \$5,000. The division shall determine the procedure for adjudication of any violations in
39582 accordance with Sections 58-1-106 and 58-1-108.

39583 (ii) The division shall deposit all penalties collected under Subsection (8)(a)(i) in the
39584 General Fund as a dedicated credit to be used by the division under Subsection 58-37-7.7(1).

39585 (b) Any person who knowingly and intentionally violates Subsections (7)(h) through
39586 (7)(j) is:

39587 (i) upon first conviction, guilty of a class B misdemeanor;

39588 (ii) upon second conviction, guilty of a class A misdemeanor; and

39589 (iii) on third or subsequent conviction, guilty of a third degree felony.

39590 (c) Any person who knowingly and intentionally violates Subsections (7)(k) through
39591 (7)(o) shall upon conviction be guilty of a third degree felony.

39592 (9) Any information communicated to any licensed practitioner in an attempt to
39593 unlawfully procure, or to procure the administration of, a controlled substance is not considered

39594 to be a privileged communication.

39595 Section 874. Section **58-37-21** is amended to read:

39596 **58-37-21. Admissibility of Utah State Crime Laboratory documents -- Drug**
39597 **analysis in criminal pretrial proceedings.**

39598 The commissioner of the Department of Public Safety shall establish standards for
39599 administration and interpretation of chemical and forensic analysis in accordance with [~~Title 63,~~
39600 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, of:

39601 (1) controlled substances as provided in Title 58, Chapter 37;

39602 (2) drug paraphernalia as provided in Title 58, Chapter 37a;

39603 (3) imitation controlled substances as provided in Title 58, Chapter 37b; and

39604 (4) controlled substance precursors as provided in Title 58, Chapter 37d.

39605 Section 875. Section **58-37c-3** is amended to read:

39606 **58-37c-3. Definitions.**

39607 In addition to the definitions in Section 58-1-102, as used in this chapter:

39608 (1) "Board" means the Controlled Substance Precursor Advisory Board created in

39609 Section 58-37c-4.

39610 (2) "Controlled substance precursor" includes a chemical reagent and means any of the
39611 following:

39612 (a) Phenyl-2-propanone;

39613 (b) Methylamine;

39614 (c) Ethylamine;

39615 (d) D-lysergic acid;

39616 (e) Ergotamine and its salts;

39617 (f) Diethyl malonate;

39618 (g) Malonic acid;

39619 (h) Ethyl malonate;

39620 (i) Barbituric acid;

39621 (j) Piperidine and its salts;

- 39622 (k) N-acetylanthranilic acid and its salts;
- 39623 (l) Pyrrolidine;
- 39624 (m) Phenylacetic acid and its salts;
- 39625 (n) Anthranilic acid and its salts;
- 39626 (o) Morpholine;
- 39627 (p) Ephedrine;
- 39628 (q) Pseudoephedrine;
- 39629 (r) Norpseudoephedrine;
- 39630 (s) Phenylpropanolamine;
- 39631 (t) Benzyl cyanide;
- 39632 (u) Ergonovine and its salts;
- 39633 (v) 3,4-Methylenedioxyphenyl-2-propanone;
- 39634 (w) propionic anhydride;
- 39635 (x) Insosafrole;
- 39636 (y) Safrole;
- 39637 (z) Piperonal;
- 39638 (aa) N-Methylephedrine;
- 39639 (bb) N-ethylephedrine;
- 39640 (cc) N-methylpseudoephedrine;
- 39641 (dd) N-ethylpseudoephedrine;
- 39642 (ee) Hydriotic acid;
- 39643 (ff) gamma butyrolactone (GBL), including butyrolactone, 1,2 butanolide, 2-oxanolone,
- 39644 tetrahydro-2-furanone, dihydro-2(3H)-furanone, and tetramethylene glycol, but not including
- 39645 gamma aminobutric acid (GABA);
- 39646 (gg) 1,4 butanediol;
- 39647 (hh) any salt, isomer, or salt of an isomer of the chemicals listed in Subsections (2)(a)
- 39648 through (gg);
- 39649 (ii) Crystal iodine;

- 39650 (jj) Iodine at concentrations greater than 1.5% by weight in a solution or matrix;
- 39651 (kk) Red phosphorous, except as provided in Section 58-37c-19.7;
- 39652 (ll) anhydrous ammonia, except as provided in Section 58-37c-19.9;
- 39653 (mm) any controlled substance precursor listed under the provisions of the Federal
- 39654 Controlled Substances Act which is designated by the director under the emergency listing
- 39655 provisions set forth in Section 58-37c-14; and
- 39656 (nn) any chemical which is designated by the director under the emergency listing
- 39657 provisions set forth in Section 58-37c-14.
- 39658 (3) "Deliver," "delivery," "transfer," or "furnish" means the actual, constructive, or
- 39659 attempted transfer of a controlled substance precursor.
- 39660 (4) "Matrix" means something, as a substance, in which something else originates,
- 39661 develops, or is contained.
- 39662 (5) "Person" means any individual, group of individuals, proprietorship, partnership,
- 39663 joint venture, corporation, or organization of any type or kind.
- 39664 (6) "Practitioner" means a physician, dentist, podiatric physician, veterinarian,
- 39665 pharmacist, scientific investigator, pharmacy, hospital, pharmaceutical manufacturer, or other
- 39666 person licensed, registered, or otherwise permitted to distribute, dispense, conduct research
- 39667 with respect to, administer, or use in teaching, or chemical analysis a controlled substance in the
- 39668 course of professional practice or research in this state.
- 39669 (7) (a) "Regulated distributor" means a person within the state who provides, sells,
- 39670 furnishes, transfers, or otherwise supplies a listed controlled substance precursor chemical in a
- 39671 regulated transaction.
- 39672 (b) "Regulated distributor" does not include any person excluded from regulation under
- 39673 this chapter.
- 39674 (8) (a) "Regulated purchaser" means any person within the state who receives a listed
- 39675 controlled substance precursor chemical in a regulated transaction.
- 39676 (b) "Regulated purchaser" does not include any person excluded from regulation under
- 39677 this chapter.

39678 (9) "Regulated transaction" means any actual, constructive or attempted:
39679 (a) transfer, distribution, delivery, or furnishing by a person within the state to another
39680 person within or outside of the state of a threshold amount of a listed precursor chemical; or
39681 (b) purchase or acquisition by any means by a person within the state from another
39682 person within or outside the state of a threshold amount of a listed precursor chemical.
39683 (10) "Retail distributor" means a grocery store, general merchandise store, drug store,
39684 or other entity or person whose activities as a distributor are limited almost exclusively to sales
39685 for personal use:
39686 (a) in both number of sales and volume of sales; and
39687 (b) either directly to walk-in customers or in face-to-face transactions by direct sales.
39688 (11) "Threshold amount of a listed precursor chemical" means any amount of a
39689 controlled substance precursor or a specified amount of a controlled substance precursor in a
39690 matrix; however, the division may exempt from the provisions of this chapter a specific
39691 controlled substance precursor in a specific amount and in certain types of transactions which
39692 provisions for exemption shall be defined by the division by rule adopted pursuant to [~~Title 63,~~
39693 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
39694 (12) "Unlawful conduct" as defined in Section 58-1-501 includes knowingly and
39695 intentionally:
39696 (a) engaging in a regulated transaction without first being appropriately licensed or
39697 exempted from licensure under this chapter;
39698 (b) acting as a regulated distributor and selling, transferring, or in any other way
39699 conveying a controlled substance precursor to a person within the state who is not appropriately
39700 licensed or exempted from licensure as a regulated purchaser, or selling, transferring, or
39701 otherwise conveying a controlled substance precursor to a person outside of the state and failing
39702 to report the transaction as required;
39703 (c) acting as a regulated purchaser and purchasing or in any other way obtaining a
39704 controlled substance precursor from a person within the state who is not a licensed regulated
39705 distributor, or purchasing or otherwise obtaining a controlled substance precursor from a person

39706 outside of the state and failing to report the transaction as required;

39707 (d) engaging in a regulated transaction and failing to submit reports and keep required
39708 records of inventories required under the provisions of this chapter or rules adopted pursuant to
39709 this chapter;

39710 (e) making any false statement in any application for license, in any record to be kept,
39711 or on any report submitted as required under this chapter;

39712 (f) with the intent of causing the evasion of the recordkeeping or reporting requirements
39713 of this chapter and rules related to this chapter, receiving or distributing any listed controlled
39714 substance precursor chemical in any manner designed so that the making of records or filing of
39715 reports required under this chapter is not required;

39716 (g) failing to take immediate steps to comply with licensure, reporting, or
39717 recordkeeping requirements of this chapter because of lack of knowledge of those requirements,
39718 upon becoming informed of the requirements;

39719 (h) presenting false or fraudulent identification where or when receiving or purchasing a
39720 listed controlled substance precursor chemical;

39721 (i) creating a chemical mixture for the purpose of evading any licensure, reporting or
39722 recordkeeping requirement of this chapter or rules related to this chapter, or receiving a
39723 chemical mixture created for that purpose;

39724 (j) if the person is at least 18 years of age, employing, hiring, using, persuading,
39725 inducing, enticing, or coercing another person under 18 years of age to violate any provision of
39726 this chapter, or assisting in avoiding detection or apprehension for any violation of this chapter
39727 by any federal, state, or local law enforcement official; and

39728 (k) obtaining or attempting to obtain or to possess any controlled substance precursor
39729 or any combination of controlled substance precursors knowing or having a reasonable cause to
39730 believe that the controlled substance precursor is intended to be used in the unlawful
39731 manufacture of any controlled substance.

39732 (13) "Unprofessional conduct" as defined in Section 58-1-102 and as may be further
39733 defined by rule includes the following:

39734 (a) violation of any provision of this chapter, the Controlled Substance Act of this state
39735 or any other state, or the Federal Controlled Substance Act; and

39736 (b) refusing to allow agents or representatives of the division or authorized law
39737 enforcement personnel to inspect inventories or controlled substance precursors or records or
39738 reports relating to purchases and sales or distribution of controlled substance precursors as such
39739 records and reports are required under this chapter.

39740 Section 876. Section **58-37c-6** is amended to read:

39741 **58-37c-6. Division duties.**

39742 The division shall be responsible for the licensing and reporting provisions of this
39743 chapter and those duties shall include:

39744 (1) providing for a system of licensure of regulated distributors and regulated
39745 purchasers;

39746 (2) refusing to renew a license or revoking, suspending, restricting, placing on
39747 probation, issuing a private or public letter of censure or reprimand, or imposing other
39748 appropriate action against a license;

39749 (3) with respect to the licensure and reporting provisions of this chapter, investigating
39750 or causing to be investigated any violation of this chapter by any person and to cause, when
39751 necessary, appropriate administrative action with respect to the license of that person;

39752 (4) presenting evidence obtained from investigations conducted by appropriate county
39753 attorneys and the Office of the Attorney General for civil or criminal prosecution or for
39754 administrative action against a licensee;

39755 (5) conducting hearings for the purpose of revoking, suspending, placing on probation,
39756 or imposing other appropriate administrative action against the license of regulated distributors
39757 or regulated purchasers in accordance with the provisions of Title 58, Chapter 1, Division of
39758 Occupational and Professional Licensing Act, and [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
39759 Administrative Procedures Act;

39760 (6) assisting all other law enforcement agencies of the state in enforcing all laws
39761 regarding controlled substance precursors;

39762 (7) specifying reports, frequency of reports, and conditions under which reports are to
39763 be submitted and to whom reports are to be submitted by regulated distributors and regulated
39764 purchasers with respect to transactions involving threshold amounts of controlled substance
39765 precursors; and

39766 (8) performing all other functions necessary to fulfill division duties and responsibilities
39767 as outlined under this chapter or rules adopted pursuant to this chapter.

39768 Section 877. Section **58-37c-8** is amended to read:

39769 **58-37c-8. License -- Exceptions from licensure or regulation.**

39770 (1) Any person engaged in a regulated transaction must be appropriately licensed under
39771 this chapter as a regulated distributor and regulated purchaser unless excepted from licensure
39772 under this chapter.

39773 (2) The division shall:

39774 (a) establish the form of application for a license, the requirements for licensure, and
39775 fees for initial licensure and renewal; and

39776 (b) identify required information to be contained in the application as a condition of
39777 licensure.

39778 (3) A practitioner who holds a Utah Controlled Substance License and a Controlled
39779 Substance Registration issued by the Drug Enforcement Administration of the U.S. Government
39780 is excepted from licensure under this chapter.

39781 (4) Any purchase, sale, transfer, furnishing, or receipt of any drug intended for lawful
39782 use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man or other
39783 animals, which contains ephedrine, pseudoephedrine, norpseudoephedrine, or
39784 phenylpropanolamine, if the drug is lawfully purchased, sold, transferred, or furnished as an
39785 over-the-counter medication without prescription pursuant to the federal Food, Drug and
39786 Cosmetic Act, 21 USC, Sec. 301 et seq., or regulations adopted under that act, are excepted
39787 from licensure, reporting, and recordkeeping under this chapter, except that products containing
39788 ephedrine, pseudoephedrine, or phenylpropanolamine are subject to Section 58-37c-20.5.

39789 (5) Any purchase, sale, transfer, receipt, or manufacture of any dietary supplement,

39790 vitamins, minerals, herbs, or other similar substances, including concentrates or extracts, which
39791 are not otherwise prohibited by law, and which may contain naturally occurring amounts of
39792 chemicals or substances listed in this chapter, or in rules adopted pursuant to [~~Title 63, Chapter~~
39793 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, are exempt from licensure
39794 under this chapter.

39795 (6) A purchaser of two ounces or less of crystal iodine in a single transaction is not
39796 required to be licensed as a regulated purchaser if the transaction complies with Section
39797 58-37c-18.

39798 (7) Any purchase, sale, transfer, receipt, or manufacture of any product that contains
39799 any precursor chemical listed in Subsection 58-37c-3(2)(ff) or (gg) and that is not intended for
39800 human consumption is exempt from licensure or regulation and is not subject to criminal
39801 penalties under this chapter.

39802 Section 878. Section **58-37c-14** is amended to read:

39803 **58-37c-14. Emergency listing provision.**

39804 (1) Upon a written finding of cause by the director that the listing of a chemical as a
39805 controlled substance precursor is necessary to protect the public health, safety, or welfare, the
39806 director may make an emergency listing of that chemical as a controlled substance precursor by
39807 adopting a rule pursuant to the provisions of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
39808 Administrative Rulemaking Act.

39809 (2) Such listing shall have effect until the close of the next immediately succeeding
39810 regular session of the Legislature. In the event the Legislature adopts the chemical as a
39811 controlled precursor by amendment to this chapter, the chemical shall remain listed under
39812 emergency provisions until the effective date of the amendment.

39813 (3) Any violation of this chapter dealing with a controlled substance precursor listed
39814 under the emergency listing provisions of this section shall constitute a violation subject only to
39815 civil or administrative penalties.

39816 Section 879. Section **58-39a-5** is amended to read:

39817 **58-39a-5. Qualifications for certification.**

39818 Applicants for certification as an alternative dispute resolution provider shall:
39819 (1) submit an application in a form as prescribed by the division;
39820 (2) pay a fee as determined by the department under Section [63-38-3.2] 63J-1-303;
39821 (3) be of good moral character; and
39822 (4) complete a program of education or training, or both, in ADR or have demonstrated
39823 sufficient experience in ADR, as determined by the division in collaboration with the board.

39824 Section 880. Section **58-40-5** is amended to read:

39825 **58-40-5. License requirements.**

39826 (1) The division shall issue a license to practice as a master therapeutic recreational
39827 specialist to any applicant who:

39828 (a) (i) has completed an approved graduate degree in therapeutic recreation or a
39829 graduate degree with an approved emphasis in therapeutic recreation; and

39830 (ii) has completed 4,000 hours of paid experience, as defined by division rule made in
39831 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
39832 Act, as a licensed therapeutic recreational specialist or as a certified therapeutic recreational
39833 specialist certified by the National Council for Therapeutic Recreation Certification;

39834 (b) is of good moral character;

39835 (c) submits an application;

39836 (d) pays the required fee; and

39837 (e) passes an approved examination.

39838 (2) The division shall issue a license to practice as a therapeutic recreational specialist
39839 to any applicant who:

39840 (a) has completed an approved bachelor's or graduate degree in therapeutic recreation,
39841 a bachelor's or graduate degree with an approved emphasis in therapeutic recreation, or a
39842 bachelor's or graduate degree with approved additional course work in therapeutic recreation
39843 after graduation;

39844 (b) has completed an approved practicum;

39845 (c) is of good moral character;

- 39846 (d) submits an application;
- 39847 (e) pays the required fee; and
- 39848 (f) passes an approved examination.
- 39849 (3) The division shall issue a license to practice as a therapeutic recreational technician
- 39850 to any applicant who:
- 39851 (a) has received a high school diploma or GED equivalent;
- 39852 (b) has completed:
- 39853 (i) an approved educational course in therapeutic recreation taught by a licensed master
- 39854 therapeutic recreational specialist; or
- 39855 (ii) six semester hours or nine quarter hours in therapeutic recreation from an accredited
- 39856 college or university;
- 39857 (c) has completed an approved practicum under the supervision of a licensed master
- 39858 therapeutic recreational specialist or an on-site, full-time employed therapeutic recreational
- 39859 specialist;
- 39860 (d) is of good moral character;
- 39861 (e) submits an application;
- 39862 (f) pays the required fee; and
- 39863 (g) passes an approved examination.
- 39864 Section 881. Section **58-40a-302** is amended to read:
- 39865 **58-40a-302. Qualifications for licensure.**
- 39866 The division shall issue a license to practice as an athletic trainer to an applicant who:
- 39867 (1) has obtained a bachelor's or advanced degree from an accredited four-year college
- 39868 or university and meets the minimum athletic training curriculum requirement established by the
- 39869 board by rule;
- 39870 (2) has successfully completed the certification examination administered by the Board
- 39871 of Certification Inc. or equivalent examination approved or recognized by the board;
- 39872 (3) is in good standing with and provides documentation of current certification by the
- 39873 Board of Certification Inc. or a nationally recognized credentialing agency approved by the

39874 board;

39875 (4) submits an application to the division on a form prescribed by the division; and

39876 (5) pays the required licensing fee as determined by the department under Section

39877 [~~63-38-3.2~~] 63J-1-303.

39878 Section 882. Section **58-40a-304** is amended to read:

39879 **58-40a-304. Term of license -- Expiration -- Renewal.**

39880 (1) (a) The division shall issue each license for an athletic trainer in accordance with a

39881 two-year renewal cycle established by rule in accordance with [~~Title 63, Chapter 46a~~] Title

39882 63G, Chapter 3, Utah Administrative Rulemaking Act.

39883 (b) The division may, by rule, extend or shorten a renewal period by as much as one

39884 year to stagger the renewal cycles it administers.

39885 (2) Each license automatically expires on the expiration date shown on the license

39886 unless the licensee renews it in accordance with Section 58-1-308.

39887 Section 883. Section **58-41-5** is amended to read:

39888 **58-41-5. Licensure requirements.**

39889 To obtain and maintain a license as a speech-language pathologist or audiologist, the

39890 applicant must:

39891 (1) submit a completed application in the form and content prescribed by the division

39892 and pay a fee to the department in accordance with Section [~~63-38-3.2~~] 63J-1-303;

39893 (2) be of good moral character;

39894 (3) provide the committee with verification:

39895 (a) from the educational institutions involved, that the applicant is the legal holder of a

39896 doctor's or master's degree or its equivalent in the area of speech-language pathology, speech

39897 science, or audiology, from an accredited university or college, based on a program of studies

39898 primarily in the field of speech-language pathology, speech sciences, or audiology; and

39899 (b) that [~~he~~] the applicant has had training and experience in treating and managing the

39900 major communication disabilities identified in speech-language pathology or audiology;

39901 (4) be in compliance with the regulations of conduct and codes of ethics for the

39902 profession of speech-language pathology and audiology;

39903 (5) submit to the board certified evidence of having completed at least one year of
39904 professional experience (at least 30 hours per week for an academic year) of direct clinical
39905 experience in treatment and management of patients. That treatment and management shall be
39906 supervised and attested by one holding a license under this chapter, the CCC, or their full
39907 equivalent;

39908 (6) submit transcripts to the board from the educational institutions involved, indicating
39909 a doctor's or master's degree from an accredited program or satisfactory completion of at least
39910 90 quarter hours in speech or hearing disorders, of which at least 50 shall be for graduate level
39911 credit. No less than nine and no more than 12 quarter hours shall be in basic and clinical
39912 audiology for persons applying for the license in speech-language pathology. No less than nine
39913 and no more than 12 quarter hours shall be in basic and functional speech-language pathology
39914 for persons applying for a license in audiology. No more than three-quarter hours shall be in
39915 thesis or student research; and

39916 (7) pass a nationally standardized examination in speech-language pathology or
39917 audiology which is the same as or equivalent to the examination required for the CCC and with
39918 pass-fail criteria equivalent to current ASHA standards. The board may, in its discretion,
39919 require an applicant to pass an acceptable practical demonstration of clinical skills to an
39920 examining committee of licensed speech-language pathologists appointed by the board.

39921 Section 884. Section **58-41-13** is amended to read:

39922 **58-41-13. Fees.**

39923 The department shall set fees in cooperation with the board and in accordance with
39924 Section [~~63-38-3.2~~] 63J-1-303 and shall collect all fees.

39925 Section 885. Section **58-42a-302** is amended to read:

39926 **58-42a-302. Qualifications for licensure.**

39927 (1) All applicants for licensure as an occupational therapist shall:

39928 (a) submit an application in a form as prescribed by the division;

39929 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

39930 (c) be of good moral character as it relates to the functions and responsibilities of the
39931 practice of occupational therapy;

39932 (d) graduate with a bachelors or graduate degree in occupational therapy from a
39933 program accredited by the Accreditation Council for Occupational Therapy Education; and

39934 (e) be certified by the National Board for Certification in Occupational Therapy as an
39935 occupational therapist registered.

39936 (2) All applicants for licensure as an occupational therapist assistant shall:

39937 (a) submit an application in a form as prescribed by the division;

39938 (b) pay a fee as determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;

39939 (c) be of good moral character as it relates to the functions and responsibilities of the
39940 practice of occupational therapy;

39941 (d) graduate with a two-year associate degree in occupational therapy from a program
39942 accredited by the Accreditation Council for Occupational Therapy Education; and

39943 (e) be certified by the National Board for Certification in Occupational Therapy as a
39944 certified occupational therapist assistant.

39945 Section 886. Section **58-44a-102** is amended to read:

39946 **58-44a-102. Definitions.**

39947 In addition to the definitions in Section 58-1-102, as used in this chapter:

39948 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
39949 omissions determined to constitute unprofessional or unlawful conduct in accordance with a fine
39950 schedule established by rule and as a result of an adjudicative proceeding conducted in
39951 accordance with ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

39952 (2) "Board" means the Certified Nurse Midwife Board created in Section 58-44a-201.

39953 (3) "Consultation and Referral Plan" means a written plan jointly developed by a
39954 certified nurse midwife, as defined in Subsection (6), and a consulting physician that permits the
39955 certified nurse midwife to prescribe schedule II-III controlled substances in consultation with
39956 the consulting physician.

39957 (4) "Consulting physician" means a physician and surgeon or osteopathic physician:

- 39958 (a) licensed as a physician;
- 39959 (b) qualified by education, training, and current practice in obstetrics, gynecology, or
39960 both to act as a consulting physician to a nurse midwife practicing under this chapter and
39961 providing intrapartum care or prescribing Schedule II-III controlled substances; and
- 39962 (c) who has agreed under a practice plan to be available to consult with a nurse
39963 midwife, which plan does not include the consulting physician's being present at the time or
39964 place the nurse midwife is engaged in practice.
- 39965 (5) "Individual" means a natural person.
- 39966 (6) "Nurse midwife" means a person licensed under this chapter to engage in practice as
39967 a certified nurse midwife.
- 39968 (7) "Physician" means a physician and surgeon or osteopathic surgeon licensed under
39969 Title 58, Chapter 67, Utah Medical Practice Act or Chapter 68, Utah Osteopathic Medical
39970 Practice Act.
- 39971 (8) "Practice as a certified nurse midwife" means:
- 39972 (a) practice as a registered nurse as defined in Section 58-31b-102, and as consistent
39973 with the education, training, experience, and current competency of the licensee; and
- 39974 (b) practice of nursing within the generally recognized scope and standards of nurse
39975 midwifery as defined by rule and consistent with professionally recognized preparations and
39976 educational standards of a certified nurse midwife by a person licensed under this chapter, which
39977 practice includes the authority to:
- 39978 (i) elicit and record a patient's complete health information, including physical
39979 examination, history, and laboratory findings commonly used in providing obstetrical,
39980 gynecological, and well infant services to a patient;
- 39981 (ii) assess findings and upon abnormal findings from the history, physical examination,
39982 or laboratory findings, manage the treatment of the patient, collaborate with the consulting
39983 physician or another qualified physician, or refer the patient to the consulting physician or to
39984 another qualified physician as appropriate;
- 39985 (iii) diagnose, plan, and implement appropriate patient care, including the administration

- 39986 and prescribing of:
- 39987 (A) prescription drugs;
- 39988 (B) schedule IV-V controlled substances; and
- 39989 (C) schedule II-III controlled substances in accordance with a consultation and referral
- 39990 plan;
- 39991 (iv) evaluate the results of patient care;
- 39992 (v) consult as is appropriate regarding patient care and the results of patient care;
- 39993 (vi) manage the intrapartum period according to accepted standards of nurse midwifery
- 39994 practice and a written practice and referral plan, including performance of routine episiotomy
- 39995 and repairs, and administration of anesthesia, including local, pudendal, or paracervical block
- 39996 anesthesia, but not including general anesthesia and major conduction anesthesia;
- 39997 (vii) manage the postpartum period;
- 39998 (viii) provide gynecological services;
- 39999 (ix) provide noncomplicated newborn and infant care to the age of one year; and
- 40000 (x) represent or hold oneself out as a certified nurse midwife, or nurse midwife, or use
- 40001 the title certified nurse midwife, nurse midwife, or the initials C.N.M., N.M., or R.N.
- 40002 (9) "Practice and referral plan" means a written plan entered into with a consulting
- 40003 physician and detailing guidelines by which a certified nurse midwife consults, collaborates, and
- 40004 refers patients.
- 40005 (10) "Unlawful conduct" is defined in Sections 58-1-501 and 58-44a-501.
- 40006 (11) "Unlicensed assistive personnel" means any unlicensed person, regardless of title,
- 40007 to whom tasks are delegated by a licensed certified nurse midwife in accordance with the
- 40008 standards of the profession as defined by rule.
- 40009 (12) "Unprofessional conduct" is defined in Sections 58-1-501 and 58-44a-502 and as
- 40010 may be further defined by rule.
- 40011 Section 887. Section **58-44a-302** is amended to read:
- 40012 **58-44a-302. Qualifications for licensure.**
- 40013 (1) An applicant for licensure as a nurse midwife shall:

- 40014 (a) submit an application in a form as prescribed by the division;
- 40015 (b) pay a fee as determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;
- 40016 (c) be of good moral character;
- 40017 (d) at the time of application for licensure hold a license in good standing as a registered
- 40018 nurse in Utah, or be at that time qualified for a license as a registered nurse under Title 58,
- 40019 Chapter 31b, Nurse Practice Act;
- 40020 (e) have completed:
- 40021 (i) a certified nurse midwifery education program accredited by the American College
- 40022 of Nurse Midwives and approved by the division; or
- 40023 (ii) a nurse midwifery education program located outside of the United States which is
- 40024 approved by the division and is equivalent to a program accredited by the American College of
- 40025 Nurse Midwives, as demonstrated by a graduate's being accepted to sit for the national
- 40026 certifying examination administered by the American College of Nurse Midwives or its
- 40027 designee; and
- 40028 (f) have passed examinations established by the division rule in collaboration with the
- 40029 board within two years after completion of the approved education program required under
- 40030 Subsection (1)(e).
- 40031 (2) For purposes of Subsection (1)(e), as of January 1, 2010, the accredited education
- 40032 program or it's equivalent must grant a graduate degree, including post-master's certificate, in
- 40033 nurse midwifery.
- 40034 Section 888. Section **58-44a-402** is amended to read:
- 40035 **58-44a-402. Authority to assess penalty.**
- 40036 (1) After a proceeding pursuant to ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4,
- 40037 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
- 40038 Professional Licensing Act, the division may impose an administrative penalty of up to \$10,000
- 40039 for unprofessional or unlawful conduct under this chapter in accordance with a fine schedule
- 40040 established by rule.
- 40041 (2) The assessment of a penalty under this section does not affect any other action the

40042 division is authorized to take regarding a license issued under this chapter.

40043 (3) The division may impose an administrative penalty of up to \$500 for any violation of
40044 Subsection 58-44a-501(2), (3), or (4), consistent with Section 58-44a-503.

40045 Section 889. Section **58-46a-302** is amended to read:

40046 **58-46a-302. Qualifications for licensure.**

40047 (1) Each applicant for licensure as a hearing instrument specialist shall:

40048 (a) submit to the division an application in a form prescribed by the division;

40049 (b) pay a fee as determined by the division pursuant to Section [~~63-38-3.2~~] 63J-1-303;

40050 (c) be of good moral character;

40051 (d) (i) have successfully completed 4,000 hours of practice as a hearing instrument
40052 intern within the state under supervision by a supervising hearing instrument specialist in
40053 accordance with Section 58-46a-302.5 or an equivalent as approved by the division; or

40054 (ii) demonstrate successful practice for the equivalent of two years of full-time practice
40055 as a licensed hearing instrument specialist in another state requiring licensure and practice in
40056 conformity with defined lawful and professional standards of practice;

40057 (e) have qualified for and currently hold board certification by the National Board for
40058 Certification - Hearing Instrument Sciences, or an equivalent certification approved by the
40059 division in collaboration with the board;

40060 (f) have passed the Utah Law and Rules Examination for Hearing Instrument
40061 Specialists; and

40062 (g) if the applicant holds a hearing instrument intern license, surrender the hearing
40063 instrument intern license at the time of licensure as a hearing instrument specialist.

40064 (2) Each applicant for licensure as a hearing instrument intern shall:

40065 (a) submit to the division an application in a form prescribed by the division;

40066 (b) pay a fee as determined by the division pursuant to Section [~~63-38-3.2~~] 63J-1-303;

40067 (c) be of good moral character;

40068 (d) have passed the Utah Law and Rules Examination for Hearing Instrument
40069 Specialists; and

40070 (e) present evidence acceptable to the division and the board that the applicant, when
40071 licensed, will practice as a hearing instrument intern only under supervision of a supervising
40072 hearing instrument specialist as required under Subsection (1)(d).

40073 Section 890. Section **58-47b-302** is amended to read:

40074 **58-47b-302. License classifications -- Qualifications for licensure.**

40075 (1) The division shall issue licenses under this chapter in the classifications of:

40076 (a) massage therapist; and

40077 (b) massage apprentice.

40078 (2) Each applicant for licensure as a massage therapist shall:

40079 (a) submit an application in a form prescribed by the division;

40080 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

40081 (c) be of good moral character;

40082 (d) be 18 years of age or older;

40083 (e) have either:

40084 (i) (A) graduated from a school of massage having a curriculum which meets standards
40085 established by division rule made in collaboration with the board; or

40086 (B) completed equivalent education and training in compliance with division rule; or

40087 (ii) completed a massage apprenticeship program consisting of a minimum of 1,000
40088 hours of supervised training over a minimum of 12 months and in accordance with standards
40089 established by the division by rule made in collaboration with the board; and

40090 (f) pass examinations established by rule by the division in collaboration with the board.

40091 (3) Each applicant for licensure as a massage apprentice shall:

40092 (a) submit an application in a form prescribed by the division;

40093 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

40094 (c) be of good moral character;

40095 (d) be 18 years of age or older;

40096 (e) provide satisfactory evidence to the division that the individual will practice as a
40097 massage apprentice only under the direct supervision of a licensed massage therapist in good

40098 standing and who has engaged in the lawful practice of massage therapy as a licensed massage
40099 therapist for not less than 6,000 hours; and

40100 (f) successfully complete an examination as required by division rule.

40101 (4) (a) Any new massage therapist or massage apprentice applicant shall submit
40102 fingerprint cards in a form acceptable to the division at the time the license application is filed
40103 and shall consent to a fingerprint background check by the Utah Bureau of Criminal
40104 Identification and the Federal Bureau of Investigation regarding the application.

40105 (b) The division shall request the Department of Public Safety to complete a Federal
40106 Bureau of Investigation criminal background check for each new massage therapist or
40107 apprentice applicant through the national criminal history system (NCIC) or any successor
40108 system.

40109 (c) The cost of the background check and the fingerprinting shall be borne by the
40110 applicant.

40111 (5) (a) Any new massage therapist or massage apprentice license issued under this
40112 section shall be conditional, pending completion of the criminal background check. If the
40113 criminal background check discloses the applicant has failed to accurately disclose a criminal
40114 history, the license shall be immediately and automatically revoked.

40115 (b) Any person whose conditional license has been revoked under Subsection (5)(a)
40116 shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be
40117 conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
40118 Procedures Act.

40119 (6) An applicant who successfully completes a fingerprint background check under
40120 Subsection (4) may not be required by any other state or local government body to submit to a
40121 second fingerprint background check as a condition of lawfully practicing massage therapy in
40122 this state.

40123 Section 891. Section **58-53-103** is amended to read:

40124 **58-53-103. Education and enforcement fund.**

40125 (1) There is created a restricted special revenue fund known as the "Landscape

40126 Architects Education and Enforcement Fund."

40127 (2) The fund consists of monies from:

40128 (a) a surcharge placed on application fees for initial, renewal, and reinstatement
40129 licensure under this chapter, in an amount established by the division with the collaboration of
40130 the board in accordance with Section [~~63-38-3.2~~] 63J-1-303, not to exceed 50% of the
40131 respective fee; and

40132 (b) administrative penalties collected pursuant to this chapter.

40133 (3) The fund shall earn interest, and all interest earned on fund monies shall be
40134 deposited into the fund.

40135 (4) The director may, with concurrence of the board, make distributions from the fund
40136 for the following purposes:

40137 (a) education and training of licensees under this chapter;

40138 (b) education and training of the public or other interested persons in matters
40139 concerning landscape architectural laws and practices; and

40140 (c) enforcement of this chapter by:

40141 (i) investigating unprofessional or unlawful conduct; and

40142 (ii) providing legal representation to the division when the division takes legal action
40143 against a person engaging in unprofessional or unlawful conduct.

40144 (5) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
40145 shall be transferred to the General Fund.

40146 (6) The division shall report annually to the appropriate appropriations subcommittee of
40147 the Legislature concerning the fund.

40148 Section 892. Section **58-53-302** is amended to read:

40149 **58-53-302. Qualifications for licensure.**

40150 (1) Each applicant for licensure as a landscape architect shall:

40151 (a) submit an application in a form prescribed by the division;

40152 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

40153 (c) provide satisfactory evidence of good moral character;

40154 (d) (i) have graduated and received an earned bachelors or masters degree from a
40155 landscape architecture program meeting criteria established by rule by the division in
40156 collaboration with the board; or

40157 (ii) have completed not less than eight years of supervised practical experience in
40158 landscape architecture which meets the requirements established by rule by the division in
40159 collaboration with the board; and

40160 (e) have successfully passed examinations established by rule by the division in
40161 collaboration with the board.

40162 (2) Satisfactory completion of each year of a landscape architectural program described
40163 in Subsection (1)(d)(i) is equivalent to one year of experience for purposes of Subsection
40164 (1)(d)(ii).

40165 Section 893. Section **58-53-502** is amended to read:

40166 **58-53-502. Citations -- Penalty for unlawful conduct.**

40167 (1) (a) If upon inspection or investigation, the division concludes that a person has
40168 violated Subsections 58-1-501(1)(a) through (d), Section 58-53-501, or Section 58-53-603 or
40169 any rule or order issued with respect to Section 58-53-501, and that disciplinary action is
40170 appropriate, the director or ~~[his]~~ the director's designee from within the division for each
40171 alternative respectively, shall promptly issue a citation to the person according to this chapter
40172 and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to
40173 appear before an adjudicative proceeding conducted under [~~Title 63, Chapter 46b~~] Title 63G,
40174 Chapter 4, Administrative Procedures Act.

40175 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-53-501
40176 or any rule or order issued with respect to Section 58-53-501, as evidenced by an uncontested
40177 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
40178 be assessed a fine pursuant to Subsection (1)(i) and may, in addition to or in lieu of, be ordered
40179 to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section 58-53-501
40180 or any rule or order issued with respect to Section 58-53-501.

40181 (ii) Except for a cease and desist order, the licensure sanctions cited in Section

40182 58-53-401 may not be assessed through a citation.

40183 (b) A citation shall:

40184 (i) be in writing;

40185 (ii) describe with particularity the nature of the violation, including a reference to the
40186 provision of the chapter, rule, or order alleged to have been violated;

40187 (iii) clearly state that the recipient must notify the division in writing within 20 calendar
40188 days of service of the citation if the recipient wishes to contest the citation at a hearing
40189 conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;
40190 and

40191 (iv) clearly explain the consequences of failure to timely contest the citation or to make
40192 payment of any fines assessed by the citation within the time specified in the citation.

40193 (c) The division may issue a notice in lieu of a citation.

40194 (d) Each citation issued under this section, or a copy of each citation, may be served
40195 upon any person whom a summons may be served in accordance with the Utah Rules of Civil
40196 Procedure and may be made personally or upon [~~his~~] the person's agent by a division
40197 investigator or by any person specially designated by the director or by mail.

40198 (e) If within 20 calendar days from the service of the citation, the person to whom the
40199 citation was issued fails to request a hearing to contest the citation, the citation becomes the
40200 final order of the division and is not subject to further agency review. The period to contest a
40201 citation may be extended by the division for cause.

40202 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
40203 the license of a licensee who fails to comply with a citation after it becomes final.

40204 (g) The failure of an applicant for licensure to comply with a citation after it becomes
40205 final is a ground for denial of license.

40206 (h) No citation may be issued under this section after the expiration of six months
40207 following the occurrence of any violation.

40208 (i) The director or [~~his~~] the director's designee shall assess fines according to the
40209 following:

- 40210 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;
40211 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;
40212 and
40213 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
40214 \$2,000 for each day of continued offense.

40215 (2) An action initiated for a first or second offense which has not yet resulted in a final
40216 order of the division does not preclude initiation of any subsequent action for a second or
40217 subsequent offense during the pendency of any preceding action. The final order on a
40218 subsequent action shall be considered a second or subsequent offense, respectively, provided the
40219 preceding action resulted in a first or second offense, respectively.

40220 (3) Any penalty which is not paid may be collected by the director by either referring
40221 the matter to a collection agency or bringing an action in the district court of the county in
40222 which the person against whom the penalty is imposed resides or in the county where the office
40223 of the director is located. Any county attorney or the attorney general of the state shall provide
40224 legal assistance and advice to the director in any action to collect the penalty. In any action
40225 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
40226 awarded to the division.

40227 Section 894. Section **58-54-2** is amended to read:

40228 **58-54-2. Definitions.**

40229 In addition to the definition in Section 58-1-102, as used in this chapter:

40230 (1) "Board" means the Radiology Technologist Licensing Board established under this
40231 chapter.

40232 (2) "Practice of radiologic technology" means using radiation from a radioactive
40233 substance, radiology equipment, or any other source, in amounts beyond normal background
40234 levels, for diagnostic or therapeutic purposes on humans.

40235 (3) "Radiologist" means a physician certified by the American Board of Radiology, the
40236 American Osteopathic Board of Radiology, the British Royal College of Radiology, or the
40237 Canadian College of Physicians and Surgeons.

40238 (4) "Radiology equipment" means any medical radiation device that emits ionizing or
40239 nonionizing radiation or detects that radiation for the purpose or intended purpose of:

40240 (a) diagnosing disease or other medical conditions in humans; or

40241 (b) treating, curing, mitigating, or preventing disease in humans.

40242 (5) "Radiology practical technician" means a person licensed under this chapter to
40243 engage in a practice of radiologic technology performing limited diagnostic radiology
40244 procedures:

40245 (a) as defined and permitted by rule in accordance with [~~Title 63, Chapter 46a~~] Title
40246 63G, Chapter 3, Utah Administrative Rulemaking Act; and

40247 (b) under the supervision of a radiologist or radiology practitioner.

40248 (6) "Radiology practitioner" means any person or individual licensed in this state as a
40249 physician and surgeon, osteopathic physician, podiatric physician, chiropractic physician,
40250 dentist, dental hygienist, or a physician's assistant, nurse practitioner, or nurse specialist
40251 practicing under the supervision of an approved supervising physician and in accordance with an
40252 approved protocol and utilization plan.

40253 (7) "Radiology technologist" means a person licensed under this chapter to engage in
40254 the practice of radiology technology under the supervision of a radiologist or radiology
40255 practitioner including the administration of parenteral contrast media, radionuclides, and other
40256 medications incidental to radiology procedures provided the administrations are under the direct
40257 supervision of a qualified physician and the technologist is currently certified in
40258 cardiopulmonary resuscitation (CPR) and appropriate patient care procedures.

40259 (8) "Unlawful conduct" as defined in Section 58-1-501 includes:

40260 (a) using any of the following titles if not licensed as a radiology technologist under this
40261 chapter:

40262 (i) radiology practical technician;

40263 (ii) radiology technologist;

40264 (iii) medical radiographer;

40265 (iv) radiation therapist; or

- 40266 (v) nuclear medicine technologist; and
- 40267 (b) using the title "radiology practical technician" if not licensed as a radiology practical
- 40268 technician under this chapter.
- 40269 (9) "Unprofessional conduct" as defined in Section 58-1-501 and as may be further
- 40270 defined by rule includes:
- 40271 (a) any act or omission by a person licensed under this chapter that is contrary to the
- 40272 instructions of the radiologist or radiology practitioner responsible for supervising the licensee
- 40273 and which does or reasonably could pose a threat to the health, safety, or welfare of a patient or
- 40274 any other person;
- 40275 (b) operating any radiology equipment that is known to be unsafe or not in compliance
- 40276 with all applicable state requirements regulating radiology equipment;
- 40277 (c) permitting any person to operate any radiology equipment who is not permitted to
- 40278 do so under provisions of law or who is incompetent to operate radiology equipment for any
- 40279 reason;
- 40280 (d) revealing to any unauthorized person any information considered confidential or
- 40281 privileged regarding any patient;
- 40282 (e) the use of any controlled substance as defined by the statutes of this state except to
- 40283 the extent the controlled substance is lawfully prescribed to the licensee and used in accordance
- 40284 with the instructions of the prescribing practitioner; and
- 40285 (f) willfully and intentionally or negligently making any false statement or entry on any
- 40286 patient record or upon any record used to facilitate payment for radiology services.

40287 Section 895. Section **58-54-5** is amended to read:

40288 **58-54-5. Requirements for licensure.**

40289 (1) Each applicant for licensure as a radiology technologist or radiology practical

40290 technician shall:

- 40291 (a) submit an application in a form prescribed by the division in collaboration with the
- 40292 board;
- 40293 (b) pay a fee as determined by the department pursuant to Section [~~63-38-3.2~~]

40294 63J-1-303; and

40295 (c) be of good moral character.

40296 (2) Each applicant for licensure as a radiology technologist shall, in addition to the
40297 requirements of Subsection (1):

40298 (a) be a graduate of an accredited educational program in radiology technology or
40299 certified by the American Registry of Radiologic Technologists or any equivalent educational
40300 program approved by the division in collaboration with the board; and

40301 (b) have passed an examination approved by the division in collaboration with the
40302 board.

40303 (3) Each applicant for licensure as a radiology practical technician shall, in addition to
40304 the requirements of Subsection (1), have passed a basic examination and one or more specialty
40305 examinations that are competency based, using a task analysis of the scope of practice of
40306 radiology practical technicians in the state. The basic examination and the speciality
40307 examination shall be approved by the division in collaboration with the board and the licensing
40308 board of the profession within which the radiology practical technician will be practicing.

40309 (4) The division shall provide for administration of the radiology practical technician
40310 examination not less than monthly at offices designated by the division and located:

40311 (a) in Salt Lake City; and

40312 (b) within each local health department jurisdictional area.

40313 Section 896. Section **58-55-103** is amended to read:

40314 **58-55-103. Construction Services Commission created -- Functions --**

40315 **Appointment -- Qualifications and terms of members -- Vacancies -- Expenses --**

40316 **Meetings.**

40317 (1) (a) There is created within the division the Construction Services Commission.

40318 (b) The commission shall:

40319 (i) with the concurrence of the director, make reasonable rules under [~~Title 63, Chapter~~

40320 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer and enforce this

40321 chapter which are consistent with this chapter including:

- 40322 (A) licensing of various licensees;
- 40323 (B) examination requirements and administration of the examinations, to include
- 40324 approving and establishing a passing score for applicant examinations;
- 40325 (C) standards of supervision for students or persons in training to become qualified to
- 40326 obtain a license in the trade they represent; and
- 40327 (D) standards of conduct for various licensees;
- 40328 (ii) approve or disapprove fees adopted by the division under Section [~~63-38-3.2~~
- 40329 63J-1-303;
- 40330 (iii) except where the boards conduct them, conduct all administrative hearings not
- 40331 delegated to an administrative law judge relating to the licensing of any applicant;
- 40332 (iv) except as otherwise provided in Sections 38-11-207 and 58-55-503, with the
- 40333 concurrence of the director, impose sanctions against licensees and certificate holders with the
- 40334 same authority as the division under Section 58-1-401;
- 40335 (v) advise the director on the administration and enforcement of any matters affecting
- 40336 the division and the construction industry;
- 40337 (vi) advise the director on matters affecting the division budget;
- 40338 (vii) advise and assist trade associations in conducting construction trade seminars and
- 40339 industry education and promotion; and
- 40340 (viii) perform other duties as provided by this chapter.
- 40341 (2) (a) Initially the commission shall be comprised of the five members of the
- 40342 Contractors Licensing Board and two of the three chair persons from the Plumbers Licensing
- 40343 Board, the Alarm System Security and Licensing Board, and the Electricians Licensing Board.
- 40344 (b) The terms of office of the commission members who are serving on the Contractors
- 40345 Licensing Board shall continue as they serve on the commission.
- 40346 (c) Beginning July 1, 2004, the commission shall be comprised of nine members
- 40347 appointed by the executive director with the approval of the governor from the following
- 40348 groups:
- 40349 (i) one member shall be a licensed general engineering contractor;

40350 (ii) one member shall be a licensed general building contractor;
40351 (iii) two members shall be licensed residential and small commercial contractors;
40352 (iv) three members shall be the three chair persons from the Plumbers Licensing Board,
40353 the Alarm System Security and Licensing Board, and the Electricians Licensing Board; and
40354 (v) two members shall be from the general public, provided, however that the certified
40355 public accountant on the Contractors Licensing Board will continue to serve until the current
40356 term expires, after which both members under this Subsection (2)(c)(v) shall be appointed from
40357 the general public.

40358 (3) (a) Except as required by Subsection (3)(b), as terms of current commission
40359 members expire, the executive director with the approval of the governor shall appoint each
40360 new member or reappointed member to a four-year term ending June 30.

40361 (b) Notwithstanding the requirements of Subsection (3)(a), the executive director with
40362 the approval of the governor shall, at the time of appointment or reappointment, adjust the
40363 length of terms to stagger the terms of commission members so that approximately 1/2 of the
40364 commission members are appointed every two years.

40365 (c) A commission member may not serve more than two consecutive terms.

40366 (4) The commission shall elect annually one of its members as chair, for a term of one
40367 year.

40368 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
40369 appointed for the unexpired term.

40370 (6) (a) Members may not receive compensation or benefits for their services, but may
40371 receive per diem and expenses incurred in the performance of the members' official duties at the
40372 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

40373 (b) Members may decline to receive per diem and expenses for their service.

40374 (7) (a) The commission shall meet at least monthly unless the director determines
40375 otherwise.

40376 (b) The director may call additional meetings at the director's discretion, upon the
40377 request of the chair, or upon the written request of four or more commission members.

- 40378 (8) (a) Five members constitute a quorum for the transaction of business.
- 40379 (b) If a quorum is present when a vote is taken, the affirmative vote of commission
- 40380 members present is the act of the commission.
- 40381 (9) The commission shall comply with the procedures and requirements of Title 13,
- 40382 Chapter 1, Department of Commerce, and [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
- 40383 Administrative Procedures Act, in all of its adjudicative proceedings.
- 40384 Section 897. Section **58-55-302** is amended to read:
- 40385 **58-55-302. Qualifications for licensure.**
- 40386 (1) Each applicant for a license under this chapter shall:
- 40387 (a) submit an application prescribed by the division;
- 40388 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 40389 (c) (i) meet the examination requirements established by rule by the commission with
- 40390 the concurrence of the director, except for the classifications of apprentice plumber, residential
- 40391 apprentice plumber, and apprentice electrician for whom no examination is required; or
- 40392 (ii) if required in Section 58-55-304, the individual qualifier must pass the required
- 40393 examination if the applicant is a business entity;
- 40394 (d) if an apprentice, identify the proposed supervisor of the apprenticeship;
- 40395 (e) if an applicant for a contractor's license:
- 40396 (i) produce satisfactory evidence of financial responsibility, except for a construction
- 40397 trades instructor for whom evidence of financial responsibility is not required;
- 40398 (ii) produce satisfactory evidence of knowledge and experience in the construction
- 40399 industry and knowledge of the principles of the conduct of business as a contractor, reasonably
- 40400 necessary for the protection of the public health, safety, and welfare; and
- 40401 (iii) be a licensed master electrician if an applicant for an electrical contractor's license
- 40402 or a licensed master residential electrician if an applicant for a residential electrical contractor's
- 40403 license; or
- 40404 (iv) be a journeyman plumber or residential journeyman plumber if an applicant for a
- 40405 plumbing contractor's license; and

40406 (f) if an applicant for a construction trades instructor license, satisfy any additional
40407 requirements established by rule.

40408 (2) After approval of an applicant for a contractor's license by the applicable board and
40409 the division, the applicant shall file the following with the division before the division issues the
40410 license:

40411 (a) proof of workers' compensation insurance which covers employees of the applicant
40412 in accordance with applicable Utah law;

40413 (b) proof of public liability insurance in coverage amounts and form established by rule
40414 except for a construction trades instructor for whom public liability insurance is not required;
40415 and

40416 (c) proof of registration as required by applicable law with the:

40417 (i) Utah Department of Commerce;

40418 (ii) Division of Corporations and Commercial Code;

40419 (iii) Unemployment Insurance Division in the Department of Workforce Services, for
40420 purposes of Title 35A, Chapter 4, Employment Security Act;

40421 (iv) State Tax Commission; and

40422 (v) Internal Revenue Service.

40423 (3) In addition to the general requirements for each applicant in Subsection (1),
40424 applicants shall comply with the following requirements to be licensed in the following
40425 classifications:

40426 (a) A journeyman plumber applicant shall produce satisfactory evidence of:

40427 (i) successful completion of the equivalent of at least four years of full-time training and
40428 instruction as a licensed apprentice plumber under supervision of a licensed journeyman plumber
40429 and in accordance with a planned program of training approved by the division;

40430 (ii) at least eight years of full-time experience approved by the division in collaboration
40431 with the Plumbers Licensing Board; or

40432 (iii) satisfactory evidence of meeting the qualifications determined by the board to be
40433 equivalent to Subsection (3)(a)(i) or (a)(ii).

40434 (b) A residential journeyman plumber shall produce satisfactory evidence of:
40435 (i) completion of the equivalent of at least three years of full-time training and
40436 instruction as a licensed apprentice plumber under the supervision of a licensed residential
40437 journeyman plumber or licensed journeyman plumber in accordance with a planned program of
40438 training approved by the division;
40439 (ii) completion of at least six years of full-time experience in a maintenance or repair
40440 trade involving substantial plumbing work; or
40441 (iii) meeting the qualifications determined by the board to be equivalent to Subsection
40442 (3)(b)(i) or (b)(ii).
40443 (c) The conduct of licensed apprentice plumbers and their licensed supervisors shall be
40444 in accordance with the following:
40445 (i) while engaging in the trade of plumbing, a licensed apprentice plumber shall be under
40446 the immediate supervision of a licensed journeyman plumber or a licensed residential
40447 journeyman plumber; and
40448 (ii) a licensed plumbing apprentice in the fourth through tenth year of training may work
40449 without supervision for a period not to exceed eight hours in any 24-hour period, but if the
40450 apprentice does not become a licensed journeyman plumber or licensed residential journeyman
40451 plumber by the end of the tenth year of apprenticeship, this nonsupervision provision no longer
40452 applies.
40453 (d) (i) A master electrician applicant shall produce satisfactory evidence that the
40454 applicant:
40455 (A) is a graduate electrical engineer of an accredited college or university approved by
40456 the division and has one year of practical electrical experience as a licensed apprentice
40457 electrician;
40458 (B) is a graduate of an electrical trade school, having received an associate of applied
40459 sciences degree following successful completion of a course of study approved by the division,
40460 and has two years of practical experience as a licensed journeyman electrician;
40461 (C) has four years of practical experience as a journeyman electrician; or

40462 (D) meets the qualifications determined by the board to be equivalent to Subsection
40463 (3)(d)(i)(A), (B), or (C).

40464 (ii) (A) An individual holding a valid Utah license as a master electrician, based on at
40465 least eight years of practical experience as a licensed apprentice under the supervision of a
40466 licensed journeyman or master electrician, in effect immediately prior to May 3, 2004, is on and
40467 after May 3, 2004, considered to hold a current license under this chapter and satisfies the
40468 requirements of this Subsection (3)(d) for the purpose of renewal or reinstatement of that
40469 license under Section 58-55-303.

40470 (B) An individual who has less than four years of practical experience as a licensed
40471 apprentice under the supervision of a licensed journeyman or master electrician prior to May 3,
40472 2004, shall complete the education requirements of Subsection (3)(d)(i)(A) or (B) to qualify for
40473 licensing as a master electrician.

40474 (C) An individual who has more than four but less than six years of practical experience
40475 as a licensed apprentice under the supervision of a licensed journeyman or master electrician
40476 prior to May 3, 2004, may satisfy the education requirements of Subsection (3)(d)(i)(A) or (B)
40477 by successfully passing a competency placement test approved by the board and administered at
40478 a Utah state institution of higher education.

40479 (D) An individual who has more than six but less than eight years of practical
40480 experience as a licensed apprentice under the supervision of a licensed journeyman or master
40481 electrician prior to May 3, 2004, satisfies the education requirements of this Subsection (3)(d)
40482 by completing the eight-year term of practical experience within a reasonable time frame
40483 subsequent to May 3, 2004, as established by board rule in accordance with [~~Title 63, Chapter~~
40484 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

40485 (e) A master residential electrician applicant shall produce satisfactory evidence that the
40486 applicant:

40487 (i) has at least two years of practical experience as a residential journeyman electrician;

40488 or

40489 (ii) meets the qualifications determined by the board to be equivalent to this practical

40490 experience.

40491 (f) (i) A journeyman electrician applicant shall produce satisfactory evidence that the
40492 applicant:

40493 (A) has successfully completed at least four years of full-time training and instruction as
40494 a licensed apprentice electrician under the supervision of a master electrician or journeyman
40495 electrician and in accordance with a planned training program approved by the division;

40496 (B) has at least eight years of full-time experience approved by the division in
40497 collaboration with the Electricians Licensing Board; or

40498 (C) meets the qualifications determined by the board to be equivalent to Subsection
40499 (3)(f)(i)(A) or (B).

40500 (ii) An individual holding a valid Utah license as a journeyman electrician, based on at
40501 least six years of full-time experience approved by the division in collaboration with the
40502 Electricians Licensing Board in effect immediately prior to May 3, 2004, is on and after May 3,
40503 2004, considered to hold a current license under this chapter and satisfies the requirements of
40504 Subsection (3)(f)(i)(B) for the purpose of renewal or reinstatement of that license under Section
40505 58-55-303.

40506 (iii) An individual who has more than six but less than eight years of full-time
40507 experience approved by the division in collaboration with the Electricians Licensing Board prior
40508 to May 3, 2004, satisfies the requirements of Subsection (3)(f)(i) by completing the eight-year
40509 term of practical experience within a reasonable time frame subsequent to May 3, 2004, as
40510 established by board rule in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
40511 Administrative Rulemaking Act.

40512 (g) A residential journeyman electrician applicant shall produce satisfactory evidence
40513 that the applicant:

40514 (i) has successfully completed two years of training in an electrical training program
40515 approved by the division;

40516 (ii) has four years of practical experience in wiring, installing, and repairing electrical
40517 apparatus and equipment for light, heat, and power under the supervision of a licensed master,

40518 journeyman, residential master, or residential journeyman electrician; or

40519 (iii) meets the qualifications determined by the division and applicable board to be
40520 equivalent to Subsection (3)(g)(i) or (ii).

40521 (h) The conduct of licensed apprentice electricians and their licensed supervisors shall
40522 be in accordance with the following:

40523 (i) A licensed apprentice electrician shall be under the immediate supervision of a
40524 licensed master, journeyman, residential master, or residential journeyman electrician. An
40525 apprentice in the fourth year of training may work without supervision for a period not to
40526 exceed eight hours in any 24-hour period.

40527 (ii) A licensed master, journeyman, residential master, or residential journeyman
40528 electrician may have under immediate supervision on a residential project up to three licensed
40529 apprentice electricians.

40530 (iii) A licensed master or journeyman electrician may have under immediate supervision
40531 on nonresidential projects only one licensed apprentice electrician.

40532 (i) An alarm company applicant shall:

40533 (i) have a qualifying agent who is an officer, director, partner, proprietor, or manager of
40534 the applicant who:

40535 (A) demonstrates 6,000 hours of experience in the alarm company business;

40536 (B) demonstrates 2,000 hours of experience as a manager or administrator in the alarm
40537 company business or in a construction business; and

40538 (C) passes an examination component established by rule by the commission with the
40539 concurrence of the director;

40540 (ii) if a corporation, provide:

40541 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
40542 of all corporate officers, directors, and those responsible management personnel employed
40543 within the state or having direct responsibility for managing operations of the applicant within
40544 the state; and

40545 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards

40546 of all shareholders owning 5% or more of the outstanding shares of the corporation, except this
40547 shall not be required if the stock is publicly listed and traded;

40548 (iii) if a limited liability company, provide:

40549 (A) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
40550 of all company officers, and those responsible management personnel employed within the state
40551 or having direct responsibility for managing operations of the applicant within the state; and

40552 (B) the names, addresses, dates of birth, Social Security numbers, and fingerprint cards
40553 of all individuals owning 5% or more of the equity of the company;

40554 (iv) if a partnership, the names, addresses, dates of birth, Social Security numbers, and
40555 fingerprint cards of all general partners, and those responsible management personnel employed
40556 within the state or having direct responsibility for managing operations of the applicant within
40557 the state;

40558 (v) if a proprietorship, the names, addresses, dates of birth, Social Security numbers,
40559 and fingerprint cards of the proprietor, and those responsible management personnel employed
40560 within the state or having direct responsibility for managing operations of the applicant within
40561 the state;

40562 (vi) be of good moral character in that officers, directors, shareholders described in
40563 Subsection (3)(i)(ii)(B), partners, proprietors, and responsible management personnel have not
40564 been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that
40565 when considered with the duties and responsibilities of an alarm company is considered by the
40566 board to indicate that the best interests of the public are served by granting the applicant a
40567 license;

40568 (vii) document that none of the applicant's officers, directors, shareholders described in
40569 Subsection (3)(i)(ii)(B), partners, proprietors, and responsible management personnel have been
40570 declared by any court of competent jurisdiction incompetent by reason of mental defect or
40571 disease and not been restored;

40572 (viii) document that none of the applicant's officers, directors, shareholders described in
40573 Subsection (3)(i)(ii)(B), partners, proprietors, and responsible management personnel are

40574 currently suffering from habitual drunkenness or from drug addiction or dependence;
40575 (ix) file and maintain with the division evidence of:
40576 (A) comprehensive general liability insurance in form and in amounts to be established
40577 by rule by the commission with the concurrence of the director;
40578 (B) workers' compensation insurance that covers employees of the applicant in
40579 accordance with applicable Utah law; and
40580 (C) registration as is required by applicable law with the:
40581 (I) Division of Corporations and Commercial Code;
40582 (II) Unemployment Insurance Division in the Department of Workforce Services, for
40583 purposes of Title 35A, Chapter 4, Employment Security Act;
40584 (III) State Tax Commission; and
40585 (IV) Internal Revenue Service; and
40586 (x) meet with the division and board.
40587 (j) Each applicant for licensure as an alarm company agent shall:
40588 (i) submit an application in a form prescribed by the division accompanied by fingerprint
40589 cards;
40590 (ii) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
40591 (iii) be of good moral character in that the applicant has not been convicted of a felony,
40592 a misdemeanor involving moral turpitude, or any other crime that when considered with the
40593 duties and responsibilities of an alarm company agent is considered by the board to indicate that
40594 the best interests of the public are served by granting the applicant a license;
40595 (iv) not have been declared by any court of competent jurisdiction incompetent by
40596 reason of mental defect or disease and not been restored;
40597 (v) not be currently suffering from habitual drunkenness or from drug addiction or
40598 dependence; and
40599 (vi) meet with the division and board if requested by the division or the board.
40600 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
40601 Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau

40602 of Investigation records shall be checked for applicants as an alarm company or alarm company
40603 agent.

40604 (5) To determine if an applicant meets the qualifications of Subsections (3)(i)(vi) and
40605 (3)(j)(iii), the division shall provide an appropriate number of copies of fingerprint cards to the
40606 Department of Public Safety with the division's request to:

40607 (a) conduct a search of records of the Department of Public Safety for criminal history
40608 information relating to each applicant for licensure as an alarm company or alarm company
40609 agent and each applicant's officers, directors, shareholders described in Subsection (3)(i)(ii)(B),
40610 partners, proprietors, and responsible management personnel; and

40611 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
40612 requiring a check of records of the F.B.I. for criminal history information under this section.

40613 (6) The Department of Public Safety shall send to the division:

40614 (a) a written record of criminal history, or certification of no criminal history record, as
40615 contained in the records of the Department of Public Safety in a timely manner after receipt of a
40616 fingerprint card from the division and a request for review of Department of Public Safety
40617 records; and

40618 (b) the results of the F.B.I. review concerning an applicant in a timely manner after
40619 receipt of information from the F.B.I.

40620 (7) (a) The division shall charge each applicant for licensure as an alarm company or
40621 alarm company agent a fee, in accordance with Section [~~63-38-3.2~~] 63J-1-303, equal to the cost
40622 of performing the records reviews under this section.

40623 (b) The division shall pay the Department of Public Safety the costs of all records
40624 reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews
40625 under this section.

40626 (8) Information obtained by the division from the reviews of criminal history records of
40627 the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only
40628 for the purpose of determining if an applicant for licensure as an alarm company or alarm
40629 company agent is qualified for licensure.

- 40630 (9) (a) An application for licensure under this chapter shall be denied if:
- 40631 (i) the applicant has had a previous license, which was issued under this chapter,
- 40632 suspended or revoked within one year prior to the date of the applicant's application;
- 40633 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and
- 40634 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
- 40635 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,
- 40636 performing similar functions, or directly or indirectly controlling the applicant has served in any
- 40637 similar capacity with any person or entity which has had a previous license, which was issued
- 40638 under this chapter, suspended or revoked within one year prior to the date of the applicant's
- 40639 application; or
- 40640 (iii) (A) the applicant is an individual or sole proprietorship; and
- 40641 (B) any owner or agent acting as a qualifier has served in any capacity listed in
- 40642 Subsection (9)(a)(ii)(B) in any entity which has had a previous license, which was issued under
- 40643 this chapter, suspended or revoked within one year prior to the date of the applicant's
- 40644 application.
- 40645 (b) An application for licensure under this chapter shall be reviewed by the appropriate
- 40646 licensing board prior to approval if:
- 40647 (i) the applicant has had a previous license, which was issued under this chapter,
- 40648 suspended or revoked more than one year prior to the date of the applicant's application;
- 40649 (ii) (A) the applicant is a partnership, corporation, or limited liability company; and
- 40650 (B) any corporate officer, director, shareholder holding 25% or more of the stock in the
- 40651 applicant, partner, member, agent acting as a qualifier, or any person occupying a similar status,
- 40652 performing similar functions, or directly or indirectly controlling the applicant has served in any
- 40653 similar capacity with any person or entity which has had a previous license, which was issued
- 40654 under this chapter, suspended or revoked more than one year prior to the date of the applicant's
- 40655 application; or
- 40656 (iii) (A) the applicant is an individual or sole proprietorship; and
- 40657 (B) any owner or agent acting as a qualifier has served in any capacity listed in

40658 Subsection (9)(b)(ii)(B) in any entity which has had a previous license, which was issued under
40659 this chapter, suspended or revoked more than one year prior to the date of the applicant's
40660 application.

40661 Section 898. Section **58-55-307** is amended to read:

40662 **58-55-307. Confidentiality of records and reports.**

40663 (1) Credit reports, financial statements, and other information submitted to the division
40664 by or at the request and direction of an applicant or licensee for the purpose of supporting a
40665 representation of financial responsibility constitute protected records under [~~Title 63, Chapter 2~~]
40666 Title 63G, Chapter 2, Government Records Access and Management Act.

40667 (2) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
40668 Access and Management Act, the records described in Subsection (1) are not open for public
40669 inspection and are not subject to discovery in civil or administrative proceedings.

40670 Section 899. Section **58-55-308** is amended to read:

40671 **58-55-308. Scope of practice -- Installation, repair, maintenance, cleaning, or**
40672 **replacement of gas appliance or combustion system -- Rules.**

40673 (1) (a) The commission, with the concurrence of the director, may adopt reasonable
40674 rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
40675 Act, to define and limit the scope of practice and operating standards of the classifications and
40676 subclassifications licensed under this chapter in a manner consistent with established practice in
40677 the relevant industry.

40678 (b) The commission and the director may limit the field and scope of operations of a
40679 licensee under this chapter in accordance with the rules and the public health, safety, and
40680 welfare, based on the licensee's education, training, experience, knowledge, and financial
40681 responsibility.

40682 (2) (a) The work and scope of practice covered by this Subsection (2) is the installation,
40683 repair, maintenance, cleaning, or replacement of a residential or commercial gas appliance or
40684 combustion system.

40685 (b) The provisions of this Subsection (2) apply to any:

40686 (i) licensee under this chapter whose license authorizes the licensee to perform the work
40687 described in Subsection (2)(a); and

40688 (ii) person exempt from licensure under Subsection 58-55-305(1)(h).

40689 (c) Any person described in Subsection (2)(b) that performs work described in
40690 Subsection (2)(a):

40691 (i) must first receive training and certification as specified in rules adopted by the
40692 division; and

40693 (ii) shall ensure that any employee authorized under other provisions of this chapter to
40694 perform work described in Subsection (2)(a) has first received training and certification as
40695 specified in rules adopted by the division.

40696 (d) The division may exempt from the training requirements adopted under Subsection
40697 (2)(c) a person that has adequate experience, as determined by the division.

40698 (3) The division may exempt the following individuals from the certification
40699 requirements adopted under Subsection (2)(c):

40700 (a) a person who has passed a test equivalent to the level of testing required by the
40701 division for certification, or has completed an apprenticeship program that teaches the
40702 installation of gas line appliances and is approved by the Federal Bureau of Apprenticeship
40703 Training; and

40704 (b) a person working under the immediate one-to-one supervision of a certified natural
40705 gas technician or a person exempt from certification.

40706 (4) This section does not prohibit a licensed specialty contractor from accepting and
40707 entering into a contract involving the use of two or more crafts or trades if the performance of
40708 the work in the crafts or trades, other than that in which the contractor is licensed, is incidental
40709 and supplemental to the work for which the contractor is licensed.

40710 Section 900. Section **58-55-503** is amended to read:

40711 **58-55-503. Penalty for unlawful conduct -- Citations.**

40712 (1) (a) (i) A person who violates Subsection 58-55-308(2), Subsection 58-55-501(1),
40713 (2), (3), (4), (5), (6), (7), (9), (10), (12), (14), or (15), or Subsection 58-55-504(2), or who fails

40714 to comply with a citation issued under this section after it is final, is guilty of a class A
40715 misdemeanor.

40716 (ii) As used in this section in reference to Subsection 58-55-504(2), "person" means an
40717 individual and does not include a sole proprietorship, joint venture, corporation, limited liability
40718 company, association, or organization of any type.

40719 (b) A person who violates the provisions of Subsection 58-55-501(8) may not be
40720 awarded and may not accept a contract for the performance of the work.

40721 (2) A person who violates the provisions of Subsection 58-55-501(13) is guilty of an
40722 infraction unless the violator did so with the intent to deprive the person to whom money is to
40723 be paid of the money received, in which case the violator is guilty of theft, as classified in
40724 Section 76-6-412.

40725 (3) Grounds for immediate suspension of the licensee's license by the division and the
40726 commission include the issuance of a citation for violation of Subsection 58-55-308(2), Section
40727 58-55-501, or Subsection 58-55-504(2), or the failure by a licensee to make application to,
40728 report to, or notify the division with respect to any matter for which application, notification, or
40729 reporting is required under this chapter or rules adopted under this chapter, including applying
40730 to the division for a new license to engage in a new specialty classification or to do business
40731 under a new form of organization or business structure, filing with the division current financial
40732 statements, notifying the division concerning loss of insurance coverage, or change in qualifier.

40733 (4) (a) If upon inspection or investigation, the division concludes that a person has
40734 violated the provisions of Subsection 58-55-308(2) or Subsections 58-55-501(1), (2), (3), (9),
40735 (10), (12), (14), (19), (21), or Subsection 58-55-504(2), or any rule or order issued with respect
40736 to these subsections, and that disciplinary action is appropriate, the director or the director's
40737 designee from within the division shall promptly issue a citation to the person according to this
40738 chapter and any pertinent rules, attempt to negotiate a stipulated settlement, or notify the person
40739 to appear before an adjudicative proceeding conducted under [~~Title 63, Chapter 46~~] Title 63G,
40740 Chapter 4, Administrative Procedures Act.

40741 (i) A person who is in violation of the provisions of Subsection 58-55-308(2),

40742 Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or (21), or Subsection
40743 58-55-504(2), as evidenced by an uncontested citation, a stipulated settlement, or by a finding
40744 of violation in an adjudicative proceeding, may be assessed a fine pursuant to this Subsection (4)
40745 and may, in addition to or in lieu of, be ordered to cease and desist from violating Subsection
40746 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9), (10), (12), (14), (19), or (21), or
40747 Subsection 58-55-504(2).

40748 (ii) Except for a cease and desist order, the licensure sanctions cited in Section
40749 58-55-401 may not be assessed through a citation.

40750 (iii) (A) A person who receives a citation or is fined for violating Subsection
40751 58-55-501(21) may also be issued a cease and desist order from engaging in work to be
40752 performed by a contractor licensed under this chapter unless the person meets the continuing
40753 education requirement within 30 days after receipt of the citation or fine.

40754 (B) The order, if issued, shall be removed upon the person's completion of the
40755 continuing education requirement.

40756 (C) This Subsection (4)(a)(iii) is repealed effective July 1, 2010.

40757 (b) (i) Each citation shall be in writing and describe with particularity the nature of the
40758 violation, including a reference to the provision of the chapter, rule, or order alleged to have
40759 been violated.

40760 (ii) The citation shall clearly state that the recipient must notify the division in writing
40761 within 20 calendar days of service of the citation if the recipient wishes to contest the citation at
40762 a hearing conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
40763 Procedures Act.

40764 (iii) The citation shall clearly explain the consequences of failure to timely contest the
40765 citation or to make payment of any fines assessed by the citation within the time specified in the
40766 citation.

40767 (c) Each citation issued under this section, or a copy of each citation, may be served
40768 upon a person upon whom a summons may be served:

40769 (i) in accordance with the Utah Rules of Civil Procedure;

40770 (ii) personally or upon the person's agent by a division investigator or by a person
40771 specially designated by the director; or
40772 (iii) by mail.

40773 (d) (i) If within 20 calendar days from the service of a citation, the person to whom the
40774 citation was issued fails to request a hearing to contest the citation, the citation becomes the
40775 final order of the division and is not subject to further agency review.

40776 (ii) The period to contest a citation may be extended by the division for cause.

40777 (e) The division may refuse to issue or renew, suspend, revoke, or place on probation
40778 the license of a licensee who fails to comply with a citation after it becomes final.

40779 (f) The failure of an applicant for licensure to comply with a citation after it becomes
40780 final is a ground for denial of license.

40781 (g) No citation may be issued under this section after the expiration of six months
40782 following the occurrence of any violation.

40783 (h) Fines shall be assessed by the director or the director's designee according to the
40784 following:

40785 (i) for a first offense handled pursuant to Subsection (4)(a), a fine of up to \$1,000;
40786 (ii) for a second offense handled pursuant to Subsection (4)(a), a fine of up to \$2,000;
40787 and
40788 (iii) for any subsequent offense handled pursuant to Subsection (4)(a), a fine of up to
40789 \$2,000 for each day of continued offense.

40790 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
40791 Subsection (4)(i), an offense constitutes a second or subsequent offense if:

40792 (A) the division previously issued a final order determining that a person committed a
40793 first or second offense in violation of Subsection 58-55-308(2), Subsection 58-55-501(1), (2),
40794 (3), (9), (10), (12), (14), or (19), or Subsection 58-55-504(2); or
40795 (B) (I) the division initiated an action for a first or second offense;
40796 (II) no final order has been issued by the division in the action initiated under
40797 Subsection (4)(i)(i)(B)(I);

40798 (III) the division determines during an investigation that occurred after the initiation of
40799 the action under Subsection (4)(i)(i)(B)(I) that the person committed a second or subsequent
40800 violation of the provisions of Subsection 58-55-308(2), Subsection 58-55-501(1), (2), (3), (9),
40801 (10), (12), (14), or (19), or Subsection 58-55-504(2); and

40802 (IV) after determining that the person committed a second or subsequent offense under
40803 Subsection (4)(i)(i)(B)(III), the division issues a final order on the action initiated under
40804 Subsection (4)(i)(i)(B)(I).

40805 (ii) In issuing a final order for a second or subsequent offense under Subsection
40806 (4)(i)(i), the division shall comply with the requirements of this section.

40807 (5) (a) A penalty imposed by the director under Subsection (4)(h) shall be deposited
40808 into the Commerce Service Fund.

40809 (b) A penalty which is not paid may be collected by the director by either referring the
40810 matter to a collection agency or bringing an action in the district court of the county in which
40811 the person against whom the penalty is imposed resides or in the county where the office of the
40812 director is located.

40813 (c) A county attorney or the attorney general of the state is to provide legal assistance
40814 and advice to the director in any action to collect the penalty.

40815 (d) In an action brought to enforce the provisions of this section, reasonable attorney's
40816 fees and costs shall be awarded.

40817 Section 901. Section **58-56-4** is amended to read:

40818 **58-56-4. Definitions -- Adoption of building codes -- Amendments -- Approval of**
40819 **other codes -- Exemptions.**

40820 (1) As used in this section:

40821 (a) "agricultural use" means a use that relates to the tilling of soil and raising of crops,
40822 or keeping or raising domestic animals;

40823 (b) "not for human occupancy" means use of a structure for purposes other than
40824 protection or comfort of human beings, but allows people to enter the structure for:

40825 (i) maintenance and repair; and

40826 (ii) the care of livestock, crops, or equipment intended for agricultural use which are
40827 kept there; and

40828 (c) "residential area" means land that is not used for an agricultural use and is:
40829 (i) (A) within the boundaries of a city or town; and
40830 (B) less than five contiguous acres;
40831 (ii) (A) within a subdivision for which the county has approved a subdivision plat under
40832 Title 17, Chapter 27a, Part 6, Subdivisions; and
40833 (B) less than two contiguous acres; or
40834 (iii) not located in whole or in part in an agricultural protection area created under Title
40835 17, Chapter 41, Agriculture Protection Area.

40836 (2) (a) Subject to the provisions of Subsections (4) and (5), the following codes, each
40837 of which must be promulgated by a nationally recognized code authority, shall be adopted, in
40838 the manner described in Subsection (2)(b), as the construction codes which the state and each
40839 political subdivision of the state shall follow in the circumstances described in Subsection (3):

40840 (i) a building code;
40841 (ii) the National Electrical Code promulgated by the National Fire Protection
40842 Association;
40843 (iii) a residential one and two family dwelling code;
40844 (iv) a plumbing code;
40845 (v) a mechanical code;
40846 (vi) a fuel gas code;
40847 (vii) an energy conservation code; and
40848 (viii) a manufactured housing installation standard code.

40849 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
40850 Administrative Rulemaking Act, the division, in collaboration with the commission, shall adopt
40851 by rule specific editions of the codes described in Subsection (2)(a), and may adopt by rule
40852 successor editions of any adopted code.

40853 (c) The division, in collaboration with the commission, may, in accordance with Section

40854 58-56-7, adopt amendments to the codes adopted under Subsection (2)(a), to be applicable to
40855 the entire state or within one or more political subdivisions.

40856 (3) Subject to the provisions of Subsections (4) and (5), the codes and amendments
40857 adopted under Subsection (2) shall be followed when:

40858 (a) new construction is involved;

40859 (b) the owner of an existing building, or the owner's agent, is voluntarily engaged in:

40860 (i) the repair, renovation, remodeling, alteration, enlargement, rehabilitation,
40861 conservation, or reconstruction of the building; or

40862 (ii) changing the character or use of the building in a manner which increases the
40863 occupancy loads, other demands, or safety risks of the building.

40864 (4) (a) The division, in collaboration with the commission, has discretion to approve,
40865 without adopting, certain codes in addition to those described in Subsection (2)(a), including
40866 specific editions of the codes, for use by a compliance agency.

40867 (b) If the applicable code is one which the division has approved under Subsection
40868 (4)(a), a compliance agency has the discretion to:

40869 (i) adopt an ordinance requiring removal, demolition, or repair of a building, according
40870 to a code;

40871 (ii) adopt, by ordinance or rule, a dangerous building code; or

40872 (iii) adopt, by ordinance or rule, a building rehabilitation code.

40873 (5) (a) Except in a residential area, a structure used solely in conjunction with
40874 agriculture use, and not for human occupancy, is exempted from the permit requirements of any
40875 code adopted by the division.

40876 (b) Notwithstanding Subsection (5)(a), unless otherwise exempted, plumbing, electrical,
40877 and mechanical permits may be required when that work is included in the structure.

40878 Section 902. Section **58-56-7** is amended to read:

40879 **58-56-7. Code amendments -- Commission recommendations -- Division duties**
40880 **and responsibilities.**

40881 (1) The division, with the commission, shall establish by rule the procedure and manner

40882 under which requests for amendments to codes under Subsection 58-56-4(2)(c) shall be:

40883 (a) filed with the division; and

40884 (b) recommended or declined for adoption.

40885 (2) The division shall accept from any local regulators, state regulators, state agencies
40886 involved with the construction and design of buildings, the contractors, plumbers, or electricians
40887 licensing boards, or from recognized construction-related associations a request for amendment
40888 to the codes under Subsection 58-56-4(2)(c).

40889 (3) The division may make recommendations to the commission for amendments to
40890 codes under Subsection 58-56-4(2)(c). The commission may also consider amendments on its
40891 own initiative.

40892 (4) On May 15 and November 15 of each calendar year, or the first government
40893 working day thereafter if either date falls on a weekend or government holiday, the division
40894 shall convene a public hearing, as a part of the rulemaking process, before the commission
40895 concerning requests for amendment of the codes, recommended by the division and commission
40896 to be adopted by rule. The hearing shall be conducted in accordance with the rules of the
40897 commission.

40898 (5) Within 15 days following completion of the hearing under Subsection (4), the
40899 commission shall provide to the division a written recommendation concerning each
40900 amendment.

40901 (6) The division shall consider the recommendations and promulgate amendments by
40902 rule in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
40903 Rulemaking Act and as prescribed by the director.

40904 (7) The decision of the division to accept or reject the recommendation of the
40905 commission shall be made within 15 days after receipt of the recommendation.

40906 (8) All decisions of the division pertaining to adoption of a code edition or amendments
40907 to any code, which are contrary to recommendations of the commission, may be overridden by a
40908 two-thirds vote of the commission according to a procedure to be established by rule.

40909 (9) (a) Amendments with statewide application:

40910 (i) shall be effective on the January 1 or July 1 following the public hearing or as soon
40911 after that date as the requirements of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
40912 Administrative Rulemaking Act, are met; or

40913 (ii) may be effective prior to the dates in Subsection (9)(a)(i) if designated by the
40914 division and the commission as necessary for the public health, safety, and welfare.

40915 (b) Amendments with local application only shall be effective on a date to be
40916 determined by the division and the commission.

40917 (c) In making rules required by this chapter, the division shall comply with the
40918 provisions of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
40919 Act. The provisions of that chapter shall have control over this section in case of any conflict.

40920 Section 903. Section ~~58-56-9.3~~ is amended to read:

40921 **58-56-9.3. Unprofessional conduct.**

40922 Unprofessional conduct is as defined in Subsection 58-1-501(2) and includes:

40923 (1) knowingly failing to inspect or issue correction notices for code violations which
40924 when left uncorrected would constitute a hazard to the public health and safety and knowingly
40925 failing to require that correction notices are complied with as a building inspector;

40926 (2) the use of alcohol or the illegal use of drugs while performing duties as a building
40927 inspector or at any time to the extent that the inspector is physically or mentally impaired and
40928 unable to effectively perform the duties of an inspector;

40929 (3) gross negligence in the performance of official duties as a building inspector;

40930 (4) the personal use of information or knowingly revealing information to unauthorized
40931 persons when that information has been obtained by a building inspector as a result of the
40932 inspector's employment, work, or position as an inspector;

40933 (5) unlawful acts or practices which are clearly unethical under generally recognized
40934 standards of conduct of a building inspector;

40935 (6) engaging in fraud or knowingly misrepresenting a fact relating to the performance of
40936 duties and responsibilities as a building inspector;

40937 (7) a building inspector knowingly failing to require that all plans, specifications,

40938 drawings, documents, and reports be stamped by architects, professional engineers, or both as
40939 established by law;

40940 (8) a building inspector knowingly failing to report to the division an act or omission of
40941 a licensee under Title 58, Chapter 55, Utah Construction Trades Licensing Act, which when left
40942 uncorrected constitutes a hazard to public health and safety;

40943 (9) a building inspector knowingly failing to report to the division unlicensed practice
40944 persons who are required to be licensed under Title 58, Chapter 55, Utah Construction Trades
40945 Licensing Act;

40946 (10) a building inspector's approval of work which materially varies from approved
40947 documents that have been stamped by an architect, professional engineer, or both unless
40948 authorized by the licensed architect, professional engineer, or both;

40949 (11) a building inspector failing to produce verification of current licensure and current
40950 certifications for the codes adopted under rules of the division upon request of the division, a
40951 compliance agency, or a contractor or property owner whose work is being inspected;

40952 (12) nondelivery of goods or services by a registered dealer which constitutes a breach
40953 of contract by the dealer;

40954 (13) the failure of a registered dealer to pay a subcontractor or supplier any amounts to
40955 which that subcontractor or supplier is legally entitled; and

40956 (14) any other activity which is defined as unprofessional conduct by division rule in
40957 accordance with the provisions of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
40958 Administrative Rulemaking Act.

40959 Section 904. Section **58-56-9.5** is amended to read:

40960 **58-56-9.5. Penalty for unlawful conduct -- Citations.**

40961 (1) A person who violates a provision of Section 58-56-9.1 or who fails to comply with
40962 a citation issued under this section after it is final is guilty of a class A misdemeanor.

40963 (2) Grounds for immediate suspension of a licensee's license by the division under this
40964 chapter include:

40965 (a) the issuance of a citation for violation of a provision of Section 58-56-9.1; and

40966 (b) failure by a licensee to make application to, report to, or notify the division with
40967 respect to a matter for which application, notification, or reporting is required under this chapter
40968 or rules made under this chapter by the division.

40969 (3) (a) If upon inspection or investigation, the division concludes that a person has
40970 violated a provision of Section 58-56-9.1, or a rule or order issued with respect to that section,
40971 and that disciplinary action is appropriate, the director or the director's designee from within the
40972 division shall:

40973 (i) promptly issue a citation to the person according to this chapter and any pertinent
40974 rules;

40975 (ii) attempt to negotiate a stipulated settlement; or

40976 (iii) notify the person to appear before an adjudicative proceeding conducted under
40977 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

40978 (b) (i) A person who violates a provision of Section 58-56-9.1, as evidenced by an
40979 uncontested citation, a stipulated settlement, or by a finding of violation in an adjudicative
40980 proceeding, may be assessed a fine under this Subsection (3)(b) and may, in addition to or
40981 instead of the fine, be ordered by the division to cease from violating the provision.

40982 (ii) Except as otherwise provided in Subsection (2)(a), the division may not assess
40983 licensure sanctions referred to in Subsection 58-56-9(1)(c) through a citation.

40984 (c) (i) Each citation shall be in writing and describe with particularity the nature of the
40985 violation, including a reference to the provision of the chapter, rule, or order alleged to have
40986 been violated.

40987 (ii) The citation shall clearly state that the recipient must notify the division in writing
40988 within 20 calendar days of service of the citation if the recipient wishes to contest the citation at
40989 a hearing conducted under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
40990 Procedures Act.

40991 (iii) The citation shall clearly explain the consequences of failure to timely contest the
40992 citation or to make payment of any fines assessed by the citation within the time specified in the
40993 citation.

40994 (d) Each citation issued under this section, or a copy of each citation, may be served
40995 upon any person upon whom a summons may be served:
40996 (i) in accordance with the Utah Rules of Civil Procedure;
40997 (ii) personally or upon the person's agent by a division investigator or by any person
40998 specially designated by the director; or
40999 (iii) by mail.

41000 (e) (i) If within 20 calendar days from the service of a citation, the person to whom the
41001 citation was issued fails to request a hearing to contest the citation, the citation becomes the
41002 final order of the division and is not subject to further agency review.
41003 (ii) The period to contest a citation may be extended by the division for cause.

41004 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
41005 the license of a licensee who fails to comply with a citation after it becomes final.

41006 (g) The failure of an applicant for licensure to comply with a citation after it becomes
41007 final is a ground for denial of a license.

41008 (h) No citation may be issued under this section after the expiration of six months
41009 following the occurrence of the violation.

41010 (i) The director or the director's designee may assess fines for violations of Section
41011 58-56-9.1 as follows:
41012 (i) for a first offense determined under this Subsection (3), a fine of up to \$1,000;
41013 (ii) for a second offense, a fine of up to \$2,000; and
41014 (iii) for any subsequent offense, a fine of up to \$2,000 for each day of continued
41015 offense.

41016 (j) For the purposes of issuing a final order under this section and assessing a fine under
41017 Subsection (3)(i), an offense constitutes a second or subsequent offense if:
41018 (i) the division previously issued a final order determining that a person committed a
41019 first or second offense in violation of a provision of Section 58-56-9.1; or
41020 (ii) (A) the division initiated an action for a first or second offense;
41021 (B) no final order has been issued by the division in the action initiated under

41022 Subsection (3)(j)(ii)(A);

41023 (C) the division determines during an investigation that occurred after the initiation of
41024 the action under Subsection (3)(j)(ii)(A) that the person committed a second or subsequent
41025 violation of a provision of Section 58-56-9.1; and

41026 (D) after determining that the person committed a second or subsequent offense under
41027 Subsection (3)(j)(ii)(C), the division issues a final order on the action initiated under Subsection
41028 (3)(j)(ii)(A).

41029 (k) In issuing a final order for a second or subsequent offense under Subsection (3)(j),
41030 the division shall comply with the requirements of this section.

41031 (4) (a) Proceeds from a fine imposed under Subsection (3)(i) shall be deposited in the
41032 Commerce Service Fund.

41033 (b) The director may collect an unpaid fine by:

41034 (i) referring the matter to a collection agency; or

41035 (ii) bringing an action in the district court of the county in which the person resides or in
41036 the county where the director's office is located.

41037 (c) (i) The state's attorney general or a county attorney shall provide legal assistance
41038 and advice to the director in an action brought under Subsection (4)(b).

41039 (ii) Reasonable attorney's fees and costs shall be awarded in an action brought to
41040 enforce the provisions of this section.

41041 Section 905. Section **58-56-16** is amended to read:

41042 **58-56-16. Registration of dealers -- Bonding requirements -- Renewal --**

41043 **Exemptions -- Discipline.**

41044 (1) Each person engaged in the sale of factory built housing in the state, except as
41045 provided in Subsection (4), shall register with the division as a dealer.

41046 (2) Each applicant for registration under this section shall:

41047 (a) submit an application in a form prescribed by the division;

41048 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303; and

41049 (c) provide the division with a registration bond in accordance with rules established by

41050 the division.

41051 (3) (a) The division shall issue each registration under this section in accordance with a
 41052 two-year renewal cycle established by rule.

41053 (b) The division may by rule extend or shorten a renewal cycle by as much as one year
 41054 to stagger the renewal cycles it administers.

41055 (c) Each registration under this section automatically expires on the expiration date on
 41056 the certificate of registration unless the registrant renews it in accordance with Section
 41057 58-1-308.

41058 (4) Subsection (1) does not apply to:

41059 (a) a person not regularly engaged in the sale of factory built housing who is selling a
 41060 unit ~~[he]~~ the person owns for ~~[his]~~ the person's own account;

41061 (b) a principal broker licensed under Title 61, Chapter 2, Division of Real Estate; or

41062 (c) a sales agent or associate broker licensed under Title 61, Chapter 2, Division of Real
 41063 Estate, who sells factory built housing as an agent for, and under the supervision~~[;]~~ of ~~the~~
 41064 licensed principal broker with whom ~~[he]~~ the sales agent or associate broker is affiliated.

41065 (5) Grounds for refusing to issue a registration, for refusing to renew a registration, for
 41066 revoking, suspending, restricting, or placing on probation a registration, for issuing a public or
 41067 private reprimand to a registrant, and for issuing a cease and desist order shall be in accordance
 41068 with Section 58-1-401.

41069 Section 906. Section ~~58-57-4~~ is amended to read:

41070 **~~58-57-4. Qualifications for a license.~~**

41071 (1) The division shall issue a respiratory care practitioner license to an applicant who
 41072 meets the requirements specified in this section.

41073 (2) An applicant seeking licensure as a respiratory care practitioner shall:

41074 (a) submit an application on a form prescribed by the division;

41075 (b) pay a fee as determined by the department pursuant to Section ~~[63-38-3.2]~~
 41076 63J-1-303;

41077 (c) show evidence of good moral character;

41078 (d) possess a high school education or its equivalent, as determined by the division in
41079 collaboration with the board;

41080 (e) have completed a respiratory care practitioner educational program that is
41081 accredited by a nationally accredited organization acceptable to the division as defined by rule;
41082 and

41083 (f) pass an examination approved by the division in collaboration with the board.

41084 Section 907. Section **58-57-14** is amended to read:

41085 **58-57-14. Unlawful conduct -- Penalty.**

41086 (1) Beginning January 1, 2007, "unlawful conduct" includes:

41087 (a) using the following titles, names, or initials, if the user is not properly licensed under
41088 this chapter:

41089 (i) respiratory care practitioner;

41090 (ii) respiratory therapist; and

41091 (iii) respiratory technician; and

41092 (b) using any other name, title, or initials that would cause a reasonable person to
41093 believe the user is licensed under this chapter if the user is not properly licensed under this
41094 chapter.

41095 (2) Any person who violates the unlawful conduct provision specifically defined in
41096 Subsection 58-1-501(1)(a) is guilty of a third degree felony.

41097 (3) Any person who violates any of the unlawful conduct provisions specifically defined
41098 in Subsections 58-1-501(1)(b) through (f) and Subsection (1) of this section is guilty of a class
41099 A misdemeanor.

41100 (4) After a proceeding pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
41101 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
41102 Professional Licensing Act, the division may assess administrative penalties for acts of
41103 unprofessional or unlawful conduct or any other appropriate administrative action.

41104 Section 908. Section **58-59-302** is amended to read:

41105 **58-59-302. Registration process.**

41106 (1) A person engaged in practice as a professional employer organization shall register
41107 under this chapter. A person registering or renewing a registration as a professional employer
41108 organization shall:

41109 (a) (i) submit an application in a form prescribed by the division; or

41110 (ii) file a certification in accordance with Subsection (2); and

41111 (b) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303.

41112 (2) (a) A person may comply with Subsection (1) by filing with the division:

41113 (i) a certification that an assurance organization certifies the qualifications of the PEO;

41114 (ii) the information required by Subsections 58-59-303.5(1)(a) through (c); and

41115 (iii) any changes to the information required by Subsection (2)(a)(ii) within 30 days of
41116 the day on which the information changes.

41117 (b) A PEO that meets the requirements of Subsection (1) by complying with this
41118 Subsection (2) is not required:

41119 (i) to renew its registration until the day on which the assurance organization no longer
41120 certifies the qualifications of the PEO; and

41121 (ii) to provide the information in Subsections 58-59-303.5(1)(d) through (f).

41122 (c) If a PEO that meets the requirements of Subsection (1) by complying with
41123 Subsection (2) receives a new or renewed certification by the assurance organization, the PEO
41124 shall file with the division a new certification within 30 days from the day on which the PEO
41125 receives the new or renewed certification from the assurance organization.

41126 (d) This Subsection (2) does not modify the division's authority or responsibility to
41127 accept, renew, or terminate a registration.

41128 (e) (i) If a PEO authorizes an assurance organization to act on behalf of the PEO for
41129 purposes of registration under this Subsection (2), the division shall accept the assurance
41130 organization's filing of the information required by Subsection (2)(a)(ii), (2)(a)(iii), or (2)(b) if
41131 the information otherwise complies with this Subsection (2) and division rules.

41132 (ii) Notwithstanding Subsection (2)(e)(i), if the assurance organization fails to make a
41133 required filing under this Subsection (2), the PEO's registration may be not accepted, not

41134 renewed, or terminated.

41135 (3) (a) Any two or more professional employer organizations held under the common
41136 control of any other person or persons acting in concert may be registered as a professional
41137 employer organization group.

41138 (b) A professional employer organization group may satisfy any reporting and financial
41139 requirements under this chapter on a consolidated basis.

41140 (4) An organization engaged in the business of providing professional employer services
41141 is subject to registration under this chapter regardless of its use of the term:

41142 (a) "professional employer organization";

41143 (b) "PEO";

41144 (c) "staff leasing company";

41145 (d) "registered staff leasing company";

41146 (e) "employee leasing company"; or

41147 (f) any other name.

41148 Section 909. Section **58-59-302.5** is amended to read:

41149 **58-59-302.5. Assurance organization.**

41150 (1) The division shall designate one or more assurance organizations by rule:

41151 (a) consistent with this section; and

41152 (b) made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
41153 Administrative Rulemaking Act.

41154 (2) The division shall require that an assurance organization designated by the division
41155 be licensed by one or more states other than Utah to certify the qualifications of a PEO.

41156 (3) The qualifications certified by an assurance organization designated by the division
41157 shall include at a minimum that a PEO:

41158 (a) ensure that each controlling person of the PEO:

41159 (i) be competent to manage a PEO;

41160 (ii) be responsible in the controlling person's finances; and

41161 (iii) not have a history of or be engaged in unlawful activities;

- 41162 (b) have a history that is verifiable that the PEO:
- 41163 (i) complies with regulatory requirements; and
- 41164 (ii) engages in financially responsible conduct;
- 41165 (c) has or is able to obtain audited financial statements;
- 41166 (d) has an adjusted net worth equal to or in excess of the greater of:
- 41167 (i) \$100,000; or
- 41168 (ii) 5% of total adjusted liabilities;
- 41169 (e) has liquid assets that are sufficient to pay short-term liabilities as demonstrated by a
- 41170 ratio determined by dividing current assets by current liabilities or a similar formula;
- 41171 (f) has on its books adequate financial reserves for all local, state, and federal
- 41172 self-insurance and any insurance policy or plan in which the final cost of coverage is affected by
- 41173 claim losses;
- 41174 (g) operates in conformity with all applicable laws and regulations including those laws
- 41175 and regulations in addition to this chapter;
- 41176 (h) does not engage in deceptive trade practices or misrepresentations of an employer's
- 41177 obligation or liability;
- 41178 (i) has a written professional employer agreement with each client;
- 41179 (j) has or is willing to obtain a written acknowledgment, as part of an existing form or
- 41180 separately, from each covered employee stating that the covered employee understands and
- 41181 accepts the nature, terms, and conditions of the coemployment relationship;
- 41182 (k) establishes and maintains a coemployment relationship by assuming key employer
- 41183 attributes with respect to covered employees as demonstrated by the professional employer
- 41184 agreement and employment forms, policies, and procedures;
- 41185 (l) provides all covered employees with a written copy of the PEO's employment
- 41186 policies and procedures;
- 41187 (m) ensures that all covered employees are covered in a regulatory compliant manner by
- 41188 workers' compensation insurance;
- 41189 (n) does not knowingly use the coemployment relationship to assist a client to evade or

- 41190 avoid the client's obligations under:
- 41191 (i) the National Labor Relations Act, 29 U.S.C. Sec. 151 et seq.;
- 41192 (ii) the federal Railway Labor Act, 45 U.S.C. Sec. 151 et seq.; or
- 41193 (iii) any collective bargaining agreement;
- 41194 (o) except through a licensed insurance agent, does not:
- 41195 (i) represent or imply that it can sell insurance;
- 41196 (ii) attempt to sell insurance; or
- 41197 (iii) sell insurance;
- 41198 (p) markets and provides, or is willing to market and provide professional employer
- 41199 organization services under a separate and distinct trade name from any affiliated PEO that is
- 41200 not certified by the assurance organization;
- 41201 (q) does not allow any person not certified by the assurance organization to use the
- 41202 PEO's trade name in the sale or delivery of the PEO's professional employer organization
- 41203 services;
- 41204 (r) does not guarantee, participate in, transfer between, or otherwise share liabilities
- 41205 with any other PEO that is not certified by the assurance organization:
- 41206 (i) in the employment of covered employees; or
- 41207 (ii) in any employee benefit or insurance policy or plan that is not fully insured and fully
- 41208 funded; and
- 41209 (s) has the ability to provide a regulatory agency or insurance carrier upon request with:
- 41210 (i) a client's name, address, and tax identification number;
- 41211 (ii) payroll data by:
- 41212 (A) client;
- 41213 (B) (I) client SIC Code of the 1987 Standard Industrial Classification Manual of the
- 41214 federal Executive Office of the President, Office of Management and Budget; or
- 41215 (II) client classification under the 2002 North American Industry Classification System
- 41216 of the federal Executive Office of the President, Office of Management and Budget; and
- 41217 (C) workers' compensation classification;

41218 (iii) the names of covered employees by:

41219 (A) the worksite of a client; and

41220 (B) workers' compensation classification; and

41221 (iv) workers' compensation certificates of insurance.

41222 Section 910. Section **58-59-303** is amended to read:

41223 **58-59-303. Term of registration -- Expiration -- Renewal.**

41224 (1) The division shall issue each registration under this chapter in accordance with a
41225 one-year renewal cycle established by rule.

41226 (2) The division may by rule, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
41227 Chapter 3, Utah Administrative Rulemaking Act, extend or shorten a renewal period by as much
41228 as six months to stagger the renewal cycles it administers.

41229 Section 911. Section **58-59-308** is amended to read:

41230 **58-59-308. No guarantee.**

41231 By registering and regulating professional employer organizations under this chapter, the
41232 state:

41233 (1) does not guarantee any right, claim, or defense of any professional employer
41234 organization, client company, coemployee, or other person;

41235 (2) does not guarantee the financial responsibility or solvency of any professional
41236 employer organization; and

41237 (3) does not waive any right, claim, or defense of immunity that it may have under
41238 [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah, or other
41239 law.

41240 Section 912. Section **58-60-115** is amended to read:

41241 **58-60-115. License by endorsement.**

41242 The division shall issue a license by endorsement under this chapter to a person who:

41243 (1) submits an application on a form provided by the division;

41244 (2) pays a fee determined by the department under Section [~~63-38-3-2~~] 63J-1-303;

41245 (3) provides documentation of current licensure in good standing in any state, district,

41246 or territory of the United States to practice in the profession in which licensure is being sought;

41247 (4) provides documentation of having been actively engaged in the legal practice of
41248 [his] the person's profession, including, but not limited to, mental health therapy, for not less
41249 than 4,000 hours during the three years immediately preceding the date of application for
41250 licensure in Utah;

41251 (5) has passed the profession specific jurisprudence examination if required of a new
41252 applicant; and

41253 (6) is of good moral character and professional standing, and has no disciplinary action
41254 pending or in effect against the applicant's license in any jurisdiction.

41255 Section 913. Section **58-60-117** is amended to read:

41256 **58-60-117. Externship licenses.**

41257 (1) The division shall issue a temporary license under Part 2, 3, or 4 of this chapter to a
41258 person who:

41259 (a) submits an application for licensure under Part 2, 3, or 4;

41260 (b) pays a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41261 (c) holds an earned doctoral degree or master's degree in a discipline that is a
41262 prerequisite for practice as a mental health therapist;

41263 (d) has one or more deficiencies in course work, experience, or training;

41264 (e) provides mental health therapy as an employee of a public or private organization,
41265 which provides mental health therapy, while under the supervision of a person licensed under
41266 this chapter; and

41267 (f) is of good moral character and has no disciplinary action pending or in effect against
41268 the applicant in connection with the practice of mental health therapy, in any jurisdiction.

41269 (2) A temporary license issued under this section shall expire upon the earlier of:

41270 (a) issuance of the license applied for; or

41271 (b) three years from the date the temporary license was issued.

41272 (3) The temporary license issued under this section is an externship license.

41273 Section 914. Section **58-60-205** is amended to read:

41274 **58-60-205. Qualifications for licensure or certification as a clinical or certified**
41275 **social worker, certified social worker intern, and social service worker.**

- 41276 (1) An applicant for licensure as a clinical social worker shall:
- 41277 (a) submit an application on a form provided by the division;
- 41278 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41279 (c) be of good moral character;
- 41280 (d) produce certified transcripts from an accredited institution of higher education
- 41281 recognized by the division in collaboration with the board verifying satisfactory completion of
- 41282 an education and earned degree as follows:
- 41283 (i) an earned master's degree in social work resulting from completion of an education
- 41284 program accredited by the Council on Social Work Education; or
- 41285 (ii) an earned doctoral degree in social work that results from successful completion of
- 41286 a clinical concentration and practicum approved by the division and defined by rule under
- 41287 Section 58-1-203;
- 41288 (e) have completed a minimum of 4,000 hours of clinical social work training as defined
- 41289 by division rule under Section 58-1-203 in not less than two years and under the supervision of
- 41290 a clinical social worker supervisor approved by the division in collaboration with the board;
- 41291 (f) document successful completion of not less than 1,000 hours of supervised training
- 41292 in mental health therapy obtained after completion of the education requirement in Subsection
- 41293 (1)(d), which training may be included as part of the 4,000 hours of training in Subsection
- 41294 (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were
- 41295 obtained under the direct personal face to face supervision of a clinical social worker approved
- 41296 by the division in collaboration with the board;
- 41297 (g) have completed a case work, group work, or family treatment course sequence with
- 41298 a clinical practicum in content as defined by rule under Section 58-1-203; and
- 41299 (h) pass the examination requirement established by rule under Section 58-1-203.
- 41300 (2) An applicant for licensure as a certified social worker shall:
- 41301 (a) submit an application on a form provided by the division;

- 41302 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41303 (c) be of good moral character;
- 41304 (d) produce certified transcripts from an accredited institution of higher education
- 41305 recognized by the division in collaboration with the Social Worker Licensing Board verifying
- 41306 satisfactory completion of an education and an earned degree as follows:
- 41307 (i) a social work education program accredited by the Council on Social Work
- 41308 Education and an earned master's degree resulting from completion of that program; or
- 41309 (ii) an education program that contains approved clinical social work concentration and
- 41310 practicum in content as defined by rule under Section 58-1-203 and an earned doctorate
- 41311 resulting from completion of that program; and
- 41312 (e) pass the examination requirement established by rule under Section 58-1-203.
- 41313 (3) (a) An applicant for certification as a certified social worker intern shall meet the
- 41314 requirements of Subsections (2)(a), (b), (c), and (d).
- 41315 (b) Certification under Subsection (3)(a) is limited to the time necessary to pass the
- 41316 examination required under Subsection (2)(e) or six months, whichever occurs first.
- 41317 (c) A certified social worker intern may provide mental health therapy under the general
- 41318 supervision of a clinical social worker.
- 41319 (4) An applicant for licensure as a social service worker shall:
- 41320 (a) submit an application on a form provided by the division;
- 41321 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41322 (c) be of good moral character;
- 41323 (d) produce certified transcripts from an accredited institution of higher education
- 41324 recognized by the division in collaboration with the Social Worker Licensing Board verifying
- 41325 satisfactory completion of an earned degree resulting from education as follows:
- 41326 (i) a bachelor's degree in a social work program accredited by the Council on Social
- 41327 Work Education;
- 41328 (ii) a master's degree in a field approved by the division in collaboration with the social
- 41329 worker board; or

41330 (iii) a bachelor's degree in sociology, psychology, family sciences, or other field
41331 approved by the division in collaboration with the Social Worker Licensing Board and also
41332 documentation of 2,000 hours of supervised social work activity approved by the division in
41333 collaboration with the board, which is performed after completing bachelor's degree
41334 requirements under this Subsection (4);

41335 (iv) a bachelor's degree in any field, if the applicant has completed:

41336 (A) the equivalent of three credit hours of course work or other approved training in
41337 full-life human growth behavior, abnormal psychology, social work values and ethics, social
41338 welfare, or social welfare policy;

41339 (B) an approved social work practice methods course; and

41340 (C) one year of qualifying experience under the supervision of a licensed certified or
41341 clinical social worker, which experience is approved by the division in collaboration with the
41342 Social Worker Licensing Board, and which is performed after completion of the requirements to
41343 obtain the bachelor's degree required under this Subsection (4); or

41344 (v) successful completion of the first academic year of a Council on Social Work
41345 Education approved master's of social work curriculum and practicum; and

41346 (e) pass the examination requirement established by rule under Section 58-1-203.

41347 Section 915. Section **58-60-305** is amended to read:

41348 **58-60-305. Qualifications for licensure.**

41349 (1) All applicants for licensure as marriage and family therapists shall:

41350 (a) submit an application on a form provided by the division;

41351 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41352 (c) be of good moral character;

41353 (d) produce certified transcripts evidencing completion of a masters or doctorate degree
41354 in marriage and family therapy from:

41355 (i) a program accredited by the Commission on Accreditation for Marriage and Family
41356 Therapy Education; or

41357 (ii) an accredited institution meeting criteria for approval established by rule under

41358 Section 58-1-203;

41359 (e) have completed a minimum of 4,000 hours of marriage and family therapy training
41360 as defined by division rule under Section 58-1-203, in not less than two years, under the
41361 supervision of a marriage and family therapist supervisor who meets the requirements of Section
41362 58-60-307, and obtained after completion of the education requirement in Subsection (1)(d);

41363 (f) document successful completion of not less than 1,000 hours of supervised training
41364 in mental health therapy obtained after completion of the education requirement described in
41365 Subsection (1)(d)(i) or (1)(d)(ii), which training may be included as part of the 4,000 hours of
41366 training described in Subsection (1)(e), and of which documented evidence demonstrates not
41367 less than 100 of the supervised hours were obtained during direct, personal, face-to-face
41368 supervision by a marriage and family therapist supervisor qualified under Section 58-60-307;
41369 and

41370 (g) pass the examination requirement established by division rule under Section
41371 58-1-203.

41372 (2) (a) All applicants for certification as a marriage and family therapist intern shall
41373 comply with the provisions of Subsections (1)(a), (b), (c), and (d).

41374 (b) An individual's certification as a marriage and family therapist intern is limited to the
41375 period of time necessary to complete clinical training as described in Subsections (1)(e) and (f)
41376 and extends not more than one year from the date the minimum requirement for training is
41377 completed, unless the individual presents satisfactory evidence to the division and the
41378 appropriate board that the individual is making reasonable progress toward passing of the
41379 qualifying examination for that profession or is otherwise on a course reasonably expected to
41380 lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years
41381 past the date the minimum supervised clinical training requirement has been completed.

41382 Section 916. Section **58-60-405** is amended to read:

41383 **58-60-405. Qualifications for licensure.**

41384 (1) All applicants for licensure as a professional counselor shall:

41385 (a) submit an application on a form provided by the division;

- 41386 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41387 (c) be of good moral character;
- 41388 (d) produce certified transcripts from an accredited institution of higher education
- 41389 recognized by the division in collaboration with the board verifying satisfactory completion of:
- 41390 (i) an education and degree in an education program in counseling with a core
- 41391 curriculum defined by division rule under Section 58-1-203 preparing one to competently
- 41392 engage in mental health therapy; and
- 41393 (ii) an earned doctoral or master's degree resulting from that education program;
- 41394 (e) have completed a minimum of 4,000 hours of professional counselor training as
- 41395 defined by division rule under Section 58-1-203, in not less than two years, under the
- 41396 supervision of a professional counselor, psychiatrist, psychologist, clinical social worker,
- 41397 registered psychiatric mental health nurse specialist, or marriage and family therapist supervisor
- 41398 approved by the division in collaboration with the board, and obtained after completion of the
- 41399 education requirement in Subsection (1)(d);
- 41400 (f) document successful completion of not less than 1,000 hours of supervised training
- 41401 in mental health therapy obtained after completion of the education requirement in Subsection
- 41402 (1)(d), which training may be included as part of the 4,000 hours of training in Subsection
- 41403 (1)(e), and of which documented evidence demonstrates not less than 100 of the hours were
- 41404 obtained under the direct personal face to face supervision of a mental health therapist approved
- 41405 by the division in collaboration with the board; and
- 41406 (g) pass the examination requirement established by division rule under Section
- 41407 58-1-203.
- 41408 (2) (a) All applicants for certification as a professional counselor intern shall comply
- 41409 with the provisions of Subsections (1)(a), (b), (c), and (d).
- 41410 (b) An individual's certification as a professional counselor intern is limited to the period
- 41411 of time necessary to complete clinical training as described in Subsections (1)(e) and (f) and
- 41412 extends not more than one year from the date the minimum requirement for training is
- 41413 completed, unless the individual presents satisfactory evidence to the division and the

41414 appropriate board that the individual is making reasonable progress toward passing of the
41415 qualifying examination for that profession or is otherwise on a course reasonably expected to
41416 lead to licensure, but the period of time under this Subsection (2)(b) may not exceed two years
41417 past the date the minimum supervised clinical training requirement has been completed.

41418 Section 917. Section **58-60-506** is amended to read:

41419 **58-60-506. Qualifications for licensure on and after July 1, 2007.**

41420 (1) An applicant for licensure under this part on and after July 1, 2007, must meet the
41421 following qualifications:

- 41422 (a) submit an application in a form prescribed by the division;
- 41423 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41424 (c) be of good moral character;
- 41425 (d) satisfy the requirements of Subsection (2), (3), (4), or (5) respectively; and
- 41426 (e) except for licensure as a certified substance abuse counselor intern, satisfy the
41427 examination requirement established by rule under Section 58-1-203.

41428 (2) An applicant for licensure as a licensed substance abuse counselor shall meet one of
41429 the following:

- 41430 (a) The applicant shall produce:
 - 41431 (i) certified transcripts from an accredited institution of higher education meeting
41432 standards established by the division by rule in collaboration with the board verifying
41433 satisfactory completion of a baccalaureate or graduate degree in behavioral or social sciences;
 - 41434 (ii) documentation of the applicant's completion of a substance abuse education
41435 program; and
 - 41436 (iii) documentation of the applicant's completion of 2,000 hours of supervised
41437 experience in substance abuse treatment:
 - 41438 (A) meeting standards established by the division in collaboration with the board; and
 - 41439 (B) performed within a two-year period after the applicant's completion of the
41440 substance abuse education program described in Subsection (2)(a)(ii).

41441 (b) The applicant shall produce:

41442 (i) certified transcripts from an accredited institution meeting standards established by
41443 the division by rule in collaboration with the board verifying satisfactory completion of a
41444 baccalaureate or graduate degree or a high school diploma or equivalent;

41445 (ii) documentation of the applicant's completion of a substance abuse education
41446 program; and

41447 (iii) documentation of the applicant's completion of 4,000 hours of supervised
41448 experience in substance abuse treatment:

41449 (A) meeting standards established by the division in collaboration with the board; and

41450 (B) performed within a four-year period after the applicant's completion of the
41451 substance abuse education program described in Subsection (2)(b)(ii).

41452 (c) Before January 1, 2009, the applicant shall produce:

41453 (i) certified transcripts from an accredited institution of higher education meeting
41454 standards established by the division by rule in collaboration with the board verifying
41455 satisfactory completion of a baccalaureate or graduate degree in behavioral or social sciences;
41456 and

41457 (ii) documentation of the applicant's completion of 4,000 hours of supervised
41458 experience in substance abuse treatment:

41459 (A) meeting standards established by the division in collaboration with the board; and

41460 (B) performed within a four-year period.

41461 (d) Before January 1, 2009, the applicant shall produce:

41462 (i) certified transcripts from an accredited institution meeting standards established by
41463 the division by rule in collaboration with the board verifying satisfactory completion of a
41464 baccalaureate or graduate degree or a high school diploma or equivalent; and

41465 (ii) documentation of the applicant's completion of 6,000 hours of supervised
41466 experience in substance abuse treatment:

41467 (A) meeting standards established by the division in collaboration with the board; and

41468 (B) performed within a six-year period.

41469 (3) An applicant for licensure as a certified substance abuse counselor shall meet one of

41470 the following:

41471 (a) The applicant shall produce:

41472 (i) certified transcripts from an accredited institution of higher education meeting
41473 standards established by the division by rule in collaboration with the board verifying
41474 satisfactory completion of a baccalaureate or graduate degree in behavioral or social sciences;
41475 and

41476 (ii) documentation of the applicant's completion of a substance abuse education
41477 program.

41478 (b) The applicant shall produce:

41479 (i) certified transcripts from an accredited institution meeting standards established by
41480 the division by rule in collaboration with the board verifying satisfactory completion of a
41481 baccalaureate or graduate degree or a high school diploma or equivalent; and

41482 (ii) documentation of the applicant's completion of a substance abuse education
41483 program.

41484 (c) Before January 1, 2009, the applicant shall produce certified transcripts from an
41485 accredited institution of higher education meeting standards established by the division by rule
41486 in collaboration with the board verifying satisfactory completion of a baccalaureate or graduate
41487 degree in behavioral or social sciences.

41488 (d) Before January 1, 2009, the applicant shall produce certified transcripts from an
41489 accredited institution meeting standards established by the division by rule in collaboration with
41490 the board verifying satisfactory completion of a baccalaureate or graduate degree or a high
41491 school diploma or equivalent.

41492 (4) (a) An applicant for licensure as a certified substance abuse counselor intern shall
41493 meet the requirements for licensure as a certified substance abuse counselor under Subsection
41494 (3).

41495 (b) A certified substance abuse counselor intern license expires at the earlier of:

41496 (i) the licensee passing the examination required for licensure as a certified substance
41497 abuse counselor; or

41498 (ii) six months after the certified substance abuse counselor intern license is issued.

41499 (5) (a) An applicant for licensure as a certified substance abuse counselor extern shall
41500 meet the requirements of Subsection (2)(a)(iii) or (2)(b)(iii).

41501 (b) A certified substance abuse counselor extern license is valid for two years from the
41502 day on which it is issued or until January 1, 2010, whichever comes first.

41503 (c) A certified substance abuse counselor extern whose license expires before the
41504 licensee completes a substance abuse education program under Subsection (2)(a)(ii) or (2)(b)(ii)
41505 may not practice under this part until the licensee meets the requirements of Subsection (2) or
41506 (3).

41507 Section 918. Section **58-61-304** is amended to read:

41508 **58-61-304. Qualifications for licensure by examination or endorsement.**

41509 (1) An applicant for licensure as a psychologist based upon education, clinical training,
41510 and examination shall:

41511 (a) submit an application on a form provided by the division;

41512 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41513 (c) be of good moral character;

41514 (d) produce certified transcripts of credit verifying satisfactory completion of a doctoral
41515 degree in psychology that includes specific core course work established by division rule under
41516 Section 58-1-203, from an institution of higher education whose doctoral program, at the time
41517 the applicant received the doctoral degree, met approval criteria established by division rule
41518 made in consultation with the board;

41519 (e) have completed a minimum of 4,000 hours of psychology training as defined by
41520 division rule under Section 58-1-203 in not less than two years and under the supervision of a
41521 psychologist supervisor approved by the division in collaboration with the board;

41522 (f) to be qualified to engage in mental health therapy, document successful completion
41523 of not less than 1,000 hours of supervised training in mental health therapy obtained after
41524 completion of a master's level of education in psychology, which training may be included as
41525 part of the 4,000 hours of training required in Subsection (1)(e), and for which documented

41526 evidence demonstrates not less than one hour of supervision for each 40 hours of supervised
41527 training was obtained under the direct personal face to face supervision of a psychologist
41528 approved by the division in collaboration with the board;

41529 (g) pass the examination requirement established by division rule under Section
41530 58-1-203; and

41531 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
41532 applicant's qualifications for licensure.

41533 (2) An applicant for licensure as a psychologist by endorsement based upon licensure in
41534 another jurisdiction shall:

41535 (a) submit an application on a form provided by the division;

41536 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41537 (c) be of good moral character and professional standing, and not have any disciplinary
41538 action pending or in effect against the applicant's psychologist license in any jurisdiction;

41539 (d) have passed the Utah Psychologist Law and Ethics Examination established by
41540 division rule;

41541 (e) provide satisfactory evidence the applicant is currently licensed in another state,
41542 district, or territory of the United States, or in any other jurisdiction approved by the division in
41543 collaboration with the board;

41544 (f) provide satisfactory evidence the applicant has actively practiced psychology in that
41545 jurisdiction for not less than 2,000 hours or one year, whichever is greater;

41546 (g) provide satisfactory evidence that:

41547 (i) the education, supervised experience, examination, and all other requirements for
41548 licensure in that jurisdiction at the time the applicant obtained licensure were substantially
41549 equivalent to the licensure requirements for a psychologist in Utah at the time the applicant
41550 obtained licensure in the other jurisdiction; or

41551 (ii) the applicant is:

41552 (A) a current holder of diplomate status in good standing from the American Board of
41553 Professional Psychology;

41554 (B) currently credentialed as a health service provider in psychology by the National
41555 Register of Health Service Providers in Psychology; or

41556 (C) currently holds a Certificate of Professional Qualification (CPQ) granted by the
41557 Association of State and Provincial Psychology Boards; and

41558 (h) meet with the board, upon request for good cause, for the purpose of evaluating the
41559 applicant's qualifications for licensure.

41560 (3) (a) An applicant for certification as a psychology resident shall comply with the
41561 provisions of Subsections (1)(a), (b), (c), (d), and (h).

41562 (b) (i) An individual's certification as a psychology resident is limited to the period of
41563 time necessary to complete clinical training as described in Subsections (1)(e) and (f) and
41564 extends not more than one year from the date the minimum requirement for training is
41565 completed, unless the individual presents satisfactory evidence to the division and the
41566 Psychologist Licensing Board that the individual is making reasonable progress toward passing
41567 the qualifying examination or is otherwise on a course reasonably expected to lead to licensure
41568 as a psychologist.

41569 (ii) The period of time under Subsection (3)(b)(i) may not exceed two years past the
41570 date the minimum supervised clinical training requirement has been completed.

41571 Section 919. Section **58-63-302** is amended to read:

41572 **58-63-302. Qualifications for licensure.**

41573 (1) Each applicant for licensure as a contract security company shall:

41574 (a) submit an application in a form prescribed by the division;

41575 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41576 (c) have a qualifying agent who is a resident of the state and an officer, director,
41577 partner, proprietor, or manager of the applicant who:

41578 (i) passes an examination component established by rule by the division in collaboration
41579 with the board; and

41580 (ii) (A) demonstrates 6,000 hours of experience as a manager, supervisor, or
41581 administrator of a contract security company; or

41582 (B) demonstrates 6,000 hours of supervisory experience acceptable to the division in
41583 collaboration with the board with a federal, United States military, state, county, or municipal
41584 law enforcement agency;

41585 (d) if a corporation, provide:

41586 (i) the names, addresses, dates of birth, and Social Security numbers of all corporate
41587 officers, directors, and those responsible management personnel employed within the state or
41588 having direct responsibility for managing operations of the applicant within the state; and

41589 (ii) the names, addresses, dates of birth, and Social Security numbers, of all
41590 shareholders owning 5% or more of the outstanding shares of the corporation, except this may
41591 not be required if the stock is publicly listed and traded;

41592 (e) if a limited liability company, provide:

41593 (i) the names, addresses, dates of birth, and Social Security numbers of all company
41594 officers, and those responsible management personnel employed within the state or having
41595 direct responsibility for managing operations of the applicant within the state; and

41596 (ii) the names, addresses, dates of birth, and Social Security numbers of all individuals
41597 owning 5% or more of the equity of the company;

41598 (f) if a partnership, the names, addresses, dates of birth, and Social Security numbers of
41599 all general partners, and those responsible management personnel employed within the state or
41600 having direct responsibility for managing operations of the applicant within the state;

41601 (g) if a proprietorship, the names, addresses, dates of birth, and Social Security numbers
41602 of the proprietor, and those responsible management personnel employed within the state or
41603 having direct responsibility for managing operations of the applicant within the state;

41604 (h) be of good moral character in that officers, directors, shareholders described in
41605 Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel have not
41606 been convicted of a felony, a misdemeanor involving moral turpitude, or any other crime that
41607 when considered with the duties and responsibilities of a contract security company is
41608 considered by the division and the board to indicate that the best interests of the public are not
41609 served by granting the applicant a license;

41610 (i) document that none of the applicant's officers, directors, shareholders described in
41611 Subsection (1)(d)(ii), partners, proprietors, and responsible management personnel:
41612 (i) have been declared by any court of competent jurisdiction incompetent by reason of
41613 mental defect or disease and not been restored; and
41614 (ii) currently suffer from habitual drunkenness or from drug addiction or dependence;
41615 (j) file and maintain with the division evidence of:
41616 (i) comprehensive general liability insurance in form and in amounts to be established by
41617 rule by the division in collaboration with the board;
41618 (ii) workers' compensation insurance that covers employees of the applicant in
41619 accordance with applicable Utah law;
41620 (iii) registration with the Division of Corporations and Commercial Code; and
41621 (iv) registration as required by applicable law with the:
41622 (A) Unemployment Insurance Division in the Department of Workforce Services, for
41623 purposes of Title 35A, Chapter 4, Employment Security Act;
41624 (B) State Tax Commission; and
41625 (C) Internal Revenue Service; and
41626 (k) meet with the division and board if requested by the division or board.
41627 (2) Each applicant for licensure as an armed private security officer shall:
41628 (a) submit an application in a form prescribed by the division;
41629 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
41630 (c) be of good moral character in that the applicant has not been convicted of a felony,
41631 a misdemeanor involving moral turpitude, or any other crime that when considered with the
41632 duties and responsibilities of an armed private security officer is considered by the division and
41633 the board to indicate that the best interests of the public are not served by granting the applicant
41634 a license;
41635 (d) not have been declared by any court of competent jurisdiction incompetent by
41636 reason of mental defect or disease and not been restored;
41637 (e) not be currently suffering from habitual drunkenness or from drug addiction or

41638 dependence;

41639 (f) successfully complete basic education and training requirements established by rule

41640 by the division in collaboration with the board;

41641 (g) successfully complete firearms training requirements established by rule by the

41642 division in collaboration with the board;

41643 (h) pass the examination requirement established by rule by the division in collaboration

41644 with the board; and

41645 (i) meet with the division and board if requested by the division or the board.

41646 (3) Each applicant for licensure as an unarmed private security officer shall:

41647 (a) submit an application in a form prescribed by the division;

41648 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41649 (c) be of good moral character in that the applicant has not been convicted of a felony,

41650 a misdemeanor involving moral turpitude, or any other crime that when considered with the

41651 duties and responsibilities of an unarmed private security officer is considered by the division

41652 and the board to indicate that the best interests of the public are not served by granting the

41653 applicant a license;

41654 (d) not have been declared by any court of competent jurisdiction incompetent by

41655 reason of mental defect or disease and not been restored;

41656 (e) not be currently suffering from habitual drunkenness or from drug addiction or

41657 dependence;

41658 (f) successfully complete basic education and training requirements established by rule

41659 by the division in collaboration with the board;

41660 (g) pass the examination requirement established by rule by the division in collaboration

41661 with the board; and

41662 (h) meet with the division and board if requested by the division or board.

41663 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

41664 Administrative Rulemaking Act, the division may make rules establishing when Federal Bureau

41665 of Investigation records shall be checked for applicants.

41666 (5) To determine if an applicant meets the qualifications of Subsections (1)(h), (2)(c),
41667 and (3)(c), the division shall provide an appropriate number of copies of fingerprint cards to the
41668 Department of Public Safety with the division's request to:

41669 (a) conduct a search of records of the Department of Public Safety for criminal history
41670 information relating to each applicant for licensure under this chapter and each applicant's
41671 officers, directors, shareholders described in Subsection (1)(d)(ii), partners, proprietors, and
41672 responsible management personnel; and

41673 (b) forward to the Federal Bureau of Investigation a fingerprint card of each applicant
41674 requiring a check of records of the F.B.I. for criminal history information under this section.

41675 (6) The Department of Public Safety shall send to the division:

41676 (a) a written record of criminal history, or certification of no criminal history record, as
41677 contained in the records of the Department of Public Safety in a timely manner after receipt of a
41678 fingerprint card from the division and a request for review of Department of Public Safety
41679 records; and

41680 (b) the results of the F.B.I. review concerning an applicant in a timely manner after
41681 receipt of information from the F.B.I.

41682 (7) (a) The division shall charge each applicant a fee, in accordance with Section
41683 [~~63-38-3.2~~] 63J-1-303, equal to the cost of performing the records reviews under this section.

41684 (b) The division shall pay the Department of Public Safety the costs of all records
41685 reviews, and the Department of Public Safety shall pay the F.B.I. the costs of records reviews
41686 under this chapter.

41687 (8) Information obtained by the division from the reviews of criminal history records of
41688 the Department of Public Safety and the F.B.I. shall be used or disseminated by the division only
41689 for the purpose of determining if an applicant for licensure under this chapter is qualified for
41690 licensure.

41691 Section 920. Section **58-63-304** is amended to read:

41692 **58-63-304. Exemptions from licensure.**

41693 (1) In addition to the exemptions from licensure in Section 58-1-307, the following

41694 individuals may engage in acts regulated under this chapter without being licensed under this
41695 chapter:

41696 (a) a peace officer employed by or licensed as a contract security company; and

41697 (b) a person employed by a contract security company for the sole purpose of operating
41698 or staffing security apparatus, including a magnetometer, magnetometer wand, x-ray viewing
41699 device, or other device approved by rule of the division.

41700 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
41701 Administrative Rulemaking Act, the division may make rules approving security apparatus
41702 under Subsection (1)(b).

41703 Section 921. Section **58-63-503** is amended to read:

41704 **58-63-503. Penalties.**

41705 (1) Unless Subsection (2) applies, an individual who commits an act of unlawful
41706 conduct under Section 58-63-501 or who fails to comply with a citation issued under this
41707 section after it becomes final is guilty of a class A misdemeanor.

41708 (2) The division may immediately suspend a license issued under this chapter of a
41709 person who is given a citation for violating Subsection 58-63-501(1) or (3).

41710 (3) (a) If upon inspection or investigation, the division determines that a person has
41711 violated Subsection 58-63-501(1) or (3) or any rule made or order issued under those
41712 subsections, and that disciplinary action is warranted, the director or the director's designee
41713 within the division shall promptly issue a citation to the person and:

41714 (i) attempt to negotiate a stipulated settlement; or

41715 (ii) notify the person to appear for an adjudicative proceeding conducted under [~~Title
41716 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

41717 (b) (i) The division may fine a person who is in violation of Subsection 58-63-501(1) or
41718 (3), as evidenced by an uncontested citation, a stipulated settlement, or a finding of a violation
41719 in an adjudicative proceeding held under Subsection (3)(a)(ii), or order the person to cease and
41720 desist from the violation, or do both.

41721 (ii) Except for a cease and desist order, the division may not impose the licensure

41722 sanctions listed in Section 58-63-401 through the issuance of a citation under this section.

41723 (c) The citation shall:

41724 (i) be in writing and describe the nature of the violation, including a reference to the
41725 statute, rule, or order alleged to have been violated;

41726 (ii) state the recipient must notify the division in writing within 20 calendar days of
41727 issuance of the citation if the recipient wants to contest the citation at the adjudicative
41728 proceeding referred to in Subsection (3)(a)(ii); and

41729 (iii) explain the consequences of failure to timely contest the citation or to make
41730 payment of any fines assessed under the citation with the time specified in the citation.

41731 (d) (i) A citation issued under this section, or a copy of the citation, may be served upon
41732 any person upon whom a summons may be served under the Utah Rules of Civil Procedure.

41733 (ii) The individual may be served personally or service may be made upon the
41734 individual's agent, and in either case the service can be made by a division investigator, by a
41735 person designated by the director, or by mail.

41736 (e) (i) If within 20 days from the service of a citation the person to whom the citation
41737 was issued fails to request a hearing to contest the citation, the citation becomes the final order
41738 of the division and is not subject to further agency review.

41739 (ii) The division may grant an extension of the 20-day period for cause.

41740 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation
41741 the license of a licensee who fails to comply with a citation after it becomes final.

41742 (g) The division may not issue a citation for an alleged violation under this section after
41743 the expiration of six months following the occurrence of the alleged violation.

41744 (h) The director or the director's designee may assess fines under this section as
41745 follows:

41746 (i) for a first offense under Subsection (3)(a), a fine of up to \$1,000;

41747 (ii) for a second offense under Subsection (3)(a), a fine of up to \$2,000; and

41748 (iii) for any subsequent offense under Subsection (3)(a), a fine of up to \$2,000 for each
41749 day of continued violation.

41750 (i) (i) For purposes of issuing a final order under this section and assessing a fine under
41751 Subsection (3)(h), an offense is a second or subsequent offense if:

41752 (A) the division previously issued a final order determining that a person committed a
41753 first or second offense in violation of Subsection 58-63-501(1) or (3); or

41754 (B) (I) the division initiated an action for a first or second offense;

41755 (II) no final order has been issued by the division in an action initiated under Subsection
41756 (3)(i)(i)(B)(I);

41757 (III) the division determines during an investigation that occurred after the initiation of
41758 the action under Subsection (3)(i)(i)(B)(I) that the person committed a second or subsequent
41759 violation of Subsection 58-63-501(1) or (3); and

41760 (IV) after determining that the person committed a second or subsequent offense under
41761 Subsection (3)(i)(i)(B)(III), the division issues a final order on the action initiated under
41762 Subsection (3)(i)(i)(B)(I).

41763 (ii) In issuing a final order for a second or subsequent offense under Subsection
41764 (3)(i)(i), the division shall comply with the requirements of this section.

41765 (4) (a) A fine imposed by the director under Subsection (3)(h) shall be deposited in the
41766 General Fund as dedicated credits to be used by the division for the purposes listed in Section
41767 58-63-103.

41768 (b) The director may collect a Subsection (3)(h) fine which is not paid by:

41769 (i) referring the matter to the Office of State Debt Collection or a collection agency; or

41770 (ii) bringing an action in the district court of the county in which the person resides or in
41771 the county where the office of the director is located.

41772 (c) The director may seek legal assistance from the attorney general or the county or
41773 district attorney of the district in which the action is brought to collect the fine.

41774 (d) The court shall award reasonable attorney's fees and costs to the division for
41775 successful actions under Subsection (4)(b)(ii).

41776 Section 922. Section **58-64-302** is amended to read:

41777 **58-64-302. Qualifications for licensure.**

- 41778 (1) Each applicant for licensure as a deception detection examiner shall:
- 41779 (a) submit an application in a form prescribed by the division;
- 41780 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
- 41781 (c) be of good moral character in that the applicant has not been convicted of a felony,
- 41782 a misdemeanor involving moral turpitude, or any other crime which when considered with the
- 41783 duties and responsibilities of a deception detection examiner is considered by the division and
- 41784 the board to indicate that the best interests of the public will not be served by granting the
- 41785 applicant a license;
- 41786 (d) not have been declared by any court of competent jurisdiction incompetent by
- 41787 reason of mental defect or disease and not been restored;
- 41788 (e) may not be currently suffering from habitual drunkenness or from drug addiction or
- 41789 dependence;
- 41790 (f) have completed one of the following:
- 41791 (i) have earned a bachelor's degree from a four year university or college meeting
- 41792 standards established by the division by rule in collaboration with the board;
- 41793 (ii) have completed not less than 8,000 hours of investigation experience approved by
- 41794 the division in collaboration with the board; or
- 41795 (iii) have completed a combination of university or college education and investigation
- 41796 experience, as defined by rule by the division in collaboration with the board as being equivalent
- 41797 to the requirements under Subsection (1)(f)(i) or (1)(f)(ii);
- 41798 (g) have successfully completed a training program in detection deception meeting
- 41799 criteria established by rule by the division in collaboration with the board; and
- 41800 (h) have performed satisfactorily as a licensed deception detection intern for a period of
- 41801 not less than one year and shall have satisfactorily conducted not less than 100 deception
- 41802 detection examinations under the direct supervision of a licensed deception detection examiner.
- 41803 (2) Each applicant for licensure as a deception detection intern shall:
- 41804 (a) submit an application in a form prescribed by the division;
- 41805 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41806 (c) be of good moral character in that the applicant has not been convicted of a felony,
41807 a misdemeanor involving moral turpitude, or any other crime which when considered with the
41808 duties and responsibilities of a deception detection intern is considered by the division and the
41809 board to indicate that the best interests of the public will not be served by granting the applicant
41810 a license;

41811 (d) not have been declared by any court of competent jurisdiction incompetent by
41812 reason of mental defect or disease and not been restored;

41813 (e) may not be currently suffering from habitual drunkenness or from drug addiction or
41814 dependence;

41815 (f) have completed one of the following:

41816 (i) have earned a bachelor's degree from a four year university or college meeting
41817 standards established by the division by rule in collaboration with the board;

41818 (ii) have completed not less than 8,000 hours of investigation experience approved by
41819 the division in collaboration with the board; or

41820 (iii) have completed a combination of university or college education and investigation
41821 experience, as defined by rule by the division in collaboration with the board as being equivalent
41822 to the requirements under Subsection (2)(f)(i) or (2)(f)(ii);

41823 (g) have successfully completed a training program in deception detection meeting
41824 criteria established by rule by the division in collaboration with the board; and

41825 (h) provide the division with an intern supervision agreement in a form prescribed by
41826 the division under which:

41827 (i) a licensed deception detection examiner agrees to directly supervise the intern; and

41828 (ii) the applicant agrees to be directly supervised by that licensed deception detection
41829 examiner.

41830 Section 923. Section **58-67-102** is amended to read:

41831 **58-67-102. Definitions.**

41832 In addition to the definitions in Section 58-1-102, as used in this chapter:

41833 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the

41834 American Medical Association.

41835 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
41836 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
41837 adjudicative proceeding conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G,
41838 Chapter 4, Administrative Procedures Act.

41839 (3) "Board" means the Physicians Licensing Board created in Section 58-67-201.

41840 (4) "Diagnose" means:

41841 (a) to examine in any manner another person, parts of a person's body, substances,
41842 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
41843 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
41844 condition;

41845 (b) to attempt to conduct an examination or determination described under Subsection
41846 (4)(a);

41847 (c) to hold oneself out as making or to represent that one is making an examination or
41848 determination as described in Subsection (4)(a); or

41849 (d) to make an examination or determination as described in Subsection (4)(a) upon or
41850 from information supplied directly or indirectly by another person, whether or not in the
41851 presence of the person making or attempting the diagnosis or examination.

41852 (5) "LCME" means the Liaison Committee on Medical Education of the American
41853 Medical Association.

41854 (6) "Medical assistant" means an unlicensed individual working under the direct and
41855 immediate supervision of a licensed physician and surgeon and engaged in specific tasks
41856 assigned by the licensed physician and surgeon in accordance with the standards and ethics of
41857 the profession.

41858 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,
41859 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section
41860 58-68-301, Utah Osteopathic Medical Practice Act.

41861 (8) "Practice of medicine" means:

41862 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
41863 disease, ailment, injury, infirmity, deformity, pain or other condition, physical or mental, real or
41864 imaginary, or to attempt to do so, by any means or instrumentality, and by an individual in Utah
41865 or outside the state upon or for any human within the state, except that conduct described in
41866 this Subsection (8)(a) that is performed by a person legally and in accordance with a license
41867 issued under another chapter of this title does not constitute the practice of medicine;

41868 (b) when a person not licensed as a physician directs a licensee under this chapter to
41869 withhold or alter the health care services that the licensee has ordered, but practice of medicine
41870 does not include any conduct under Subsection 58-67-501(2);

41871 (c) to maintain an office or place of business for the purpose of doing any of the acts
41872 described in Subsection (8)(a) whether or not for compensation; or

41873 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
41874 treatment of human diseases or conditions in any printed material, stationery, letterhead,
41875 envelopes, signs, or advertisements, the designation "doctor," "doctor of medicine," "physician,"
41876 "surgeon," "physician and surgeon," "Dr.," "M.D.," or any combination of these designations in
41877 any manner which might cause a reasonable person to believe the individual using the
41878 designation is a licensed physician and surgeon, and if the party using the designation is not a
41879 licensed physician and surgeon, the designation must additionally contain the description of the
41880 branch of the healing arts for which the person has a license.

41881 (9) "Prescription drug or device" means:

41882 (a) a drug or device which, under federal law, is required to be labeled with either of the
41883 following statements or their equivalent:

41884 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

41885 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
41886 veterinarian"; or

41887 (b) a drug or device that is required by any applicable federal or state law or rule to be
41888 dispensed on prescription only or is restricted to use by practitioners only.

41889 (10) "SPEX" means the Special Purpose Examination of the Federation of State

41890 Medical Boards.

41891 (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-67-501.

41892 (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-67-502, and as
41893 may be further defined by division rule.

41894 Section 924. Section **58-67-302** is amended to read:

41895 **58-67-302. Qualifications for licensure.**

41896 (1) An applicant for licensure as a physician and surgeon, except as set forth in
41897 Subsection (2), shall:

41898 (a) submit an application in a form prescribed by the division, which may include:

41899 (i) submissions by the applicant of information maintained by practitioner data banks, as
41900 designated by division rule, with respect to the applicant; and

41901 (ii) a record of professional liability claims made against the applicant and settlements
41902 paid by or on behalf of the applicant;

41903 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

41904 (c) be of good moral character;

41905 (d) provide satisfactory documentation of having successfully completed a program of
41906 professional education preparing an individual as a physician and surgeon, as evidenced by
41907 having received an earned degree of doctor of medicine from:

41908 (i) an LCME accredited medical school or college; or

41909 (ii) a medical school or college located outside of the United States or its jurisdictions
41910 which at the time of the applicant's graduation, met criteria for LCME accreditation;

41911 (e) hold a current certification by the Educational Commission for Foreign Medical
41912 Graduates or any successor organization approved by the division in collaboration with the
41913 board, if the applicant graduated from a medical school or college located outside of the United
41914 States or its jurisdictions;

41915 (f) satisfy the division and board that the applicant:

41916 (i) has successfully completed 24 months of progressive resident training in a program
41917 approved by the ACGME, the Royal College of Physicians and Surgeons, the College of Family

41918 Physicians of Canada, or any similar body in the United States or Canada approved by the
41919 division in collaboration with the board; or

41920 (ii) (A) has successfully completed 12 months of resident training in an ACGME
41921 approved program after receiving a degree of doctor of medicine as required under Subsection
41922 (1)(d);

41923 (B) has been accepted in and is successfully participating in progressive resident training
41924 in an ACGME approved program within Utah, in the applicant's second or third year of
41925 postgraduate training; and

41926 (C) has agreed to surrender to the division ~~[his] the applicant's~~ license as a physician
41927 and surgeon without any proceedings under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4,
41928 Administrative Procedures Act, and has agreed ~~[his] the applicant's~~ license as a physician and
41929 surgeon will be automatically revoked by the division if the applicant fails to continue in good
41930 standing in an ACGME approved progressive resident training program within the state;

41931 (g) pass the licensing examination sequence required by division rule made in
41932 collaboration with the board;

41933 (h) be able to read, write, speak, understand, and be understood in the English language
41934 and demonstrate proficiency to the satisfaction of the board if requested by the board;

41935 (i) meet with the board and representatives of the division, if requested, for the purpose
41936 of evaluating the applicant's qualifications for licensure;

41937 (j) designate:

41938 (i) a contact person for access to medical records in accordance with the federal Health
41939 Insurance Portability and Accountability Act; and

41940 (ii) an alternate contact person for access to medical records, in the event the original
41941 contact person is unable or unwilling to serve as the contact person for access to medical
41942 records; and

41943 (k) establish a method for notifying patients of the identity and location of the contact
41944 person and alternate contact person, if the applicant will practice in a location with no other
41945 persons licensed under this chapter.

- 41946 (2) An applicant for licensure as a physician and surgeon by endorsement shall:
- 41947 (a) be currently licensed with a full unrestricted license in good standing in any state,
- 41948 district, or territory of the United States;
- 41949 (b) have been actively engaged in the legal practice of medicine in any state, district, or
- 41950 territory of the United States for not less than 6,000 hours during the five years immediately
- 41951 preceding the date of application for licensure in Utah;
- 41952 (c) not have any action pending against the applicant's license;
- 41953 (d) not have a license that was suspended or revoked in any state, unless the license was
- 41954 subsequently reinstated as a full unrestricted license in good standing; and
- 41955 (e) produce satisfactory evidence of the applicant's qualifications, identity, and good
- 41956 standing to the satisfaction of the division in collaboration with the board.
- 41957 (3) An applicant for licensure by endorsement may engage in the practice of medicine
- 41958 under a temporary license while the applicant's application for licensure is being processed by
- 41959 the division, provided:
- 41960 (a) the applicant submits a complete application required for temporary licensure to the
- 41961 division;
- 41962 (b) the applicant submits a written document to the division from:
- 41963 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
- 41964 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the
- 41965 health care facility; or
- 41966 (ii) two individuals licensed under this chapter, whose license is in good standing and
- 41967 who practice in the same clinical location, both stating that:
- 41968 (A) the applicant is practicing under the invitation of the individual; and
- 41969 (B) the applicant will practice at the same clinical location as the individual;
- 41970 (c) the applicant submits a signed certification to the division that the applicant meets
- 41971 the requirements of Subsection (2);
- 41972 (d) the applicant does not engage in the practice of medicine until the division has
- 41973 issued a temporary license;

41974 (e) the temporary license is only issued for and may not be extended beyond the
41975 duration of one year from issuance; and

41976 (f) the temporary license expires immediately and prior to the expiration of one year
41977 from issuance, upon notification from the division that the applicant's application for licensure
41978 by endorsement is denied.

41979 (4) The division shall issue a temporary license under Subsection (3) within 15 business
41980 days after the applicant satisfies the requirements of Subsection (3).

41981 Section 925. Section **58-67-402** is amended to read:

41982 **58-67-402. Authority to assess penalty.**

41983 (1) After proceeding pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
41984 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
41985 Professional Licensing Act, the division may impose administrative penalties of up to \$10,000
41986 for acts of unprofessional conduct under this chapter.

41987 (2) Assessment of a penalty under this section does not affect any other action the
41988 division is authorized to take regarding a license issued under this chapter.

41989 Section 926. Section **58-67-601** is amended to read:

41990 **58-67-601. Mentally incompetent or incapacitated physician.**

41991 (1) As used in this section:

41992 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

41993 (b) "Mentally ill" has the same definition as in Section 62A-15-602.

41994 (2) If a court of competent jurisdiction determines a physician is an incapacitated person
41995 or that [~~he~~] the physician is mentally ill and unable to safely engage in the practice of medicine,
41996 the director shall immediately suspend the license of the physician upon the entry of the
41997 judgment of the court, without further proceedings under [~~Title 63, Chapter 46b~~] Title 63G,
41998 Chapter 4, Administrative Procedures Act, regardless of whether an appeal from the court's
41999 ruling is pending. The director shall promptly notify the physician, in writing, of the suspension.

42000 (3) (a) If the division and a majority of the board find reasonable cause to believe a
42001 physician, who is not determined judicially to be an incapacitated person or to be mentally ill, is

42002 incapable of practicing medicine with reasonable skill regarding the safety of patients, because
42003 of illness, excessive use of drugs or alcohol, or as a result of any mental or physical condition,
42004 the board shall recommend that the director file a petition with the division, and cause the
42005 petition to be served upon the physician with a notice of hearing on the sole issue of the
42006 capacity of the physician to competently and safely engage in the practice of medicine.

42007 (b) The hearing shall be conducted under Section 58-1-109, and [~~Title 63, Chapter 46b~~]
42008 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

42009 (4) (a) Every physician who accepts the privilege of being licensed under this chapter
42010 gives consent to:

42011 (i) submitting at [~~his~~] the physician's own expense to an immediate mental or physical
42012 examination when directed in writing by the division and a majority of the board to do so; and

42013 (ii) the admissibility of the reports of the examining physician's testimony or
42014 examination, and waives all objections on the ground the reports constitute a privileged
42015 communication.

42016 (b) The examination may be ordered by the division, with the consent of a majority of
42017 the board, only upon a finding of reasonable cause to believe:

42018 (i) the physician is mentally ill or incapacitated or otherwise unable to practice medicine
42019 with reasonable skill and safety; and

42020 (ii) immediate action by the division and the board is necessary to prevent harm to the
42021 physician's patients or the general public.

42022 (c) (i) Failure of a physician to submit to the examination ordered under this section is a
42023 ground for the division's immediate suspension of the physician's license by written order of the
42024 director.

42025 (ii) The division may enter the order of suspension without further compliance with
42026 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, unless the
42027 division finds the failure to submit to the examination ordered under this section was due to
42028 circumstances beyond the control of the physician and was not related directly to the illness or
42029 incapacity of the physician.

42030 (5) (a) A physician whose license is suspended under Subsection (2) or (3) has the right
42031 to a hearing to appeal the suspension within ten days after the license is suspended.

42032 (b) The hearing held under this subsection shall be conducted in accordance with
42033 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
42034 the continuance of the order of suspension in order to prevent harm to the physician's patients
42035 or the general public.

42036 (6) A physician whose license is revoked, suspended, or in any way restricted under this
42037 section may request the division and the board to consider, at reasonable intervals, evidence
42038 presented by the physician, under procedures established by division rule, regarding any change
42039 in the physician's condition, to determine whether:

42040 (a) ~~[he]~~ the physician is or is not able to safely and competently engage in the practice
42041 of medicine; and

42042 (b) ~~[he]~~ the physician is qualified to have ~~[his]~~ the physician's license to practice under
42043 this chapter restored completely or in part.

42044 Section 927. Section **58-68-102** is amended to read:

42045 **58-68-102. Definitions.**

42046 In addition to the definitions in Section 58-1-102, as used in this chapter:

42047 (1) "ACGME" means the Accreditation Council for Graduate Medical Education of the
42048 American Medical Association.

42049 (2) "Administrative penalty" means a monetary fine imposed by the division for acts or
42050 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
42051 adjudicative proceeding conducted in accordance with ~~[Title 63, Chapter 46b]~~ Title 63G,
42052 Chapter 4, Administrative Procedures Act.

42053 (3) "AOA" means the American Osteopathic Association.

42054 (4) "Board" means the Osteopathic Physicians Licensing Board created in Section
42055 58-68-201.

42056 (5) "Diagnose" means:

42057 (a) to examine in any manner another person, parts of a person's body, substances,

42058 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
42059 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
42060 condition;

42061 (b) to attempt to conduct an examination or determination described under Subsection
42062 (5)(a);

42063 (c) to hold oneself out as making or to represent that one is making an examination or
42064 determination as described in Subsection (5)(a); or

42065 (d) to make an examination or determination as described in Subsection (5)(a) upon or
42066 from information supplied directly or indirectly by another person, whether or not in the
42067 presence of the person making or attempting the diagnosis or examination.

42068 (6) "Medical assistant" means an unlicensed individual working under the direct and
42069 immediate supervision of a licensed osteopathic physician and surgeon and engaged in specific
42070 tasks assigned by the licensed osteopathic physician and surgeon in accordance with the
42071 standards and ethics of the profession.

42072 (7) "Physician" means both physicians and surgeons licensed under Section 58-67-301,
42073 Utah Medical Practice Act, and osteopathic physicians and surgeons licensed under Section
42074 58-68-301, Utah Osteopathic Medical Practice Act.

42075 (8) "Practice of osteopathic medicine" means:

42076 (a) to diagnose, treat, correct, administer anesthesia, or prescribe for any human
42077 disease, ailment, injury, infirmity, deformity, pain, or other condition, physical or mental, real or
42078 imaginary, or to attempt to do so, by any means or instrumentality, which in whole or in part is
42079 based upon emphasis of the importance of the musculoskeletal system and manipulative therapy
42080 in the maintenance and restoration of health, by an individual in Utah or outside of the state
42081 upon or for any human within the state, except that conduct described in this Subsection (8)(a)
42082 that is performed by a person legally and in accordance with a license issued under another
42083 chapter of this title does not constitute the practice of medicine;

42084 (b) when a person not licensed as a physician directs a licensee under this chapter to
42085 withhold or alter the health care services that the licensee has ordered, but practice of medicine

42086 does not include any conduct under Subsection 58-68-501(2);

42087 (c) to maintain an office or place of business for the purpose of doing any of the acts
42088 described in Subsection (8)(a) whether or not for compensation; or

42089 (d) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
42090 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
42091 envelopes, signs, or advertisements, the designation "doctor," "doctor of osteopathic medicine,"
42092 "osteopathic physician," "osteopathic surgeon," "osteopathic physician and surgeon," "Dr.,"
42093 "D.O.," or any combination of these designations in any manner which might cause a reasonable
42094 person to believe the individual using the designation is a licensed osteopathic physician, and if
42095 the party using the designation is not a licensed osteopathic physician, the designation must
42096 additionally contain the description of the branch of the healing arts for which the person has a
42097 license.

42098 (9) "Prescription drug or device" means:

42099 (a) a drug or device which, under federal law, is required to be labeled with either of the
42100 following statements or their equivalent:

42101 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or

42102 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
42103 veterinarian"; or

42104 (b) a drug or device that is required by any applicable federal or state law or rule to be
42105 dispensed on prescription only or is restricted to use by practitioners only.

42106 (10) "SPEX" means the Special Purpose Examination of the Federation of State
42107 Medical Boards.

42108 (11) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-68-501.

42109 (12) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-68-502 and as
42110 may be further defined by division rule.

42111 Section 928. Section **58-68-302** is amended to read:

42112 **58-68-302. Qualifications for licensure.**

42113 (1) An applicant for licensure as an osteopathic physician and surgeon, except as set

42114 forth in Subsection (2) or (3), shall:

42115 (a) submit an application in a form prescribed by the division, which may include:

42116 (i) submissions by the applicant of information maintained by practitioner data banks, as
42117 designated by division rule, with respect to the applicant; and

42118 (ii) a record of professional liability claims made against the applicant and settlements
42119 paid by or on behalf of the applicant;

42120 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42121 (c) be of good moral character;

42122 (d) provide satisfactory documentation of having successfully completed a program of
42123 professional education preparing an individual as an osteopathic physician and surgeon, as
42124 evidenced by having received an earned degree of doctor of osteopathic medicine from:

42125 (i) an AOA approved medical school or college; or

42126 (ii) an osteopathic medical school or college located outside of the United States or its
42127 jurisdictions which at the time of the applicant's graduation, met criteria for accreditation by the
42128 AOA;

42129 (e) hold a current certification by the Educational Commission for Foreign Medical
42130 Graduates or any successor organization approved by the division in collaboration with the
42131 board, if the applicant graduated from a medical school or college located outside of the United
42132 States or its jurisdictions;

42133 (f) satisfy the division and board that the applicant:

42134 (i) has successfully completed 24 months of progressive resident training in an ACGME
42135 or AOA approved program after receiving a degree of doctor of osteopathic medicine required
42136 under Subsection (1)(d); or

42137 (ii) (A) has successfully completed 12 months of resident training in an ACGME or
42138 AOA approved program after receiving a degree of doctor of osteopathic medicine as required
42139 under Subsection (1)(d);

42140 (B) has been accepted in and is successfully participating in progressive resident training
42141 in an ACGME or AOA approved program within Utah, in the applicant's second or third year of

42142 postgraduate training; and

42143 (C) has agreed to surrender to the division ~~[his] the applicant's~~ license as an osteopathic
42144 physician and surgeon without any proceedings under ~~[Title 63, Chapter 46b]~~ Title 63G,
42145 Chapter 4, Administrative Procedures Act, and has agreed ~~[his] the applicant's~~ license as an
42146 osteopathic physician and surgeon will be automatically revoked by the division if the applicant
42147 fails to continue in good standing in an ACGME or AOA approved progressive resident training
42148 program within the state;

42149 (g) pass the licensing examination sequence required by division rule, as made in
42150 collaboration with the board;

42151 (h) be able to read, write, speak, understand, and be understood in the English language
42152 and demonstrate proficiency to the satisfaction of the board, if requested by the board;

42153 (i) meet with the board and representatives of the division, if requested for the purpose
42154 of evaluating the applicant's qualifications for licensure;

42155 (j) designate:

42156 (i) a contact person for access to medical records in accordance with the federal Health
42157 Insurance Portability and Accountability Act; and

42158 (ii) an alternate contact person for access to medical records, in the event the original
42159 contact person is unable or unwilling to serve as the contact person; and

42160 (k) establish a method for notifying patients of the identity and location of the contact
42161 person and alternate contact person, if the applicant will practice in a location with no other
42162 persons licensed under this chapter.

42163 (2) An applicant for licensure as an osteopathic physician and surgeon qualifying under
42164 the endorsement provision of Section 58-1-302 shall:

42165 (a) be currently licensed in good standing in another jurisdiction as set forth in Section
42166 58-1-302;

42167 (b) (i) document having met all requirements for licensure under Subsection (1) except,
42168 if an applicant received licensure in another state or jurisdiction based upon only 12 months
42169 residency training after graduation from medical school, the applicant may qualify for licensure

42170 in Utah by endorsement only if licensed in the other state prior to July 1, 1996; or
42171 (ii) document having obtained licensure in another state or jurisdiction whose licensure
42172 requirements were at the time of obtaining licensure equal to licensure requirements at that time
42173 in Utah;

42174 (c) have passed the SPEX examination within 12 months preceding the date of
42175 application for licensure in Utah if the date on which the applicant passed qualifying
42176 examinations for licensure is greater than five years prior to the date of the application for
42177 licensure in Utah, or meet medical specialty certification requirements which may be established
42178 by division rule made in collaboration with the board;

42179 (d) have been actively engaged in the practice as an osteopathic physician and surgeon
42180 for not less than 6,000 hours during the five years immediately preceding the date of application
42181 for licensure in Utah;

42182 (e) meet with the board and representatives of the division, if requested for the purpose
42183 of evaluating the applicant's qualifications for licensure; and

42184 (f) not have a license that was suspended or revoked in any state, unless the license was
42185 subsequently reinstated as a full unrestricted license in good standing.

42186 (3) An applicant for licensure as an osteopathic physician and surgeon, who has been
42187 licensed as an osteopathic physician in Utah, who has allowed [~~his~~] the applicant's license in
42188 Utah to expire for nonpayment of license fees, and who is currently licensed in good standing in
42189 another state or jurisdiction of the United States shall:

42190 (a) submit an application in a form prescribed by the division;
42191 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
42192 (c) be of good moral character;

42193 (d) have passed the SPEX examination within 12 months preceding the date of
42194 application for licensure in Utah if the date on which the applicant passed qualifying
42195 examinations for licensure is greater than five years prior to the date of the application for
42196 licensure in Utah;

42197 (e) have been actively engaged in the practice as an osteopathic physician for not fewer

42198 than 6,000 hours during the five years immediately preceding the date of application for
42199 licensure; and

42200 (f) meet with the board and representatives of the division, if requested for the purpose
42201 of evaluating the applicant's qualifications for licensure.

42202 (4) An applicant for licensure by endorsement may engage in the practice of medicine
42203 under a temporary license while the applicant's application for licensure is being processed by
42204 the division, provided:

42205 (a) the applicant submits a complete application required for temporary licensure to the
42206 division;

42207 (b) the applicant submits a written document to the division from:

42208 (i) a health care facility licensed under Title 26, Chapter 21, Health Care Facility
42209 Licensing and Inspection Act, stating that the applicant is practicing under the invitation of the
42210 health care facility; or

42211 (ii) two individuals licensed under this chapter, whose license is in good standing and
42212 who practice in the same clinical location, both stating that:

42213 (A) the applicant is practicing under the invitation of the individual; and

42214 (B) the applicant will practice at the same clinical location as the individual;

42215 (c) the applicant submits a signed certification to the division that the applicant meets
42216 the requirements of Subsection (2);

42217 (d) the applicant does not engage in the practice of medicine until the division has
42218 issued a temporary license;

42219 (e) the temporary license is only issued for and may not be extended beyond the
42220 duration of one year from issuance; and

42221 (f) the temporary license expires immediately and prior to the expiration of one year
42222 from issuance, upon notification from the division that the applicant's application for licensure
42223 by endorsement is denied.

42224 (5) The division shall issue a temporary license under Subsection (4) within 15 business
42225 days after the applicant satisfies the requirements of Subsection (4).

42226 Section 929. Section **58-68-402** is amended to read:

42227 **58-68-402. Authority to assess penalties.**

42228 (1) After acting in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
42229 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
42230 Professional Licensing Act, the division may impose administrative penalties of up to \$10,000
42231 for each act of unprofessional conduct under this chapter.

42232 (2) Assessment of a penalty under this section does not affect any other action the
42233 division is authorized to take regarding a license issued under this chapter.

42234 Section 930. Section **58-68-601** is amended to read:

42235 **58-68-601. Mentally incompetent or incapacitated osteopathic physician.**

42236 (1) As used in this section:

42237 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

42238 (b) "Mentally ill" has the same definition as in Section 62A-15-602.

42239 (2) If a court of competent jurisdiction determines an osteopathic physician and surgeon
42240 is an incapacitated person or that [~~he~~] the physician or surgeon is mentally ill and unable to
42241 safely engage in the practice of medicine, the director shall immediately suspend the license of
42242 the osteopathic physician and surgeon upon the entry of the judgment of the court, without
42243 further proceedings under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
42244 Procedures Act, regardless of whether an appeal from the court's ruling is pending. The
42245 director shall promptly notify the osteopathic physician and surgeon, in writing, of the
42246 suspension.

42247 (3) (a) If the division and a majority of the board find reasonable cause to believe an
42248 osteopathic physician and surgeon, who is not determined judicially to be an incapacitated
42249 person or to be mentally ill, is incapable of practicing osteopathic medicine with reasonable skill
42250 regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a
42251 result of any mental or physical condition, the board shall recommend that the director file a
42252 petition with the division, and cause the petition to be served upon the osteopathic physician
42253 and surgeon with a notice of hearing on the sole issue of the capacity of the osteopathic

42254 physician and surgeon to competently and safety engage in the practice of medicine.

42255 (b) The hearing shall be conducted under Section 58-1-109, and [~~Title 63, Chapter 46b~~]
42256 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

42257 (4) (a) Every osteopathic physician and surgeon who accepts the privilege of being
42258 licensed under this chapter gives consent to:

42259 (i) submitting at [~~his~~] the physician's or surgeon's own expense to an immediate mental
42260 or physical examination when directed in writing by the division and a majority of the board to
42261 do so; and

42262 (ii) the admissibility of the reports of the examining physician's testimony or
42263 examination, and waives all objections on the ground the reports constitute a privileged
42264 communication.

42265 (b) The examination may be ordered by the division, with the consent of a majority of
42266 the board, only upon a finding of reasonable cause to believe:

42267 (i) the osteopathic physician and surgeon is mentally ill or incapacitated or otherwise
42268 unable to practice medicine with reasonable skill and safety; and

42269 (ii) immediate action by the division and the board is necessary to prevent harm to the
42270 osteopathic physician and surgeon's patients or the general public.

42271 (c) (i) Failure of an osteopathic physician and surgeon to submit to the examination
42272 ordered under this section is a ground for the division's immediate suspension of the osteopathic
42273 physician and surgeon's license by written order of the director.

42274 (ii) The division may enter the order of suspension without further compliance with
42275 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, unless the
42276 division finds the failure to submit to the examination ordered under this section was due to
42277 circumstances beyond the control of the osteopathic physician and surgeon and was not related
42278 directly to the illness or incapacity of the osteopathic physician and surgeon.

42279 (5) (a) An osteopathic physician and surgeon whose license is suspended under
42280 Subsection (2) or (3) has the right to a hearing to appeal the suspension within ten days after the
42281 license is suspended.

42282 (b) The hearing held under this subsection shall be conducted in accordance with
42283 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
42284 the continuance of the order of suspension in order to prevent harm to the osteopathic physician
42285 and surgeon's patients or the general public.

42286 (6) An osteopathic physician and surgeon whose license is revoked, suspended, or in
42287 any way restricted under this section may request the division and the board to consider, at
42288 reasonable intervals, evidence presented by the osteopathic physician and surgeon, under
42289 procedures established by division rule, regarding any change in the osteopathic physician and
42290 surgeon's condition, to determine whether:

42291 (a) ~~he~~ the physician or surgeon is or is not able to safely and competently engage in
42292 the practice of medicine; and

42293 (b) ~~he~~ the physician or surgeon is qualified to have ~~his~~ the physician's or surgeon's
42294 license to practice under this chapter restored completely or in part.

42295 Section 931. Section **58-69-302** is amended to read:

42296 **58-69-302. Qualifications for licensure.**

42297 (1) An applicant for licensure as a dentist, except as set forth in Subsection (2), shall:

42298 (a) submit an application in a form as prescribed by the division;

42299 (b) pay a fee as determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;

42300 (c) be of good moral character;

42301 (d) provide satisfactory documentation of having successfully completed a program of
42302 professional education preparing an individual as a dentist as evidenced by having received an
42303 earned doctor's degree in dentistry from:

42304 (i) a dental school accredited by the Commission on Dental Accreditation of the
42305 American Dental Association; or

42306 (ii) a dental school located outside of the United States or its jurisdictions which, at the
42307 time the applicant graduated from the dental school, met standards for accreditation by the
42308 Commission on Dental Accreditation of the American Dental Association;

42309 (e) pass the National Board Dental Examinations as administered by the Joint

42310 Commission on National Dental Examinations of the American Dental Association;

42311 (f) pass any one of the regional dental clinical licensure examinations unless the division,

42312 in collaboration with the board, determines that:

42313 (i) the examination is clearly inferior to the Western Regional Examination Board; and

42314 (ii) reliance upon the examination poses an unjustifiable threat to public health and

42315 safety;

42316 (g) pass any other examinations regarding applicable law, rules, or ethics as established

42317 by division rule made in collaboration with the board;

42318 (h) be able to read, write, speak, understand, and be understood in the English language

42319 and demonstrate proficiency to the satisfaction of the board if requested by the board; and

42320 (i) meet with the board if requested by the board or division for the purpose of

42321 examining the applicant's qualifications for licensure.

42322 (2) An applicant for licensure as a dentist qualifying under the endorsement provision of

42323 Section 58-1-302 shall:

42324 (a) be currently licensed in good standing in another jurisdiction set forth in Section

42325 58-1-302;

42326 (b) (i) document having met all requirements for licensure under Subsection (1) except,

42327 an applicant having received licensure in another state or jurisdiction prior to the year when the

42328 National Board Dental Examinations were first administered, shall document having passed a

42329 state administered examination acceptable to the division in collaboration with the board; or

42330 (ii) document having obtained licensure in another state or jurisdiction upon which

42331 licensure by endorsement is based by meeting requirements which were equal to licensure

42332 requirements in Utah at the time the applicant obtained licensure in the other state or

42333 jurisdiction; and

42334 (c) document having been successfully engaged in practice as a dentist for not less than

42335 6,000 hours in the five years immediately preceding the date of application for licensure.

42336 (3) An applicant for licensure as a dental hygienist, except as set forth in Subsection (4),

42337 shall:

- 42338 (a) submit an application in a form as prescribed by the division;
- 42339 (b) pay a fee as determined by the department pursuant to Section [~~63-38-3.2~~
- 42340 63J-1-303;
- 42341 (c) be of good moral character;
- 42342 (d) be a graduate holding a certificate or degree in dental hygiene from:
- 42343 (i) a school accredited by the Commission on Dental Accreditation of the American
- 42344 Dental Association; or
- 42345 (ii) a dental hygiene school located outside of the United States or its jurisdictions
- 42346 which, at the time the applicant graduated from or received certification from the school, met
- 42347 standards for accreditation by the Commission on Dental Accreditation of the American Dental
- 42348 Association;
- 42349 (e) pass the National Board Dental Hygiene Examination as administered by the Joint
- 42350 Commission on National Dental Examinations of the American Dental Association;
- 42351 (f) pass an examination consisting of practical demonstrations in the practice of dental
- 42352 hygiene and written or oral examination in the theory and practice of dental hygiene as
- 42353 established by division rule made in collaboration with the board;
- 42354 (g) pass any other examinations regarding applicable law, rules, and ethics as
- 42355 established by rule by division rule made in collaboration with the board;
- 42356 (h) be able to read, write, speak, understand, and be understood in the English language
- 42357 and demonstrate proficiency to the satisfaction of the board if requested by the board; and
- 42358 (i) meet with the board if requested by the board or division for the purpose of
- 42359 examining the applicant's qualifications for licensure.
- 42360 (4) An applicant for licensure as a dental hygienist qualifying under the endorsement
- 42361 provision of Section 58-1-302 shall:
- 42362 (a) be currently licensed in another jurisdiction set forth in Section 58-1-302;
- 42363 (b) (i) document having met all requirements for licensure under Subsection (3) except,
- 42364 an applicant having received licensure in another state or jurisdiction prior to 1962, the year
- 42365 when the National Board Dental Hygiene Examinations were first administered, shall document

42366 having passed a state administered examination acceptable to the division in collaboration with
42367 the board; or

42368 (ii) document having obtained licensure in another state or jurisdiction upon which
42369 licensure by endorsement is based by meeting requirements which were equal to licensure
42370 requirements in Utah at the time the applicant obtained licensure in the other state or
42371 jurisdiction; and

42372 (c) document having been successfully engaged in practice as a dental hygienist for not
42373 less than 2,000 hours in the two years immediately preceding the date of application for
42374 licensure.

42375 Section 932. Section **58-69-601** is amended to read:

42376 **58-69-601. Mentally incompetent or incapacitated dentist or dental hygienist.**

42377 (1) As used in this section:

42378 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

42379 (b) "Mentally ill" has the same definition as in Section 62A-15-602.

42380 (2) If a court of competent jurisdiction determines a dentist or dental hygienist is an
42381 incapacitated person or that ~~he~~ the dentist or hygienist is mentally ill and unable to safely
42382 engage in the practice of dentistry or dental hygiene, the director shall immediately suspend the
42383 license of the dentist or dental hygienist upon the entry of the judgment of the court, without
42384 further proceedings under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative
42385 Procedures Act, regardless of whether an appeal from the court's ruling is pending. The
42386 director shall promptly notify the dentist or dental hygienist, in writing, of the suspension.

42387 (3) (a) If the division and a majority of the board find reasonable cause to believe a
42388 dentist or dental hygienist, who is not determined judicially to be an incapacitated person or to
42389 be mentally ill, is incapable of practicing dentistry or dental hygiene with reasonable skill
42390 regarding the safety of patients, because of illness, excessive use of drugs or alcohol, or as a
42391 result of any mental or physical condition, the board shall recommend that the director file a
42392 petition with the division, and cause the petition to be served upon the dentist or dental
42393 hygienist with a notice of hearing on the sole issue of the capacity of the dentist or dental

42394 hygienist to competently and safely engage in the practice of dentistry or dental hygiene.

42395 (b) The hearing shall be conducted under Section 58-1-109 and [~~Title 63, Chapter 46b~~]
42396 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

42397 (4) (a) Every dentist or dental hygienist who accepts the privilege of being licensed
42398 under this chapter gives consent to:

42399 (i) submitting at [~~his~~] the dentist or dental hygienist's own expense to an immediate
42400 mental or physical examination when directed in writing by the division and a majority of the
42401 board to do so; and

42402 (ii) the admissibility of the reports of the examining practitioner's testimony or
42403 examination, and waives all objections on the ground the reports constitute a privileged
42404 communication.

42405 (b) The examination may be ordered by the division, with the consent of a majority of
42406 the board, only upon a finding of reasonable cause to believe:

42407 (i) the dentist or dental hygienist is mentally ill or incapacitated or otherwise unable to
42408 practice dentistry or dental hygiene with reasonable skill and safety; and

42409 (ii) immediate action by the division and the board is necessary to prevent harm to the
42410 dentist's or dental hygienist's patients or the general public.

42411 (c) (i) Failure of a dentist or dental hygienist to submit to the examination ordered
42412 under this section is a ground for the division's immediate suspension of the dentist's or dental
42413 hygienist's license by written order of the director.

42414 (ii) The division may enter the order of suspension without further compliance with
42415 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, unless the
42416 division finds the failure to submit to the examination ordered under this section was due to
42417 circumstances beyond the control of the dentist or dental hygienist and was not related directly
42418 to the illness or incapacity of the dentist or dental hygienist.

42419 (5) (a) A dentist or dental hygienist whose license is suspended under Subsection (2) or
42420 (3) has the right to a hearing to appeal the suspension within ten days after the license is
42421 suspended.

42422 (b) The hearing held under this subsection shall be conducted in accordance with
42423 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
42424 the continuance of the order of suspension in order to prevent harm to the dentist's or dental
42425 hygienist's patients or the general public.

42426 (6) A dentist or dental hygienist whose license is revoked, suspended, or in any way
42427 restricted under this section may request the division and the board to consider, at reasonable
42428 intervals, evidence presented by the dentist or dental hygienist, under procedures established by
42429 division rule, regarding any change in the dentist's or dental hygienist's condition, to determine
42430 whether:

42431 (a) ~~he~~ the dentist or dental hygienist is or is not able to safely and competently engage
42432 in the practice of dentistry or dental hygiene; and

42433 (b) ~~he~~ the dentist or dental hygienist is qualified to have ~~his~~ the dentist or dental
42434 hygienist's licensure to practice under this chapter restored completely or in part.

42435 Section 933. Section **58-70a-302** is amended to read:

42436 **58-70a-302. Qualifications for licensure.**

42437 Each applicant for licensure as a physician assistant shall:

42438 (1) submit an application in a form prescribed by the division;

42439 (2) pay a fee determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;

42440 (3) be of good moral character;

42441 (4) have successfully completed a physician assistant program accredited by the
42442 Commission on Accreditation of Allied Health Education Programs;

42443 (5) have passed the licensing examinations required by division rule made in
42444 collaboration with the board;

42445 (6) meet with the board and representatives of the division, if requested, for the purpose
42446 of evaluating the applicant's qualifications for licensure; and

42447 (7) (a) if the applicant desires to practice in Utah, complete a form provided by the
42448 division indicating:

42449 (i) the applicant has completed a delegation of services agreement signed by the

42450 physician assistant, supervising physician, and substitute supervising physicians; and
42451 (ii) the agreement is on file at the Utah practice sites; or
42452 (b) complete a form provided by the division indicating the applicant is not practicing in
42453 Utah and, prior to practicing in Utah, the applicant will meet the requirements of Subsection
42454 (7)(a).

42455 Section 934. Section **58-71-102** is amended to read:

42456 **58-71-102. Definitions.**

42457 In addition to the definitions in Section 58-1-102, as used in this chapter:

42458 (1) "Administrative penalty" means a monetary fine imposed by the division for acts or
42459 omissions determined to constitute unprofessional or unlawful conduct, as a result of an
42460 adjudicative proceeding conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G,
42461 Chapter 4, Administrative Procedures Act.

42462 (2) "Acupuncture" has the same definition as in Section 58-72-102.

42463 (3) "Board" means the Naturopathic Physicians Licensing Board created in Section
42464 58-71-201.

42465 (4) "Diagnose" means:

42466 (a) to examine in any manner another person, parts of a person's body, substances,
42467 fluids, or materials excreted, taken, or removed from a person's body, or produced by a person's
42468 body, to determine the source, nature, kind, or extent of a disease or other physical or mental
42469 condition;

42470 (b) to attempt to conduct an examination or determination described under Subsection
42471 (4)(a);

42472 (c) to hold oneself out as making or to represent that one is making an examination or
42473 determination as described in Subsection (4)(a); or

42474 (d) to make an examination or determination as described in Subsection (4)(a) upon or
42475 from information supplied directly or indirectly by another person, whether or not in the
42476 presence of the person making or attempting the diagnosis or examination.

42477 (5) "Local anesthesia" means an agent, whether a natural medicine or prescription drug,

42478 which:

42479 (a) is applied topically or by injection in superficial tissues associated with the
42480 performance of minor office procedures;

42481 (b) has the ability to produce loss of sensation at the site of minor office procedures;

42482 and

42483 (c) does not cause loss of consciousness or produce general sedation.

42484 (6) "Medical naturopathic assistant" means an unlicensed individual working under the
42485 direct and immediate supervision of a licensed naturopathic physician and engaged in specific
42486 tasks assigned by the licensed naturopathic physician in accordance with the standards and
42487 ethics of the profession.

42488 (7) (a) "Minor office procedures" means:

42489 (i) the use of operative, electrical, or other methods for repair and care of superficial
42490 lacerations, abrasions, and benign lesions;

42491 (ii) removal of foreign bodies located in the superficial tissues, excluding the eye or ear;

42492 and

42493 (iii) the use of antiseptics and local anesthetics in connection with minor office surgical
42494 procedures; and

42495 (b) "Minor office procedures" does not include:

42496 (i) general or spinal anesthesia;

42497 (ii) office procedures more complicated or extensive than those set forth in Subsection

42498 (7)(a);

42499 (iii) procedures involving the eye; or

42500 (iv) any office procedure involving tendons, nerves, veins, or arteries.

42501 (8) "Natural medicine" means:

42502 (a) food, food extracts, dietary supplements as defined by the federal Food, Drug, and
42503 Cosmetics Act, all homeopathic remedies, and plant substances that are not designated as
42504 prescription drugs or controlled substances;

42505 (b) over-the-counter medications;

42506 (c) other nonprescription substances, the prescription or administration of which is not
42507 otherwise prohibited or restricted under federal or state law; and

42508 (d) prescription drugs:

42509 (i) that are not controlled substances as defined in Section 58-37-2;

42510 (ii) the prescription of which is consistent with the competent practice of naturopathic
42511 medicine; and

42512 (iii) the prescription of which is approved by the division in collaboration with the
42513 naturopathic formulary advisory peer committee.

42514 (9) (a) "Naturopathic childbirth" means uncomplicated natural childbirth assisted by a
42515 naturopathic physician, and includes the use of:

42516 (i) natural medicines; and

42517 (ii) uncomplicated episiotomy.

42518 (b) "Naturopathic childbirth" does not include the use of:

42519 (i) forceps delivery;

42520 (ii) general or spinal anesthesia;

42521 (iii) caesarean section delivery; or

42522 (iv) induced labor or abortion.

42523 (10) "Naturopathic mobilization therapy":

42524 (a) means manually administering mechanical treatment of body structures or tissues for
42525 the purpose of restoring normal physiological function to the body by normalizing and balancing
42526 the musculoskeletal system of the body;

42527 (b) does not mean manipulation or adjustment of the joints of the human body beyond
42528 the elastic barrier; and

42529 (c) does not include manipulation as defined in Title 58, Chapter 73, Chiropractic
42530 Physician Practice Act.

42531 (11) "Naturopathic physical medicine" means the use of the physical agents of air,
42532 water, heat, cold, sound, light, and electromagnetic nonionizing radiation, and the physical
42533 modalities of electrotherapy, biofeedback, acupuncture, diathermy, ultraviolet light, ultrasound,

42534 hydrotherapy, naturopathic mobilization therapy, and exercise. Naturopathic medicine does not
42535 include the practice of physical therapy or physical rehabilitation.

42536 (12) "Practice of naturopathic medicine" means:

42537 (a) a system of primary health care for the prevention, diagnosis, and treatment of
42538 human health conditions, injuries, and diseases that uses education, natural medicines, and
42539 natural therapies, to support and stimulate the patient's intrinsic self-healing processes:

42540 (i) using naturopathic childbirth, but only if:

42541 (A) the licensee meets standards of the American College of Naturopathic Obstetricians
42542 (ACNO) or its successor as determined by the division in collaboration with the board; and

42543 (B) the licensee follows a written plan for naturopathic physicians practicing
42544 naturopathic childbirth approved by the division in collaboration with the board, which includes
42545 entering into an agreement with a consulting physician and surgeon or osteopathic physician, in
42546 cases where the scope of practice of naturopathic childbirth may be exceeded and specialty care
42547 and delivery is indicated, detailing the guidelines by which the naturopathic physician will:

42548 (I) refer patients to the consulting physician; and

42549 (II) consult with the consulting physician;

42550 (ii) using naturopathic mobilization therapy;

42551 (iii) using naturopathic physical medicine;

42552 (iv) using minor office procedures;

42553 (v) prescribing or administering natural medicine;

42554 (vi) prescribing medical equipment and devices, diagnosing by the use of medical
42555 equipment and devices, and administering therapy or treatment by the use of medical devices
42556 necessary and consistent with the competent practice of naturopathic medicine;

42557 (vii) prescribing barrier devices for contraception;

42558 (viii) using dietary therapy;

42559 (ix) taking and using diagnostic x-rays, electrocardiograms, ultrasound, and
42560 physiological function tests;

42561 (x) taking of body fluids for clinical laboratory tests and using the results of the tests in

42562 diagnosis;

42563 (xi) taking of a history from and conducting of a physical examination upon a human
42564 patient; and

42565 (xii) prescribing and administering natural medicines and medical devices, except a
42566 naturopathic physician may only administer:

42567 (A) a prescription drug, as defined in Section 58-17b-102, in accordance with
42568 Subsection (8)(d); and

42569 (B) local anesthesia that is not a controlled substance, and only in the performance of
42570 minor office procedures;

42571 (b) to maintain an office or place of business for the purpose of doing any of the acts
42572 described in Subsection (12)(a), whether or not for compensation; or

42573 (c) to use, in the conduct of any occupation or profession pertaining to the diagnosis or
42574 treatment of human diseases or conditions, in any printed material, stationery, letterhead,
42575 envelopes, signs, or advertisements, the designation "naturopathic physician," "naturopathic
42576 doctor," "naturopath," "doctor of naturopathic medicine," "doctor of naturopathy,"
42577 "naturopathic medical doctor," "naturopathic medicine," "naturopathic health care,"
42578 "naturopathy," "N.D.," "N.M.D.," or any combination of these designations in any manner that
42579 might cause a reasonable person to believe the individual using the designation is a licensed
42580 naturopathic physician.

42581 (13) "Prescription drug or device" means:

42582 (a) a drug or device which, under federal law, is required to be labeled with either of the
42583 following statements or their equivalent:

42584 (i) "CAUTION: Federal law prohibits dispensing without prescription"; or
42585 (ii) "CAUTION: Federal law restricts this drug to use by or on the order of a licensed
42586 veterinarian"; or

42587 (b) a drug or device that is required by any applicable federal or state law or rule to be
42588 dispensed on prescription only or is restricted to use by practitioners only.

42589 (14) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-71-501.

42590 (15) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-71-502, and as
42591 may be further defined by division rule.

42592 Section 935. Section **58-71-302** is amended to read:

42593 **58-71-302. Qualifications for licensure.**

42594 (1) An applicant for licensure as a naturopathic physician, except as set forth in
42595 Subsection (2), shall:

42596 (a) submit an application in a form prescribed by the division which may include:

42597 (i) submissions by the applicant of information maintained by practitioner data banks, as
42598 designated by division rule, with respect to the applicant; and

42599 (ii) a record of professional liability claims made against the applicant and settlements
42600 paid by or in behalf of the applicant;

42601 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42602 (c) be of good moral character;

42603 (d) provide satisfactory documentation of having successfully completed a program of
42604 professional education preparing an individual as a naturopathic physician, as evidenced by
42605 having received an earned degree of doctor of naturopathic medicine from:

42606 (i) a naturopathic medical school or college accredited by the Council of Naturopathic
42607 Medical Education or its successor organization approved by the division;

42608 (ii) a naturopathic medical school or college that is a candidate for accreditation by the
42609 Council of Naturopathic Medical Education or its successor organization, and is approved by
42610 the division in collaboration with the board, upon a finding there is reasonable expectation the
42611 school or college will be accredited; or

42612 (iii) a naturopathic medical school or college which, at the time of the applicant's
42613 graduation, met current criteria for accreditation by the Council of Naturopathic Medical
42614 Education or its successor approved by the division;

42615 (e) provide satisfactory documentation of having successfully completed, after
42616 successful completion of the education requirements set forth in Subsection (1)(d), 12 months
42617 of clinical experience in naturopathic medicine in a residency program recognized by the

42618 division and associated with an accredited school or college of naturopathic medicine, and under
42619 the preceptorship of a licensed naturopathic physician, physician and surgeon, or osteopathic
42620 physician;

42621 (f) pass the licensing examination sequence required by division rule established in
42622 collaboration with the board;

42623 (g) be able to read, write, speak, understand, and be understood in the English language
42624 and demonstrate proficiency to the satisfaction of the board if requested by the board; and

42625 (h) meet with the board and representatives of the division, if requested, for the purpose
42626 of evaluating the applicant's qualifications for licensure.

42627 (2) An applicant for licensure as a naturopathic physician qualifying under the
42628 endorsement provision of Section 58-1-302 shall:

42629 (a) be currently licensed in good standing in another jurisdiction as set forth in Section
42630 58-1-302;

42631 (b) document having met all requirements for licensure under Subsection (1) except the
42632 clinical experience requirement of Subsection (1)(e);

42633 (c) have passed the examination requirements established under Subsection (1)(f)
42634 which:

42635 (i) the applicant has not passed in connection with licensure in another state or
42636 jurisdiction; and

42637 (ii) are available to the applicant to take without requiring additional professional
42638 education;

42639 (d) have been actively engaged in the practice of a naturopathic physician for not less
42640 than 6,000 hours during the five years immediately preceding the date of application for
42641 licensure in Utah; and

42642 (e) meet with the board and representatives of the division, if requested for the purpose
42643 of evaluating the applicant's qualifications for licensure.

42644 Section 936. Section **58-71-402** is amended to read:

42645 **58-71-402. Authority to assess penalty.**

42646 (1) After proceeding pursuant to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
42647 Administrative Procedures Act, and Title 58, Chapter 1, Division of Occupational and
42648 Professional Licensing Act, the division may impose administrative penalties of up to \$10,000
42649 for acts of unprofessional conduct or unlawful conduct under this chapter.

42650 (2) Assessment of a penalty under this section does not affect any other action the
42651 division is authorized to take regarding a license issued under this chapter.

42652 Section 937. Section **58-71-601** is amended to read:

42653 **58-71-601. Mentally incompetent or incapacitated naturopathic physician.**

42654 (1) As used in this section:

42655 (a) "Incapacitated person" has the same definition as in Section 75-1-201.

42656 (b) "Mentally ill" has the same definition as in Section 62A-15-602.

42657 (2) If a court of competent jurisdiction determines a naturopathic physician is an
42658 incapacitated person or that [~~he~~] the physician is mentally ill and unable to safely engage in the
42659 practice of medicine, the director shall immediately suspend the license of the naturopathic
42660 physician upon the entry of the judgment of the court, without further proceedings under [~~Title~~
42661 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, regardless of whether
42662 an appeal from the court's ruling is pending. The director shall promptly notify the naturopathic
42663 physician, in writing, of the suspension.

42664 (3) (a) If the division and a majority of the board find reasonable cause to believe a
42665 naturopathic physician, who is not determined judicially to be an incapacitated person or to be
42666 mentally ill, is incapable of practicing medicine with reasonable skill regarding the safety of
42667 patients, because of illness, excessive use of drugs or alcohol, or as a result of any mental or
42668 physical condition, the board shall recommend that the director file a petition with the division,
42669 and cause the petition to be served upon the naturopathic physician with a notice of hearing on
42670 the sole issue of the capacity of the naturopathic physician to competently and safely engage in
42671 the practice of medicine.

42672 (b) The hearing shall be conducted under Section 58-1-109, and [~~Title 63, Chapter 46b~~]
42673 Title 63G, Chapter 4, Administrative Procedures Act, except as provided in Subsection (4).

42674 (4) (a) Every naturopathic physician who accepts the privilege of being licensed under
42675 this chapter gives consent to:

42676 (i) submitting at ~~his~~ the physician's own expense to an immediate mental or physical
42677 examination when directed in writing by the division and a majority of the board to do so; and

42678 (ii) the admissibility of the reports of the examining physician's testimony or
42679 examination, and waives all objections on the ground the reports constitute a privileged
42680 communication.

42681 (b) The examination may be ordered by the division, with the consent of a majority of
42682 the board, only upon a finding of reasonable cause to believe:

42683 (i) the naturopathic physician is mentally ill or incapacitated or otherwise unable to
42684 practice medicine with reasonable skill and safety; and

42685 (ii) immediate action by the division and the board is necessary to prevent harm to the
42686 naturopathic physician's patients or the general public.

42687 (c) (i) Failure of a naturopathic physician to submit to the examination ordered under
42688 this section is a ground for the division's immediate suspension of the naturopathic physician's
42689 license by written order of the director.

42690 (ii) The division may enter the order of suspension without further compliance with
42691 ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, unless the
42692 division finds the failure to submit to the examination ordered under this section was due to
42693 circumstances beyond the control of the naturopathic physician and was not related directly to
42694 the illness or incapacity of the naturopathic physician.

42695 (5) (a) A naturopathic physician whose license is suspended under Subsection (2) or (3)
42696 has the right to a hearing to appeal the suspension within ten days after the license is suspended.

42697 (b) The hearing held under this subsection shall be conducted in accordance with
42698 Sections 58-1-108 and 58-1-109 for the sole purpose of determining if sufficient basis exists for
42699 the continuance of the order of suspension in order to prevent harm to the naturopathic
42700 physician's patients or the general public.

42701 (6) A naturopathic physician whose license is revoked, suspended, or in any way

42702 restricted under this section may request the division and the board to consider, at reasonable
42703 intervals, evidence presented by the naturopathic physician, under procedures established by
42704 division rule, regarding any change in the naturopathic physician's condition, to determine
42705 whether:

42706 (a) ~~he~~ the physician is or is not able to safely and competently engage in the practice
42707 of medicine; and

42708 (b) ~~he~~ the physician is qualified to have ~~his~~ the physician's license to practice under
42709 this chapter restored completely or in part.

42710 Section 938. Section **58-72-302** is amended to read:

42711 **58-72-302. Qualification for licensure.**

42712 Notwithstanding Section 58-1-302, an applicant for licensure as a licensed acupuncturist
42713 shall:

42714 (1) submit an application in a form prescribed by the division;

42715 (2) pay a fee determined by the department under Section ~~[63-38-3.2]~~ 63J-1-303;

42716 (3) be of good moral character;

42717 (4) meet the requirements for current active certification in acupuncture under
42718 guidelines established by the National Commission for the Certification of Acupuncture and
42719 Oriental Medicine (NCCAOM) as demonstrated through a current certificate or other
42720 appropriate documentation;

42721 (5) pass the examination required by the division by rule;

42722 (6) establish procedures, as defined by rule, which shall enable patients to give informed
42723 consent to treatment; and

42724 (7) meet with the board, if requested, for the purpose of evaluating the applicant's
42725 qualifications for licensure.

42726 Section 939. Section **58-73-302** is amended to read:

42727 **58-73-302. Qualifications for licensure.**

42728 (1) Each applicant for licensure as a chiropractic physician, other than those applying
42729 for a license based on licensure as a chiropractor or chiropractic physician in another

42730 jurisdiction, shall:

42731 (a) submit an application in a form prescribed by the division;

42732 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42733 (c) be of good moral character;

42734 (d) demonstrate satisfactory completion of at least two years of general study in a
42735 college or university;

42736 (e) demonstrate having earned a degree of doctor of chiropractic from a chiropractic
42737 college or university that at the time the degree was conferred was accredited by the Council on
42738 Chiropractic Education, Inc., or an equivalent chiropractic accrediting body recognized by the
42739 United States Department of Education and by the division rule made in collaboration with the
42740 board;

42741 (f) demonstrate successful completion of:

42742 (i) the National Chiropractic Boards:

42743 (A) Parts I and II;

42744 (B) Written Clinical Competency Examination; and

42745 (C) Physical Therapy;

42746 (ii) the Utah Chiropractic Law and Rules Examination; and

42747 (iii) a practical examination approved by the division in collaboration with the board;

42748 and

42749 (g) meet with the board, if requested, for the purpose of reviewing the applicant's
42750 qualifications for licensure.

42751 (2) Each applicant for licensure as a chiropractic physician based on licensure as a
42752 chiropractor or chiropractic physician in another jurisdiction shall:

42753 (a) submit an application in the form prescribed by the division;

42754 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42755 (c) be of good moral character;

42756 (d) demonstrate having obtained licensure as a chiropractor or chiropractic physician in
42757 another state under education requirements which were equivalent to the education

42758 requirements in this state to obtain a chiropractor or chiropractic physician license at the time
42759 the applicant obtained the license in the other state;

42760 (e) demonstrate successful completion of:

42761 (i) the Utah Chiropractic Law and Rules Examination; and

42762 (ii) the Special Purposes Examination for Chiropractic (SPEC) of the National Board of
42763 Chiropractic Examiners;

42764 (f) have been actively engaged in the practice of chiropractic for not less than two years
42765 immediately preceding application for licensure in this state; and

42766 (g) meet with the board, if requested, for the purpose of reviewing the applicant's
42767 qualifications for licensure.

42768 Section 940. Section **58-73-701** is amended to read:

42769 **58-73-701. Persons immune from liability.**

42770 (1) Employees of the division, members of the board or its committees, and professional
42771 consultants serving the division or the board, are not subject to civil damages, when acting
42772 under the authority of this chapter for any act or omission performed in good faith within the
42773 scope of their functions as an employee of the division or member of the board.

42774 (2) Employees, board members, committee members, and professional consultants are
42775 indemnified by the state. The state has full responsibility for providing legal and financial
42776 protection for employees, board members, committee members, and consultants to the board or
42777 division.

42778 (3) Nothing in this section may be construed to adversely limit any provision of [~~Title~~
42779 ~~63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

42780 Section 941. Section **58-74-302** is amended to read:

42781 **58-74-302. Qualifications for licensure.**

42782 (1) Each applicant for licensure as a certified court reporter under this chapter shall:

42783 (a) be at least 18 years of age;

42784 (b) be a citizen of the United States;

42785 (c) submit an application in a form prescribed by the division;

- 42786 (d) pay a fee determined by the department under Subsection [~~63-38-3~~] 63J-1-301(2);
- 42787 (e) possess a high degree of skill and ability in the art of court reporting;
- 42788 (f) produce satisfactory evidence of good moral character; and
- 42789 (g) submit evidence that they have completed and passed the Registered Professional
- 42790 Reporter Examination of the National Court Reporters Association or the Certified Verbatim
- 42791 Reporter Examination of the National Verbatim Reporters Association.

42792 (2) Any person granted a certificate to practice as a certified shorthand reporter may
42793 use the abbreviation "C.S.R." as long as the person's certificate is current and valid.

42794 (3) Any person granted a certificate to practice as a certified voice reporter may use the
42795 abbreviation "C.V.R." as long as the person's certificate is current and valid.

42796 Section 942. Section **58-75-102** is amended to read:

42797 **58-75-102. Definitions.**

42798 In addition to the definitions in Section 58-1-102, as used in this chapter:

42799 (1) "Board" means the Genetic Counselors Licensing Board created in Section
42800 58-75-201.

42801 (2) "Genetic counselor" means a person licensed under this chapter to engage in the
42802 practice of genetic counseling.

42803 (3) "Practice of genetic counseling" means the communication process which deals with
42804 the human problems associated with the occurrence, or the risk of occurrence, of a genetic
42805 disorder in a family, including the provision of services to help an individual or family:

42806 (a) comprehend the medical facts, including the diagnosis, probable cause of the
42807 disorder, and the available management;

42808 (b) appreciate the way heredity contributes to the disorder and the risk of occurrence in
42809 specified relatives;

42810 (c) understand the alternatives for dealing with the risk of occurrence;

42811 (d) choose the course of action which seems appropriate to them in view of their risk,
42812 their family goals, and their ethical and religious standards, and to act in accordance with that
42813 decision; and

42814 (e) make the best possible psychosocial adjustment to the disorder in an affected family
42815 member or to the risk of occurrence of that disorder.

42816 (4) "Unlawful conduct" is as defined in Sections 58-1-501 and 58-75-501.

42817 (5) "Unprofessional conduct" is as defined in Sections 58-1-501 and 58-75-502 and as
42818 may be further defined by rule by the division in accordance with [~~Title 63, Chapter 46a~~] Title
42819 63G, Chapter 3, Utah Administrative Rulemaking Act.

42820 Section 943. Section **58-75-302** is amended to read:

42821 **58-75-302. Qualifications for licensure -- Temporary license.**

42822 (1) Except as provided in Subsection (2), each applicant for licensure as a genetic
42823 counselor under this chapter shall:

42824 (a) submit an application in a form prescribed by the division;

42825 (b) pay a fee determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42826 (c) be of good moral character;

42827 (d) provide satisfactory documentation of having earned:

42828 (i) a master's degree from a genetic counseling training program that is accredited by
42829 the American Board of Genetic Counseling or an equivalent as determined by the division; or

42830 (ii) a doctoral degree from a medical genetics training program that is accredited by the
42831 American Board of Medical Genetics or an equivalent as determined by the division; and

42832 (e) meet the examination requirement for certification as:

42833 (i) a genetic counselor by the American Board of Genetic Counseling or the American
42834 Board of Medical Genetics; or

42835 (ii) a medical geneticist by the American Board of Medical Genetics.

42836 (2) The division may issue a temporary license, in accordance with Section 58-1-303
42837 and any other conditions established by rule, to an applicant who meets all of the requirements
42838 for licensure except the examination requirement of Subsection (1)(e).

42839 Section 944. Section **58-76-103** is amended to read:

42840 **58-76-103. Education and enforcement fund.**

42841 (1) There is created within the General Fund a restricted account known as the

42842 "Professional Geologist Education and Enforcement Fund."
 42843 (2) The account shall be nonlapsing and consist of monies from:
 42844 (a) a surcharge fee established by the department in accordance with Section
 42845 [~~63-38-3.2~~] 63J-1-303, placed on initial, renewal, and reinstatement licensure fees under this
 42846 chapter not to exceed 50% of the respective initial, renewal, or reinstatement licensure fee;
 42847 (b) administrative penalties collected pursuant to this chapter; and
 42848 (c) interest earned on monies in the account.
 42849 (3) Monies in the account may be appropriated by the Legislature for the following
 42850 purposes:
 42851 (a) education and training of licensees under this chapter;
 42852 (b) education and training of the public or other interested persons in matters
 42853 concerning geology laws and practices;
 42854 (c) enforcement of this chapter by:
 42855 (i) investigating unprofessional or unlawful conduct;
 42856 (ii) providing legal representation to the division when legal action is taken against a
 42857 person engaging in unprofessional or unlawful conduct; and
 42858 (iii) monitoring compliance of renewal requirements; and
 42859 (d) education and training of board members.
 42860 Section 945. Section **58-76-302** is amended to read:
 42861 **58-76-302. Qualifications for licensure.**
 42862 Each applicant for licensure as a professional geologist shall:
 42863 (1) submit an application in a form as prescribed by the division;
 42864 (2) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;
 42865 (3) be of good moral character;
 42866 (4) provide satisfactory evidence of:
 42867 (a) a bachelors or graduate degree in the geosciences granted through an institution of
 42868 higher education that is accredited by a regional or national accrediting agency with a minimum
 42869 of 30 semester or 45 quarter hours of course work in the geosciences; or

42870 (b) completion of other equivalent educational requirements as determined by the
42871 division in collaboration with the board;

42872 (5) provide satisfactory evidence of:

42873 (a) with a bachelors degree, a specific record of five years of active professional
42874 practice in geological work of a character satisfactory to the division, indicating the applicant is
42875 competent to be placed in a responsible charge of the work;

42876 (b) with a masters degree, a specific record of three years of active professional practice
42877 in geological work of a character satisfactory to the division, indicating the applicant is
42878 competent to be placed in a responsible charge of the work; or

42879 (c) with a doctorate degree, a specific record of one year of active professional practice
42880 in geological work of a character satisfactory to the division, indicating the applicant is
42881 competent to be placed in a responsible charge of the work; and

42882 (6) after January 1, 2004, meet the examination requirement established by rule by the
42883 division in collaboration with the board.

42884 Section 946. Section **58-76-502** is amended to read:

42885 **58-76-502. Penalty for unlawful conduct.**

42886 (1) (a) If, upon inspection or investigation, the division concludes that a person has
42887 violated Section 58-76-501 or any rule or order issued with respect to Section 58-76-501, and
42888 that disciplinary action is appropriate, the director or ~~[his or her]~~ the director's designee from
42889 within the division shall promptly issue a citation to the person according to this chapter and any
42890 pertinent rules, attempt to negotiate a stipulated settlement, or notify the person to appear
42891 before an adjudicative proceeding conducted under ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter
42892 4, Administrative Procedures Act.

42893 (i) A person who violates Subsections 58-1-501(1)(a) through (d) or Section 58-76-501
42894 or any rule or order issued with respect to Section 58-76-501, as evidenced by an uncontested
42895 citation, a stipulated settlement, or by a finding of violation in an adjudicative proceeding, may
42896 be assessed a fine pursuant to this Subsection (1) and may, in addition to or in lieu of, be
42897 ordered to cease and desist from violating Subsections 58-1-501(1)(a) through (d) or Section

42898 58-76-501 or any rule or order issued with respect to this section.

42899 (ii) Except for a cease and desist order, the licensure sanctions cited in Section

42900 58-76-401 may not be assessed through a citation.

42901 (b) A citation shall:

42902 (i) be in writing;

42903 (ii) describe with particularity the nature of the violation, including a reference to the

42904 provision of the chapter, rule, or order alleged to have been violated;

42905 (iii) clearly state that the recipient must notify the division in writing within 20 calendar

42906 days of service of the citation if the recipient wishes to contest the citation at a hearing

42907 conducted under [~~Title 63, Chapter 46~~] Title 63G, Chapter 4, Administrative Procedures Act;

42908 and

42909 (iv) clearly explain the consequences of failure to timely contest the citation or to make

42910 payment of any fines assessed by the citation within the time specified in the citation.

42911 (c) The division may issue a notice in lieu of a citation.

42912 (d) Each citation issued under this section, or a copy of each citation, may be served

42913 upon any person upon whom a summons may be served in accordance with the Utah Rules of

42914 Civil Procedure and may be made personally or upon [~~his~~] the person's agent by a division

42915 investigator or by any person specially designated by the director or by mail.

42916 (e) If within 20 calendar days from the service of the citation, the person to whom the

42917 citation was issued fails to request a hearing to contest the citation, the citation becomes the

42918 final order of the division and is not subject to further agency review. The period to contest a

42919 citation may be extended by the division for cause.

42920 (f) The division may refuse to issue or renew, suspend, revoke, or place on probation

42921 the license of a licensee who fails to comply with a citation after it becomes final.

42922 (g) The failure of an applicant for licensure to comply with a citation after it becomes

42923 final is a ground for denial of license.

42924 (h) No citation may be issued under this section after the expiration of six months

42925 following the occurrence of any violation.

42926 (i) The director or [~~his~~] the director's designee shall assess fines according to the
42927 following:

42928 (i) for a first offense handled pursuant to Subsection (1)(a), a fine of up to \$1,000;

42929 (ii) for a second offense handled pursuant to Subsection (1)(a), a fine of up to \$2,000;

42930 and

42931 (iii) for any subsequent offense handled pursuant to Subsection (1)(a), a fine of up to
42932 \$2,000 for each day of continued offense.

42933 (2) An action initiated for a first or second offense which has not yet resulted in a final
42934 order of the division shall not preclude initiation of any subsequent action for a second or
42935 subsequent offense during the pendency of any preceding action. The final order on a
42936 subsequent action shall be considered a second or subsequent offense, respectively, provided the
42937 preceding action resulted in a first or second offense, respectively.

42938 (3) Any penalty which is not paid may be collected by the director by either referring
42939 the matter to a collection agency or bringing an action in the district court of the county in
42940 which the person against whom the penalty is imposed resides or in the county where the office
42941 of the director is located. Any county attorney or the attorney general of the state shall provide
42942 legal assistance and advice to the director in any action to collect the penalty. In any action
42943 brought to enforce the provisions of this section, reasonable attorney's fees and costs shall be
42944 awarded to the division.

42945 Section 947. Section **58-77-302** is amended to read:

42946 **58-77-302. Qualifications for licensure.**

42947 Each applicant for licensure as a licensed Direct-entry midwife shall:

42948 (1) submit an application in a form prescribed by the division;

42949 (2) pay a fee as determined by the department under Section [~~63-38-3.2~~] 63J-1-303;

42950 (3) be of good moral character;

42951 (4) hold a Certified Professional Midwife certificate in good standing with the North
42952 American Registry of Midwives or equivalent certification approved by the division in
42953 collaboration with the board;

42954 (5) hold current adult and infant CPR and newborn resuscitation certifications through
42955 an organization approved by the division in collaboration with the board; and

42956 (6) provide documentation of successful completion of an approved pharmacology
42957 course as defined by division rule.

42958 Section 948. Section **59-1-210** is amended to read:

42959 **59-1-210. General powers and duties.**

42960 The powers and duties of the commission are as follows:

42961 (1) to sue and be sued in its own name;

42962 (2) to adopt rules and policies consistent with the Constitution and laws of this state to
42963 govern the commission, executive director, division directors, and commission employees in the
42964 performance of their duties;

42965 (3) to adopt rules and policies consistent with the Constitution and laws of the state, to
42966 govern county boards and officers in the performance of any duty relating to assessment,
42967 equalization, and collection of taxes;

42968 (4) to prescribe the use of forms relating to the assessment of property for state or local
42969 taxation, the equalization of those assessments, the reporting of property or income for state or
42970 local taxation purposes, or for the computation of those taxes and the reporting of any
42971 information, statistics, or data required by the commission;

42972 (5) to administer and supervise the tax laws of the state;

42973 (6) to prepare and maintain from year to year a complete record of all lands subject to
42974 taxation in this state, and all machinery used in mining and all property or surface improvements
42975 upon or appurtenant to mines or mining claims;

42976 (7) to exercise general supervision over assessors and county boards of equalization
42977 including the authority to enforce Section 59-2-303.1, and over other county officers in the
42978 performance of their duties relating to the assessment of property and collection of taxes, so
42979 that all assessments of property are just and equal, according to fair market value, and that the
42980 tax burden is distributed without favor or discrimination;

42981 (8) to reconvene any county board of equalization which, when reconvened, may only

42982 address business approved by the commission and extend the time for which any county board
42983 of equalization may sit for the equalization of assessments;

42984 (9) to confer with, advise, and direct county treasurers, assessors, and other county
42985 officers in matters relating to the assessment and equalization of property for taxation and the
42986 collection of taxes;

42987 (10) to provide for and hold annually at such time and place as may be convenient a
42988 district or state convention of county assessors, auditors, and other county officers to consider
42989 and discuss matters relative to taxation, uniformity of valuation, and changes in the law relative
42990 to taxation and methods of assessment, to which county assessors and other officers called to
42991 attend shall attend at county expense;

42992 (11) to direct proceedings, actions, and prosecutions to enforce the laws relating to the
42993 penalties, liabilities, and punishments of public officers, persons, and officers or agents of
42994 corporations for failure or neglect to comply with the statutes governing the reporting,
42995 assessment, and taxation of property;

42996 (12) to cause complaints to be made in the proper court seeking removal from office of
42997 assessors, auditors, members of county boards, and other assessing, taxing, or disbursing
42998 officers, who are guilty of official misconduct or neglect of duty;

42999 (13) to require county attorneys to immediately institute and prosecute actions and
43000 proceedings in respect to penalties, forfeitures, removals, and punishments for violations of the
43001 laws relating to the assessment and taxation of property in their respective counties;

43002 (14) to require any person to furnish any information required by the commission to
43003 ascertain the value and the relative burden borne by all kinds of property in the state, and to
43004 require from all state and local officers any information necessary for the proper discharge of
43005 the duties of the commission;

43006 (15) to examine all records relating to the valuation of property of any person;

43007 (16) to subpoena witnesses to appear and give testimony and produce records relating
43008 to any matter before the commission;

43009 (17) to cause depositions of witnesses to be taken as in civil actions at the request of

43010 the commission or any party to any matter or proceeding before the commission;

43011 (18) to authorize any member or employee of the commission to administer oaths and
43012 affirmations in any matter or proceeding relating to the exercise of the powers and duties of the
43013 commission;

43014 (19) to visit periodically each county of the state, to investigate and direct the work and
43015 methods of local assessors and other officials in the assessment, equalization, and taxation of
43016 property, and to ascertain whether the law requiring the assessment of all property not exempt
43017 from taxation, and the collection of taxes, have been properly administered and enforced;

43018 (20) to carefully examine all cases where evasion or violation of the laws for assessment
43019 and taxation of property is alleged, to ascertain whether existing laws are defective or
43020 improperly administered;

43021 (21) to furnish to the governor from time to time such assistance and information as the
43022 governor requires;

43023 (22) to transmit to the governor and to each member of the Legislature
43024 recommendations as to legislation which will correct or eliminate defects in the operation of the
43025 tax laws and will equalize the burden of taxation within the state;

43026 (23) to correct any error in any assessment made by it at any time before the tax is due
43027 and report the correction to the county auditor, who shall enter the corrected assessment upon
43028 the assessment roll;

43029 (24) to compile and publish statistics relating to taxation in the state and prepare and
43030 submit an annual budget to the governor for inclusion in the state budget to be submitted to the
43031 Legislature;

43032 (25) to perform any further duties imposed by law, and exercise all powers necessary in
43033 the performance of its duties;

43034 (26) to adopt a schedule of fees assessed for services provided by the commission,
43035 unless otherwise provided by statute. The fee shall be reasonable and fair, and shall reflect the
43036 cost of services provided. Each fee established in this manner shall be submitted to and
43037 approved by the Legislature as part of the commission's annual appropriations request. The

43038 commission may not charge or collect any fee proposed in this manner without approval by the
43039 Legislature;

43040 (27) to comply with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title
43041 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings; and

43042 (28) to provide data to the executive director of the Department of Health for purposes
43043 of the distributions required by Section 26-9-4.

43044 Section 949. Section **59-1-302** is amended to read:

43045 **59-1-302. Penalty for nonpayment of certain taxes -- Jeopardy proceedings.**

43046 (1) This section applies to the following:

43047 (a) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

43048 (b) a tax under Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax
43049 Act;

43050 (c) a tax under Chapter 10, Part 4, Withholding of Tax;

43051 (d) (i) except as provided in Subsection (1)(d)(ii), a tax under Chapter 12, Sales and
43052 Use Tax Act; and

43053 (ii) notwithstanding Subsection (1)(d)(i), this section does not apply to Chapter 12, Part
43054 9, Sales Tax Refund for Qualified Emergency Food Agencies;

43055 (e) a tax under Chapter 13, Part 2, Motor Fuel;

43056 (f) a tax under Chapter 13, Part 3, Special Fuel; and

43057 (g) a tax under Chapter 13, Part 4, Aviation Fuel.

43058 (2) Any person required to collect, truthfully account for, and pay over any tax listed in
43059 Subsection (1) who willfully fails to collect the tax, fails to truthfully account for and pay over
43060 the tax, or attempts in any manner to evade or defeat any tax or the payment of the tax, shall be
43061 liable for a penalty equal to the total amount of the tax evaded, not collected, not accounted for,
43062 or not paid over. This penalty is in addition to other penalties provided by law.

43063 (3) (a) If the commission determines in accordance with Subsection (2) that a person is
43064 liable for the penalty, the commission shall notify the taxpayer of the proposed penalty.

43065 (b) The notice of proposed penalty shall:

- 43066 (i) set forth the basis of the assessment; and
- 43067 (ii) be mailed by certified mail to the person's last-known address.
- 43068 (4) Upon receipt of the notice of proposed penalty, the person against whom the
- 43069 penalty is proposed may:
 - 43070 (a) pay the amount of the proposed penalty at the place and time stated in the notice; or
 - 43071 (b) proceed in accordance with the review procedures of Subsection (5).
- 43072 (5) Any person against whom a penalty has been proposed in accordance with
- 43073 Subsections (2) and (3) may contest the proposed penalty by filing a petition for an adjudicative
- 43074 proceeding with the commission.
- 43075 (6) If the commission determines that the collection of the penalty is in jeopardy,
- 43076 nothing in this section may prevent the immediate collection of the penalty in accordance with
- 43077 the procedures and requirements for emergency proceedings in [~~Title 63, Chapter 46b~~] Title
- 43078 63G, Chapter 4, Administrative Procedures Act.
- 43079 (7) (a) In any hearing before the commission and in any judicial review of the hearing,
- 43080 the commission and the court shall consider any inference and evidence that a person has
- 43081 willfully failed to collect, truthfully account for, or pay over any tax listed in Subsection (1).
- 43082 (b) It is prima facie evidence that a person has willfully failed to collect, truthfully
- 43083 account for, or pay over any of the taxes listed in Subsection (1) if the commission or a court
- 43084 finds that the person charged with the responsibility of collecting, accounting for, or paying over
- 43085 the taxes:
 - 43086 (i) made a voluntary, conscious, and intentional decision to prefer other creditors over
 - 43087 the state government or utilize the tax money for personal purposes;
 - 43088 (ii) recklessly disregarded obvious or known risks, which resulted in the failure to
 - 43089 collect, account for, or pay over the tax; or
 - 43090 (iii) failed to investigate or to correct mismanagement, having notice that the tax was
 - 43091 not or is not being collected, accounted for, or paid over as provided by law.
- 43092 (c) The commission or court need not find a bad motive or specific intent to defraud the
- 43093 government or deprive it of revenue to establish willfulness under this section.

43094 (d) (i) If the commission determines that a person is liable for the penalty under
43095 Subsection (2), the commission shall assess the penalty and give notice and demand for
43096 payment.

43097 (ii) The notice and demand for payment described in Subsection (7)(d)(i) shall be mailed
43098 by certified mail to the person's last-known address.

43099 Section 950. Section **59-1-304** is amended to read:

43100 **59-1-304. Definition -- Limitations on maintaining a class action that relates to a**
43101 **tax or fee -- Requirements for a person to be included as a member of a class in a class**
43102 **action -- Rulemaking authority -- Commission report to Revenue and Taxation Interim**
43103 **Committee -- Limitations on recovery by members of a class -- Severability.**

43104 (1) As used in this section, "tax or fee" means a tax or fee administered by the
43105 commission.

43106 (2) A class action that relates to a tax or fee may not be maintained in any court if a
43107 claim sought by a representative party seeking to maintain the class action arises as a result of:

43108 (a) a person collecting a tax or fee from the representative party if the representative
43109 party is not required by law to pay the tax or fee; or

43110 (b) any of the following that requires a change in the manner in which a tax or fee is
43111 required to be collected or paid:

43112 (i) an administrative rule made by the commission;

43113 (ii) a private letter ruling issued by the commission; or

43114 (iii) a decision issued by:

43115 (A) the commission; or

43116 (B) a court of competent jurisdiction.

43117 (3) (a) A person may be included as a member of a class in a class action relating to a
43118 tax or fee only if the person:

43119 (i) exhausts all administrative remedies with the commission; and

43120 (ii) requests in writing to be included as a member of the class.

43121 (b) (i) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

43122 Administrative Rulemaking Act, the commission shall make rules to simplify and expedite the
43123 administrative remedies a person shall exhaust as required by Subsection (3)(a).

43124 (ii) The rules required by Subsection (3)(b)(i) may include rules providing for:

43125 (A) expedited filing procedures and forms;

43126 (B) consolidation of hearings procedures as may be reasonably needed to accommodate
43127 potential inclusion of similarly situated persons; and

43128 (C) the designation of test or sample cases to avoid multiple hearings.

43129 (iii) The commission shall report to the Revenue and Taxation Interim Committee on
43130 the status of the rules required by this Subsection (3)(b) on or before the October 2004 interim
43131 meeting.

43132 (4) Subject to Subsection (5), in a class action brought under this section against the
43133 state or its political subdivisions in which members of the class are awarded a refund or credit of
43134 a tax or fee by a court of competent jurisdiction, the total amount that may be recovered by
43135 members of the class may not exceed the difference between:

43136 (a) the sum of:

43137 (i) the amount of the refund or credit awarded to members of the class; and

43138 (ii) interest as provided in Section 59-1-402; and

43139 (b) if awarded in accordance with Subsection (5), the sum of:

43140 (i) reasonable costs; and

43141 (ii) reasonable [~~attorneys'~~] attorney fees.

43142 (5) (a) For purposes of Subsection (4), at the discretion of the court, the court may
43143 award:

43144 (i) reasonable costs as determined by the court; and

43145 (ii) reasonable [~~attorneys'~~] attorney fees determined under Subsection (5)(b).

43146 (b) Reasonable [~~attorneys'~~] attorney fees awarded in a class action may not exceed a
43147 reasonable hourly rate for work actually performed:

43148 (i) as determined by the court; and

43149 (ii) taking into account all facts and circumstances that the court considers reasonable.

43150 (6) If any provision of this section, or the application of any provision of this section to
43151 any person or circumstance is held unconstitutional or invalid by a court of competent
43152 jurisdiction, the remainder of the section shall be given effect without the invalid provision or
43153 application.

43154 Section 951. Section **59-1-305** is amended to read:

43155 **59-1-305. Convenience fee to cover the costs of electronic payments.**

43156 (1) As used in this section:

43157 (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.

43158 (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.

43159 (2) The commission may collect a convenience electronic payment fee established in
43160 accordance with the procedures and requirements of Section [~~63-38-3-2~~] 63J-1-303 to cover
43161 the costs of electronic payments of taxes and fees administered by the commission.

43162 (3) Notwithstanding any other provisions of this title, the commission shall use a fee
43163 imposed under this section as a dedicated credit to cover the costs of electronic payments.

43164 Section 952. Section **59-1-401** is amended to read:

43165 **59-1-401. Definitions -- Offenses and penalties -- Rulemaking authority -- Statute**
43166 **of limitations -- Commission authority to waive, reduce, or compromise penalty or**
43167 **interest.**

43168 (1) As used in this section:

43169 (a) (i) "Nonqualifying obligation" means a charge, fee, payment, or tax administered by
43170 the commission.

43171 (ii) "Nonqualifying obligation" does not include:

43172 (A) beginning on the phase I activation date, a phase I obligation; or

43173 (B) beginning on the phase II activation date, a phase II obligation.

43174 (b) "Phase I activation date" means the earlier of:

43175 (i) the day on which the commission's GenTax system is activated to administer all
43176 phase I obligations; or

43177 (ii) May 1, 2008.

- 43178 (c) "Phase I obligation" means:
- 43179 (i) a fee under Section 19-6-808;
- 43180 (ii) a tax under Chapter 10, Part 1, Determination and Reporting of Tax Liability and
- 43181 Information;
- 43182 (iii) a tax under Chapter 10, Part 2, Trusts and Estates;
- 43183 (iv) a tax under Chapter 10, Part 12, Single Rate Individual Income Tax Act; or
- 43184 (v) a tax under Chapter 12, Sales and Use Tax Act.
- 43185 (d) "Phase II activation date" means the earlier of:
- 43186 (i) the day on which the commission's GenTax system is activated to administer all
- 43187 phase II obligations; or
- 43188 (ii) May 4, 2009.
- 43189 (e) (i) "Phase II obligation" means:
- 43190 (A) a payment under Chapter 6, Mineral Production Tax Withholding;
- 43191 (B) a tax under Chapter 7, Corporate Franchise and Income Taxes;
- 43192 (C) a payment under Chapter 10, Part 4, Withholding of Tax; or
- 43193 (D) a tax paid on a return filed in accordance with Section 59-10-507.
- 43194 (ii) "Phase II obligation" does not include a payment of estimated tax under Section
- 43195 59-7-504.
- 43196 (2) (a) The due date for filing a return is:
- 43197 (i) if the person filing the return is not allowed by law an extension of time for filing the
- 43198 return, the day on which the return is due as provided by law; or
- 43199 (ii) if the person filing the return is allowed by law an extension of time for filing the
- 43200 return, the last day of that extension of time.
- 43201 (b) (i) A penalty in the amount described in Subsection (2)(b)(ii) is imposed if:
- 43202 (A) a person is required to file a return with respect to a nonqualifying obligation; and
- 43203 (B) the person described in Subsection (2)(b)(i)(A) files the return after the due date
- 43204 described in Subsection (2)(a).
- 43205 (ii) For purposes of Subsection (2)(b)(i), the penalty is an amount equal to the greater

43206 of:

43207 (A) \$20; or

43208 (B) 10% of the unpaid nonqualifying obligation due on the return.

43209 (c) (i) A penalty in the amount described in Subsection (2)(c)(ii) is imposed if a person:

43210 (A) (I) is required to file a return:

43211 (Aa) on or after the phase I activation date; and

43212 (Bb) with respect to a phase I obligation; and

43213 (II) files the return after the due date described in Subsection (2)(a); or

43214 (B) (I) is required to file a return:

43215 (Aa) on or after the phase II activation date; and

43216 (Bb) with respect to a phase II obligation; and

43217 (II) files the return after the due date described in Subsection (2)(a).

43218 (ii) For purposes of Subsection (2)(c)(i), the penalty is an amount equal to the greater

43219 of:

43220 (A) \$20; or

43221 (B) (I) 2% of the unpaid phase I obligation or phase II obligation due on the return if

43222 the return is filed no later than five days after the due date described in Subsection (2)(a);

43223 (II) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

43224 return is filed more than five days after the due date but no later than 15 days after the due date

43225 described in Subsection (2)(a); or

43226 (III) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

43227 return is filed more than 15 days after the due date described in Subsection (2)(a).

43228 (d) This Subsection (2) does not apply to:

43229 (i) an amended return; or

43230 (ii) a return with no tax due.

43231 (3) (a) If a person fails to pay a tax, fee, or charge due, the person is subject to a

43232 penalty as provided in this Subsection (3).

43233 (b) (i) A penalty in the amount described in Subsection (3)(b)(ii) is imposed if:

43234 (A) a person files a return with respect to a nonqualifying obligation on or before the
43235 due date for filing a return described in Subsection (2)(a), but fails to pay the nonqualifying
43236 obligation due on the return on or before that due date;

43237 (B) a person:

43238 (I) is subject to a penalty under Subsection (2)(b); and

43239 (II) fails to pay a nonqualifying obligation due on a return within a 90-day period after
43240 the due date for filing a return described in Subsection (2)(a);

43241 (C) a person:

43242 (I) is mailed a notice of deficiency; and

43243 (II) within a 30-day period after the day on which the notice of deficiency described in
43244 Subsection (3)(b)(i)(C)(I) is mailed:

43245 (Aa) does not file a petition for redetermination or a request for agency action; and

43246 (Bb) fails to pay a nonqualifying obligation due on a return;

43247 (D) (I) the commission:

43248 (Aa) issues an order constituting final agency action resulting from a timely filed
43249 petition for redetermination or a timely filed request for agency action; or

43250 (Bb) is considered to have denied a request for reconsideration under Subsection
43251 [~~63-46b-13~~] 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a
43252 timely filed request for agency action; and

43253 (II) a person fails to pay a nonqualifying obligation due on a return within a 30-day
43254 period after the date the commission:

43255 (Aa) issues the order constituting final agency action described in Subsection
43256 (3)(b)(i)(D)(I)(Aa); or

43257 (Bb) is considered to have denied the request for reconsideration described in
43258 Subsection (3)(b)(i)(D)(I)(Bb); or

43259 (E) a person fails to pay a nonqualifying obligation within a 30-day period after the date
43260 of a final judicial decision resulting from a timely filed petition for judicial review.

43261 (ii) For purposes of Subsection (3)(b)(i), the penalty is an amount equal to the greater

43262 of:

43263 (A) \$20; or

43264 (B) 10% of the unpaid nonqualifying obligation due on the return.

43265 (c) (i) This Subsection (3)(c) applies to a penalty:

43266 (A) imposed on or after the phase I activation date with respect to a phase I obligation;

43267 or

43268 (B) imposed on or after the phase II activation date with respect to a phase II

43269 obligation.

43270 (ii) (A) The penalty described in Subsection (3)(c)(ii)(B) applies if a person:

43271 (I) with respect to a phase I obligation:

43272 (Aa) files a return on or before the due date for filing a return described in Subsection

43273 (2)(a); and

43274 (Bb) fails to pay the phase I obligation due on the return on or before the due date

43275 described in Subsection (2)(a); or

43276 (II) with respect to a phase II obligation:

43277 (Aa) files a return on or before the due date for filing a return described in Subsection

43278 (2)(a); and

43279 (Bb) fails to pay the phase II obligation due on the return on or before the due date

43280 described in Subsection (2)(a).

43281 (B) For purposes of Subsection (3)(c)(ii)(A), the penalty is an amount equal to the

43282 greater of:

43283 (I) \$20; or

43284 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

43285 the phase I obligation or phase II obligation due on the return is paid no later than five days

43286 after the due date for filing a return described in Subsection (2)(a);

43287 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

43288 phase I obligation or phase II obligation due on the return is paid more than five days after the

43289 due date for filing a return described in Subsection (2)(a) but no later than 15 days after that due

43290 date; or

43291 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
43292 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
43293 due date for filing a return described in Subsection (2)(a).

43294 (iii) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iii)(B) if the
43295 person:

43296 (I) is subject to a penalty under Subsection (2)(c); and

43297 (II) fails to pay a phase I obligation or phase II obligation due on a return within a
43298 90-day period after the due date for filing a return described in Subsection (2)(a).

43299 (B) For purposes of Subsection (3)(c)(iii)(A), the penalty is an amount equal to the
43300 greater of:

43301 (I) \$20; or

43302 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if
43303 the phase I obligation or phase II obligation due on the return is paid no later than five days
43304 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II);

43305 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the
43306 phase I obligation or phase II obligation due on the return is paid more than five days after the
43307 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II) but no later than 15 days
43308 after the last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II); or

43309 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the
43310 phase I obligation or phase II obligation due on the return is paid more than 15 days after the
43311 last day of the 90-day period described in Subsection (3)(c)(iii)(A)(II).

43312 (iv) (A) A person is subject to a penalty as provided in Subsection (3)(c)(iv)(B) if the
43313 person:

43314 (I) is mailed a notice of deficiency; and

43315 (II) within a 30-day period after the day on which the notice of deficiency described in
43316 Subsection (3)(c)(iv)(A)(I) is mailed:

43317 (Aa) does not file a petition for redetermination or a request for agency action; and

43318 (Bb) fails to pay a phase I obligation or phase II obligation due on a return.

43319 (B) For purposes of Subsection (3)(c)(iv)(A), the penalty is an amount equal to the

43320 greater of:

43321 (I) \$20; or

43322 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

43323 the phase I obligation or phase II obligation due on the return is paid no later than five days

43324 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II);

43325 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

43326 phase I obligation or phase II obligation due on the return is paid more than five days after the

43327 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II) but no later than 15 days

43328 after the last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II); or

43329 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

43330 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

43331 last day of the 30-day period described in Subsection (3)(c)(iv)(A)(II).

43332 (v) (A) A person is subject to a penalty as provided in Subsection (3)(c)(v)(B) if:

43333 (I) the commission:

43334 (Aa) issues an order constituting final agency action resulting from a timely filed

43335 petition for redetermination or a timely filed request for agency action; or

43336 (Bb) is considered to have denied a request for reconsideration under Subsection

43337 ~~[63-46b-13]~~ 63G-4-302(3)(b) resulting from a timely filed petition for redetermination or a

43338 timely filed request for agency action; and

43339 (II) the person fails to pay a phase I obligation or phase II obligation due on a return

43340 within a 30-day period after the date the commission:

43341 (Aa) issues the order constituting final agency action described in Subsection

43342 (3)(c)(v)(A)(I)(Aa); or

43343 (Bb) is considered to have denied the request for reconsideration described in

43344 Subsection (3)(c)(v)(A)(I)(Bb).

43345 (B) For purposes of Subsection (3)(c)(v)(A), the penalty is an amount equal to the

43346 greater of:

43347 (I) \$20; or

43348 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

43349 the phase I obligation or phase II obligation due on the return is paid no later than five days

43350 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II);

43351 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

43352 phase I obligation or phase II obligation due on the return is paid more than five days after the

43353 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II) but no later than 15 days

43354 after the last day of the 30-day period described in Subsection (3)(c)(v)(A)(II); or

43355 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

43356 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

43357 last day of the 30-day period described in Subsection (3)(c)(v)(A)(II).

43358 (vi) (A) A person is subject to a penalty as provided in Subsection (3)(c)(vi)(B) if

43359 within a 30-day period after the date of a final judicial decision resulting from a timely filed

43360 petition for judicial review, the person fails to pay a phase I obligation or phase II obligation.

43361 (B) For purposes of Subsection (3)(c)(vi)(A), the penalty is an amount equal to the

43362 greater of:

43363 (I) \$20; or

43364 (II) (Aa) 2% of the unpaid phase I obligation or phase II obligation due on the return if

43365 the phase I obligation or phase II obligation due on the return is paid no later than five days

43366 after the last day of the 30-day period described in Subsection (3)(c)(vi)(A);

43367 (Bb) 5% of the unpaid phase I obligation or phase II obligation due on the return if the

43368 phase I obligation or phase II obligation due on the return is paid more than five days after the

43369 last day of the 30-day period described in Subsection (3)(c)(vi)(A) but no later than 15 days

43370 after the last day of the 30-day period described in Subsection (3)(c)(vi)(A); or

43371 (Cc) 10% of the unpaid phase I obligation or phase II obligation due on the return if the

43372 phase I obligation or phase II obligation due on the return is paid more than 15 days after the

43373 last day of the 30-day period described in Subsection (3)(c)(vi)(A).

43374 (4) (a) Beginning January 1, 1995, in the case of any underpayment of estimated tax or
43375 quarterly installments required by Sections 59-5-107, 59-5-207, 59-7-504, and 59-9-104, there
43376 shall be added a penalty in an amount determined by applying the interest rate provided under
43377 Section 59-1-402 plus four percentage points to the amount of the underpayment for the period
43378 of the underpayment.

43379 (b) (i) For purposes of Subsection (4)(a), the amount of the underpayment shall be the
43380 excess of the required installment over the amount, if any, of the installment paid on or before
43381 the due date for the installment.

43382 (ii) The period of the underpayment shall run from the due date for the installment to
43383 whichever of the following dates is the earlier:

43384 (A) the original due date of the tax return, without extensions, for the taxable year; or

43385 (B) with respect to any portion of the underpayment, the date on which that portion is
43386 paid.

43387 (iii) For purposes of this Subsection (4), a payment of estimated tax shall be credited
43388 against unpaid required installments in the order in which the installments are required to be
43389 paid.

43390 (5) (a) Notwithstanding Subsection (2) and except as provided in Subsection (6), a
43391 person allowed by law an extension of time for filing a corporate franchise or income tax return
43392 under Chapter 7, Corporate Franchise and Income Taxes, or an individual income tax return
43393 under Chapter 10, Individual Income Tax Act, is subject to a penalty in the amount described in
43394 Subsection (5)(b) if, on or before the day on which the return is due as provided by law, not
43395 including the extension of time, the person fails to pay:

43396 (i) for a person filing a corporate franchise or income tax return under Chapter 7,
43397 Corporate Franchise and Income Taxes, the payment required by Subsection 59-7-507(1)(b); or

43398 (ii) for a person filing an individual income tax return under Chapter 10, Individual
43399 Income Tax Act, the payment required by Subsection 59-10-516(2).

43400 (b) For purposes of Subsection (5)(a), the penalty per month during the period of the
43401 extension of time for filing the return is an amount equal to 2% of the unpaid tax due on the

43402 return.

43403 (6) If a person does not file a return within an extension of time allowed by Section

43404 59-7-505 or 59-10-516, the person:

43405 (a) is not subject to a penalty in the amount described in Subsection (5)(b); and

43406 (b) is subject to a penalty in an amount equal to the sum of:

43407 (i) a late file penalty in an amount equal to the greater of:

43408 (A) \$20; or

43409 (B) 10% of the unpaid tax due on the return; and

43410 (ii) a late pay penalty in an amount equal to the greater of:

43411 (A) \$20; or

43412 (B) 10% of the unpaid tax due on the return.

43413 (7) (a) Additional penalties for underpayments of tax are as provided in this Subsection

43414 (7)(a).

43415 (i) Except as provided in Subsection (7)(c), if any underpayment of tax is due to

43416 negligence, the penalty is 10% of the underpayment.

43417 (ii) Except as provided in Subsection (7)(d), if any underpayment of tax is due to

43418 intentional disregard of law or rule, the penalty is 15% of the underpayment.

43419 (iii) For intent to evade the tax, the penalty is the greater of \$500 per period or 50% of

43420 the tax due.

43421 (iv) If the underpayment is due to fraud with intent to evade the tax, the penalty is the

43422 greater of \$500 per period or 100% of the underpayment.

43423 (b) If the commission determines that a person is liable for a penalty imposed under

43424 Subsection (7)(a)(ii), (iii), or (iv), the commission shall notify the taxpayer of the proposed

43425 penalty.

43426 (i) The notice of proposed penalty shall:

43427 (A) set forth the basis of the assessment; and

43428 (B) be mailed by certified mail, postage prepaid, to the person's last-known address.

43429 (ii) Upon receipt of the notice of proposed penalty, the person against whom the

43430 penalty is proposed may:

43431 (A) pay the amount of the proposed penalty at the place and time stated in the notice;

43432 or

43433 (B) proceed in accordance with the review procedures of Subsection (7)(b)(iii).

43434 (iii) Any person against whom a penalty has been proposed in accordance with this

43435 Subsection (7) may contest the proposed penalty by filing a petition for an adjudicative

43436 proceeding with the commission.

43437 (iv) (A) If the commission determines that a person is liable for a penalty under this

43438 Subsection (7), the commission shall assess the penalty and give notice and demand for

43439 payment.

43440 (B) The notice and demand for payment described in Subsection (7)(b)(iv)(A) shall be

43441 mailed by certified mail, postage prepaid, to the person's last-known address.

43442 (c) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not

43443 subject to the penalty under Subsection (7)(a)(i) if on or after July 1, 2001:

43444 (i) a court of competent jurisdiction issues a final unappealable judgment or order

43445 determining that:

43446 (A) the seller meets one or more of the criteria described in Subsection

43447 59-12-107(1)(a); and

43448 (B) the commission or a county, city, or town may require the seller to collect a tax

43449 under Subsection 59-12-103(2)(a) or (b); or

43450 (ii) the commission issues a final unappealable administrative order determining that:

43451 (A) the seller meets one or more of the criteria described in Subsection

43452 59-12-107(1)(a); and

43453 (B) the commission or a county, city, or town may require the seller to collect a tax

43454 under Subsection 59-12-103(2)(a) or (b).

43455 (d) A seller that voluntarily collects a tax under Subsection 59-12-107(1)(b) is not

43456 subject to the penalty under Subsection (7)(a)(ii) if:

43457 (i) (A) a court of competent jurisdiction issues a final unappealable judgment or order

43458 determining that:

43459 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

43460 and

43461 (II) the commission or a county, city, or town may require the seller to collect a tax

43462 under Subsection 59-12-103(2)(a) or (b); or

43463 (B) the commission issues a final unappealable administrative order determining that:

43464 (I) the seller meets one or more of the criteria described in Subsection 59-12-107(1)(a);

43465 and

43466 (II) the commission or a county, city, or town may require the seller to collect a tax

43467 under Subsection 59-12-103(2)(a) or (b); and

43468 (ii) the seller's intentional disregard of law or rule is warranted by existing law or by a

43469 nonfrivolous argument for the extension, modification, or reversal of existing law or the

43470 establishment of new law.

43471 (8) Except as provided in Section 59-12-105, the penalty for failure to file an

43472 information return, information report, or a complete supporting schedule is \$50 for each

43473 information return, information report, or supporting schedule up to a maximum of \$1,000.

43474 (9) If any taxpayer, in furtherance of a frivolous position, has a prima facie intent to

43475 delay or impede administration of the tax law and files a purported return that fails to contain

43476 information from which the correctness of reported tax liability can be determined or that clearly

43477 indicates that the tax liability shown must be substantially incorrect, the penalty is \$500.

43478 (10) (a) A seller that fails to remit a tax, fee, or charge monthly as required by

43479 Subsection 59-12-108(1)(a)(ii):

43480 (i) is subject to a penalty described in Subsection (2); and

43481 (ii) may not retain the percentage of sales and use taxes that would otherwise be

43482 allowable under Subsection 59-12-108(2).

43483 (b) A seller that fails to remit a tax, fee, or charge by electronic funds transfer as

43484 required by Subsection 59-12-108(1)(a)(ii)(B):

43485 (i) is subject to a penalty described in Subsection (2); and

- 43486 (ii) may not retain the percentage of sales and use taxes that would otherwise be
43487 allowable under Subsection 59-12-108(2).
- 43488 (11) (a) A person is subject to the penalty provided in Subsection (11)(c) if that person:
43489 (i) commits an act described in Subsection (11)(b) with respect to one or more of the
43490 following documents:
- 43491 (A) a return;
 - 43492 (B) an affidavit;
 - 43493 (C) a claim; or
 - 43494 (D) a document similar to Subsections (11)(a)(i)(A) through (C);
- 43495 (ii) knows or has reason to believe that the document described in Subsection (11)(a)(i)
43496 will be used in connection with any material matter administered by the commission; and
43497 (iii) knows that the document described in Subsection (11)(a)(i), if used in connection
43498 with any material matter administered by the commission, would result in an understatement of
43499 another person's liability for a tax, fee, or charge administered by the commission.
- 43500 (b) The following acts apply to Subsection (11)(a)(i):
- 43501 (i) preparing any portion of a document described in Subsection (11)(a)(i);
 - 43502 (ii) presenting any portion of a document described in Subsection (11)(a)(i);
 - 43503 (iii) procuring any portion of a document described in Subsection (11)(a)(i);
 - 43504 (iv) advising in the preparation or presentation of any portion of a document described
43505 in Subsection (11)(a)(i);
 - 43506 (v) aiding in the preparation or presentation of any portion of a document described in
43507 Subsection (11)(a)(i);
 - 43508 (vi) assisting in the preparation or presentation of any portion of a document described
43509 in Subsection (11)(a)(i); or
 - 43510 (vii) counseling in the preparation or presentation of any portion of a document
43511 described in Subsection (11)(a)(i).
- 43512 (c) For purposes of Subsection (11)(a), the penalty:
43513 (i) shall be imposed by the commission;

43514 (ii) is \$500 for each document described in Subsection (11)(a)(i) with respect to which
43515 the person described in Subsection (11)(a) meets the requirements of Subsection (11)(a); and

43516 (iii) is in addition to any other penalty provided by law.

43517 (d) The commission may seek a court order to enjoin a person from engaging in
43518 conduct that is subject to a penalty under this Subsection (11).

43519 (e) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
43520 Administrative Rulemaking Act, the commission may make rules prescribing the documents that
43521 are similar to Subsections (11)(a)(i)(A) through (C).

43522 (12) (a) As provided in Section 76-8-1101, criminal offenses and penalties are as
43523 provided in Subsections (12)(b) through (e).

43524 (b) (i) Any person who is required by this title or any laws the commission administers
43525 or regulates to register with or obtain a license or permit from the commission, who operates
43526 without having registered or secured a license or permit, or who operates when the registration,
43527 license, or permit is expired or not current, is guilty of a class B misdemeanor.

43528 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(b)(i), the
43529 penalty may not:

43530 (A) be less than \$500; or

43531 (B) exceed \$1,000.

43532 (c) (i) Any person who, with intent to evade any tax or requirement of this title or any
43533 lawful requirement of the commission, fails to make, render, sign, or verify any return or to
43534 supply any information within the time required by law, or who makes, renders, signs, or
43535 verifies any false or fraudulent return or statement, or who supplies any false or fraudulent
43536 information, is guilty of a third degree felony.

43537 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(c)(i), the
43538 penalty may not:

43539 (A) be less than \$1,000; or

43540 (B) exceed \$5,000.

43541 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or

43542 the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree
43543 felony.

43544 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (12)(d)(i), the
43545 penalty may not:

43546 (A) be less than \$1,500; or

43547 (B) exceed \$25,000.

43548 (e) (i) A person is guilty of a second degree felony if that person commits an act:

43549 (A) described in Subsection (12)(e)(ii) with respect to one or more of the following
43550 documents:

43551 (I) a return;

43552 (II) an affidavit;

43553 (III) a claim; or

43554 (IV) a document similar to Subsections (12)(e)(i)(A)(I) through (III); and

43555 (B) subject to Subsection (12)(e)(iii), with knowledge that the document described in
43556 Subsection (12)(e)(i)(A):

43557 (I) is false or fraudulent as to any material matter; and

43558 (II) could be used in connection with any material matter administered by the
43559 commission.

43560 (ii) The following acts apply to Subsection (12)(e)(i):

43561 (A) preparing any portion of a document described in Subsection (12)(e)(i)(A);

43562 (B) presenting any portion of a document described in Subsection (12)(e)(i)(A);

43563 (C) procuring any portion of a document described in Subsection (12)(e)(i)(A);

43564 (D) advising in the preparation or presentation of any portion of a document described
43565 in Subsection (12)(e)(i)(A);

43566 (E) aiding in the preparation or presentation of any portion of a document described in
43567 Subsection (12)(e)(i)(A);

43568 (F) assisting in the preparation or presentation of any portion of a document described
43569 in Subsection (12)(e)(i)(A); or

43570 (G) counseling in the preparation or presentation of any portion of a document
43571 described in Subsection (12)(e)(i)(A).

43572 (iii) This Subsection (12)(e) applies:

43573 (A) regardless of whether the person for which the document described in Subsection
43574 (12)(e)(i)(A) is prepared or presented:

43575 (I) knew of the falsity of the document described in Subsection (12)(e)(i)(A); or

43576 (II) consented to the falsity of the document described in Subsection (12)(e)(i)(A); and

43577 (B) in addition to any other penalty provided by law.

43578 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (12)(e), the
43579 penalty may not:

43580 (A) be less than \$1,500; or

43581 (B) exceed \$25,000.

43582 (v) The commission may seek a court order to enjoin a person from engaging in
43583 conduct that is subject to a penalty under this Subsection (12)(e).

43584 (vi) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
43585 Administrative Rulemaking Act, the commission may make rules prescribing the documents that
43586 are similar to Subsections (12)(e)(i)(A)(I) through (III).

43587 (f) The statute of limitations for prosecution for a violation of this Subsection (12) is
43588 the later of six years:

43589 (i) from the date the tax should have been remitted; or

43590 (ii) after the day on which the person commits the criminal offense.

43591 (13) Upon making a record of its actions, and upon reasonable cause shown, the
43592 commission may waive, reduce, or compromise any of the penalties or interest imposed under
43593 this part.

43594 Section 953. Section **59-1-403** is amended to read:

43595 **59-1-403. Confidentiality -- Exceptions -- Penalty -- Application to property tax.**

43596 (1) (a) Any of the following may not divulge or make known in any manner any
43597 information gained by that person from any return filed with the commission:

- 43598 (i) a tax commissioner;
- 43599 (ii) an agent, clerk, or other officer or employee of the commission; or
- 43600 (iii) a representative, agent, clerk, or other officer or employee of any county, city, or
- 43601 town.
- 43602 (b) An official charged with the custody of a return filed with the commission is not
- 43603 required to produce the return or evidence of anything contained in the return in any action or
- 43604 proceeding in any court, except:
- 43605 (i) in accordance with judicial order;
- 43606 (ii) on behalf of the commission in any action or proceeding under:
- 43607 (A) this title; or
- 43608 (B) other law under which persons are required to file returns with the commission;
- 43609 (iii) on behalf of the commission in any action or proceeding to which the commission is
- 43610 a party; or
- 43611 (iv) on behalf of any party to any action or proceeding under this title if the report or
- 43612 facts shown by the return are directly involved in the action or proceeding.
- 43613 (c) Notwithstanding Subsection (1)(b), a court may require the production of, and may
- 43614 admit in evidence, any portion of a return or of the facts shown by the return, as are specifically
- 43615 pertinent to the action or proceeding.
- 43616 (2) This section does not prohibit:
- 43617 (a) a person or that person's duly authorized representative from receiving a copy of any
- 43618 return or report filed in connection with that person's own tax;
- 43619 (b) the publication of statistics as long as the statistics are classified to prevent the
- 43620 identification of particular reports or returns; and
- 43621 (c) the inspection by the attorney general or other legal representative of the state of the
- 43622 report or return of any taxpayer:
- 43623 (i) who brings action to set aside or review a tax based on the report or return;
- 43624 (ii) against whom an action or proceeding is contemplated or has been instituted under
- 43625 this title; or

43626 (iii) against whom the state has an unsatisfied money judgment.

43627 (3) (a) Notwithstanding Subsection (1) and for purposes of administration, the

43628 commission may by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

43629 Utah Administrative Rulemaking Act, provide for a reciprocal exchange of information with:

43630 (i) the United States Internal Revenue Service; or

43631 (ii) the revenue service of any other state.

43632 (b) Notwithstanding Subsection (1) and for all taxes except individual income tax and

43633 corporate franchise tax, the commission may by rule, made in accordance with [~~Title 63,~~

43634 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, share information

43635 gathered from returns and other written statements with the federal government, any other

43636 state, any of the political subdivisions of another state, or any political subdivision of this state,

43637 except as limited by Sections 59-12-209 and 59-12-210, if the political subdivision, other state,

43638 or the federal government grant substantially similar privileges to this state.

43639 (c) Notwithstanding Subsection (1) and for all taxes except individual income tax and

43640 corporate franchise tax, the commission may by rule, in accordance with [~~Title 63, Chapter 46a~~]

43641 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, provide for the issuance of

43642 information concerning the identity and other information of taxpayers who have failed to file

43643 tax returns or to pay any tax due.

43644 (d) Notwithstanding Subsection (1), the commission shall provide to the Solid and

43645 Hazardous Waste Control Board executive secretary, as defined in Section 19-6-102, as

43646 requested by the executive secretary, any records, returns, or other information filed with the

43647 commission under Chapter 13, Motor and Special Fuel Tax Act, or Section 19-6-410.5

43648 regarding the environmental assurance program participation fee.

43649 (e) Notwithstanding Subsection (1), at the request of any person the commission shall

43650 provide that person sales and purchase volume data reported to the commission on a report,

43651 return, or other information filed with the commission under:

43652 (i) Chapter 13, Part 2, Motor Fuel; or

43653 (ii) Chapter 13, Part 4, Aviation Fuel.

43654 (f) Notwithstanding Subsection (1), upon request from a tobacco product manufacturer,
43655 as defined in Section 59-22-202, the commission shall report to the manufacturer:

43656 (i) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
43657 manufacturer and reported to the commission for the previous calendar year under Section
43658 59-14-407; and

43659 (ii) the quantity of cigarettes, as defined in Section 59-22-202, produced by the
43660 manufacturer for which a tax refund was granted during the previous calendar year under
43661 Section 59-14-401 and reported to the commission under Subsection 59-14-401(1)(a)(v).

43662 (g) Notwithstanding Subsection (1), the commission shall notify manufacturers,
43663 distributors, wholesalers, and retail dealers of a tobacco product manufacturer that is prohibited
43664 from selling cigarettes to consumers within the state under Subsection 59-14-210(2).

43665 (h) Notwithstanding Subsection (1), the commission may:

43666 (i) provide to the Division of Consumer Protection within the Department of Commerce
43667 and the attorney general data:

43668 (A) reported to the commission under Section 59-14-212; or

43669 (B) related to a violation under Section 59-14-211; and

43670 (ii) upon request provide to any person data reported to the commission under
43671 Subsections 59-14-212(1)(a) through (c) and Subsection 59-14-212(1)(g).

43672 (i) Notwithstanding Subsection (1), the commission shall, at the request of a committee
43673 of the Legislature, Office of the Legislative Fiscal Analyst, or Governor's Office of Planning and
43674 Budget, provide to the committee or office the total amount of revenues collected by the
43675 commission under Chapter 24, Radioactive Waste Facility Tax Act, for the time period specified
43676 by the committee or office.

43677 (j) Notwithstanding Subsection (1), the commission shall at the request of the
43678 Legislature provide to the Legislature the total amount of sales or uses exempt under
43679 Subsection 59-12-104(46) reported to the commission in accordance with Section 59-12-105.

43680 (k) Notwithstanding Subsection (1), the commission shall make the directory required
43681 by Section 59-14-603 available for public inspection.

43682 (l) Notwithstanding Subsection (1), the commission may share information with federal,
43683 state, or local agencies as provided in Subsection 59-14-606(3).

43684 (m) (i) Notwithstanding Subsection (1), the commission shall provide the Office of
43685 Recovery Services within the Department of Human Services any relevant information obtained
43686 from a return filed under Chapter 10, Individual Income Tax Act, regarding a taxpayer who has
43687 become obligated to the Office of Recovery Services.

43688 (ii) The information described in Subsection (3)(m)(i) may be provided by the Office of
43689 Recovery Services to any other state's child support collection agency involved in enforcing that
43690 support obligation.

43691 (n) (i) Notwithstanding Subsection (1), upon request from the state court administrator,
43692 the commission shall provide to the state court administrator, the name, address, telephone
43693 number, county of residence, and Social Security number on resident returns filed under
43694 Chapter 10, Individual Income Tax Act.

43695 (ii) The state court administrator may use the information described in Subsection
43696 (3)(n)(i) only as a source list for the master jury list described in Section 78-46-10.

43697 (o) Notwithstanding Subsection (1), the commission shall at the request of a committee,
43698 commission, or task force of the Legislature provide to the committee, commission, or task
43699 force of the Legislature any information relating to a tax imposed under Chapter 9, Taxation of
43700 Admitted Insurers, relating to the study required by Section 59-9-101.

43701 (p) (i) As used in this Subsection (3)(p), "office" means the:

43702 (A) Office of the Legislative Fiscal Analyst; or

43703 (B) Office of Legislative Research and General Counsel.

43704 (ii) Notwithstanding Subsection (1) and except as provided in Subsection (3)(p)(iii), the
43705 commission shall at the request of an office provide to the office all information:

43706 (A) gained by the commission; and

43707 (B) required to be attached to or included in returns filed with the commission.

43708 (iii) (A) An office may not request and the commission may not provide to an office a
43709 person's:

- 43710 (I) address;
- 43711 (II) name;
- 43712 (III) Social Security number; or
- 43713 (IV) taxpayer identification number.
- 43714 (B) The commission shall in all instances protect the privacy of a person as required by
- 43715 Subsection (3)(p)(iii)(A).
- 43716 (iv) An office may provide information received from the commission in accordance
- 43717 with this Subsection (3)(p) only:
- 43718 (A) as:
- 43719 (I) a fiscal estimate;
- 43720 (II) fiscal note information; or
- 43721 (III) statistical information; and
- 43722 (B) if the information is classified to prevent the identification of a particular return.
- 43723 (v) (A) A person may not request information from an office under [~~Title 63, Chapter~~
- 43724 ~~2] Title 63G, Chapter 2, Government Records Access and Management Act, or this section, if~~
- 43725 that office received the information from the commission in accordance with this Subsection
- 43726 (3)(p).
- 43727 (B) An office may not provide to a person that requests information in accordance with
- 43728 Subsection (3)(p)(v)(A) any information other than the information the office provides in
- 43729 accordance with Subsection (3)(p)(iv).
- 43730 (4) (a) Reports and returns shall be preserved for at least three years.
- 43731 (b) After the three-year period provided in Subsection (4)(a) the commission may
- 43732 destroy a report or return.
- 43733 (5) (a) Any person who violates this section is guilty of a class A misdemeanor.
- 43734 (b) If the person described in Subsection (5)(a) is an officer or employee of the state,
- 43735 the person shall be dismissed from office and be disqualified from holding public office in this
- 43736 state for a period of five years thereafter.
- 43737 (c) Notwithstanding Subsection (5)(a) or (b), an office that requests information in

43738 accordance with Subsection (3)(p)(iii) or a person that requests information in accordance with
43739 Subsection (3)(p)(v):

43740 (i) is not guilty of a class A misdemeanor; and

43741 (ii) is not subject to:

43742 (A) dismissal from office in accordance with Subsection (5)(b); or

43743 (B) disqualification from holding public office in accordance with Subsection (5)(b).

43744 (6) Except as provided in Section 59-1-404, this part does not apply to the property
43745 tax.

43746 Section 954. Section **59-1-404** is amended to read:

43747 **59-1-404. Definitions -- Confidentiality of commercial information obtained from**
43748 **a property taxpayer or derived from the commercial information -- Rulemaking authority**
43749 **-- Exceptions -- Written explanation -- Signature requirements -- Retention of signed**
43750 **explanation by employer -- Penalty.**

43751 (1) As used in this section:

43752 (a) "Appraiser" means an individual who holds an appraiser's certificate or license
43753 issued by the Division of Real Estate under Title 61, Chapter 2b, Real Estate Appraiser
43754 Licensing and Certification Act and includes an individual associated with an appraiser who
43755 assists the appraiser in preparing an appraisal.

43756 (b) "Appraisal" means an appraisal as defined in Section 61-2b-2.

43757 (c) (i) "Commercial information" means:

43758 (A) information of a commercial nature obtained from a property taxpayer regarding
43759 the property taxpayer's property; or

43760 (B) information derived from the information described in this Subsection (1)(c)(i).

43761 (ii) (A) "Commercial information" does not include information regarding a property
43762 taxpayer's property if the information is intended for public use.

43763 (B) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
43764 Administrative Rulemaking Act, for purposes of Subsection (1)(c)(ii)(A), the commission may
43765 by rule prescribe the circumstances under which information is intended for public use.

- 43766 (d) "Consultation service" means a consultation service as defined in Section 61-2b-2.
- 43767 (e) "Locally assessed property" means property that is assessed by a county assessor in
- 43768 accordance with Chapter 2, Part 3, County Assessment.
- 43769 (f) "Property taxpayer" means a person that:
- 43770 (i) is a property owner; or
- 43771 (ii) has in effect a contract with a property owner to:
- 43772 (A) make filings on behalf of the property owner;
- 43773 (B) process appeals on behalf of the property owner; or
- 43774 (C) pay a tax under Chapter 2, Property Tax Act, on the property owner's property.
- 43775 (g) "Property taxpayer's property" means property with respect to which a property
- 43776 taxpayer:
- 43777 (i) owns the property;
- 43778 (ii) makes filings relating to the property;
- 43779 (iii) processes appeals relating to the property; or
- 43780 (iv) pays a tax under Chapter 2, Property Tax Act, on the property.
- 43781 (h) "Protected commercial information" means commercial information that:
- 43782 (i) identifies a specific property taxpayer; or
- 43783 (ii) would reasonably lead to the identity of a specific property taxpayer.
- 43784 (2) An individual listed under Subsection 59-1-403(1)(a) may not disclose commercial
- 43785 information:
- 43786 (a) obtained in the course of performing any duty that the individual listed under
- 43787 Subsection 59-1-403(1)(a) performs under Chapter 2, Property Tax Act; or
- 43788 (b) relating to an action or proceeding:
- 43789 (i) with respect to a tax imposed on property in accordance with Chapter 2, Property
- 43790 Tax Act; and
- 43791 (ii) that is filed in accordance with:
- 43792 (A) this chapter;
- 43793 (B) Chapter 2, Property Tax Act; or

- 43794 (C) this chapter and Chapter 2, Property Tax Act.
- 43795 (3) (a) Notwithstanding Subsection (2) and subject to Subsection (3)(b), an individual
- 43796 listed under Subsection 59-1-403(1)(a) may disclose the following information:
- 43797 (i) the assessed value of property;
- 43798 (ii) the tax rate imposed on property;
- 43799 (iii) a legal description of property;
- 43800 (iv) the physical description or characteristics of property, including a street address or
- 43801 parcel number for the property;
- 43802 (v) the square footage or acreage of property;
- 43803 (vi) the square footage of improvements on property;
- 43804 (vii) the name of a property taxpayer;
- 43805 (viii) the mailing address of a property taxpayer;
- 43806 (ix) the amount of a property tax:
- 43807 (A) assessed on property;
- 43808 (B) due on property;
- 43809 (C) collected on property;
- 43810 (D) abated on property; or
- 43811 (E) deferred on property;
- 43812 (x) the amount of the following relating to property taxes due on property:
- 43813 (A) interest;
- 43814 (B) costs; or
- 43815 (C) other charges;
- 43816 (xi) the tax status of property, including:
- 43817 (A) an exemption;
- 43818 (B) a property classification;
- 43819 (C) a bankruptcy filing; or
- 43820 (D) whether the property is the subject of an action or proceeding under this title;
- 43821 (xii) information relating to a tax sale of property; or

- 43822 (xiii) information relating to single-family residential property.
- 43823 (b) (i) Subject to Subsection (3)(b)(ii), a person may receive the information described
43824 in Subsection (3)(a) in written format.
- 43825 (ii) The following may charge a reasonable fee to cover the actual cost of providing the
43826 information described in Subsection (3)(a) in written format:
- 43827 (A) the commission;
- 43828 (B) a county;
- 43829 (C) a city; or
- 43830 (D) a town.
- 43831 (4) (a) Notwithstanding Subsection (2) and except as provided in Subsection (4)(c), an
43832 individual listed under Subsection 59-1-403(1)(a) shall disclose commercial information:
- 43833 (i) in accordance with judicial order;
- 43834 (ii) on behalf of the commission in any action or proceeding:
- 43835 (A) under this title;
- 43836 (B) under another law under which a property taxpayer is required to disclose
43837 commercial information; or
- 43838 (C) to which the commission is a party;
- 43839 (iii) on behalf of any party to any action or proceeding under this title if the commercial
43840 information is directly involved in the action or proceeding; or
- 43841 (iv) if the requirements of Subsection (4)(b) are met, that is:
- 43842 (A) relevant to an action or proceeding:
- 43843 (I) filed in accordance with this title; and
- 43844 (II) involving property; or
- 43845 (B) in preparation for an action or proceeding involving property.
- 43846 (b) Commercial information shall be disclosed in accordance with Subsection (4)(a)(iv):
- 43847 (i) if the commercial information is obtained from:
- 43848 (A) a real estate agent if the real estate agent is not a property taxpayer of the property
43849 that is the subject of the action or proceeding;

43850 (B) an appraiser if the appraiser:
43851 (I) is not a property taxpayer of the property that is the subject of the action or
43852 proceeding; and
43853 (II) did not receive the commercial information pursuant to Subsection (8);
43854 (C) a property manager if the property manager is not a property taxpayer of the
43855 property that is the subject of the action or proceeding; or
43856 (D) a property taxpayer other than a property taxpayer of the property that is the
43857 subject of the action or proceeding;
43858 (ii) regardless of whether the commercial information is disclosed in more than one
43859 action or proceeding; and
43860 (iii) (A) if a county board of equalization conducts the action or proceeding, the county
43861 board of equalization takes action to provide that any commercial information disclosed during
43862 the action or proceeding may not be disclosed by any person conducting or participating in the
43863 action or proceeding except as specifically allowed by this section;
43864 (B) if the commission conducts the action or proceeding, the commission enters a
43865 protective order or, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
43866 Administrative Rulemaking Act, makes rules specifying that any commercial information
43867 disclosed during the action or proceeding may not be disclosed by any person conducting or
43868 participating in the action or proceeding except as specifically allowed by this section; or
43869 (C) if a court of competent jurisdiction conducts the action or proceeding, the court
43870 enters a protective order specifying that any commercial information disclosed during the action or
43871 proceeding may not be disclosed by any person conducting or participating in the action or
43872 proceeding except as specifically allowed by this section.
43873 (c) Notwithstanding Subsection (4)(a), a court may require the production of, and may
43874 admit in evidence, commercial information that is specifically pertinent to the action or
43875 proceeding.
43876 (5) Notwithstanding Subsection (2), this section does not prohibit:
43877 (a) the following from receiving a copy of any commercial information relating to the

43878 basis for assessing a tax that is charged to a property taxpayer:

43879 (i) the property taxpayer;

43880 (ii) a duly authorized representative of the property taxpayer;

43881 (iii) a person that has in effect a contract with the property taxpayer to:

43882 (A) make filings on behalf of the property taxpayer;

43883 (B) process appeals on behalf of the property taxpayer; or

43884 (C) pay a tax under Chapter 2, Property Tax Act, on the property taxpayer's property;

43885 (iv) a property taxpayer that purchases property from another property taxpayer; or

43886 (v) a person that the property taxpayer designates in writing as being authorized to

43887 receive the commercial information;

43888 (b) the publication of statistics as long as the statistics are classified to prevent the

43889 identification of a particular property taxpayer's commercial information; or

43890 (c) the inspection by the attorney general or other legal representative of the state or a

43891 legal representative of a political subdivision of the state of the commercial information of a

43892 property taxpayer:

43893 (i) that brings action to set aside or review a tax or property valuation based on the

43894 commercial information;

43895 (ii) against which an action or proceeding is contemplated or has been instituted under

43896 this title; or

43897 (iii) against which the state or a political subdivision of the state has an unsatisfied

43898 money judgment.

43899 (6) Notwithstanding Subsection (2), in accordance with [~~Title 63, Chapter 46a~~] Title

43900 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule establish

43901 standards authorizing an individual listed under Subsection 59-1-403(1)(a) to disclose

43902 commercial information:

43903 (a) (i) in a published decision; or

43904 (ii) in carrying out official duties; and

43905 (b) if that individual listed under Subsection 59-1-403(1)(a) consults with the property

43906 taxpayer that provided the commercial information.

43907 (7) Notwithstanding Subsection (2):

43908 (a) an individual listed under Subsection 59-1-403(1)(a) may share commercial

43909 information with the following:

43910 (i) another individual listed in Subsection 59-1-403(1)(a)(i) or (ii); or

43911 (ii) a representative, agent, clerk, or other officer or employee of a county as required

43912 to fulfill an obligation created by Chapter 2, Property Tax Act;

43913 (b) an individual listed under Subsection 59-1-403(1)(a) may perform the following to

43914 fulfill an obligation created by Chapter 2, Property Tax Act:

43915 (i) publish notice;

43916 (ii) provide notice; or

43917 (iii) file a lien; or

43918 (c) the commission may by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title

43919 63G, Chapter 3, Utah Administrative Rulemaking Act, share commercial information gathered

43920 from returns and other written statements with the federal government, any other state, any of

43921 the political subdivisions of another state, or any political subdivision of this state, if these

43922 political subdivisions or the federal government grant substantially similar privileges to this

43923 state.

43924 (8) Notwithstanding Subsection (2):

43925 (a) subject to the limitations in this section, an individual described in Subsection

43926 59-1-403(1)(a) may share the following commercial information with an appraiser:

43927 (i) the sales price of locally assessed property and the related financing terms;

43928 (ii) capitalization rates and related rates and ratios related to the valuation of locally

43929 assessed property; and

43930 (iii) income and expense information related to the valuation of locally assessed

43931 property; and

43932 (b) except as provided in Subsection (4), an appraiser who receives commercial

43933 information:

- 43934 (i) may disclose the commercial information:
- 43935 (A) to an individual described in Subsection 59-1-403(1)(a);
- 43936 (B) to an appraiser;
- 43937 (C) in an appraisal if protected commercial information is removed to protect its
- 43938 confidential nature; or
- 43939 (D) in performing a consultation service if protected commercial information is not
- 43940 disclosed; and
- 43941 (ii) may not use the commercial information:
- 43942 (A) for a purpose other than to prepare an appraisal or perform a consultation service;
- 43943 or
- 43944 (B) for a purpose intended to be, or which could reasonably be foreseen to be,
- 43945 anti-competitive to a property taxpayer.
- 43946 (9) (a) The commission shall:
- 43947 (i) prepare a written explanation of this section; and
- 43948 (ii) make the written explanation described in Subsection (9)(a)(i) available to the
- 43949 public.
- 43950 (b) An employer of a person described in Subsection 59-1-403(1)(a) shall:
- 43951 (i) provide the written explanation described in Subsection (9)(a)(i) to each person
- 43952 described in Subsection 59-1-403(1)(a) who is reasonably likely to receive commercial
- 43953 information;
- 43954 (ii) require each person who receives a written explanation in accordance with
- 43955 Subsection (9)(b)(i) to:
- 43956 (A) read the written explanation; and
- 43957 (B) sign the written explanation; and
- 43958 (iii) retain each written explanation that is signed in accordance with Subsection
- 43959 (9)(b)(ii) for a time period:
- 43960 (A) beginning on the day on which a person signs the written explanation in accordance
- 43961 with Subsection (9)(b)(ii); and

43962 (B) ending six years after the day on which the employment of the person described in
43963 Subsection (9)(b)(iii)(A) by the employer terminates.

43964 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
43965 Administrative Rulemaking Act, the commission shall by rule define "employer."

43966 (10) (a) An individual described in Subsection (1)(a) or 59-1-403(1)(a), or an individual
43967 that violates a protective order or similar limitation entered pursuant to Subsection (4)(b)(iii), is
43968 guilty of a class A misdemeanor if that person:

43969 (i) intentionally discloses commercial information in violation of this section; and

43970 (ii) knows that the disclosure described in Subsection (10)(a)(i) is prohibited by this
43971 section.

43972 (b) If the individual described in Subsection (10)(a) is an officer or employee of the
43973 state or a county and is convicted of violating this section, the individual shall be dismissed from
43974 office and be disqualified from holding public office in this state for a period of five years
43975 thereafter.

43976 (c) If the individual described in Subsection (10)(a) is an appraiser, the appraiser shall
43977 forfeit any certification or license received under Title 61, Section 2b, Real Estate Appraiser
43978 Licensing and Certification Act, for a period of five years.

43979 (d) If the individual described in Subsection (10)(a) is an individual associated with an
43980 appraiser who assists the appraiser in preparing appraisals, the individual shall be prohibited
43981 from becoming licensed or certified under Title 61, Section 2b, Real Estate Appraiser Licensing
43982 and Certification Act, for a period of five years.

43983 Section 955. Section **59-1-502.5** is amended to read:

43984 **59-1-502.5. Initial hearing.**

43985 (1) At least 30 days before any formal hearing is held in response to a party's request for
43986 agency action, an initial hearing shall be held before one or more tax commissioners or an
43987 administrative law judge designated by the commission at which proffers of evidence, including
43988 testimony, documents, and other exhibits may be made and oral or written argument on legal
43989 issues may be received.

43990 (2) Any party participating in an initial hearing shall have the right to informal discovery
43991 under any rules established by the commission.

43992 (3) Parties may appear at the initial hearing in person or through agents, employees, or
43993 other representatives, but any person appearing on behalf of another party or entity shall have
43994 full settlement authority on behalf of the party ~~he~~ the person is representing.

43995 (4) A record may not be kept of the initial hearing and all initial hearing proceedings
43996 are privileged and do not constitute admissions against interest of any party participating in the
43997 hearing.

43998 (5) At the initial hearing, or as soon thereafter as reasonably practicable, the
43999 commission may take any action it deems appropriate to settle, compromise, or reduce the
44000 deficiency, or adjust the assessed valuation of any property.

44001 (6) Nothing in this section may limit a party's right to a formal hearing under ~~[Title 63,~~
44002 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

44003 Section 956. Section **59-1-601** is amended to read:

44004 **59-1-601. District court jurisdiction.**

44005 (1) In addition to the jurisdiction granted in Section ~~[63-46b-15]~~ 63G-4-402, beginning
44006 July 1, 1994, the district court shall have jurisdiction to review by trial de novo all decisions
44007 issued by the commission after that date resulting from formal adjudicative proceedings.

44008 (2) As used in this section, "trial de novo" means an original, independent proceeding,
44009 and does not mean a trial de novo on the record.

44010 (3) (a) In any appeal to the district court pursuant to this section taken after January 1,
44011 1997, the commission shall certify a record of its proceedings to the district court.

44012 (b) This Subsection (3) supercedes Section ~~[63-46b-16]~~ 63G-4-403 pertaining to
44013 judicial review of formal adjudicative proceedings.

44014 Section 957. Section **59-1-602** is amended to read:

44015 **59-1-602. Right to appeal -- Venue -- County as party in interest.**

44016 (1) (a) Any aggrieved party appearing before the commission or county whose tax
44017 revenues are affected by the decision may at that party's option petition for judicial review in the

44018 district court pursuant to this section, or in the Supreme Court or the Court of Appeals pursuant
44019 to Section 59-1-610.

44020 (b) Judicial review of formal or informal adjudicative proceedings in the district is in the
44021 district court located in the county of residence or principal place of business of the affected
44022 taxpayer or, in the case of a taxpayer whose taxes are assessed on a statewide basis, to the
44023 Third Judicial District Court in and for Salt Lake County.

44024 (c) Notwithstanding Section [~~63-46b-15~~] 63G-4-402, a petition for review made to the
44025 district court under this section shall conform to the Utah Rules of Appellate Procedure.

44026 (2) A county whose tax revenues are affected by the decision being reviewed shall be
44027 allowed to be a party in interest in the proceeding before the court.

44028 Section 958. Section **59-1-610** is amended to read:

44029 **59-1-610. Standard of review of appellate court.**

44030 (1) When reviewing formal adjudicative proceedings commenced before the
44031 commission, the Court of Appeals or Supreme Court shall:

44032 (a) grant the commission deference concerning its written findings of fact, applying a
44033 substantial evidence standard on review; and

44034 (b) grant the commission no deference concerning its conclusions of law, applying a
44035 correction of error standard, unless there is an explicit grant of discretion contained in a statute
44036 at issue before the appellate court.

44037 (2) This section supercedes Section [~~63-46b-16~~] 63G-4-403 pertaining to judicial
44038 review of formal adjudicative proceedings.

44039 Section 959. Section **59-1-1302** is amended to read:

44040 **59-1-1302. Definitions.**

44041 (1) "Gross income" is as defined in Section 61, Internal Revenue Code.

44042 (2) "Income tax" means a tax imposed under:

44043 (a) Chapter 7, Corporate Franchise and Income Taxes; or

44044 (b) Chapter 10, Individual Income Tax Act.

44045 (3) "Income tax return" means a return filed under:

- 44046 (a) Chapter 7, Corporate Franchise and Income Taxes; or
- 44047 (b) Chapter 10, Individual Income Tax Act.
- 44048 (4) "Listed transaction" means a reportable transaction that is the same as, or
- 44049 substantially similar to, a transaction or arrangement specifically identified as a listed transaction
- 44050 by the:
- 44051 (a) United States Secretary of the Treasury in written materials interpreting the
- 44052 requirements of Section 6011, Internal Revenue Code; or
- 44053 (b) commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 44054 Chapter 3, Utah Administrative Rulemaking Act.
- 44055 (5) "Material advisor" is as defined in Section 6111, Internal Revenue Code.
- 44056 (6) "Reportable transaction" means a transaction or arrangement that:
- 44057 (a) is carried out through or invested in by one or more entities that:
- 44058 (i) are organized in this state;
- 44059 (ii) do business in this state;
- 44060 (iii) derive gross income from sources within this state;
- 44061 (iv) are subject to income tax; or
- 44062 (v) are otherwise subject to the jurisdiction of this state; and
- 44063 (b) is:
- 44064 (i) a transaction or arrangement described in 26 C.F.R. Sec. 1.6011-4(b)(2) through (7);
- 44065 or
- 44066 (ii) a reportable transaction as described by the commission by rule made in accordance
- 44067 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 44068 (7) "Taxpayer" means a person that is required to file an income tax return.
- 44069 (8) "Unitary group" is as defined in Section 59-7-101.
- 44070 Section 960. Section **59-1-1303** is amended to read:
- 44071 **59-1-1303. Taxpayer disclosure of reportable transactions.**
- 44072 (1) A taxpayer is subject to this section for each taxable year in which:
- 44073 (a) the taxpayer participates in a reportable transaction;

44074 (b) the taxpayer:

44075 (i) is included in a federal consolidated return under Sections 1501 and 1504(b),

44076 Internal Revenue Code; and

44077 (ii) participates in a reportable transaction; or

44078 (c) the taxpayer is a member of a group that:

44079 (i) is a unitary group; and

44080 (ii) participates in a reportable transaction.

44081 (2) (a) A taxpayer described in Subsection (1) shall disclose a reportable transaction to

44082 the commission in a manner required by the commission by rule made in accordance with [~~Title~~

44083 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

44084 (b) If a taxpayer described in Subsection (1) is required to file a disclosure statement

44085 under 26 C.F.R. Sec. 1.6011-4, the taxpayer shall provide the commission a copy of that

44086 disclosure statement in a manner required by the commission by rule made in accordance with

44087 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

44088 (3) (a) For a listed transaction entered into on or after January 1, 2004, but on or before

44089 December 31, 2006, a disclosure statement required by this section shall be attached to:

44090 (i) (A) the taxpayer's income tax return for the taxable year beginning on or after

44091 January 1, 2007, but beginning on or before December 31, 2007; and

44092 (B) any amended income tax return that the taxpayer files for the taxable year beginning

44093 on or after January 1, 2007, but beginning on or before December 31, 2007; and

44094 (ii) subject to Subsection (3)(b):

44095 (A) the taxpayer's income tax return for any taxable year after the taxable year

44096 beginning on or after January 1, 2007, but beginning on or before December 31, 2007, for

44097 which there is a reduction in income tax as a result of the listed transaction; and

44098 (B) any amended income tax return for any taxable year after the taxable year beginning

44099 on or after January 1, 2007, but beginning on or before December 31, 2007, for which there is a

44100 reduction in income tax as a result of the listed transaction.

44101 (b) For purposes of Subsection (3)(a)(ii), a reduction in income tax as a result of a

44102 listed transaction includes a loss, credit, or deduction if the loss, credit, or deduction results
44103 from a listed transaction that is carried forward or carried back.

44104 (4) For a reportable transaction entered into on or after January 1, 2004, a disclosure
44105 statement required by this section shall be attached to an amended income tax return filed on or
44106 after January 1, 2007, if the filing of the amended income tax return reflects a determination by
44107 the Internal Revenue Service of the federal income tax treatment of the reportable transaction.

44108 (5) (a) For a reportable transaction entered into on or after January 1, 2007, a
44109 disclosure statement required by this section shall be attached to:

44110 (i) (A) the taxpayer's income tax return for the taxable year during which the transaction
44111 was entered into; and

44112 (B) any amended income tax return that the taxpayer files for the taxable year during
44113 which the transaction was entered into; and

44114 (ii) subject to Subsection (5)(b):

44115 (A) the taxpayer's income tax return for any taxable year after the taxable year during
44116 which the transaction was entered into, for which there is a reduction in income tax as a result
44117 of the reportable transaction; and

44118 (B) any amended income tax return for any taxable year after the taxable year during
44119 which the transaction was entered into, for which there is a reduction in income tax as a result
44120 of the reportable transaction.

44121 (b) For purposes of Subsection (5)(a)(ii), a reduction in income tax as a result of a
44122 reportable transaction includes a loss, credit, or deduction if the loss, credit, or deduction results
44123 from a reportable transaction that is carried forward or carried back.

44124 Section 961. Section **59-1-1306** is amended to read:

44125 **59-1-1306. Material advisor disclosure of reportable transactions.**

44126 (1) (a) A material advisor shall disclose a reportable transaction to the commission on a
44127 form provided by the commission.

44128 (b) The disclosure described in Subsection (1)(a):

44129 (i) shall include information:

44130 (A) identifying and describing the transaction; and
44131 (B) describing any potential tax benefits expected to result from the transaction; and
44132 (ii) may include information other than the information described in Subsection (1)(b)(i)
44133 as required by the commission.

44134 (2) If a material advisor described in Subsection (1) is required to file a return disclosing
44135 a reportable transaction under Section 6111, Internal Revenue Code, the material advisor shall
44136 provide the commission a copy of that return.

44137 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
44138 Administrative Rulemaking Act, the commission shall make rules prescribing:

44139 (a) the date a:

44140 (i) disclosure required by Subsection (1) shall be filed with the commission; and

44141 (ii) copy of a return required by Subsection (2) shall be filed with the commission;

44142 (b) that only one person may be required to meet the requirements of Subsection (1) or
44143 (2) if two or more persons would otherwise be required to meet the requirements of Subsection
44144 (1) or (2); and

44145 (c) exemptions from Subsection (1) or (2).

44146 Section 962. Section **59-1-1307** is amended to read:

44147 **59-1-1307. Material advisor maintenance of list.**

44148 (1) For each reportable transaction, a material advisor shall maintain a list of the
44149 persons to which the material advisor provides material aid, assistance, or advice with respect to
44150 organizing, managing, promoting, selling, implementing, insuring, or carrying out a reportable
44151 transaction.

44152 (2) The list described in Subsection (1) shall include:

44153 (a) the name of each person described in Subsection (1) that is:

44154 (i) a taxpayer;

44155 (ii) (A) a taxpayer; and

44156 (B) a member of a unitary group; or

44157 (iii) (A) a taxpayer; and

44158 (B) included in a federal consolidated return under Sections 1501 and 1504(b), Internal
44159 Revenue Code;

44160 (b) the same information required to be contained in the list described in 26 C.F.R. Sec.
44161 301.6112-1; and

44162 (c) any additional information required by the commission by rule made in accordance
44163 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

44164 (3) The list described in Subsection (1) shall be maintained in the same form and manner
44165 as the list described in 26 C.F.R. Sec. 301.6112-1.

44166 (4) A material advisor required to maintain a list under Subsection (1) shall:

44167 (a) make the list available to the commission upon written request by the commission;
44168 and

44169 (b) retain the information that is required to be included on the list for seven years.

44170 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
44171 Administrative Rulemaking Act, the commission shall make rules prescribing that only one
44172 person may be required to meet the requirements of this section if two or more persons would
44173 otherwise be required to meet the requirements of this section.

44174 Section 963. Section **59-2-102** is amended to read:

44175 **59-2-102. Definitions.**

44176 As used in this chapter and title:

44177 (1) "Aerial applicator" means aircraft or rotorcraft used exclusively for the purpose of
44178 engaging in dispensing activities directly affecting agriculture or horticulture with an
44179 airworthiness certificate from the Federal Aviation Administration certifying the aircraft or
44180 rotorcraft's use for agricultural and pest control purposes.

44181 (2) "Air charter service" means an air carrier operation which requires the customer to
44182 hire an entire aircraft rather than book passage in whatever capacity is available on a scheduled
44183 trip.

44184 (3) "Air contract service" means an air carrier operation available only to customers
44185 who engage the services of the carrier through a contractual agreement and excess capacity on

44186 any trip and is not available to the public at large.

44187 (4) "Aircraft" is as defined in Section 72-10-102.

44188 (5) "Airline" means any air carrier operating interstate routes on a scheduled basis
44189 which offers to fly passengers or cargo on the basis of available capacity on regularly scheduled
44190 routes.

44191 (6) "Assessment roll" means a permanent record of the assessment of property as
44192 assessed by the county assessor and the commission and may be maintained manually or as a
44193 computerized file as a consolidated record or as multiple records by type, classification, or
44194 categories.

44195 (7) (a) "Certified revenue levy" means a property tax levy that provides the same
44196 amount of ad valorem property tax revenue as was collected for the prior year, plus new
44197 growth, but exclusive of revenue from collections from redemptions, interest, and penalties.

44198 (b) For purposes of this Subsection (7), "ad valorem property tax revenue" does not
44199 include property tax revenue received by a taxing entity from personal property that is:

44200 (i) assessed by a county assessor in accordance with Part 3, County Assessment; and

44201 (ii) semiconductor manufacturing equipment.

44202 (8) "County-assessed commercial vehicle" means:

44203 (a) any commercial vehicle, trailer, or semitrailer which is not apportioned under
44204 Section 41-1a-301 and is not operated interstate to transport the vehicle owner's goods or
44205 property in furtherance of the owner's commercial enterprise;

44206 (b) any passenger vehicle owned by a business and used by its employees for
44207 transportation as a company car or vanpool vehicle; and

44208 (c) vehicles which are:

44209 (i) especially constructed for towing or wrecking, and which are not otherwise used to
44210 transport goods, merchandise, or people for compensation;

44211 (ii) used or licensed as taxicabs or limousines;

44212 (iii) used as rental passenger cars, travel trailers, or motor homes;

44213 (iv) used or licensed in this state for use as ambulances or hearses;

- 44214 (v) especially designed and used for garbage and rubbish collection; or
- 44215 (vi) used exclusively to transport students or their instructors to or from any private,
- 44216 public, or religious school or school activities.
- 44217 (9) (a) Except as provided in Subsection (9)(b), for purposes of Section 59-2-801,
- 44218 "designated tax area" means a tax area created by the overlapping boundaries of only the
- 44219 following taxing entities:
- 44220 (i) a county; and
- 44221 (ii) a school district.
- 44222 (b) Notwithstanding Subsection (9)(a), "designated tax area" includes a tax area created
- 44223 by the overlapping boundaries of:
- 44224 (i) the taxing entities described in Subsection (9)(a); and
- 44225 (ii) (A) a city or town if the boundaries of the school district under Subsection (9)(a)
- 44226 and the boundaries of the city or town are identical; or
- 44227 (B) a special service district if the boundaries of the school district under Subsection
- 44228 (9)(a) are located entirely within the special service district.
- 44229 (10) "Eligible judgment" means a final and unappealable judgment or order under
- 44230 Section 59-2-1330:
- 44231 (a) that became a final and unappealable judgment or order no more than 14 months
- 44232 prior to the day on which the notice required by Subsection 59-2-919(4) is required to be
- 44233 mailed; and
- 44234 (b) for which a taxing entity's share of the final and unappealable judgment or order is
- 44235 greater than or equal to the lesser of:
- 44236 (i) \$5,000; or
- 44237 (ii) 2.5% of the total ad valorem property taxes collected by the taxing entity in the
- 44238 previous fiscal year.
- 44239 (11) (a) "Escaped property" means any property, whether personal, land, or any
- 44240 improvements to the property, subject to taxation and is:
- 44241 (i) inadvertently omitted from the tax rolls, assigned to the incorrect parcel, or assessed

44242 to the wrong taxpayer by the assessing authority;

44243 (ii) undervalued or omitted from the tax rolls because of the failure of the taxpayer to
44244 comply with the reporting requirements of this chapter; or

44245 (iii) undervalued because of errors made by the assessing authority based upon
44246 incomplete or erroneous information furnished by the taxpayer.

44247 (b) Property which is undervalued because of the use of a different valuation
44248 methodology or because of a different application of the same valuation methodology is not
44249 "escaped property."

44250 (12) "Fair market value" means the amount at which property would change hands
44251 between a willing buyer and a willing seller, neither being under any compulsion to buy or sell
44252 and both having reasonable knowledge of the relevant facts. For purposes of taxation, "fair
44253 market value" shall be determined using the current zoning laws applicable to the property in
44254 question, except in cases where there is a reasonable probability of a change in the zoning laws
44255 affecting that property in the tax year in question and the change would have an appreciable
44256 influence upon the value.

44257 (13) "Farm machinery and equipment," for purposes of the exemption provided under
44258 Section 59-2-1101, means tractors, milking equipment and storage and cooling facilities, feed
44259 handling equipment, irrigation equipment, harvesters, choppers, grain drills and planters, tillage
44260 tools, scales, combines, spreaders, sprayers, haying equipment, and any other machinery or
44261 equipment used primarily for agricultural purposes; but does not include vehicles required to be
44262 registered with the Motor Vehicle Division or vehicles or other equipment used for business
44263 purposes other than farming.

44264 (14) "Geothermal fluid" means water in any form at temperatures greater than 120
44265 degrees centigrade naturally present in a geothermal system.

44266 (15) "Geothermal resource" means:

44267 (a) the natural heat of the earth at temperatures greater than 120 degrees centigrade;

44268 and

44269 (b) the energy, in whatever form, including pressure, present in, resulting from, created

- 44270 by, or which may be extracted from that natural heat, directly or through a material medium.
- 44271 (16) (a) "Goodwill" means:
- 44272 (i) acquired goodwill that is reported as goodwill on the books and records:
- 44273 (A) of a taxpayer; and
- 44274 (B) that are maintained for financial reporting purposes; or
- 44275 (ii) the ability of a business to:
- 44276 (A) generate income:
- 44277 (I) that exceeds a normal rate of return on assets; and
- 44278 (II) resulting from a factor described in Subsection (16)(b); or
- 44279 (B) obtain an economic or competitive advantage resulting from a factor described in
- 44280 Subsection (16)(b).
- 44281 (b) The following factors apply to Subsection (16)(a)(ii):
- 44282 (i) superior management skills;
- 44283 (ii) reputation;
- 44284 (iii) customer relationships;
- 44285 (iv) patronage; or
- 44286 (v) a factor similar to Subsections (16)(b)(i) through (iv).
- 44287 (c) "Goodwill" does not include:
- 44288 (i) the intangible property described in Subsection (20)(a) or (b);
- 44289 (ii) locational attributes of real property, including:
- 44290 (A) zoning;
- 44291 (B) location;
- 44292 (C) view;
- 44293 (D) a geographic feature;
- 44294 (E) an easement;
- 44295 (F) a covenant;
- 44296 (G) proximity to raw materials;
- 44297 (H) the condition of surrounding property; or

- 44298 (I) proximity to markets;
- 44299 (iii) value attributable to the identification of an improvement to real property,
- 44300 including:
- 44301 (A) reputation of the designer, builder, or architect of the improvement;
- 44302 (B) a name given to, or associated with, the improvement; or
- 44303 (C) the historic significance of an improvement; or
- 44304 (iv) the enhancement or assemblage value specifically attributable to the interrelation of
- 44305 the existing tangible property in place working together as a unit.
- 44306 (17) "Governing body" means:
- 44307 (a) for a county, city, or town, the legislative body of the county, city, or town;
- 44308 (b) for a local district under Title 17B, Limited Purpose Local Government Entities -
- 44309 Local Districts, the local district's board of trustees;
- 44310 (c) for a school district, the local board of education; or
- 44311 (d) for a special service district under Title 17A, Chapter 2, Part 13, Utah Special
- 44312 Service District Act:
- 44313 (i) the legislative body of the county or municipality that created the special service
- 44314 district, to the extent that the county or municipal legislative body has not delegated authority to
- 44315 an administrative control board established under Section 17A-2-1326; or
- 44316 (ii) the administrative control board, to the extent that the county or municipal
- 44317 legislative body has delegated authority to an administrative control board established under
- 44318 Section 17A-2-1326.
- 44319 (18) (a) For purposes of Section 59-2-103:
- 44320 (i) "household" means the association of persons who live in the same dwelling, sharing
- 44321 its furnishings, facilities, accommodations, and expenses; and
- 44322 (ii) "household" includes married individuals, who are not legally separated, that have
- 44323 established domiciles at separate locations within the state.
- 44324 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 44325 Administrative Rulemaking Act, the commission may make rules defining the term "domicile."

44326 (19) (a) Except as provided in Subsection (19)(c), "improvement" means a building,
44327 structure, fixture, fence, or other item that is permanently attached to land, regardless of
44328 whether the title has been acquired to the land, if:

- 44329 (i) (A) attachment to land is essential to the operation or use of the item; and
- 44330 (B) the manner of attachment to land suggests that the item will remain attached to the
44331 land in the same place over the useful life of the item; or
- 44332 (ii) removal of the item would:
 - 44333 (A) cause substantial damage to the item; or
 - 44334 (B) require substantial alteration or repair of a structure to which the item is attached.
- 44335 (b) "Improvement" includes:
 - 44336 (i) an accessory to an item described in Subsection (19)(a) if the accessory is:
 - 44337 (A) essential to the operation of the item described in Subsection (19)(a); and
 - 44338 (B) installed solely to serve the operation of the item described in Subsection (19)(a);
 - 44339 and
 - 44340 (ii) an item described in Subsection (19)(a) that:
 - 44341 (A) is temporarily detached from the land for repairs; and
 - 44342 (B) remains located on the land.
 - 44343 (c) Notwithstanding Subsections (19)(a) and (b), "improvement" does not include:
 - 44344 (i) an item considered to be personal property pursuant to rules made in accordance
44345 with Section 59-2-107;
 - 44346 (ii) a moveable item that is attached to land:
 - 44347 (A) for stability only; or
 - 44348 (B) for an obvious temporary purpose;
 - 44349 (iii) (A) manufacturing equipment and machinery; or
 - 44350 (B) essential accessories to manufacturing equipment and machinery;
 - 44351 (iv) an item attached to the land in a manner that facilitates removal without substantial
44352 damage to:
 - 44353 (A) the land; or

44354 (B) the item; or

44355 (v) a transportable factory-built housing unit as defined in Section 59-2-1502 if that

44356 transportable factory-built housing unit is considered to be personal property under Section

44357 59-2-1503.

44358 (20) "Intangible property" means:

44359 (a) property that is capable of private ownership separate from tangible property,

44360 including:

44361 (i) moneys;

44362 (ii) credits;

44363 (iii) bonds;

44364 (iv) stocks;

44365 (v) representative property;

44366 (vi) franchises;

44367 (vii) licenses;

44368 (viii) trade names;

44369 (ix) copyrights; and

44370 (x) patents;

44371 (b) a low-income housing tax credit; or

44372 (c) goodwill.

44373 (21) "Low-income housing tax credit" means:

44374 (a) a federal low-income housing tax credit under Section 42, Internal Revenue Code;

44375 or

44376 (b) a low-income housing tax credit under:

44377 (i) Section 59-7-607; or

44378 (ii) Section 59-10-1010.

44379 (22) "Metalliferous minerals" includes gold, silver, copper, lead, zinc, and uranium.

44380 (23) "Mine" means a natural deposit of either metalliferous or nonmetalliferous valuable

44381 mineral.

44382 (24) "Mining" means the process of producing, extracting, leaching, evaporating, or
44383 otherwise removing a mineral from a mine.

44384 (25) (a) "Mobile flight equipment" means tangible personal property that is:

44385 (i) owned or operated by an:

44386 (A) air charter service;

44387 (B) air contract service; or

44388 (C) airline; and

44389 (ii) (A) capable of flight;

44390 (B) attached to an aircraft that is capable of flight; or

44391 (C) contained in an aircraft that is capable of flight if the tangible personal property is
44392 intended to be used:

44393 (I) during multiple flights;

44394 (II) during a takeoff, flight, or landing; and

44395 (III) as a service provided by an air charter service, air contract service, or airline.

44396 (b) (i) "Mobile flight equipment" does not include a spare part other than a spare engine
44397 that is rotated:

44398 (A) at regular intervals; and

44399 (B) with an engine that is attached to the aircraft.

44400 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

44401 Administrative Rulemaking Act, the commission may make rules defining the term "regular
44402 intervals."

44403 (26) "Nonmetalliferous minerals" includes, but is not limited to, oil, gas, coal, salts,
44404 sand, rock, gravel, and all carboniferous materials.

44405 (27) "Personal property" includes:

44406 (a) every class of property as defined in Subsection (28) which is the subject of
44407 ownership and not included within the meaning of the terms "real estate" and "improvements";

44408 (b) gas and water mains and pipes laid in roads, streets, or alleys;

44409 (c) bridges and ferries;

44410 (d) livestock which, for the purposes of the exemption provided under Section
44411 59-2-1112, means all domestic animals, honeybees, poultry, fur-bearing animals, and fish; and

44412 (e) outdoor advertising structures as defined in Section 72-7-502.

44413 (28) (a) "Property" means property that is subject to assessment and taxation according
44414 to its value.

44415 (b) "Property" does not include intangible property as defined in this section.

44416 (29) "Public utility," for purposes of this chapter, means the operating property of a
44417 railroad, gas corporation, oil or gas transportation or pipeline company, coal slurry pipeline
44418 company, electrical corporation, telephone corporation, sewerage corporation, or heat
44419 corporation where the company performs the service for, or delivers the commodity to, the
44420 public generally or companies serving the public generally, or in the case of a gas corporation or
44421 an electrical corporation, where the gas or electricity is sold or furnished to any member or
44422 consumers within the state for domestic, commercial, or industrial use. Public utility also means
44423 the operating property of any entity or person defined under Section 54-2-1 except water
44424 corporations.

44425 (30) "Real estate" or "real property" includes:

44426 (a) the possession of, claim to, ownership of, or right to the possession of land;

44427 (b) all mines, minerals, and quarries in and under the land, all timber belonging to
44428 individuals or corporations growing or being on the lands of this state or the United States, and
44429 all rights and privileges appertaining to these; and

44430 (c) improvements.

44431 (31) "Residential property," for the purposes of the reductions and adjustments under
44432 this chapter, means any property used for residential purposes as a primary residence. It does
44433 not include property used for transient residential use or condominiums used in rental pools.

44434 (32) For purposes of Subsection 59-2-801(1)(e), "route miles" means the number of
44435 miles calculated by the commission that is:

44436 (a) measured in a straight line by the commission; and

44437 (b) equal to the distance between a geographical location that begins or ends:

44438 (i) at a boundary of the state; and

44439 (ii) where an aircraft:

44440 (A) takes off; or

44441 (B) lands.

44442 (33) (a) "State-assessed commercial vehicle" means:

44443 (i) any commercial vehicle, trailer, or semitrailer which operates interstate or intrastate
44444 to transport passengers, freight, merchandise, or other property for hire; or

44445 (ii) any commercial vehicle, trailer, or semitrailer which operates interstate and
44446 transports the vehicle owner's goods or property in furtherance of the owner's commercial
44447 enterprise.

44448 (b) "State-assessed commercial vehicle" does not include vehicles used for hire which
44449 are specified in Subsection (8)(c) as county-assessed commercial vehicles.

44450 (34) "Taxable value" means fair market value less any applicable reduction allowed for
44451 residential property under Section 59-2-103.

44452 (35) "Tax area" means a geographic area created by the overlapping boundaries of one
44453 or more taxing entities.

44454 (36) "Taxing entity" means any county, city, town, school district, special taxing
44455 district, local district under Title 17B, Limited Purpose Local Government Entities - Local
44456 Districts, or other political subdivision of the state with the authority to levy a tax on property.

44457 (37) "Tax roll" means a permanent record of the taxes charged on property, as extended
44458 on the assessment roll and may be maintained on the same record or records as the assessment
44459 roll or may be maintained on a separate record properly indexed to the assessment roll. It
44460 includes tax books, tax lists, and other similar materials.

44461 Section 964. Section **59-2-103.5** is amended to read:

44462 **59-2-103.5. Procedures to obtain an exemption for residential property.**

44463 (1) Subject to the other provisions of this section, a county legislative body may by
44464 ordinance require that in order for residential property to be allowed a residential exemption in
44465 accordance with Section 59-2-103, an owner of the residential property shall file with the

44466 county board of equalization a statement:

- 44467 (a) on a form prescribed by the commission by rule;
- 44468 (b) signed by all of the owners of the residential property;
- 44469 (c) certifying that the residential property is residential property; and
- 44470 (d) containing other information as required by the commission by rule.

44471 (2) (a) Subject to Section 59-2-103 and except as provided in Subsection (3), a county
44472 board of equalization shall allow an owner described in Subsection (1) a residential exemption
44473 for the residential property described in Subsection (1) if:

- 44474 (i) the county legislative body enacts the ordinance described in Subsection (1); and
- 44475 (ii) the county board of equalization determines that the requirements of Subsection (1)
44476 are met.

44477 (b) A county board of equalization may require an owner of the residential property
44478 described in Subsection (1) to file the statement described in Subsection (1) only if:

- 44479 (i) that residential property was ineligible for the residential exemption authorized under
44480 Section 59-2-103 during the calendar year immediately preceding the calendar year for which
44481 the owner is seeking to claim the residential exemption for that residential property;
- 44482 (ii) an ownership interest in that residential property changes; or
- 44483 (iii) the county board of equalization determines that there is reason to believe that that
44484 residential property no longer qualifies for the residential exemption in accordance with Section
44485 59-2-103.

44486 (3) Notwithstanding Subsection (2)(a), if a county legislative body does not enact an
44487 ordinance requiring an owner to file a statement in accordance with this section, the county
44488 board of equalization:

- 44489 (a) may not require an owner to file a statement for residential property to be eligible
44490 for a residential exemption in accordance with Section 59-2-103; and
- 44491 (b) shall allow a residential exemption for residential property in accordance with
44492 Section 59-2-103.

44493 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

44494 Administrative Rulemaking Act, the commission shall make rules providing:

44495 (i) the form for the statement described in Subsection (1); and

44496 (ii) the contents of the form for the statement described in Subsection (1).

44497 (b) The commission shall make the form described in Subsection (4)(a) available to
44498 counties.

44499 Section 965. Section **59-2-107** is amended to read:

44500 **59-2-107. Classes of personal property -- Rulemaking authority.**

44501 The commission shall make rules:

44502 (1) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

44503 Administrative Rulemaking Act;

44504 (2) defining classes of items considered to be personal property for purposes of this
44505 chapter;

44506 (3) defining items that fall into the classes established under Subsection (2); and

44507 (4) defining any class or item as personal property if the commission defined that class
44508 or item as personal property prior to January 1, 2004, by:

44509 (a) a rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
44510 Administrative Rulemaking Act;

44511 (b) a published decision of the commission; or

44512 (c) an official schedule published by the commission.

44513 Section 966. Section **59-2-202** is amended to read:

44514 **59-2-202. Statement of taxpayer -- Extension of time for filing -- Assessment**
44515 **without statement -- Penalty for failure to file statement or information -- Waiver,**
44516 **reduction, or compromise of penalty -- Appeals.**

44517 (1) (a) A person, or an officer or agent of that person, owning or operating property
44518 described in Subsection (1)(b) shall, on or before March 1 of each year, file with the
44519 commission a statement:

44520 (i) signed and sworn to by the person, officer, or agent;

44521 (ii) showing in detail all real property and tangible personal property located in the state

44522 that the person owns or operates;

44523 (iii) containing the number of miles of taxable tangible personal property in each county:

44524 (A) that the person owns or operates; and

44525 (B) as valued on January 1 of the year for which the person, officer, or agent is

44526 furnishing the statement; and

44527 (iv) containing any other information the commission requires.

44528 (b) Subsection (1)(a) applies to:

44529 (i) the following property located in the state:

44530 (A) a public utility;

44531 (B) an airline;

44532 (C) an air charter service; or

44533 (D) an air contract service; or

44534 (ii) the following property located in more than one county in the state:

44535 (A) a pipeline company;

44536 (B) a power company;

44537 (C) a canal company;

44538 (D) an irrigation company; or

44539 (E) a telephone company.

44540 (c) (i) The commission may allow an extension for filing the statement under Subsection

44541 (1)(a) for a time period not exceeding 30 days, unless the commission determines that

44542 extraordinary circumstances require a longer period of extension.

44543 (ii) The commission shall grant a person, or an officer or agent of that person, an

44544 extension for filing the statement under Subsection (1)(a) for a time period not exceeding 15

44545 days if:

44546 (A) a federal regulatory agency requires the taxpayer to file a statement that contains

44547 the same information as the statement under Subsection (1)(a); and

44548 (B) the person, or an officer or agent of that person, requests the commission to grant

44549 the extension.

44550 (2) The commission shall assess and list the property described in Subsection (1)(b)
44551 using the best information obtainable by the commission if a person, or an officer or agent of
44552 that person, fails to file the statement required under Subsection (1)(a) on or before the later of:
44553 (a) March 1; or
44554 (b) if the commission allows an extension under Subsection (1)(c) for filing the
44555 statement, the day after the last day of the extension period.

44556 (3) (a) Except as provided in Subsection (3)(c), the commission shall assess a person a
44557 penalty as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails
44558 to file:
44559 (i) the statement required under Subsection (1)(a) on or before the later of:
44560 (A) March 1; or
44561 (B) if the commission allows an extension under Subsection (1)(c) for filing the
44562 statement, the day after the last day of the extension period; or
44563 (ii) any other information the commission determines to be necessary to:
44564 (A) establish valuations for assessment purposes; or
44565 (B) apportion an assessment.

44566 (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:
44567 (i) 10% of the person's estimated tax liability under this chapter for the current calendar
44568 year not to exceed \$50,000; or
44569 (ii) \$100.

44570 (c) (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce,
44571 or compromise a penalty imposed under this section if the commission finds there are reasonable
44572 grounds for the waiver, reduction, or compromise.
44573 (ii) If the commission waives, reduces, or compromises a penalty under Subsection
44574 (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or
44575 compromising the penalty.

44576 (4) The county treasurer shall collect the penalty imposed under Subsection (3) as
44577 provided in Section 59-2-1308.

44578 (5) A person subject to a penalty under Subsection (3) may appeal the penalty
 44579 according to procedures and requirements of [~~Title 63, Chapter 46~~] Title 63G, Chapter 4,
 44580 Administrative Procedures Act.

44581 Section 967. Section **59-2-207** is amended to read:

44582 **59-2-207. Statements for mines -- Penalty for failure to file statement or**
 44583 **information -- Assessment without statement -- Penalty -- Waiver, reduction, or**
 44584 **compromise of penalty -- Extension of time for filing statement -- Appeals.**

44585 (1) (a) A person, or an officer or agent of that person, owning or operating property
 44586 described in Subsection (1)(b) shall file with the commission, on a form prescribed by the
 44587 commission, a sworn statement on or before March 1 of each year:

44588 (i) showing in detail all real property and tangible personal property located in the state
 44589 that the person owns or operates; and

44590 (ii) containing any other information the commission requires.

44591 (b) Subsection (1)(a) applies to the following property:

44592 (i) a mine;

44593 (ii) a mining claim; or

44594 (iii) a valuable mineral deposit, including lands containing coal or hydrocarbons.

44595 (c) (i) The commission may allow an extension for filing the statement under Subsection
 44596 (1)(a) for a time period not exceeding 30 days, unless the commission determines that
 44597 extraordinary circumstances require a longer period of extension.

44598 (ii) The commission shall grant a person, or an officer or agent of that person, an
 44599 extension for filing the statement under Subsection (1)(a) for a time period not exceeding 15
 44600 days if:

44601 (A) a federal regulatory agency requires the taxpayer to file a statement that contains
 44602 the same information as the statement under Subsection (1)(a); and

44603 (B) the person, or an officer or agent of that person, requests the commission to grant
 44604 the extension.

44605 (2) The commission shall assess and list the property described in Subsection (1)(b)

44606 using the best information obtainable by the commission if a person, or an officer or agent of
44607 that person, fails to file the statement required under Subsection (1)(a) on or before the later of:

44608 (a) March 1; or

44609 (b) if the commission allows an extension under Subsection (1)(c) for filing the
44610 statement, the day after the last day of the extension period.

44611 (3) (a) Except as provided in Subsection (3)(c), the commission shall assess a person a
44612 penalty as provided in Subsection (3)(b), if the person, or an officer or agent of that person, fails
44613 to file:

44614 (i) the statement required under Subsection (1)(a) on or before the later of:

44615 (A) March 1; or

44616 (B) if the commission allows an extension under Subsection (1)(c) for filing the
44617 statement, the day after the last day of the extension period; or

44618 (ii) any other information the commission determines to be necessary to:

44619 (A) establish valuations for assessment purposes; or

44620 (B) apportion an assessment.

44621 (b) The penalty described in Subsection (3)(a) is an amount equal to the greater of:

44622 (i) 10% of the person's estimated tax liability under this chapter for the current calendar
44623 year not to exceed \$50,000; or

44624 (ii) \$100.

44625 (c) (i) Notwithstanding Subsections (3)(a) and (4), the commission may waive, reduce,
44626 or compromise a penalty imposed under this section if the commission finds there are reasonable
44627 grounds for the waiver, reduction, or compromise.

44628 (ii) If the commission waives, reduces, or compromises a penalty under Subsection
44629 (3)(c)(i), the commission shall make a record of the grounds for waiving, reducing, or
44630 compromising the penalty.

44631 (4) The county treasurer shall collect the penalty imposed under Subsection (3) as
44632 provided in Section 59-2-1308.

44633 (5) A person subject to a penalty under Subsection (3) may appeal the penalty

44634 according to the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
44635 Administrative Procedures Act.

44636 Section 968. Section **59-2-307** is amended to read:

44637 **59-2-307. Refusal by taxpayer to file signed statement -- Penalty -- Assessor to**
44638 **estimate value -- Reporting information to other counties.**

44639 (1) (a) Each person who fails to file the signed statement required by Section 59-2-306,
44640 fails to file the signed statement with respect to name and place of residence, or fails to appear
44641 and testify when requested by the assessor, shall pay a penalty equal to 10% of the estimated tax
44642 due, but not less than \$100 for each failure to file a signed and completed statement.

44643 (b) Each penalty under Subsection (1)(a) shall be collected in the manner provided by
44644 Sections 59-2-1302 and 59-2-1303, except as otherwise provided for in this section, or by a
44645 judicial proceeding brought in the name of the assessor.

44646 (c) All money recovered by any assessor under this section shall be paid into the county
44647 treasury.

44648 (2) (a) The penalty imposed by Subsection (1)(a) may not be waived or reduced by the
44649 assessor, county, county Board of Equalization, or commission except pursuant to a procedure
44650 for the review and approval of reductions and waivers adopted by county ordinance, or by
44651 administrative rule adopted in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
44652 Utah Administrative Rulemaking Act.

44653 (b) The penalty under Subsection (1)(a) for failure to appear and testify when requested
44654 by the assessor may not be imposed until 30 days after the certified postmark date of mailing of
44655 a subsequent certified notice.

44656 (3) (a) If any owner neglects or refuses to file the signed statement within 30 days of
44657 the date the first county request was sent as required under Section 59-2-306, the assessor shall:

44658 (i) make:

44659 (A) a subsequent request by certified mail for the signed statement, informing the owner
44660 of the consequences of not filing a signed statement; and

44661 (B) a record of the failure to file and an estimate of the value of the property of the

44662 owner based on known facts and circumstances; and

44663 (ii) impose a fee for the actual and necessary expenses of the certified mailing under
44664 Subsection (3)(a)(i)(A).

44665 (b) The value fixed by the assessor may not be reduced by the county board of
44666 equalization or by the commission.

44667 (4) If the signed statement discloses property in any other county, the assessor shall file
44668 the signed statement and send a certified copy to the assessor of each county in which the
44669 property is located.

44670 Section 969. Section **59-2-309** is amended to read:

44671 **59-2-309. Property escaping assessment -- Duties of assessing authority --**
44672 **Property willfully concealed -- Penalties.**

44673 (1) Any escaped property may be assessed by the original assessing authority at any
44674 time as far back as five years prior to the time of discovery, in which case the assessor shall
44675 enter the assessments on the tax rolls and follow the procedures established under Part 13 of
44676 this chapter.

44677 (2) Any property found to be willfully concealed, removed, transferred, or
44678 misrepresented by its owner or agent in order to evade taxation is subject to a penalty equal to
44679 the tax on its value, and neither the penalty nor assessment may be reduced or waived by the
44680 assessor, county, county Board of Equalization, or the commission, except pursuant to a
44681 procedure for the review and approval of waivers adopted by county ordinance, or by
44682 administrative rule adopted in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
44683 Utah Administrative Rulemaking Act.

44684 Section 970. Section **59-2-405.2** is amended to read:

44685 **59-2-405.2. Definitions -- Uniform statewide fee on certain tangible personal**
44686 **property -- Distribution of revenues -- Rulemaking authority -- Determining the length of**
44687 **a vessel.**

44688 (1) As used in this section:

44689 (a) (i) Except as provided in Subsection (1)(a)(ii), "all-terrain vehicle" means a motor

44690 vehicle that:

44691 (A) is an:

44692 (I) all-terrain type I vehicle as defined in Section 41-22-2; or

44693 (II) all-terrain type II vehicle as defined in Section 41-22-2;

44694 (B) is required to be registered in accordance with Title 41, Chapter 22, Off-Highway

44695 Vehicles; and

44696 (C) has:

44697 (I) an engine with more than 150 cubic centimeters displacement;

44698 (II) a motor that produces more than five horsepower; or

44699 (III) an electric motor; and

44700 (ii) notwithstanding Subsection (1)(a)(i), "all-terrain vehicle" does not include a

44701 snowmobile.

44702 (b) "Camper" means a camper:

44703 (i) as defined in Section 41-1a-102; and

44704 (ii) that is required to be registered in accordance with Title 41, Chapter 1a, Part 2,

44705 Registration.

44706 (c) (i) "Canoe" means a vessel that:

44707 (A) is long and narrow;

44708 (B) has curved sides; and

44709 (C) is tapered:

44710 (I) to two pointed ends; or

44711 (II) to one pointed end and is blunt on the other end; and

44712 (ii) "canoe" includes:

44713 (A) a collapsible inflatable canoe;

44714 (B) a kayak;

44715 (C) a racing shell; or

44716 (D) a rowing scull.

44717 (d) "Dealer" is as defined in Section 41-1a-102.

- 44718 (e) "Jon boat" means a vessel that:
- 44719 (i) has a square bow; and
- 44720 (ii) has a flat bottom.
- 44721 (f) "Motor vehicle" is as defined in Section 41-22-2.
- 44722 (g) "Other motorcycle" means a motor vehicle that:
- 44723 (i) is:
- 44724 (A) a motorcycle as defined in Section 41-1a-102; and
- 44725 (B) designed primarily for use and operation over unimproved terrain;
- 44726 (ii) is required to be registered in accordance with Title 41, Chapter 1a, Part 2,
- 44727 Registration; and
- 44728 (iii) has:
- 44729 (A) an engine with more than 150 cubic centimeters displacement; or
- 44730 (B) a motor that produces more than five horsepower.
- 44731 (h) (i) "Other trailer" means a portable vehicle without motive power that is primarily
- 44732 used:
- 44733 (A) to transport tangible personal property; and
- 44734 (B) for a purpose other than a commercial purpose; and
- 44735 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 44736 Administrative Rulemaking Act, for purposes of Subsection (1)(h)(i)(B), the commission may
- 44737 by rule define what constitutes a purpose other than a commercial purpose.
- 44738 (i) "Outboard motor" is as defined in Section 41-1a-102.
- 44739 (j) "Personal watercraft" means a personal watercraft:
- 44740 (i) as defined in Section 73-18-2; and
- 44741 (ii) that is required to be registered in accordance with Title 73, Chapter 18, State
- 44742 Boating Act.
- 44743 (k) (i) "Pontoon" means a vessel that:
- 44744 (A) is:
- 44745 (I) supported by one or more floats; and

44746 (II) propelled by either inboard or outboard power; and
44747 (B) is not:
44748 (I) a houseboat; or
44749 (II) a collapsible inflatable vessel; and
44750 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
44751 Administrative Rulemaking Act, the commission may by rule define the term "houseboat".
44752 (l) "Qualifying adjustment, exemption, or reduction" means an adjustment, exemption,
44753 or reduction:
44754 (i) of all or a portion of a qualifying payment;
44755 (ii) granted by a county during the refund period; and
44756 (iii) received by a qualifying person.
44757 (m) (i) "Qualifying payment" means the payment made:
44758 (A) of a uniform statewide fee in accordance with this section:
44759 (I) by a qualifying person;
44760 (II) to a county; and
44761 (III) during the refund period; and
44762 (B) on an item of qualifying tangible personal property; and
44763 (ii) if a qualifying person received a qualifying adjustment, exemption, or reduction for
44764 an item of qualifying tangible personal property, the qualifying payment for that qualifying
44765 tangible personal property is equal to the difference between:
44766 (A) the payment described in this Subsection (1)(m) for that item of qualifying tangible
44767 personal property; and
44768 (B) the amount of the qualifying adjustment, exemption, or reduction.
44769 (n) "Qualifying person" means a person that paid a uniform statewide fee:
44770 (i) during the refund period;
44771 (ii) in accordance with this section; and
44772 (iii) on an item of qualifying tangible personal property.
44773 (o) "Qualifying tangible personal property" means a:

- 44774 (i) qualifying vehicle; or
- 44775 (ii) qualifying watercraft.
- 44776 (p) "Qualifying vehicle" means:
- 44777 (i) an all-terrain vehicle with an engine displacement that is 100 or more cubic
- 44778 centimeters but 150 or less cubic centimeters;
- 44779 (ii) an other motorcycle with an engine displacement that is 100 or more cubic
- 44780 centimeters but 150 or less cubic centimeters;
- 44781 (iii) a small motor vehicle with an engine displacement that is 100 or more cubic
- 44782 centimeters but 150 or less cubic centimeters;
- 44783 (iv) a snowmobile with an engine displacement that is 100 or more cubic centimeters
- 44784 but 150 or less cubic centimeters; or
- 44785 (v) a street motorcycle with an engine displacement that is 100 or more cubic
- 44786 centimeters but 150 or less cubic centimeters.
- 44787 (q) "Qualifying watercraft" means a:
- 44788 (i) canoe;
- 44789 (ii) collapsible inflatable vessel;
- 44790 (iii) jon boat;
- 44791 (iv) pontoon;
- 44792 (v) sailboat; or
- 44793 (vi) utility boat.
- 44794 (r) "Refund period" means the time period:
- 44795 (i) beginning on January 1, 2006; and
- 44796 (ii) ending on December 29, 2006.
- 44797 (s) "Sailboat" means a sailboat as defined in Section 73-18-2.
- 44798 (t) (i) "Small motor vehicle" means a motor vehicle that:
- 44799 (A) is required to be registered in accordance with Title 41, Motor Vehicles; and
- 44800 (B) has:
- 44801 (I) an engine with 150 or less cubic centimeters displacement; or

- 44802 (II) a motor that produces five or less horsepower; and
- 44803 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 44804 Administrative Rulemaking Act, the commission may by rule develop a process for an owner of
- 44805 a motor vehicle to certify whether the motor vehicle has:
- 44806 (A) an engine with 150 or less cubic centimeters displacement; or
- 44807 (B) a motor that produces five or less horsepower.
- 44808 (u) "Snowmobile" means a motor vehicle that:
- 44809 (i) is a snowmobile as defined in Section 41-22-2;
- 44810 (ii) is required to be registered in accordance with Title 41, Chapter 22, Off-Highway
- 44811 Vehicles; and
- 44812 (iii) has:
- 44813 (A) an engine with more than 150 cubic centimeters displacement; or
- 44814 (B) a motor that produces more than five horsepower.
- 44815 (v) "Street motorcycle" means a motor vehicle that:
- 44816 (i) is:
- 44817 (A) a motorcycle as defined in Section 41-1a-102; and
- 44818 (B) designed primarily for use and operation on highways;
- 44819 (ii) is required to be registered in accordance with Title 41, Chapter 1a, Part 2,
- 44820 Registration; and
- 44821 (iii) has:
- 44822 (A) an engine with more than 150 cubic centimeters displacement; or
- 44823 (B) a motor that produces more than five horsepower.
- 44824 (w) "Tangible personal property owner" means a person that owns an item of qualifying
- 44825 tangible personal property.
- 44826 (x) "Tent trailer" means a portable vehicle without motive power that:
- 44827 (i) is constructed with collapsible side walls that:
- 44828 (A) fold for towing by a motor vehicle; and
- 44829 (B) unfold at a campsite;

44830 (ii) is designed as a temporary dwelling for travel, recreational, or vacation use;

44831 (iii) is required to be registered in accordance with Title 41, Chapter 1a, Part 2,

44832 Registration; and

44833 (iv) does not require a special highway movement permit when drawn by a

44834 self-propelled motor vehicle.

44835 (y) (i) Except as provided in Subsection (1)(y)(ii), "travel trailer" means a travel trailer:

44836 (A) as defined in Section 41-1a-102; and

44837 (B) that is required to be registered in accordance with Title 41, Chapter 1a, Part 2,

44838 Registration; and

44839 (ii) notwithstanding Subsection (1)(y)(i), "travel trailer" does not include:

44840 (A) a camper; or

44841 (B) a tent trailer.

44842 (z) (i) "Utility boat" means a vessel that:

44843 (A) has:

44844 (I) two or three bench seating;

44845 (II) an outboard motor; and

44846 (III) a hull made of aluminum, fiberglass, or wood; and

44847 (B) does not have:

44848 (I) decking;

44849 (II) a permanent canopy; or

44850 (III) a floor other than the hull; and

44851 (ii) notwithstanding Subsection (1)(z)(i), "utility boat" does not include a collapsible

44852 inflatable vessel.

44853 (aa) "Vessel" means a vessel:

44854 (i) as defined in Section 73-18-2, including an outboard motor of the vessel; and

44855 (ii) that is required to be registered in accordance with Title 73, Chapter 18, State

44856 Boating Act.

44857 (2) (a) In accordance with Utah Constitution Article XIII, Section 2, Subsection (6),

44858 beginning on January 1, 2006, the tangible personal property described in Subsection (2)(b) is:

44859 (i) exempt from the tax imposed by Section 59-2-103; and

44860 (ii) in lieu of the tax imposed by Section 59-2-103, subject to uniform statewide fees as
44861 provided in this section.

44862 (b) The following tangible personal property applies to Subsection (2)(a) if that tangible
44863 personal property is required to be registered with the state:

44864 (i) an all-terrain vehicle;

44865 (ii) a camper;

44866 (iii) an other motorcycle;

44867 (iv) an other trailer;

44868 (v) a personal watercraft;

44869 (vi) a small motor vehicle;

44870 (vii) a snowmobile;

44871 (viii) a street motorcycle;

44872 (ix) a tent trailer;

44873 (x) a travel trailer; and

44874 (xi) a vessel if that vessel is less than 31 feet in length as determined under Subsection

44875 (6).

44876 (3) For purposes of this section, the uniform statewide fees are:

44877 (a) for an all-terrain vehicle, an other motorcycle, or a snowmobile:

| | | |
|-------|---|-----------------------|
| 44878 | Age of All-Terrain Vehicle, Other Motorcycle, or Snowmobile | Uniform Statewide Fee |
|-------|---|-----------------------|

| | | |
|-------|------------------|------|
| 44879 | 12 or more years | \$10 |
|-------|------------------|------|

| | | |
|-------|--|------|
| 44880 | 9 or more years but less than 12 years | \$20 |
|-------|--|------|

| | | |
|-------|---------------------------------------|------|
| 44881 | 6 or more years but less than 9 years | \$30 |
|-------|---------------------------------------|------|

| | | |
|-------|---------------------------------------|------|
| 44882 | 3 or more years but less than 6 years | \$35 |
|-------|---------------------------------------|------|

| | | |
|-------|-------------------|------|
| 44883 | Less than 3 years | \$45 |
|-------|-------------------|------|

44884 (b) for a camper or a tent trailer:

| | | |
|-------|-------------------------------|-----------------------|
| 44885 | Age of Camper or Tent Trailer | Uniform Statewide Fee |
|-------|-------------------------------|-----------------------|

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| | | |
|-------|--|-----------------------|
| 44886 | 12 or more years | \$10 |
| 44887 | 9 or more years but less than 12 years | \$25 |
| 44888 | 6 or more years but less than 9 years | \$35 |
| 44889 | 3 or more years but less than 6 years | \$50 |
| 44890 | Less than 3 years | \$70 |
| 44891 | (c) for an other trailer: | |
| 44892 | Age of Other Trailer | Uniform Statewide Fee |
| 44893 | 12 or more years | \$10 |
| 44894 | 9 or more years but less than 12 years | \$15 |
| 44895 | 6 or more years but less than 9 years | \$20 |
| 44896 | 3 or more years but less than 6 years | \$25 |
| 44897 | Less than 3 years | \$30 |
| 44898 | (d) for a personal watercraft: | |
| 44899 | Age of Personal Watercraft | Uniform Statewide Fee |
| 44900 | 12 or more years | \$10 |
| 44901 | 9 or more years but less than 12 years | \$25 |
| 44902 | 6 or more years but less than 9 years | \$35 |
| 44903 | 3 or more years but less than 6 years | \$45 |
| 44904 | Less than 3 years | \$55 |
| 44905 | (e) for a small motor vehicle: | |
| 44906 | Age of Small Motor Vehicle | Uniform Statewide Fee |
| 44907 | 6 or more years | \$10 |
| 44908 | 3 or more years but less than 6 years | \$15 |
| 44909 | Less than 3 years | \$25 |
| 44910 | (f) for a street motorcycle: | |
| 44911 | Age of Street Motorcycle | Uniform Statewide Fee |
| 44912 | 12 or more years | \$10 |
| 44913 | 9 or more years but less than 12 years | \$35 |

| | | |
|-------|---|-----------------------|
| 44914 | 6 or more years but less than 9 years | \$50 |
| 44915 | 3 or more years but less than 6 years | \$70 |
| 44916 | Less than 3 years | \$95 |
| 44917 | (g) for a travel trailer: | |
| 44918 | Age of Travel Trailer | Uniform Statewide Fee |
| 44919 | 12 or more years | \$20 |
| 44920 | 9 or more years but less than 12 years | \$65 |
| 44921 | 6 or more years but less than 9 years | \$90 |
| 44922 | 3 or more years but less than 6 years | \$135 |
| 44923 | Less than 3 years | \$175 |
| 44924 | (h) \$10 regardless of the age of the vessel if the vessel is: | |
| 44925 | (i) less than 15 feet in length; | |
| 44926 | (ii) a canoe; | |
| 44927 | (iii) a jon boat; or | |
| 44928 | (iv) a utility boat; | |
| 44929 | (i) for a collapsible inflatable vessel, pontoon, or sailboat, regardless of age: | |
| 44930 | Length of Vessel | Uniform Statewide Fee |
| 44931 | 15 feet or more in length but less than 19 feet in length | \$15 |
| 44932 | 19 feet or more in length but less than 23 feet in length | \$25 |
| 44933 | 23 feet or more in length but less than 27 feet in length | \$40 |
| 44934 | 27 feet or more in length but less than 31 feet in length | \$75 |
| 44935 | (j) for a vessel, other than a canoe, collapsible inflatable vessel, jon boat, pontoon, | |
| 44936 | sailboat, or utility boat, that is 15 feet or more in length but less than 19 feet in length: | |
| 44937 | Age of Vessel | Uniform Statewide Fee |
| 44938 | 12 or more years | \$25 |
| 44939 | 9 or more years but less than 12 years | \$65 |
| 44940 | 6 or more years but less than 9 years | \$80 |
| 44941 | 3 or more years but less than 6 years | \$110 |

44942 Less than 3 years \$150
44943 (k) for a vessel, other than a canoe, collapsible inflatable vessel, jon boat, pontoon,
44944 sailboat, or utility boat, that is 19 feet or more in length but less than 23 feet in length:

| 44945 | Age of Vessel | Uniform Statewide Fee |
|-------|--|-----------------------|
| 44946 | 12 or more years | \$50 |
| 44947 | 9 or more years but less than 12 years | \$120 |
| 44948 | 6 or more years but less than 9 years | \$175 |
| 44949 | 3 or more years but less than 6 years | \$220 |
| 44950 | Less than 3 years | \$275 |

44951 (l) for a vessel, other than a canoe, collapsible inflatable vessel, jon boat, pontoon,
44952 sailboat, or utility boat, that is 23 feet or more in length but less than 27 feet in length:

| 44953 | Age of Vessel | Uniform Statewide Fee |
|-------|--|-----------------------|
| 44954 | 12 or more years | \$100 |
| 44955 | 9 or more years but less than 12 years | \$180 |
| 44956 | 6 or more years but less than 9 years | \$240 |
| 44957 | 3 or more years but less than 6 years | \$310 |
| 44958 | Less than 3 years | \$400 |

44959 (m) for a vessel, other than a canoe, collapsible inflatable vessel, jon boat, pontoon,
44960 sailboat, or utility boat, that is 27 feet or more in length but less than 31 feet in length:

| 44961 | Age of Vessel | Uniform Statewide Fee |
|-------|--|-----------------------|
| 44962 | 12 or more years | \$120 |
| 44963 | 9 or more years but less than 12 years | \$250 |
| 44964 | 6 or more years but less than 9 years | \$350 |
| 44965 | 3 or more years but less than 6 years | \$500 |
| 44966 | Less than 3 years | \$700 |

44967 (4) Notwithstanding Section 59-2-407, tangible personal property subject to the
44968 uniform statewide fees imposed by this section that is brought into the state shall, as a condition
44969 of registration, be subject to the uniform statewide fees unless all property taxes or uniform fees

44970 imposed by the state of origin have been paid for the current calendar year.

44971 (5) (a) The revenues collected in each county from the uniform statewide fees imposed
44972 by this section shall be distributed by the county to each taxing entity in which each item of
44973 tangible personal property subject to the uniform statewide fees is located in the same
44974 proportion in which revenues collected from the ad valorem property tax are distributed.

44975 (b) Each taxing entity described in Subsection (5)(a) that receives revenues from the
44976 uniform statewide fees imposed by this section shall distribute the revenues in the same
44977 proportion in which revenues collected from the ad valorem property tax are distributed.

44978 (6) (a) For purposes of the uniform statewide fee imposed by this section, the length of
44979 a vessel shall be determined as provided in this Subsection (6).

44980 (b) (i) Except as provided in Subsection (6)(b)(ii), the length of a vessel shall be
44981 measured as follows:

44982 (A) the length of a vessel shall be measured in a straight line; and

44983 (B) the length of a vessel is equal to the distance between the bow of the vessel and the
44984 stern of the vessel.

44985 (ii) Notwithstanding Subsection (6)(b)(i), the length of a vessel may not include the
44986 length of:

44987 (A) a swim deck;

44988 (B) a ladder;

44989 (C) an outboard motor; or

44990 (D) an appurtenance or attachment similar to Subsections (6)(b)(ii)(A) through (C) as
44991 determined by the commission by rule.

44992 (iii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
44993 Administrative Rulemaking Act, the commission may by rule define what constitutes an
44994 appurtenance or attachment similar to Subsections (6)(b)(ii)(A) through (C).

44995 (c) The length of a vessel:

44996 (i) (A) for a new vessel, is the length:

44997 (I) listed on the manufacturer's statement of origin if the length of the vessel measured

44998 under Subsection (6)(b) is equal to the length of the vessel listed on the manufacturer's
44999 statement of origin; or

45000 (II) listed on a form submitted to the commission by a dealer in accordance with
45001 Subsection (6)(d) if the length of the vessel measured under Subsection (6)(b) is not equal to
45002 the length of the vessel listed on the manufacturer's statement of origin; or

45003 (B) for a vessel other than a new vessel, is the length:

45004 (I) corresponding to the model number if the length of the vessel measured under
45005 Subsection (6)(b) is equal to the length of the vessel determined by reference to the model
45006 number; or

45007 (II) listed on a form submitted to the commission by an owner of the vessel in
45008 accordance with Subsection (6)(d) if the length of the vessel measured under Subsection (6)(b)
45009 is not equal to the length of the vessel determined by reference to the model number; and

45010 (ii) (A) is determined at the time of the:

45011 (I) first registration as defined in Section 41-1a-102 that occurs on or after January 1,
45012 2006; or

45013 (II) first renewal of registration that occurs on or after January 1, 2006; and

45014 (B) may be determined after the time described in Subsection (6)(c)(ii)(A) only if the
45015 commission requests that a dealer or an owner submit a form to the commission in accordance
45016 with Subsection (6)(d).

45017 (d) (i) A form under Subsection (6)(c) shall:

45018 (A) be developed by the commission;

45019 (B) be provided by the commission to:

45020 (I) a dealer; or

45021 (II) an owner of a vessel;

45022 (C) provide for the reporting of the length of a vessel;

45023 (D) be submitted to the commission at the time the length of the vessel is determined in
45024 accordance with Subsection (6)(c)(ii);

45025 (E) be signed by:

- 45026 (I) if the form is submitted by a dealer, that dealer; or
- 45027 (II) if the form is submitted by an owner of the vessel, an owner of the vessel; and
- 45028 (F) include a certification that the information set forth in the form is true.
- 45029 (ii) A certification made under Subsection (6)(d)(i)(F) is considered as if made under
- 45030 oath and subject to the same penalties as provided by law for perjury.
- 45031 (iii) (A) A dealer or an owner that submits a form to the commission under Subsection
- 45032 (6)(c) is considered to have given the dealer's or owner's consent to an audit or review by:
- 45033 (I) the commission;
- 45034 (II) the county assessor; or
- 45035 (III) the commission and the county assessor.
- 45036 (B) The consent described in Subsection (6)(d)(iii)(A) is a condition to the acceptance
- 45037 of any form.
- 45038 (7) (a) A county that collected a qualifying payment from a qualifying person during the
- 45039 refund period shall issue a refund to the qualifying person as described in Subsection (7)(b) if:
- 45040 (i) the difference described in Subsection (7)(b) is \$1 or more; and
- 45041 (ii) the qualifying person submitted a form in accordance with Subsections (7)(c) and
- 45042 (d).
- 45043 (b) The refund amount shall be calculated as follows:
- 45044 (i) for a qualifying vehicle, the refund amount is equal to the difference between:
- 45045 (A) the qualifying payment the qualifying person paid on the qualifying vehicle during
- 45046 the refund period; and
- 45047 (B) the amount of the statewide uniform fee:
- 45048 (I) for that qualifying vehicle; and
- 45049 (II) that the qualifying person would have been required to pay:
- 45050 (Aa) during the refund period; and
- 45051 (Bb) in accordance with this section had Section 1, Chapter 3, Laws of Utah 2006, Fifth
- 45052 Special Session, been in effect during the refund period; and
- 45053 (ii) for a qualifying watercraft, the refund amount is equal to the difference between:

45054 (A) the qualifying payment the qualifying person paid on the qualifying watercraft
45055 during the refund period; and
45056 (B) the amount of the statewide uniform fee:
45057 (I) for that qualifying watercraft;
45058 (II) that the qualifying person would have been required to pay:
45059 (Aa) during the refund period; and
45060 (Bb) in accordance with this section had Section 1, Chapter 3, Laws of Utah 2006, Fifth
45061 Special Session, been in effect during the refund period.
45062 (c) Before the county issues a refund to the qualifying person in accordance with
45063 Subsection (7)(a) the qualifying person shall submit a form to the county to verify the qualifying
45064 person is entitled to the refund.
45065 (d) (i) A form under Subsection (7)(c) or (8) shall:
45066 (A) be developed by the commission;
45067 (B) be provided by the commission to the counties;
45068 (C) be provided by the county to the qualifying person or tangible personal property
45069 owner;
45070 (D) provide for the reporting of the following:
45071 (I) for a qualifying vehicle:
45072 (Aa) the type of qualifying vehicle; and
45073 (Bb) the amount of cubic centimeters displacement;
45074 (II) for a qualifying watercraft:
45075 (Aa) the length of the qualifying watercraft;
45076 (Bb) the age of the qualifying watercraft; and
45077 (Cc) the type of qualifying watercraft;
45078 (E) be signed by the qualifying person or tangible personal property owner; and
45079 (F) include a certification that the information set forth in the form is true.
45080 (ii) A certification made under Subsection (7)(d)(i)(F) is considered as if made under
45081 oath and subject to the same penalties as provided by law for perjury.

45082 (iii) (A) A qualifying person or tangible personal property owner that submits a form to
45083 a county under Subsection (7)(c) or (8) is considered to have given the qualifying person's
45084 consent to an audit or review by:

- 45085 (I) the commission;
- 45086 (II) the county assessor; or
- 45087 (III) the commission and the county assessor.

45088 (B) The consent described in Subsection (7)(d)(iii)(A) is a condition to the acceptance
45089 of any form.

45090 (e) The county shall make changes to the commission's records with the information
45091 received by the county from the form submitted in accordance with Subsection (7)(c).

45092 (8) A county shall change its records regarding an item of qualifying tangible personal
45093 property if the tangible personal property owner submits a form to the county in accordance
45094 with Subsection (7)(d).

45095 (9) (a) For purposes of this Subsection (9) "owner of tangible personal property" means
45096 a person that was required to pay a uniform statewide fee:

- 45097 (i) during the refund period;
- 45098 (ii) in accordance with this section; and
- 45099 (iii) on an item of tangible personal property subject to the uniform statewide fees
45100 imposed by this section.

45101 (b) A county that collected revenues from uniform statewide fees imposed by this
45102 section during the refund period shall notify an owner of tangible personal property:

- 45103 (i) of the tangible personal property classification changes made to this section pursuant
45104 to Section 1, Chapter 3, Laws of Utah 2006, Fifth Special Session;
- 45105 (ii) that the owner of tangible personal property may obtain and file a form to modify
45106 the county's records regarding the owner's tangible personal property; and
- 45107 (iii) that the owner may be entitled to a refund pursuant to Subsection (7).

45108 Section 971. Section **59-2-406** is amended to read:

45109 **59-2-406. Collection of uniform fees and other motor vehicle fees.**

45110 (1) (a) For the purposes of efficiency in the collection of the uniform fee required by
45111 this section, the commission shall enter into a contract for the collection of the uniform fees
45112 required under Sections 59-2-405, 59-2-405.1, 59-2-405.2, and 59-2-405.3, and certain fees
45113 required by Title 41, Motor Vehicles.

45114 (b) The contract required by this section shall, at the county's option, provide for one of
45115 the following collection agreements:

45116 (i) the collection by the commission of:

45117 (A) the uniform fees required under Sections 59-2-405, 59-2-405.1, 59-2-405.2, and
45118 59-2-405.3; and

45119 (B) all fees listed in Subsection (1)(c); or

45120 (ii) the collection by the county of:

45121 (A) the uniform fees required under Sections 59-2-405, 59-2-405.1, 59-2-405.2, and
45122 59-2-405.3; and

45123 (B) all fees listed in Subsection (1)(c).

45124 (c) For purposes of Subsections (1)(b)(i)(B) and (1)(b)(ii)(B), the fees that are subject
45125 to the contractual agreement required by this section are the following fees imposed by Title 41,
45126 Motor Vehicles:

45127 (i) registration fees for vehicles, mobile homes, manufactured homes, boats, and
45128 off-highway vehicles, with the exception of fleet and proportional registration;

45129 (ii) title fees for vehicles, mobile homes, manufactured homes, boats, and off-highway
45130 vehicles;

45131 (iii) plate fees for vehicles;

45132 (iv) permit fees; and

45133 (v) impound fees.

45134 (d) A county may change the election it makes pursuant to Subsection (1)(b) by
45135 providing written notice of the change to the commission at least 18 months before the change
45136 shall take effect.

45137 (2) The contract shall provide that the party contracting to perform services shall:

45138 (a) be responsible for the collection of:
45139 (i) the uniform fees under Sections 59-2-405, 59-2-405.1, 59-2-405.2, and 59-2-405.3;
45140 and
45141 (ii) any fees described in Subsection (1)(c) as agreed to in the contract;
45142 (b) utilize the documents and forms, guidelines, practices, and procedures that meet the
45143 contract specifications;
45144 (c) meet the performance standards and comply with applicable training requirements
45145 specified in the rules made under Subsection (8)(a); and
45146 (d) be subject to a penalty of 1/2 the difference between the reimbursement fee specified
45147 under Subsection (3) and the reimbursement fee for fiscal year 1997-98 if performance is below
45148 the performance standards specified in the rules made under Subsection (8)(a).
45149 (3) (a) The commission shall recommend a reimbursement fee for collecting the fees as
45150 provided in Subsection (2)(a), except that the commission may not collect a reimbursement fee
45151 on a state-assessed commercial vehicle described in Subsection 59-2-405.1(2)(a)(ii).
45152 (b) The reimbursement fee shall be based on two dollars per standard unit for the first
45153 5,000 standard units in each county and one dollar per standard unit for all other standard units
45154 and shall be annually adjusted by the commission beginning July 1, 1999.
45155 (c) The adjustment shall be equal to any increase in the Consumer Price Index for all
45156 urban consumers, prepared by the United States Bureau of Labor Statistics, during the
45157 preceding calendar year.
45158 (d) The reimbursement fees under this Subsection (3) shall be appropriated by the
45159 Legislature.
45160 (4) All counties that elect to collect the uniform fees described in Subsection
45161 (1)(b)(ii)(A) and any other fees described in Subsection (1)(c) as provided by contract shall be
45162 subject to similar contractual terms.
45163 (5) The party performing the collection services by contract shall use appropriate
45164 automated systems software and equipment compatible with the system used by the other
45165 contracting party in order to ensure the integrity of the current motor vehicle data base and

45166 county tax systems, or successor data bases and systems.

45167 (6) If the county elects not to collect the uniform fees described in Subsection
45168 (1)(b)(ii)(A) and the fees described in Subsection (1)(c):

45169 (a) the commission shall:

45170 (i) collect the uniform fees described in Subsection (1)(b)(ii)(A) and the fees described
45171 in Subsection (1)(c) in each county or regional center as negotiated by the counties with the
45172 commission in accordance with the requirements of this section; and

45173 (ii) provide information to the county in a format and media consistent with the county's
45174 requirements; and

45175 (b) the county shall pay the commission a reimbursement fee as provided in Subsection
45176 (3).

45177 (7) This section shall not limit the authority given to the county in Section 59-2-1302.

45178 (8) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45179 Administrative Rulemaking Act, the commission shall make rules specifying the performance
45180 standards and applicable training requirements for all contracts required by this section.

45181 (b) Beginning on July 1, 1998, each new contract entered into under this section shall
45182 be subject to the rules made under Subsection (8)(a).

45183 Section 972. Section **59-2-503** is amended to read:

45184 **59-2-503. Qualifications for agricultural use assessment.**

45185 (1) For general property tax purposes, land may be assessed on the basis of the value
45186 that the land has for agricultural use if the land:

45187 (a) is not less than five contiguous acres in area, except that land may be assessed on
45188 the basis of the value that the land has for agricultural use:

45189 (i) if:

45190 (A) the land is devoted to agricultural use in conjunction with other eligible acreage;
45191 and

45192 (B) the land and the other eligible acreage described in Subsection (1)(a)(i)(A) have
45193 identical legal ownership; or

- 45194 (ii) as provided under Subsection (4); and
- 45195 (b) except as provided in Subsection (5):
- 45196 (i) is actively devoted to agricultural use; and
- 45197 (ii) has been actively devoted to agricultural use for at least two successive years
- 45198 immediately preceding the tax year for which the land is being assessed under this part.
- 45199 (2) In determining whether land is actively devoted to agricultural use, production per
- 45200 acre for a given county or area and a given type of land shall be determined by using the first
- 45201 applicable of the following:
- 45202 (a) production levels reported in the current publication of the Utah Agricultural
- 45203 Statistics;
- 45204 (b) current crop budgets developed and published by Utah State University; and
- 45205 (c) other acceptable standards of agricultural production designated by the commission
- 45206 by rule adopted in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 45207 Administrative Rulemaking Act.
- 45208 (3) Land may be assessed on the basis of the land's agricultural value if the land:
- 45209 (a) is subject to the privilege tax imposed by Section 59-4-101;
- 45210 (b) is owned by the state or any of the state's political subdivisions; and
- 45211 (c) meets the requirements of Subsection (1).
- 45212 (4) Notwithstanding Subsection (1)(a), the commission or a county board of
- 45213 equalization may grant a waiver of the acreage limitation for land upon:
- 45214 (a) appeal by the owner; and
- 45215 (b) submission of proof that:
- 45216 (i) 80% or more of the owner's, purchaser's, or lessee's income is derived from
- 45217 agricultural products produced on the property in question; or
- 45218 (ii) (A) the failure to meet the acreage requirement arose solely as a result of an
- 45219 acquisition by a governmental entity by:
- 45220 (I) eminent domain; or
- 45221 (II) the threat or imminence of an eminent domain proceeding;

45222 (B) the land is actively devoted to agricultural use; and

45223 (C) no change occurs in the ownership of the land.

45224 (5) (a) Notwithstanding Subsection (1)(b), the commission or a county board of
45225 equalization may grant a waiver of the requirement that the land is actively devoted to
45226 agricultural use for the tax year for which the land is being assessed under this part upon:

45227 (i) appeal by the owner; and

45228 (ii) submission of proof that:

45229 (A) the land was assessed on the basis of agricultural use for at least two years
45230 immediately preceding that tax year; and

45231 (B) the failure to meet the agricultural production requirements for that tax year was
45232 due to no fault or act of the owner, purchaser, or lessee.

45233 (b) As used in Subsection (5)(a), "fault" does not include:

45234 (i) intentional planting of crops or trees which, because of the maturation period, do not
45235 give the owner, purchaser, or lessee a reasonable opportunity to satisfy the production levels
45236 required for land actively devoted to agricultural use; or

45237 (ii) implementation of a bona fide range improvement program, crop rotation program,
45238 or other similar accepted cultural practices which do not give the owner, purchaser, or lessee a
45239 reasonable opportunity to satisfy the production levels required for land actively devoted to
45240 agricultural use.

45241 Section 973. Section **59-2-703** is amended to read:

45242 **59-2-703. Commission to assist county assessors -- Appraisers provided upon**
45243 **request -- Costs of services -- Contingency fee arrangements prohibited.**

45244 (1) The commission shall, upon request and pursuant to mutual agreement, provide
45245 county assessors with technical assistance and appraisal aid. It shall provide certified or licensed
45246 appraisers who, upon request of the county assessor and pursuant to mutual agreement, shall
45247 perform appraisals of property and other technical services as needed by the county assessor.
45248 The costs of these services shall be computed by the commission upon the basis of the number
45249 of days of services rendered. Each county shall pay to the commission 50% of the cost of the

45250 services which they receive.

45251 (2) (a) Both the commission and counties may contract with a private firm or an
45252 individual to conduct appraisals.

45253 (b) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
45254 Access and Management Act, the commission and counties may disclose the name of the
45255 taxpayer and the taxpayer's address to the contract appraiser. A private appraiser is subject to
45256 the confidentiality requirements and penalty provisions provided in [~~Title 63, Chapter 2~~] Title
45257 63G, Chapter 2, Part 8, Remedies.

45258 (c) Neither the commission nor a county may contract with a private firm or an
45259 individual under a contingency fee arrangement to assess property or prosecute or defend an
45260 appeal. An appraisal that has been prepared on a contingency fee basis may not be allowed in
45261 any proceeding before a county board of equalization or the commission.

45262 Section 974. Section **59-2-704.5** is amended to read:

45263 **59-2-704.5. Commission to adopt rules -- Legislative review.**

45264 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45265 Administrative Rulemaking Act, and after receiving the advice of the Utah Assessors
45266 Association, the commission shall by rule adopt standards for determining acceptable
45267 assessment levels and valuation deviations within each county. The standards shall be used for
45268 determining whether factoring or corrective action is required under Subsection 59-2-704(2).

45269 (2) As part of its review of the standards for determining acceptable assessment levels
45270 and valuation deviations within each county, the commission shall consider any relevant
45271 standards promulgated by the International Association of Assessing Officers.

45272 (3) By October 1, 1998, and every five years thereafter, the Revenue and Taxation
45273 Interim Committee shall review the commission's standards and determine whether the
45274 standards should be modified.

45275 Section 975. Section **59-2-801** is amended to read:

45276 **59-2-801. Apportionment of property assessed by commission.**

45277 (1) Before May 25 of each year, the commission shall apportion to each tax area the

45278 total assessment of all of the property the commission assesses as provided in Subsections (1)(a)
45279 through (f).

45280 (a) (i) The commission shall apportion the assessments of the property described in
45281 Subsection (1)(a)(ii):

45282 (A) to each tax area through which the public utility or company described in
45283 Subsection (1)(a)(ii) operates; and

45284 (B) in proportion to the property's value in each tax area.

45285 (ii) Subsection (1)(a)(i) applies to property owned by:

45286 (A) a public utility, except for the rolling stock of a public utility;

45287 (B) a pipeline company;

45288 (C) a power company;

45289 (D) a canal company; or

45290 (E) an irrigation company.

45291 (b) The commission shall apportion the assessments of the rolling stock of a railroad:

45292 (i) to the tax areas through which railroads operate; and

45293 (ii) in the proportion that the length of the main tracks, sidetracks, passing tracks,
45294 switches, and tramways of the railroads in each tax area bears to the total length of the main
45295 tracks, sidetracks, passing tracks, switches, and tramways in the state.

45296 (c) The commission shall apportion the assessments of the property of a car company
45297 to:

45298 (i) each tax area in which a railroad is operated; and

45299 (ii) in the proportion that the length of the main tracks, passing tracks, sidetracks,
45300 switches, and tramways of all of the railroads in each tax area bears to the total length of the
45301 main tracks, passing tracks, sidetracks, switches, and tramways of all of the railroads in the
45302 state.

45303 (d) (i) The commission shall apportion the assessments of the property described in
45304 Subsection (1)(d)(ii) to each tax area in which the property is located.

45305 (ii) Subsection (1)(d)(i) applies to the following property:

45306 (A) mines;

45307 (B) mining claims; or

45308 (C) mining property.

45309 (e) (i) The commission shall apportion the assessments of the property described in

45310 Subsection (1)(e)(ii) to:

45311 (A) each designated tax area; and

45312 (B) in the proportion that the route miles in each designated tax area bear to the total

45313 route miles in the state.

45314 (ii) Subsection (1)(e)(i) applies to the mobile flight equipment owned by an:

45315 (A) air charter service;

45316 (B) air contract service; or

45317 (C) airline.

45318 (f) (i) The commission shall apportion the assessments of the property described in

45319 Subsection (1)(f)(ii) to each tax area in which the property is located as of January 1 of each

45320 year.

45321 (ii) Subsection (1)(f)(i) applies to the real and tangible personal property, other than

45322 mobile flight equipment, owned by an:

45323 (A) air charter service;

45324 (B) air contract service; or

45325 (C) airline.

45326 (2) (a) (i) (A) State-assessed commercial vehicles that weigh 12,001 pounds or more

45327 shall be taxed at a statewide average rate which is calculated from the overall county average

45328 tax rates from the preceding year, exclusive of the property subject to the statewide uniform fee,

45329 weighted by lane miles of principal routes in each county.

45330 (B) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

45331 Administrative Rulemaking Act, the commission shall adopt rules to define "principal routes."

45332 (ii) State-assessed commercial vehicles that weigh 12,000 pounds or less are subject to

45333 the uniform fee provided in Section 59-2-405.1.

45334 (b) The combined revenue from all state-assessed commercial vehicles shall be
45335 apportioned to the counties based on:

45336 (i) 40% by the percentage of lane miles of principal routes within each county as
45337 determined by the commission; and

45338 (ii) 60% by the percentage of total state-assessed vehicles having business situs in each
45339 county.

45340 (c) At least quarterly, the commission shall apportion the total taxes paid on
45341 state-assessed commercial vehicles to the counties.

45342 (d) Each county shall apportion its share of the revenues under this Subsection (2) to
45343 the taxing entities within its boundaries in the same proportion as the assessments of other:

45344 (i) real property;

45345 (ii) tangible personal property; and

45346 (iii) property assessed by the commission.

45347 Section 976. Section **59-2-924** is amended to read:

45348 **59-2-924. Report of valuation of property to county auditor and commission --**
45349 **Transmittal by auditor to governing bodies -- Certified tax rate -- Calculation of certified**
45350 **tax rate -- Rulemaking authority -- Adoption of tentative budget.**

45351 (1) (a) Before June 1 of each year, the county assessor of each county shall deliver to
45352 the county auditor and the commission the following statements:

45353 (i) a statement containing the aggregate valuation of all taxable property in each taxing
45354 entity; and

45355 (ii) a statement containing the taxable value of any additional personal property
45356 estimated by the county assessor to be subject to taxation in the current year.

45357 (b) The county auditor shall, on or before June 8, transmit to the governing body of
45358 each taxing entity:

45359 (i) the statements described in Subsections (1)(a)(i) and (ii);

45360 (ii) an estimate of the revenue from personal property;

45361 (iii) the certified tax rate; and

- 45362 (iv) all forms necessary to submit a tax levy request.
- 45363 (2) (a) (i) The "certified tax rate" means a tax rate that will provide the same ad valorem
- 45364 property tax revenues for a taxing entity as were budgeted by that taxing entity for the prior
- 45365 year.
- 45366 (ii) For purposes of this Subsection (2), "ad valorem property tax revenues" do not
- 45367 include:
 - 45368 (A) collections from redemptions;
 - 45369 (B) interest;
 - 45370 (C) penalties; and
 - 45371 (D) revenue received by a taxing entity from personal property that is:
 - 45372 (I) assessed by a county assessor in accordance with Part 3, County Assessment; and
 - 45373 (II) semiconductor manufacturing equipment.
- 45374 (iii) (A) Except as otherwise provided in this section, the certified tax rate shall be
- 45375 calculated by dividing the ad valorem property tax revenues budgeted for the prior year by the
- 45376 taxing entity by the amount calculated under Subsection (2)(a)(iii)(B).
- 45377 (B) For purposes of Subsection (2)(a)(iii)(A), the legislative body of a taxing entity
- 45378 shall calculate an amount as follows:
 - 45379 (I) calculate for the taxing entity the difference between:
 - 45380 (Aa) the aggregate taxable value of all property taxed; and
 - 45381 (Bb) any redevelopment adjustments for the current calendar year;
 - 45382 (II) after making the calculation required by Subsection (2)(a)(iii)(B)(I), calculate an
 - 45383 amount determined by increasing or decreasing the amount calculated under Subsection
 - 45384 (2)(a)(iii)(B)(I) by the average of the percentage net change in the value of taxable property for
 - 45385 the equalization period for the three calendar years immediately preceding the current calendar
 - 45386 year;
 - 45387 (III) after making the calculation required by Subsection (2)(a)(iii)(B)(II), calculate the
 - 45388 product of:
 - 45389 (Aa) the amount calculated under Subsection (2)(a)(iii)(B)(II); and

45390 (Bb) the percentage of property taxes collected for the five calendar years immediately
45391 preceding the current calendar year; and

45392 (IV) after making the calculation required by Subsection (2)(a)(iii)(B)(III), calculate an
45393 amount determined by subtracting from the amount calculated under Subsection
45394 (2)(a)(iii)(B)(III) any new growth as defined in this section:

45395 (Aa) within the taxing entity; and

45396 (Bb) for the current calendar year.

45397 (C) For purposes of Subsection (2)(a)(iii)(B)(I), the aggregate taxable value of all
45398 property taxed:

45399 (I) except as provided in Subsection (2)(a)(iii)(C)(II), includes the total taxable value of
45400 the real and personal property contained on the tax rolls of the taxing entity; and

45401 (II) does not include the total taxable value of personal property contained on the tax
45402 rolls of the taxing entity that is:

45403 (Aa) assessed by a county assessor in accordance with Part 3, County Assessment; and

45404 (Bb) semiconductor manufacturing equipment.

45405 (D) For purposes of Subsection (2)(a)(iii)(B)(II), for calendar years beginning on or
45406 after January 1, 2007, the value of taxable property does not include the value of personal
45407 property that is:

45408 (I) within the taxing entity assessed by a county assessor in accordance with Part 3,
45409 County Assessment; and

45410 (II) semiconductor manufacturing equipment.

45411 (E) For purposes of Subsection (2)(a)(iii)(B)(III)(Bb), for calendar years beginning on
45412 or after January 1, 2007, the percentage of property taxes collected does not include property
45413 taxes collected from personal property that is:

45414 (I) within the taxing entity assessed by a county assessor in accordance with Part 3,
45415 County Assessment; and

45416 (II) semiconductor manufacturing equipment.

45417 (F) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

45418 Administrative Rulemaking Act, the commission may prescribe rules for calculating
45419 redevelopment adjustments for a calendar year.

45420 (iv) (A) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45421 Administrative Rulemaking Act, the commission shall make rules determining the calculation of
45422 ad valorem property tax revenues budgeted by a taxing entity.

45423 (B) For purposes of Subsection (2)(a)(iv)(A), ad valorem property tax revenues
45424 budgeted by a taxing entity shall be calculated in the same manner as budgeted property tax
45425 revenues are calculated for purposes of Section 59-2-913.

45426 (v) The certified tax rates for the taxing entities described in this Subsection (2)(a)(v)
45427 shall be calculated as follows:

45428 (A) except as provided in Subsection (2)(a)(v)(B), for new taxing entities the certified
45429 tax rate is zero;

45430 (B) for each municipality incorporated on or after July 1, 1996, the certified tax rate is:

45431 (I) in a county of the first, second, or third class, the levy imposed for municipal-type
45432 services under Sections 17-34-1 and 17-36-9; and

45433 (II) in a county of the fourth, fifth, or sixth class, the levy imposed for general county
45434 purposes and such other levies imposed solely for the municipal-type services identified in
45435 Section 17-34-1 and Subsection 17-36-3(22); and

45436 (C) for debt service voted on by the public, the certified tax rate shall be the actual levy
45437 imposed by that section, except that the certified tax rates for the following levies shall be
45438 calculated in accordance with Section 59-2-913 and this section:

45439 (I) school leeways provided for under Sections 11-2-7, 53A-16-110, 53A-17a-125,
45440 53A-17a-127, 53A-17a-133, 53A-17a-134, 53A-17a-143, 53A-17a-145, and 53A-21-103; and

45441 (II) levies to pay for the costs of state legislative mandates or judicial or administrative
45442 orders under Section 59-2-906.3.

45443 (vi) (A) A judgment levy imposed under Section 59-2-1328 or 59-2-1330 shall be
45444 established at that rate which is sufficient to generate only the revenue required to satisfy one or
45445 more eligible judgments, as defined in Section 59-2-102.

45446 (B) The ad valorem property tax revenue generated by the judgment levy shall not be
45447 considered in establishing the taxing entity's aggregate certified tax rate.

45448 (b) (i) For the purpose of calculating the certified tax rate, the county auditor shall use
45449 the taxable value of property on the assessment roll.

45450 (ii) For purposes of Subsection (2)(b)(i), the taxable value of property on the
45451 assessment roll does not include:

45452 (A) new growth as defined in Subsection (2)(b)(iii); or

45453 (B) the total taxable value of personal property contained on the tax rolls of the taxing
45454 entity that is:

45455 (I) assessed by a county assessor in accordance with Part 3, County Assessment; and

45456 (II) semiconductor manufacturing equipment.

45457 (iii) "New growth" means:

45458 (A) the difference between the increase in taxable value of the taxing entity from the
45459 previous calendar year to the current year; minus

45460 (B) the amount of an increase in taxable value described in Subsection (2)(b)(v).

45461 (iv) For purposes of Subsection (2)(b)(iii), the taxable value of the taxing entity does
45462 not include the taxable value of personal property that is:

45463 (A) contained on the tax rolls of the taxing entity if that property is assessed by a
45464 county assessor in accordance with Part 3, County Assessment; and

45465 (B) semiconductor manufacturing equipment.

45466 (v) Subsection (2)(b)(iii)(B) applies to the following increases in taxable value:

45467 (A) the amount of increase to locally assessed real property taxable values resulting
45468 from factoring, reappraisal, or any other adjustments; or

45469 (B) the amount of an increase in the taxable value of property assessed by the
45470 commission under Section 59-2-201 resulting from a change in the method of apportioning the

45471 taxable value prescribed by:

45472 (I) the Legislature;

45473 (II) a court;

45474 (III) the commission in an administrative rule; or

45475 (IV) the commission in an administrative order.

45476 (c) Beginning January 1, 1997, if a taxing entity receives increased revenues from
45477 uniform fees on tangible personal property under Section 59-2-404, 59-2-405, 59-2-405.1,
45478 59-2-405.2, or 59-2-405.3 as a result of any county imposing a sales and use tax under Chapter
45479 12, Part 11, County Option Sales and Use Tax, the taxing entity shall decrease its certified tax
45480 rate to offset the increased revenues.

45481 (d) (i) Beginning July 1, 1997, if a county has imposed a sales and use tax under
45482 Chapter 12, Part 11, County Option Sales and Use Tax, the county's certified tax rate shall be:

45483 (A) decreased on a one-time basis by the amount of the estimated sales and use tax
45484 revenue to be distributed to the county under Subsection 59-12-1102(3); and

45485 (B) increased by the amount necessary to offset the county's reduction in revenue from
45486 uniform fees on tangible personal property under Section 59-2-404, 59-2-405, 59-2-405.1,
45487 59-2-405.2, or 59-2-405.3 as a result of the decrease in the certified tax rate under Subsection
45488 (2)(d)(i)(A).

45489 (ii) The commission shall determine estimates of sales and use tax distributions for
45490 purposes of Subsection (2)(d)(i).

45491 (e) Beginning January 1, 1998, if a municipality has imposed an additional resort
45492 communities sales tax under Section 59-12-402, the municipality's certified tax rate shall be
45493 decreased on a one-time basis by the amount necessary to offset the first 12 months of estimated
45494 revenue from the additional resort communities sales and use tax imposed under Section
45495 59-12-402.

45496 (f) (i) (A) For fiscal year 2000, the certified tax rate of each county required under
45497 Subsection 17-34-1(4)(a) to provide advanced life support and paramedic services to the
45498 unincorporated area of the county shall be decreased by the amount necessary to reduce
45499 revenues in that fiscal year by an amount equal to the difference between the amount the county
45500 budgeted in its 2000 fiscal year budget for advanced life support and paramedic services
45501 countywide and the amount the county spent during fiscal year 2000 for those services,

45502 excluding amounts spent from a municipal services fund for those services.

45503 (B) For fiscal year 2001, the certified tax rate of each county to which Subsection
45504 (2)(f)(i)(A) applies shall be decreased by the amount necessary to reduce revenues in that fiscal
45505 year by the amount that the county spent during fiscal year 2000 for advanced life support and
45506 paramedic services countywide, excluding amounts spent from a municipal services fund for
45507 those services.

45508 (ii) (A) A city or town located within a county of the first class to which Subsection
45509 (2)(f)(i) applies may increase its certified tax rate by the amount necessary to generate within
45510 the city or town the same amount of revenues as the county would collect from that city or
45511 town if the decrease under Subsection (2)(f)(i) did not occur.

45512 (B) An increase under Subsection (2)(f)(ii)(A), whether occurring in a single fiscal year
45513 or spread over multiple fiscal years, is not subject to the notice and hearing requirements of
45514 Sections 59-2-918 and 59-2-919.

45515 (g) (i) The certified tax rate of each county required under Subsection 17-34-1(4)(b) to
45516 provide detective investigative services to the unincorporated area of the county shall be
45517 decreased:

45518 (A) in fiscal year 2001 by the amount necessary to reduce revenues in that fiscal year by
45519 at least \$4,400,000; and

45520 (B) in fiscal year 2002 by the amount necessary to reduce revenues in that fiscal year by
45521 an amount equal to the difference between \$9,258,412 and the amount of the reduction in
45522 revenues under Subsection (2)(g)(i)(A).

45523 (ii) (A) (I) Beginning with municipal fiscal year 2002, a city or town located within a
45524 county to which Subsection (2)(g)(i) applies may increase its certified tax rate to generate
45525 within the city or town the same amount of revenue as the county would have collected during
45526 county fiscal year 2001 from within the city or town except for Subsection (2)(g)(i)(A).

45527 (II) Beginning with municipal fiscal year 2003, a city or town located within a county to
45528 which Subsection (2)(g)(i) applies may increase its certified tax rate to generate within the city
45529 or town the same amount of revenue as the county would have collected during county fiscal

45530 year 2002 from within the city or town except for Subsection (2)(g)(i)(B).

45531 (B) (I) Except as provided in Subsection (2)(g)(ii)(B)(II), an increase in the city or
45532 town's certified tax rate under Subsection (2)(g)(ii)(A), whether occurring in a single fiscal year
45533 or spread over multiple fiscal years, is subject to the notice and hearing requirements of Sections
45534 59-2-918 and 59-2-919.

45535 (II) For an increase under this Subsection (2)(g)(ii) that generates revenue that does not
45536 exceed the same amount of revenue as the county would have collected except for Subsection
45537 (2)(g)(i), the requirements of Sections 59-2-918 and 59-2-919 do not apply if the city or town:

45538 (Aa) publishes a notice that meets the size, type, placement, and frequency requirements
45539 of Section 59-2-919, reflects that the increase is a shift of a tax from one imposed by the county
45540 to one imposed by the city or town, and explains how the revenues from the tax increase will be
45541 used; and

45542 (Bb) holds a public hearing on the tax shift that may be held in conjunction with the city
45543 or town's regular budget hearing.

45544 (h) (i) This Subsection (2)(h) applies to each county that:

45545 (A) establishes a countywide special service district under Title 17A, Chapter 2, Part
45546 13, Utah Special Service District Act, to provide jail service, as provided in Subsection
45547 17A-2-1304(1)(a)(x); and

45548 (B) levies a property tax on behalf of the special service district under Section
45549 17A-2-1322.

45550 (ii) (A) The certified tax rate of each county to which this Subsection (2)(h) applies
45551 shall be decreased by the amount necessary to reduce county revenues by the same amount of
45552 revenues that will be generated by the property tax imposed on behalf of the special service
45553 district.

45554 (B) Each decrease under Subsection (2)(h)(ii)(A) shall occur contemporaneously with
45555 the levy on behalf of the special service district under Section 17A-2-1322.

45556 (i) (i) As used in this Subsection (2)(i):

45557 (A) "Annexing county" means a county whose unincorporated area is included within a

45558 fire district by annexation.

45559 (B) "Annexing municipality" means a municipality whose area is included within a fire
45560 district by annexation.

45561 (C) "Equalized fire protection tax rate" means the tax rate that results from:

45562 (I) calculating, for each participating county and each participating municipality, the
45563 property tax revenue necessary to cover all of the costs associated with providing fire
45564 protection, paramedic, and emergency services:

45565 (Aa) for a participating county, in the unincorporated area of the county; and

45566 (Bb) for a participating municipality, in the municipality; and

45567 (II) adding all the amounts calculated under Subsection (2)(i)(i)(C)(I) for all
45568 participating counties and all participating municipalities and then dividing that sum by the
45569 aggregate taxable value of the property, as adjusted in accordance with Section 59-2-913:

45570 (Aa) for participating counties, in the unincorporated area of all participating counties;
45571 and

45572 (Bb) for participating municipalities, in all the participating municipalities.

45573 (D) "Fire district" means a service area under Title 17B, Chapter 2a, Part 9, Service
45574 Area Act, in the creation of which an election was not required under Subsection
45575 17B-1-214(3)(c).

45576 (E) "Fire protection tax rate" means:

45577 (I) for an annexing county, the property tax rate that, when applied to taxable property
45578 in the unincorporated area of the county, generates enough property tax revenue to cover all the
45579 costs associated with providing fire protection, paramedic, and emergency services in the
45580 unincorporated area of the county; and

45581 (II) for an annexing municipality, the property tax rate that generates enough property
45582 tax revenue in the municipality to cover all the costs associated with providing fire protection,
45583 paramedic, and emergency services in the municipality.

45584 (F) "Participating county" means a county whose unincorporated area is included within
45585 a fire district at the time of the creation of the fire district.

45586 (G) "Participating municipality" means a municipality whose area is included within a
45587 fire district at the time of the creation of the fire district.

45588 (ii) In the first year following creation of a fire district, the certified tax rate of each
45589 participating county and each participating municipality shall be decreased by the amount of the
45590 equalized fire protection tax rate.

45591 (iii) In the first year following annexation to a fire district, the certified tax rate of each
45592 annexing county and each annexing municipality shall be decreased by the fire protection tax
45593 rate.

45594 (iv) Each tax levied under this section by a fire district shall be considered to be levied
45595 by:

45596 (A) each participating county and each annexing county for purposes of the county's tax
45597 limitation under Section 59-2-908; and

45598 (B) each participating municipality and each annexing municipality for purposes of the
45599 municipality's tax limitation under Section 10-5-112, for a town, or Section 10-6-133, for a city.

45600 (j) For the calendar year beginning on January 1, 2007, the calculation of a taxing
45601 entity's certified tax rate shall be adjusted by the amount necessary to offset any change in the
45602 certified tax rate that may result from excluding the following from the certified tax rate under
45603 Subsection (2)(a) enacted by the Legislature during the 2007 General Session:

45604 (i) personal property tax revenue:

45605 (A) received by a taxing entity;

45606 (B) assessed by a county assessor in accordance with Part 3, County Assessment; and

45607 (C) for personal property that is semiconductor manufacturing equipment; or

45608 (ii) the taxable value of personal property:

45609 (A) contained on the tax rolls of a taxing entity;

45610 (B) assessed by a county assessor in accordance with Part 3, County Assessment; and

45611 (C) that is semiconductor manufacturing equipment.

45612 (3) (a) On or before June 22, each taxing entity shall annually adopt a tentative budget.

45613 (b) If the taxing entity intends to exceed the certified tax rate, it shall notify the county

45614 auditor of:

45615 (i) its intent to exceed the certified tax rate; and

45616 (ii) the amount by which it proposes to exceed the certified tax rate.

45617 (c) The county auditor shall notify all property owners of any intent to exceed the

45618 certified tax rate in accordance with Subsection 59-2-919(2).

45619 (4) (a) The taxable value for the base year under Subsection 17C-1-102(6) shall be

45620 reduced for any year to the extent necessary to provide a community development and renewal

45621 agency established under Title 17C, Limited Purpose Local Government Entities - Community

45622 Development and Renewal Agencies, with approximately the same amount of money the agency

45623 would have received without a reduction in the county's certified tax rate if:

45624 (i) in that year there is a decrease in the certified tax rate under Subsection (2)(c) or

45625 (2)(d)(i);

45626 (ii) the amount of the decrease is more than 20% of the county's certified tax rate of the

45627 previous year; and

45628 (iii) the decrease results in a reduction of the amount to be paid to the agency under

45629 Section 17C-1-403 or 17C-1-404.

45630 (b) The base taxable value under Subsection 17C-1-102(6) shall be increased in any

45631 year to the extent necessary to provide a community development and renewal agency with

45632 approximately the same amount of money as the agency would have received without an

45633 increase in the certified tax rate that year if:

45634 (i) in that year the base taxable value under Subsection 17C-1-102(6) is reduced due to

45635 a decrease in the certified tax rate under Subsection (2)(c) or (2)(d)(i); and

45636 (ii) The certified tax rate of a city, school district, local district, or special service

45637 district increases independent of the adjustment to the taxable value of the base year.

45638 (c) Notwithstanding a decrease in the certified tax rate under Subsection (2)(c) or

45639 (2)(d)(i), the amount of money allocated and, when collected, paid each year to a community

45640 development and renewal agency established under Title 17C, Limited Purpose Local

45641 Government Entities - Community Development and Renewal Agencies, for the payment of

45642 bonds or other contract indebtedness, but not for administrative costs, may not be less than that
45643 amount would have been without a decrease in the certified tax rate under Subsection (2)(c) or
45644 (2)(d)(i).

45645 Section 977. Section **59-2-1004** is amended to read:

45646 **59-2-1004. Appeal to county board of equalization -- Real property -- Time**
45647 **period for appeal -- Decision of board -- Extensions approved by commission -- Appeal to**
45648 **commission.**

45649 (1) (a) A taxpayer dissatisfied with the valuation or the equalization of the taxpayer's
45650 real property may make an application to appeal by:

45651 (i) filing the application with the county board of equalization within the time period
45652 described in Subsection (2); or

45653 (ii) making an application by telephone or other electronic means within the time period
45654 described in Subsection (2) if the county legislative body passes a resolution under Subsection
45655 (5) authorizing applications to be made by telephone or other electronic means.

45656 (b) The contents of the application shall be prescribed by rule of the county board of
45657 equalization.

45658 (2) (a) Except as provided in Subsection (2)(b), for purposes of Subsection (1), a
45659 taxpayer shall make an application to appeal the valuation or the equalization of the taxpayer's
45660 real property on or before the later of:

45661 (i) September 15 of the current calendar year; or

45662 (ii) the last day of a 45-day period beginning on the day on which the county auditor
45663 mails the notice under Subsection 59-2-919(4).

45664 (b) Notwithstanding Subsection (2)(a), in accordance with [~~Title 63, Chapter 46a~~] Title
45665 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules
45666 providing for circumstances under which the county board of equalization is required to accept
45667 an application to appeal that is filed after the time period prescribed in Subsection (2)(a).

45668 (3) The owner shall include in the application under Subsection (1)(a)(i) the owner's
45669 estimate of the fair market value of the property and any evidence which may indicate that the

45670 assessed valuation of the owner's property is improperly equalized with the assessed valuation
45671 of comparable properties.

45672 (4) (a) The county board of equalization shall meet and hold public hearings as
45673 prescribed in Section 59-2-1001.

45674 (b) The county board of equalization shall make a decision on each appeal filed in
45675 accordance with this section within a 60-day period after the day on which the application is
45676 made.

45677 (c) The commission may approve the extension of a time period provided for in
45678 Subsection (4)(b) for a county board of equalization to make a decision on an appeal.

45679 (d) The decision of the board shall contain a determination of the valuation of the
45680 property based on fair market value, and a conclusion that the fair market value is properly
45681 equalized with the assessed value of comparable properties.

45682 (e) If no evidence is presented before the county board of equalization, it will be
45683 presumed that the equalization issue has been met.

45684 (f) (i) If the fair market value of the property that is the subject of the appeal deviates
45685 plus or minus 5% from the assessed value of comparable properties, the valuation of the
45686 appealed property shall be adjusted to reflect a value equalized with the assessed value of
45687 comparable properties.

45688 (ii) The equalized value established under Subsection (4)(f)(i) shall be the assessed
45689 value for property tax purposes until the county assessor is able to evaluate and equalize the
45690 assessed value of all comparable properties to bring them all into conformity with full fair
45691 market value.

45692 (5) If any taxpayer is dissatisfied with the decision of the county board of equalization,
45693 the taxpayer may file an appeal with the commission as prescribed in Section 59-2-1006.

45694 (6) A county legislative body may pass a resolution authorizing taxpayers owing taxes
45695 on property assessed by that county to file property tax appeals applications under this section
45696 by telephone or other electronic means.

45697 Section 978. Section **59-2-1004.5** is amended to read:

45698 **59-2-1004.5. Valuation adjustment for decrease in taxable value caused by a**
45699 **natural disaster.**

45700 (1) For purposes of this section:

45701 (a) "natural disaster" means:

45702 (i) an explosion;

45703 (ii) fire;

45704 (iii) a flood;

45705 (iv) a storm;

45706 (v) a tornado;

45707 (vi) winds;

45708 (vii) an earthquake;

45709 (viii) lightning;

45710 (ix) any adverse weather event; or

45711 (x) any event similar to an event described in this Subsection (1), as determined by the
45712 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45713 Administrative Rulemaking Act; and

45714 (b) "natural disaster damage" means any physical harm to property caused by a natural
45715 disaster.

45716 (2) Except as provided in Subsection (3), if, during a calendar year, property sustains a
45717 decrease in taxable value that is caused by natural disaster damage, the owner of the property
45718 may apply to the county board of equalization for an adjustment in the taxable value of the
45719 owner's property as provided in Subsection (4).

45720 (3) Notwithstanding Subsection (2), an owner may not receive the valuation adjustment
45721 described in this section if the decrease in taxable value described in Subsection (2) is:

45722 (a) due to the intentional action or inaction of the owner; or

45723 (b) less than 30% of the taxable value of the property described in Subsection (2) before
45724 the decrease in taxable value described in Subsection (2).

45725 (4) (a) To receive the valuation adjustment described in Subsection (2), the owner of

45726 the property shall file an application for the valuation adjustment with the county board of
45727 equalization on or before the later of:

45728 (i) the deadline described in Subsection 59-2-1004(2); or

45729 (ii) 45 days after the day on which the natural disaster damage described in Subsection
45730 (2) occurs.

45731 (b) The county board of equalization shall hold a hearing:

45732 (i) within 30 days of the day on which the application described in Subsection (4)(a) is
45733 received by the board of equalization; and

45734 (ii) following the procedures and requirements of Section 59-2-1001.

45735 (c) At the hearing described in Subsection (4)(b), the applicant shall have the burden of
45736 proving, by a preponderance of the evidence:

45737 (i) that the property sustained a decrease in taxable value, that:

45738 (A) was caused by natural disaster damage; and

45739 (B) is at least 30% of the taxable value of the property described in this Subsection
45740 (4)(c)(i) before the decrease in taxable value described in this Subsection (4)(c)(i);

45741 (ii) the amount of the decrease in taxable value described in Subsection (4)(c)(i); and

45742 (iii) that the decrease in taxable value described in Subsection (4)(c)(i) is not due to the
45743 action or inaction of the applicant.

45744 (d) If the county board of equalization determines that the applicant has met the burden
45745 of proof described in Subsection (4)(c), the county board of equalization shall reduce the
45746 valuation of the property described in Subsection (4)(c)(i) by an amount equal to the decrease in
45747 taxable value of the property multiplied by the percentage of the calendar year remaining after
45748 the natural disaster damage occurred.

45749 (e) The decision of the board of equalization shall be provided to the applicant, in
45750 writing, within 30 days of the day on which the hearing described in Subsection (4)(b) is
45751 concluded.

45752 (5) An applicant that is dissatisfied with a decision of the board of equalization under
45753 this section may appeal that decision under Section 59-2-1006.

45754 Section 979. Section **59-2-1004.6** is amended to read:

45755 **59-2-1004.6. Tax relief for decrease in fair market value due to access**
45756 **interruption.**

45757 (1) For purposes of this section "access interruption" means interruption of the normal
45758 access to or from property due to any circumstance beyond the control of the owner, including:

45759 (a) road construction;

45760 (b) traffic diversion;

45761 (c) an accident;

45762 (d) vandalism;

45763 (e) an explosion;

45764 (f) fire;

45765 (g) a flood;

45766 (h) a storm;

45767 (i) a tornado;

45768 (j) winds;

45769 (k) an earthquake;

45770 (l) lightning;

45771 (m) any adverse weather event; or

45772 (n) any event similar to the events described in this Subsection (1), as determined by the
45773 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45774 Administrative Rulemaking Act.

45775 (2) Except as provided in Subsection (3), if, during a calendar year, property sustains a
45776 decrease in fair market value that is caused by access interruption, the owner of the property
45777 may apply to the county board of equalization for an adjustment in the fair market value of the
45778 owner's property as provided in Subsection (4).

45779 (3) Notwithstanding Subsection (2), an owner may not receive the tax relief described
45780 in this section if the decrease in fair market value described in Subsection (2) is due to the
45781 intentional action or inaction of the owner.

45782 (4) (a) To receive the tax relief described in Subsection (2), the owner of the property
45783 shall file an application for tax relief with the county board of equalization on or before
45784 September 30.

45785 (b) The county board of equalization shall hold a hearing:

45786 (i) within 30 days of the day on which the application described in Subsection (4)(a) is
45787 received by the board of equalization; and

45788 (ii) in the manner described in Section 59-2-1001.

45789 (c) At the hearing described in Subsection (4)(b), the applicant shall have the burden of
45790 proving, by a preponderance of the evidence:

45791 (i) that the property sustained a decrease in fair market value, during the applicable
45792 calendar year, that was caused by access interruption;

45793 (ii) the amount of the decrease in fair market value described in Subsection (4)(c)(i);
45794 and

45795 (iii) that the decrease in fair market value described in Subsection (4)(c)(i) is not due to
45796 the action or inaction of the applicant.

45797 (d) If the county board of equalization determines that the applicant has met the burden
45798 of proof described in Subsection (4)(c), the county board of equalization shall reduce the
45799 valuation of the property described in Subsection (4)(c)(i) by an amount equal to the decrease in
45800 fair market value of the property multiplied by the portion of the calendar year that the fair
45801 market value of the property was decreased.

45802 (e) The decision of the board of equalization shall be provided to the applicant, in
45803 writing, within 30 days of the day on which the hearing described in Subsection (4)(b) is
45804 concluded.

45805 (5) An applicant that is dissatisfied with a decision of the board of equalization under
45806 this section may appeal that decision under Section 59-2-1006.

45807 Section 980. Section **59-2-1007** is amended to read:

45808 **59-2-1007. Objection to assessment by commission -- Application -- Contents of**
45809 **application -- Amending an application -- Hearings -- Appeals.**

45810 (1) (a) If the owner of any property assessed by the commission, or any county upon a
45811 showing of reasonable cause, objects to the assessment, the owner or the county may, on or
45812 before the later of June 1 or a day within 30 days of the date the notice of assessment is mailed
45813 by the commission pursuant to Section 59-2-201, apply to the commission for a hearing.

45814 (b) The commission shall allow the following to be a party at a hearing under this
45815 section:

- 45816 (i) the owner; and
- 45817 (ii) the county upon a showing of reasonable cause.

45818 (2) The owner or county shall include in the application under Subsection (1)(a):

45819 (a) a written statement setting forth the known facts and legal basis supporting a
45820 different fair market value than the value assessed by the commission; and

45821 (b) the owner's or county's estimate of the fair market value of the property.

45822 (3) (a) An owner's or a county's estimate on an application under Subsection (2) of the
45823 fair market value of the property may be amended prior to the hearing as provided by rule.

45824 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45825 Administrative Rulemaking Act, the commission may make rules governing the procedures for
45826 amending an estimate of fair market value under Subsection (3)(a).

45827 (4) (a) An owner applying to the commission for a hearing in accordance with
45828 Subsection (1) shall for the property for which the owner objects to the commission's
45829 assessment file a copy of the application with the county auditor of each county in which the
45830 property is located.

45831 (b) A county auditor receiving a copy of an application in accordance with Subsection
45832 (4)(a) shall provide a copy of the application to the county:

- 45833 (i) assessor;
- 45834 (ii) attorney;
- 45835 (iii) legislative body; and
- 45836 (iv) treasurer.

45837 (5) (a) On or before August 1, the commission shall conduct a scheduling conference

45838 with all parties to a hearing under this section.

45839 (b) At the scheduling conference under Subsection (5)(a), the commission shall
45840 establish dates for:

- 45841 (i) the completion of discovery;
- 45842 (ii) the filing of prehearing motions; and
- 45843 (iii) conducting a hearing on the objection to the assessment.

45844 (6) (a) The commission shall issue a written decision no later than 120 days after the
45845 later of:

- 45846 (i) the hearing described in Subsection (5)(b) is completed; or
- 45847 (ii) all posthearing briefs are submitted.

45848 (b) Any applications not resolved by the commission within a two-year period from the
45849 date of filing are considered to be denied, unless the parties stipulate to a different time period
45850 for resolving an application.

45851 (c) A party may appeal to the district court pursuant to Section 59-1-601 within 30
45852 days from the day on which an application is considered to be denied.

45853 (7) At the hearing on the application, the commission may increase, lower, or sustain
45854 the assessment if:

- 45855 (a) the commission finds an error in the assessment; or
- 45856 (b) the commission determines that increasing, lowering, or sustaining the assessment is
45857 necessary to equalize the assessment with other similarly assessed property.

45858 (8) (a) (i) The commission shall send notice of a commission action under Subsection
45859 (7) to a county auditor if:

45860 (A) the commission proposes to adjust an assessment which was made pursuant to
45861 Section 59-2-201;

45862 (B) the county's tax revenues may be affected by the commission's decision; and

45863 (C) the county has not already been made a party pursuant to Subsection (1).

45864 (ii) The written notice sent by the commission under Subsection (8)(a)(i):

45865 (A) may be transmitted by:

45866 (I) any form of electronic communication;

45867 (II) first class mail; or

45868 (III) private carrier; and

45869 (B) shall request the county to show good cause why the commission should not adjust

45870 the assessment by requesting the county to provide to the commission a written statement:

45871 (I) setting forth the known facts and legal basis for not adjusting the assessment; and

45872 (II) within 30 days from the date of the notice.

45873 (b) If a county provides to the commission a written statement in accordance with

45874 Subsection (8)(a)(ii)(B), the commission shall:

45875 (i) hold a hearing or take other appropriate action to consider the good cause alleged by

45876 the county; and

45877 (ii) issue a written decision increasing, lowering, or sustaining the assessment.

45878 (c) If a county does not provide to the commission a written statement in accordance

45879 with Subsection (8)(a)(ii)(B), within 30 days after the commission sends the notice described in

45880 Subsection (8)(a), the commission shall adjust the assessment and send a copy of the

45881 commission's written decision to the county.

45882 (9) Subsection (8) does not limit the rights of any county as described in Subsection (1).

45883 Section 981. Section **59-2-1102** is amended to read:

45884 **59-2-1102. Determination of exemptions by board of equalization -- Appeal --**

45885 **Application for exemption -- Annual statement -- Exceptions.**

45886 (1) (a) For property assessed under Part 3, County Assessment, the county board of

45887 equalization may, after giving notice in a manner prescribed by rule, determine whether certain

45888 property within the county is exempt from taxation.

45889 (b) The decision of the county board of equalization described in Subsection (1)(a)

45890 shall:

45891 (i) be in writing; and

45892 (ii) include:

45893 (A) a statement of facts; and

45894 (B) the statutory basis for its decision.

45895 (c) Except as provided in Subsection (11)(a), a copy of the decision described in
45896 Subsection (1)(a) shall be sent on or before May 15 to the person applying for the exemption.

45897 (2) The county board of equalization shall notify an owner of exempt property that has
45898 previously received an exemption but failed to file an annual statement in accordance with
45899 Subsection (9)(c), of the county board of equalization's intent to revoke the exemption on or
45900 before April 1.

45901 (3) (a) Except as provided in Subsection (8) and subject to Subsection (9), a reduction
45902 may not be made under this part in the value of property and an exemption may not be granted
45903 under this part unless the party affected or the party's agent:

45904 (i) makes and files with the county board of equalization a written application for the
45905 reduction or exemption, verified by signed statement; and

45906 (ii) appears before the county board of equalization and shows facts upon which it is
45907 claimed the reduction should be made, or exemption granted.

45908 (b) Notwithstanding Subsection (9), the county board of equalization may waive:

45909 (i) the application or personal appearance requirements of Subsection (3)(a), (4)(b), or
45910 (9)(a); or

45911 (ii) the annual statement requirements of Subsection (9)(c).

45912 (4) (a) Before the county board of equalization grants any application for exemption or
45913 reduction, the county board of equalization may examine under oath the person or agent making
45914 the application.

45915 (b) Except as provided in Subsection (3)(b), a reduction may not be made or exemption
45916 granted unless the person or the agent making the application attends and answers all questions
45917 pertinent to the inquiry.

45918 (5) For the hearing on the application, the county board of equalization may subpoena
45919 any witnesses, and hear and take any evidence in relation to the pending application.

45920 (6) Except as provided in Subsection (11)(b), the county board of equalization shall
45921 hold hearings and render a written decision to determine any exemption on or before May 1 in

45922 each year.

45923 (7) Any property owner dissatisfied with the decision of the county board of
45924 equalization regarding any reduction or exemption may appeal to the commission under Section
45925 59-2-1006.

45926 (8) Notwithstanding Subsection (3)(a), a county board of equalization may not require
45927 an owner of property to file an application in accordance with this section in order to claim an
45928 exemption for the property under the following:

45929 (a) Subsections 59-2-1101(3)(a) through (c);

45930 (b) Subsection 59-2-1101(3)(f) or (g);

45931 (c) Section 59-2-1110;

45932 (d) Section 59-2-1111;

45933 (e) Section 59-2-1112;

45934 (f) Section 59-2-1113; or

45935 (g) Section 59-2-1114.

45936 (9) (a) Except as provided in Subsections (3)(b) and (9)(b), for property described in
45937 Subsection 59-2-1101(3)(d) or (e), a county board of equalization shall, consistent with
45938 Subsection (10), require an owner of that property to file an application in accordance with this
45939 section in order to claim an exemption for that property.

45940 (b) Notwithstanding Subsection (9)(a), a county board of equalization may not require
45941 an owner of property described in Subsection 59-2-1101(3)(d) or (e) to file an application under
45942 Subsection (9)(a) if:

45943 (i) (A) the owner filed an application under Subsection (9)(a); or

45944 (B) the county board of equalization waived the application requirements in accordance
45945 with Subsection (3)(b);

45946 (ii) the county board of equalization determines that the owner may claim an exemption
45947 for that property; and

45948 (iii) the exemption described in Subsection (9)(b)(ii) is in effect.

45949 (c) (i) Except as provided in Subsection (3)(b), for the time period that an owner is

45950 granted an exemption in accordance with this section for property described in Subsection
45951 59-2-1101(3)(d) or (e), a county board of equalization shall require the owner to file an annual
45952 statement on a form prescribed by the commission establishing that the property continues to be
45953 eligible for the exemption.

45954 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
45955 Administrative Rulemaking Act, the commission shall make rules providing:

45956 (A) the form for the annual statement required by Subsection (9)(c)(i);

45957 (B) the contents of the form for the annual statement required by Subsection (9)(c)(i);

45958 and

45959 (C) procedures and requirements for making the annual statement required by
45960 Subsection (9)(c)(i).

45961 (iii) The commission shall make the form described in Subsection (9)(c)(ii)(A) available
45962 to counties.

45963 (10) (a) For purposes of this Subsection (10), "exclusive use exemption" is as defined in
45964 Section 59-2-1101.

45965 (b) (i) For purposes of Subsection (1)(a), and except as provided in Subsections
45966 (10)(b)(ii) and (iii), when a person acquires property on or after January 1 that qualifies for an
45967 exclusive use exemption, that person may apply for the exclusive use exemption on or before
45968 the later of:

45969 (A) the day set by rule as the deadline for filing a property tax exemption application; or

45970 (B) 30 days after the day on which the property is acquired.

45971 (ii) Notwithstanding Subsection (10)(b)(i), a person who acquires property on or after
45972 January 1, 2004, and before January 1, 2005, that qualifies for an exclusive use exemption, may
45973 apply for the exclusive use exemption for the 2004 calendar year on or before September 30,
45974 2005.

45975 (iii) Notwithstanding Subsection (10)(b)(i), a person who acquires property on or after
45976 January 1, 2005, and before January 1, 2006, that qualifies for an exclusive use exemption, may
45977 apply for the exclusive use exemption for the 2005 calendar year on or before the later of:

45978 (A) September 30, 2005; or
45979 (B) 30 days after the day on which the property is acquired.
45980 (11) (a) Notwithstanding Subsection (1)(c), if an application for an exemption is filed
45981 under Subsection (10), a county board of equalization shall send a copy of the decision
45982 described in Subsection (1)(c) to the person applying for the exemption on or before the later
45983 of:

45984 (i) May 15; or
45985 (ii) 45 days after the day on which the application for the exemption is filed.
45986 (b) Notwithstanding Subsection (6), if an application for an exemption is filed under
45987 Subsection (10), a county board of equalization shall hold the hearing and render the decision
45988 described in Subsection (6) on or before the later of:

45989 (i) May 1; or
45990 (ii) 30 days after the day on which the application for the exemption is filed.

45991 Section 982. Section **59-2-1105** is amended to read:

45992 **59-2-1105. Application for veteran's exemption -- Rulemaking authority --**
45993 **Statement -- County authority to make refunds.**

45994 (1) (a) A veteran's exemption may be allowed only if the interest of the claimant is on
45995 record on January 1 of the year the exemption is claimed.

45996 (b) If the claimant has an interest in real property under a contract, the veteran's
45997 exemption may be allowed if it is proved to the satisfaction of the county that the claimant is:

45998 (i) the purchaser under the contract; and
45999 (ii) obligated to pay the taxes on the property beginning January 1 of the year the
46000 exemption is claimed.

46001 (c) If the claimant is the grantor of a trust holding title to real or tangible personal
46002 property on which a veteran's exemption is claimed, the claimant may claim the portion of the
46003 veteran's exemption under Section 59-2-1104 and be treated as the owner of that portion of the
46004 property held in trust for which the claimant proves to the satisfaction of the county that:

46005 (i) title to the portion of the trust will revert in the claimant upon the exercise of a

46006 power:

46007 (A) by:

46008 (I) the claimant as grantor of the trust;

46009 (II) a nonadverse party; or

46010 (III) both the claimant and a nonadverse party; and

46011 (B) regardless of whether the power is a power:

46012 (I) to revoke;

46013 (II) to terminate;

46014 (III) to alter;

46015 (IV) to amend; or

46016 (V) to appoint;

46017 (ii) the claimant is obligated to pay the taxes on that portion of the trust property

46018 beginning January 1 of the year the claimant claims the exemption; and

46019 (iii) the claimant meets the requirements under this part for the exemption.

46020 (2) (a) (i) A claimant applying for a veteran's exemption under this section shall file an

46021 application:

46022 (A) with the county in which that person resides; and

46023 (B) except as provided in Subsection (2)(b) or (e), on or before September 1 of the year

46024 in which that claimant is applying for the veteran's exemption in accordance with this section.

46025 (ii) A county shall provide a claimant who files an application for a veteran's exemption

46026 in accordance with this section with a receipt:

46027 (A) stating that the county received the claimant's application; and

46028 (B) no later than 30 days after the day on which the claimant filed the application in

46029 accordance with this section.

46030 (b) Notwithstanding Subsection (2)(a)(i)(B) or (2)(e):

46031 (i) subject to Subsection (2)(b)(iv), for a claimant who applies for a veteran's exemption

46032 on or after January 1, 2004, a county shall extend the deadline for filing the application required

46033 by Subsection (2)(a) to September 1 of the year after the year the claimant would otherwise be

46034 required to file the application under Subsection (2)(a)(i)(B) if:

46035 (A) on or after January 1, 2004, a military entity issues a written decision that the:

46036 (I) disabled veteran is disabled; or

46037 (II) deceased disabled veteran with respect to whom the claimant applies for a veteran's

46038 exemption was disabled at the time the deceased disabled veteran died; and

46039 (B) the date the written decision described in Subsection (2)(b)(i)(A) takes effect is in

46040 any year prior to the current calendar year;

46041 (ii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a

46042 veteran's exemption on or after January 1, 2004, a county shall allow the claimant to amend the

46043 application required by Subsection (2)(a) on or before September 1 of the year after the year the

46044 claimant filed the application under Subsection (2)(a)(i)(B) if:

46045 (A) on or after January 1, 2004, a military entity issues a written decision that the

46046 percentage of disability has changed for the:

46047 (I) disabled veteran; or

46048 (II) deceased disabled veteran with respect to whom the claimant applies for a veteran's

46049 exemption; and

46050 (B) the date the written decision described in Subsection (2)(b)(ii)(A) takes effect is in

46051 any year prior to the current calendar year;

46052 (iii) subject to Subsections (2)(b)(iv) and (2)(d), for a claimant who applies for a

46053 veteran's exemption on or after January 1, 2004, a county shall extend the deadline for filing the

46054 application required by Subsection (2)(a) to September 1 of the year after the year the claimant

46055 would otherwise be required to file the application under Subsection (2)(a)(i)(B) if the county

46056 legislative body determines that:

46057 (A) the claimant or a member of the claimant's immediate family had an illness or injury

46058 that prevented the claimant from filing the application on or before the deadline for filing the

46059 application established in Subsection (2)(a)(i)(B);

46060 (B) a member of the claimant's immediate family died during the calendar year the

46061 claimant was required to file the application under Subsection (2)(a)(i)(B);

46062 (C) the claimant was not physically present in the state for a time period of at least six
46063 consecutive months during the calendar year the claimant was required to file the application
46064 under Subsection (2)(a)(i)(B); or

46065 (D) the failure of the claimant to file the application on or before the deadline for filing
46066 the application established in Subsection (2)(a)(i)(B):

46067 (I) would be against equity or good conscience; and

46068 (II) was beyond the reasonable control of the claimant; and

46069 (iv) a county may extend the deadline for filing an application or amending an
46070 application under this Subsection (2) until December 31 if the county finds that good cause
46071 exists to extend the deadline.

46072 (c) The following shall accompany the initial application for a veteran's exemption:

46073 (i) a copy of the veteran's certificate of discharge from the military service of:

46074 (A) the United States; or

46075 (B) this state; or

46076 (ii) other satisfactory evidence of eligible military service.

46077 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

46078 Administrative Rulemaking Act, the commission may by rule:

46079 (i) establish procedures and requirements for amending an application under Subsection
46080 (2)(b)(ii);

46081 (ii) for purposes of Subsection (2)(b)(iii), define the terms:

46082 (A) "immediate family"; or

46083 (B) "physically present"; or

46084 (iii) for purposes of Subsection (2)(b)(iii), prescribe the circumstances under which the
46085 failure of a claimant to file an application on or before the deadline for filing the application
46086 established in Subsection (2)(a)(i)(B):

46087 (A) would be against equity or good conscience; and

46088 (B) is beyond the reasonable control of a claimant.

46089 (e) If a claimant has on file with the county the application described in Subsection

46090 (2)(a), the county may not require the claimant to file another application described in
46091 Subsection (2)(a) unless:

- 46092 (i) the claimant applies all or a portion of an exemption allowed by this section to any
46093 tangible personal property;
- 46094 (ii) the percentage of disability has changed for the:
 - 46095 (A) disabled veteran; or
 - 46096 (B) deceased disabled veteran with respect to whom a claimant applies for a veteran's
46097 exemption under this section;
- 46098 (iii) the disabled veteran dies;
- 46099 (iv) the claimant's ownership interest in the claimant's primary residence changes;
- 46100 (v) the claimant's occupancy of the primary residence for which the claimant claims an
46101 exemption under Section 59-2-1104 changes; or
- 46102 (vi) the claimant who files an application for a veteran's exemption with respect to a
46103 deceased disabled veteran or veteran who was killed in action or died in the line of duty is a
46104 person other than the claimant who filed the application described in Subsection (2)(a) for a
46105 veteran's exemption:
 - 46106 (A) for the calendar year immediately preceding the current calendar year; and
 - 46107 (B) with respect to that deceased disabled veteran or veteran who was killed in action
46108 or died in the line of duty.
- 46109 (f) The county may verify that the residential property for which the claimant claims an
46110 exemption under Section 59-2-1104 is the claimant's primary residence.

46111 (3) (a) (i) Subject to Subsection (3)(a)(ii), a claimant who files an application for a
46112 veteran's exemption shall have on file with the county a statement:

- 46113 (A) issued by a military entity; and
- 46114 (B) listing the percentage of disability for the disabled veteran or deceased disabled
46115 veteran with respect to whom a claimant applies for a veteran's exemption.

46116 (ii) If a claimant has on file with the county the statement described in Subsection
46117 (3)(a)(i), the county may not require the claimant to file another statement described in

46118 Subsection (3)(a)(i) unless:

46119 (A) the claimant who files an application under this section for a veteran's exemption
46120 with respect to a deceased disabled veteran or veteran who was killed in action or died in the
46121 line of duty is a person other than the claimant who filed the statement described in Subsection
46122 (3)(a)(i) for a veteran's exemption:

46123 (I) for the calendar year immediately preceding the current calendar year; and

46124 (II) with respect to that deceased disabled veteran or veteran who was killed in action
46125 or died in the line of duty; or

46126 (B) the percentage of disability has changed for a:

46127 (I) disabled veteran; or

46128 (II) deceased disabled veteran with respect to whom the claimant applies for a veteran's
46129 exemption under this section.

46130 (b) For a claimant filing an application in accordance with Subsection (2)(b)(i), the
46131 claimant shall include with the application required by Subsection (2) a statement issued by a
46132 military entity listing the date the written decision described in Subsection (2)(b)(i)(A) takes
46133 effect.

46134 (c) For a claimant amending an application in accordance with Subsection (2)(b)(ii), the
46135 claimant shall provide to the county a statement issued by a military entity listing the date the
46136 written decision described in Subsection (2)(b)(ii)(A) takes effect.

46137 (4) (a) For purposes of this Subsection (4):

46138 (i) "Property taxes due" means the taxes due on a claimant's property:

46139 (A) for which a veteran's exemption is granted by a county; and

46140 (B) for the calendar year for which the veteran's exemption is granted.

46141 (ii) "Property taxes paid" is an amount equal to the sum of:

46142 (A) the amount of the property taxes the claimant paid for the calendar year for which
46143 the claimant is applying for the veteran's exemption; and

46144 (B) the veteran's exemption the county granted for the calendar year described in
46145 Subsection (4)(a)(ii)(A).

46146 (b) A county granting a veteran's exemption to a claimant shall refund to that claimant
46147 an amount equal to the amount by which the claimant's property taxes paid exceed the
46148 claimant's property taxes due, if that amount is \$1 or more.

46149 Section 983. Section **59-2-1115** is amended to read:

46150 **59-2-1115. Exemption of certain tangible personal property.**

46151 (1) (a) The taxable tangible personal property of a taxpayer is exempt from taxation if
46152 the taxable tangible personal property has a total aggregate fair market value of \$3,500 or less.

46153 (b) For purposes of this section, "taxable tangible personal property" does not include:

46154 (i) tangible personal property required by law to be registered with the state before it is
46155 used:

46156 (A) on a public highway;

46157 (B) on a public waterway;

46158 (C) on public land; or

46159 (D) in the air;

46160 (ii) a mobile home as defined in Section 41-1a-102; or

46161 (iii) a manufactured home as defined in Section 41-1a-102.

46162 (2) (a) For calendar years beginning on or after January 1, 2008, the commission shall
46163 increase the dollar amount described in Subsection (1) by a percentage equal to the percentage
46164 difference between the consumer price index for the preceding calendar year and the consumer
46165 price index for calendar year 2006.

46166 (b) For purposes of this Subsection (2), the commission shall calculate the consumer
46167 price index as provided in Sections 1(f)(4) and 1(f)(5), Internal Revenue Code.

46168 (c) If the percentage difference under Subsection (2)(a) is zero or a negative
46169 percentage, the consumer price index increase for the year is zero.

46170 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46171 Administrative Rulemaking Act, the commission may make rules to administer this section and
46172 provide for uniform implementation.

46173 Section 984. Section **59-2-1202** is amended to read:

46174 **59-2-1202. Definitions.**

46175 As used in this part:

46176 (1) (a) "Claimant" means a homeowner or renter who:

46177 (i) has filed a claim under this part;

46178 (ii) is domiciled in this state for the entire calendar year for which a claim for relief is
46179 filed under this part; and

46180 (iii) on or before the December 31 of the year for which a claim for relief is filed under
46181 this part, is:

46182 (A) 65 years of age or older if the person was born on or before December 31, 1942;

46183 (B) 66 years of age or older if the person was born on or after January 1, 1943, but on
46184 or before December 31, 1959; or

46185 (C) 67 years of age or older if the person was born on or after January 1, 1960.

46186 (b) A surviving spouse, who otherwise qualifies under this section, is an eligible
46187 claimant regardless of age.

46188 (c) If two or more individuals of a household are able to meet the qualifications for a
46189 claimant, they may determine among them as to who the claimant shall be, but if they are unable
46190 to agree, the matter shall be referred to the county legislative body for a determination of the
46191 claimant of an owned residence and to the commission for a determination of the claimant of a
46192 rented residence.

46193 (2) (a) "Gross rent" means rental actually paid in cash or its equivalent solely for the
46194 right of occupancy, at arm's-length, of a residence, exclusive of charges for any utilities,
46195 services, furniture, furnishings, or personal appliances furnished by the landlord as a part of the
46196 rental agreement.

46197 (b) If a claimant occupies two or more residences in the year and does not own the
46198 residence as of the lien date, "gross rent" means the total rent paid for the residences during the
46199 one-year period for which the renter files a claim under this part.

46200 (3) "Homeowner's credit" means a credit against a claimant's property tax liability.

46201 (4) "Household" means the association of persons who live in the same dwelling,

- 46202 sharing its furnishings, facilities, accommodations, and expenses.
- 46203 (5) "Household income" means all income received by all persons of a household in:
- 46204 (a) the calendar year preceding the calendar year in which property taxes are due; or
- 46205 (b) for purposes of the renter's credit authorized by this part, the year for which a claim
- 46206 is filed.
- 46207 (6) (a) (i) "Income" means the sum of:
- 46208 (A) federal adjusted gross income as defined in Section 62, Internal Revenue Code; and
- 46209 (B) all nontaxable income as defined in Subsection (6)(b).
- 46210 (ii) "Income" does not include:
- 46211 (A) aid, assistance, or contributions from a tax-exempt nongovernmental source;
- 46212 (B) surplus foods;
- 46213 (C) relief in kind supplied by a public or private agency; or
- 46214 (D) relief provided under this part, Section 59-2-1108, or Section 59-2-1109.
- 46215 (b) For purposes of Subsection (6)(a)(i), "nontaxable income" means amounts excluded
- 46216 from adjusted gross income under the Internal Revenue Code, including:
- 46217 (i) capital gains;
- 46218 (ii) loss carry forwards claimed during the taxable year in which a claimant files for
- 46219 relief under this part, Section 59-2-1108, or Section 59-2-1109;
- 46220 (iii) depreciation claimed pursuant to the Internal Revenue Code by a claimant on the
- 46221 residence for which the claimant files for relief under this part, Section 59-2-1108, or Section
- 46222 59-2-1109;
- 46223 (iv) support money received;
- 46224 (v) nontaxable strike benefits;
- 46225 (vi) cash public assistance or relief;
- 46226 (vii) the gross amount of a pension or annuity, including benefits under the Railroad
- 46227 Retirement Act of 1974, 45 U.S.C. Sec. 231 et seq., and veterans disability pensions;
- 46228 (viii) payments received under the Social Security Act;
- 46229 (ix) state unemployment insurance amounts;

- 46230 (x) nontaxable interest received from any source;
- 46231 (xi) workers' compensation;
- 46232 (xii) the gross amount of "loss of time" insurance; and
- 46233 (xiii) voluntary contributions to a tax-deferred retirement plan.
- 46234 (7) (a) "Property taxes accrued" means property taxes, exclusive of special assessments,
46235 delinquent interest, and charges for service, levied on a claimant's residence in this state.
- 46236 (b) For a mobile home, "property taxes accrued" includes taxes imposed on both the
46237 land upon which the home is situated and on the structure of the home itself, whether classified
46238 as real property or personal property taxes.
- 46239 (c) (i) Beginning on January 1, 1999, for a claimant who owns a residence, "property
46240 taxes accrued" are the property taxes described in Subsection (7)(a) levied for the calendar year
46241 on 35% of the fair market value of the residence as reflected on the assessment roll.
- 46242 (ii) The amount described in Subsection (7)(c)(i) constitutes:
- 46243 (A) a tax abatement for the poor in accordance with Utah Constitution Article XIII,
46244 Section 3; and
- 46245 (B) the residential exemption provided for in Section 59-2-103.
- 46246 (d) (i) For purposes of this Subsection (7) property taxes accrued are levied on the lien
46247 date.
- 46248 (ii) If a claimant owns a residence on the lien date, property taxes accrued mean taxes
46249 levied on the lien date, even if that claimant does not own a residence for the entire year.
- 46250 (e) When a household owns and occupies two or more different residences in this state
46251 in the same calendar year, property taxes accrued shall relate only to the residence occupied on
46252 the lien date by the household as its principal place of residence.
- 46253 (f) (i) If a residence is an integral part of a large unit such as a farm or a multipurpose or
46254 multidwelling building, property taxes accrued shall be the same percentage of the total property
46255 taxes accrued as the value of the residence is of the total value.
- 46256 (ii) For purposes of this Subsection (7)(f), "unit" refers to the parcel of property
46257 covered by a single tax statement of which the residence is a part.

46258 (8) (a) As used in this section, "rental assistance payment" means any payment that:

46259 (i) is made by a:

46260 (A) governmental entity; or

46261 (B) (I) charitable organization; or

46262 (II) religious organization; and

46263 (ii) is specifically designated for the payment of rent of a claimant:

46264 (A) for the calendar year for which the claimant seeks a renter's credit under this part;

46265 and

46266 (B) regardless of whether the payment is made to the:

46267 (I) claimant; or

46268 (II) landlord; and

46269 (b) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

46270 Administrative Rulemaking Act, the commission may make rules defining the terms:

46271 (i) "governmental entity";

46272 (ii) "charitable organization"; or

46273 (iii) "religious organization."

46274 (9) (a) "Residence" means the dwelling, whether owned or rented, and so much of the
46275 land surrounding it, not exceeding one acre, as is reasonably necessary for use of the dwelling as
46276 a home, and may consist of a part of a multidwelling or multipurpose building and a part of the
46277 land upon which it is built and includes a mobile home or houseboat.

46278 (b) "Residence" does not include personal property such as furniture, furnishings, or
46279 appliances.

46280 (c) For purposes of this Subsection (9), "owned" includes a vendee in possession under
46281 a land contract or one or more joint tenants or tenants in common.

46282 Section 985. Section **59-5-101** is amended to read:

46283 **59-5-101. Definitions.**

46284 As used in this part:

46285 (1) "Board" means the Board of Oil, Gas and Mining created in Section 40-6-4.

46286 (2) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

46287 (3) "Condensate" means those hydrocarbons, regardless of gravity, that occur naturally
46288 in the gaseous phase in the reservoir that are separated from the natural gas as liquids through
46289 the process of condensation either in the reservoir, in the wellbore, or at the surface in field
46290 separators.

46291 (4) "Crude oil" means those hydrocarbons, regardless of gravity, that occur naturally in
46292 the liquid phase in the reservoir and are produced and recovered at the wellhead in liquid form.

46293 (5) "Development well" means any oil and gas producing well other than a wildcat well.

46294 (6) "Division" means the Division of Oil, Gas and Mining established under Title 40,
46295 Chapter 6.

46296 (7) "Enhanced recovery project" means:

46297 (a) the injection of liquids or hydrocarbon or nonhydrocarbon gases directly into a
46298 reservoir for the purpose of:

46299 (i) augmenting reservoir energy;

46300 (ii) modifying the properties of the fluids or gases in a reservoir; or

46301 (iii) changing the reservoir conditions to increase the recoverable oil, gas, or oil and gas
46302 through the joint use of two or more well bores; and

46303 (b) a project initially approved by the board as a new or expanded enhanced recovery
46304 project on or after January 1, 1996.

46305 (8) (a) "Gas" means:

46306 (i) natural gas;

46307 (ii) natural gas liquids; or

46308 (iii) any mixture of natural gas and natural gas liquids.

46309 (b) "Gas" does not include solid hydrocarbons.

46310 (9) "Incremental production" means that part of production, certified by the Division of
46311 Oil, Gas and Mining, which is achieved from an enhanced recovery project that would not have
46312 economically occurred under the reservoir conditions existing before the project and that has
46313 been approved by the division as incremental production.

46314 (10) "Natural gas" means those hydrocarbons, other than oil and other than natural gas
46315 liquids separated from natural gas, that occur naturally in the gaseous phase in the reservoir and
46316 are produced and recovered at the wellhead in gaseous form.

46317 (11) "Natural gas liquids" means those hydrocarbons initially in reservoir natural gas,
46318 regardless of gravity, that are separated in gas processing plants from the natural gas as liquids
46319 at the surface through the process of condensation, absorption, adsorption, or other methods.

46320 (12) (a) "Oil" means:

46321 (i) crude oil;

46322 (ii) condensate; or

46323 (iii) any mixture of crude oil and condensate.

46324 (b) "Oil" does not include solid hydrocarbons.

46325 (13) "Oil or gas field" means a geographical area overlying oil or gas structures. The
46326 boundaries of oil or gas fields shall conform with the boundaries as fixed by the Board and
46327 Division of Oil, Gas and Mining under Title 40, Chapter 6, Board and Division of Oil, Gas and
46328 Mining.

46329 (14) "Oil shale" means a group of fine black to dark brown shales containing bituminous
46330 material that yields petroleum upon distillation.

46331 (15) "Operator" means any person engaged in the business of operating an oil or gas
46332 well, regardless of whether the person is:

46333 (a) a working interest owner;

46334 (b) an independent contractor; or

46335 (c) acting in a capacity similar to Subsection (15)(a) or (b) as determined by the
46336 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46337 Administrative Rulemaking Act.

46338 (16) "Owner" means any person having a working interest, royalty interest, payment
46339 out of production, or any other interest in the oil or gas produced or extracted from an oil or
46340 gas well in the state, or in the proceeds of this production.

46341 (17) (a) Subject to Subsections (17)(b) and (c), "processing costs" means the

46342 reasonable actual costs of processing oil or gas to remove:

46343 (i) natural gas liquids; or

46344 (ii) contaminants.

46345 (b) If processing costs are determined on the basis of an arm's-length contract,

46346 processing costs are the actual costs.

46347 (c) (i) If processing costs are determined on a basis other than an arm's-length contract,

46348 processing costs are those reasonable costs associated with:

46349 (A) actual operating and maintenance expenses, including oil or gas used or consumed
46350 in processing;

46351 (B) overhead directly attributable and allocable to the operation and maintenance; and

46352 (C) (I) depreciation and a return on undepreciated capital investment; or

46353 (II) a cost equal to a return on the investment in the processing facilities as determined
46354 by the commission.

46355 (ii) Subsection (17)(c)(i) includes situations where the producer performs the
46356 processing for the producer's product.

46357 (18) "Producer" means any working interest owner in any lands in any oil or gas field
46358 from which gas or oil is produced.

46359 (19) "Recompletion" means any downhole operation that is:

46360 (a) conducted to reestablish the producibility or serviceability of a well in any geologic
46361 interval; and

46362 (b) approved by the division as a recompletion.

46363 (20) "Research and development" means the process of inquiry or experimentation
46364 aimed at the discovery of facts, devices, technologies, or applications and the process of
46365 preparing those devices, technologies, or applications for marketing.

46366 (21) "Royalty interest owner" means the owner of an interest in oil or gas, or in the
46367 proceeds of production from the oil or gas who does not have the obligation to share in the
46368 expenses of developing and operating the property.

46369 (22) "Solid hydrocarbons" means:

- 46370 (a) coal;
- 46371 (b) gilsonite;
- 46372 (c) ozocerite;
- 46373 (d) elaterite;
- 46374 (e) oil shale;
- 46375 (f) tar sands; and
- 46376 (g) all other hydrocarbon substances that occur naturally in solid form.
- 46377 (23) "Stripper well" means:
 - 46378 (a) an oil well whose average daily production for the days the well has produced has
 - 46379 been 20 barrels or less of crude oil a day during any consecutive 12-month period; or
 - 46380 (b) a gas well whose average daily production for the days the well has produced has
 - 46381 been 60 MCF or less of natural gas a day during any consecutive 90-day period.
- 46382 (24) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
- 46383 and require further processing other than mechanical blending before becoming finished
- 46384 petroleum products.
- 46385 (25) (a) Subject to Subsections (25)(b) and (c), "transportation costs" means the
- 46386 reasonable actual costs of transporting oil or gas products from the well to the point of sale.
- 46387 (b) If transportation costs are determined on the basis of an arm's-length contract,
- 46388 transportation costs are the actual costs.
- 46389 (c) (i) If transportation costs are determined on a basis other than an arm's-length
- 46390 contract, transportation costs are those reasonable costs associated with:
 - 46391 (A) actual operating and maintenance expenses, including fuel used or consumed in
 - 46392 transporting the oil or gas;
 - 46393 (B) overhead costs directly attributable and allocable to the operation and maintenance;
 - 46394 and
 - 46395 (C) depreciation and a return on undepreciated capital investment.
- 46396 (ii) Subsection (25)(c)(i) includes situations where the producer performs the
- 46397 transportation for the producer's product.

46398 (d) Regardless of whether transportation costs are determined on the basis of an
46399 arm's-length contract or a basis other than an arm's-length contract, transportation costs include:

46400 (i) carbon dioxide removal;

46401 (ii) compression;

46402 (iii) dehydration;

46403 (iv) gathering;

46404 (v) separating;

46405 (vi) treating; or

46406 (vii) a process similar to Subsections (25)(d)(i) through (vi), as determined by the
46407 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46408 Administrative Rulemaking Act.

46409 (26) "Tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

46410 (27) "Well or wells" means any extractive means from which oil or gas is produced or
46411 extracted, located within an oil or gas field, and operated by one person.

46412 (28) "Wildcat well" means an oil and gas producing well which is drilled and completed
46413 in a pool, as defined under Section 40-6-2, in which a well has not been previously completed as
46414 a well capable of producing in commercial quantities.

46415 (29) "Working interest owner" means the owner of an interest in oil or gas burdened
46416 with a share of the expenses of developing and operating the property.

46417 (30) (a) "Workover" means any downhole operation that is:

46418 (i) conducted to sustain, restore, or increase the producibility or serviceability of a well
46419 in the geologic intervals in which the well is currently completed; and

46420 (ii) approved by the division as a workover.

46421 (b) "Workover" does not include operations that are conducted primarily as routine
46422 maintenance or to replace worn or damaged equipment.

46423 Section 986. Section **59-5-110** is amended to read:

46424 **59-5-110. Decisions of commission.**

46425 Every decision of the commission shall be in writing and notice of the decision shall be

46426 mailed to the taxpayer within ten days. All decisions become final upon the expiration of 30
46427 days after notice has been mailed to the taxpayer, unless proceedings are taken within such time
46428 for a review in accordance with [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4,
46429 Administrative Procedures Act, in which case it becomes final as specified in the Administrative
46430 Procedures Act.

46431 Section 987. Section **59-5-203** is amended to read:

46432 **59-5-203. Determining taxable value.**

46433 (1) Except as provided in Subsection (3), the basis for computing the gross proceeds,
46434 prior to those deductions or adjustments specified in this chapter, in determining the taxable
46435 value of the metals or metalliferous minerals sold or otherwise disposed of, in the order of
46436 priority, is as follows:

46437 (a) If the metals or metalliferous mineral products are actually sold, the value of those
46438 metals or metalliferous mineral products shall be the gross amount the producer receives from
46439 that sale, provided that the metals or metalliferous mineral products are sold under a bona fide
46440 contract of sale between unaffiliated parties. In the case of a sale of uranium concentrates,
46441 gross proceeds shall be the gross amount the producer receives from the sale of processed
46442 uranium concentrate or "yellowcake," provided that the uranium concentrate is sold under a
46443 bona fide contract of sale between unaffiliated parties.

46444 (b) If the metals or metalliferous mineral products are not actually sold but are shipped,
46445 transported, or delivered out of state, the gross proceeds shall be the multiple of the recoverable
46446 units of finished metals, or of the finished metals contained in the metalliferous minerals shipped,
46447 and the average daily price per unit of contained metals as quoted by an established authority for
46448 market prices of metals for the period during which the tax imposed by this chapter is due. The
46449 established authority or authorities shall be designated by the commission by rule adopted in
46450 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
46451 Act.

46452 (c) In the case of metals or metalliferous minerals not sold, but otherwise disposed of,
46453 for which there is no established authority for market prices of metals for the period during

46454 which the tax imposed by this chapter is due, gross proceeds is determined by allocating to the
46455 state the same proportion of the producer's total sales of metals or metalliferous minerals sold or
46456 otherwise disposed of as the producer's total Utah costs bear to the total costs associated with
46457 sale or disposal of the metal or metalliferous mineral.

46458 (d) In the event of a sale of metals or metalliferous minerals between affiliated
46459 companies which is not a bona fide sale because the value received is not proportionate to the
46460 fair market value of the metals or metalliferous minerals or in the event that Subsection (1)(a),
46461 (b), or (c) are not applicable, the commission shall determine the value of such metals or
46462 metalliferous minerals in an equitable manner by reference to an objective standard as specified
46463 in a rule adopted in accordance with the provisions of [~~Title 63, Chapter 46a~~] Title 63G,
46464 Chapter 3, Utah Administrative Rulemaking Act.

46465 (2) For all metals except beryllium, the taxable value of the metalliferous mineral sold or
46466 otherwise disposed of is 30% of the gross proceeds received for the metals sold or otherwise
46467 disposed of by the producer of the metal.

46468 (3) (a) Beginning on January 1, 1990, through December 31, 2004, for beryllium sold
46469 or otherwise disposed of, the taxable value is 20% of the gross proceeds received for the
46470 beryllium sold or otherwise disposed of by the producer.

46471 (b) (i) Notwithstanding Subsection (1) or (4) and subject to Subsection (3)(b)(ii),
46472 beginning on January 1, 2005, the taxable value of beryllium sold or otherwise disposed of by
46473 the producer of the beryllium is equal to 125% of the direct mining costs incurred in mining the
46474 beryllium.

46475 (ii) For an action or proceeding filed on or after January 1, 2005, if the taxable value of
46476 beryllium is calculated under Subsection (3)(a) for purposes of imposing a tax on beryllium
46477 under this part, the taxable value of beryllium calculated under Subsection (3)(a) may not
46478 exceed the taxable value of beryllium calculated under Subsection (3)(b)(i).

46479 (4) Except as provided in Subsection (3), if the metalliferous mineral sold or otherwise
46480 disposed of is sold or shipped out of state in the form of ore, then the taxable value is 80% of
46481 the gross proceeds.

46482 Section 988. Section **59-5-204** is amended to read:

46483 **59-5-204. Statements filed -- Contents -- Verification -- Falsification as perjury.**

46484 (1) Every person engaged in the business of mining or extracting metalliferous minerals
46485 shall make and file with the commission, on or before June 1 of each year on forms furnished by
46486 the commission, a statement containing:

46487 (a) the name, description, and location of the mine owned and operated by the person
46488 during the preceding calendar year;

46489 (b) the number of tons of mineral mined during the preceding calendar year and the
46490 disposition of the mineral;

46491 (c) the total amount received during the preceding calendar year from the sale of
46492 minerals; and

46493 (d) such other reasonable and necessary information as the commission may require for
46494 the proper enforcement of this chapter as specified in a rule adopted under [~~Title 63, Chapter~~
46495 ~~46a~~] Title 63G, Chapter 3, the Administrative Rulemaking Act.

46496 (2) The owner of the mine shall be responsible for the statement or report required by
46497 this section, but the principal lessee, contractor, or operator may, with the consent of the
46498 commission, report and pay the tax as agent for the owner. The owner shall be entitled to
46499 deduct and remit to the commission any tax chargeable upon the operations conducted by the
46500 lessees or other parties.

46501 (3) The statements or reports required to be filed with the commission shall be signed
46502 and sworn to by the person required to file the statements or reports, by a partner if a
46503 partnership, or by the president, secretary, or managing officer, if a corporation. Any willful
46504 false swearing as to the purported material facts set out in this report constitutes the crime of
46505 perjury and shall be punished as such under Title 76, the Utah Criminal Code.

46506 Section 989. Section **59-5-210** is amended to read:

46507 **59-5-210. Decisions of commission.**

46508 Every decision of the commission shall be in writing and notice of the decision shall be
46509 mailed to the taxpayer within ten days. All decisions become final upon the expiration of 30

46510 days after notice has been mailed to the taxpayer, unless proceedings are taken within such time
46511 for a review in accordance with [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4,
46512 Administrative Procedures Act, in which case it becomes final as specified in the Administrative
46513 Procedures Act.

46514 Section 990. Section **59-6-104** is amended to read:

46515 **59-6-104. State laws applicable to chapter -- Rules of commission.**

46516 (1) The provisions of Title 59, Chapter 10, applicable to withholding of taxes by
46517 employers under Title 59, Chapter 10, Part 4, relating to records, penalties, interest,
46518 deficiencies, overpayments, refunds, assessments, venue, and civil and criminal penalties are
46519 applicable to the withholding and payment of withheld taxes under this chapter to the extent
46520 that those provisions are consistent with this chapter.

46521 (2) The commission may adopt rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G,
46522 Chapter 3, the Administrative Rulemaking Act, necessary to effectuate the purposes of this
46523 chapter.

46524 Section 991. Section **59-7-101** is amended to read:

46525 **59-7-101. Definitions.**

46526 As used in this chapter:

46527 (1) "Adjusted income" means unadjusted income as modified by Sections 59-7-105 and
46528 59-7-106.

46529 (2) (a) "Affiliated group" means one or more chains of corporations that are connected
46530 through stock ownership with a common parent corporation that meet the following
46531 requirements:

46532 (i) at least 80% of the stock of each of the corporations in the group, excluding the
46533 common parent corporation, is owned by one or more of the other corporations in the group;
46534 and

46535 (ii) the common parent directly owns at least 80% of the stock of at least one of the
46536 corporations in the group.

46537 (b) "Affiliated group" does not include corporations that are qualified to do business but

46538 are not otherwise doing business in this state.

46539 (c) For purposes of this Subsection (2), "stock" does not include nonvoting stock which
46540 is limited and preferred as to dividends.

46541 (3) "Apportionable income" means adjusted income less nonbusiness income net of
46542 related expenses, to the extent included in adjusted income.

46543 (4) "Apportioned income" means apportionable income multiplied by the apportionment
46544 fraction as determined in Section 59-7-311.

46545 (5) "Business income" is as defined in Section 59-7-302.

46546 (6) "Corporate return" or "return" includes a combined report.

46547 (7) (a) "Common ownership" means the direct or indirect control or ownership of more
46548 than 50% of the outstanding voting stock of:

46549 (i) a parent-subsidiary controlled group as defined in Section 1563, Internal Revenue
46550 Code, except that 50% shall be substituted for 80%;

46551 (ii) a brother-sister controlled group as defined in Section 1563, Internal Revenue
46552 Code, except that 50% shall be substituted for 80%; or

46553 (iii) three or more corporations each of which is a member of a group of corporations
46554 described in Subsection (2)(a)(i) or (2)(a)(ii), and one of which is:

46555 (A) a common parent corporation included in a group of corporations described in
46556 Subsection (2)(a)(i); and

46557 (B) included in a group of corporations described in Subsection (2)(a)(ii).

46558 (b) Ownership of outstanding voting stock shall be determined by Section 1563,
46559 Internal Revenue Code.

46560 (8) "Corporation" includes:

46561 (a) entities defined as corporations under Sections 7701(a) and 7704, Internal Revenue
46562 Code; and

46563 (b) other organizations that are taxed as corporations for federal income tax purposes
46564 under the Internal Revenue Code.

46565 (9) "Dividend" means any distribution, including money or other type of property, made

46566 by a corporation to its shareholders out of its earnings or profits accumulated after December
46567 31, 1930.

46568 (10) (a) "Doing business" includes any transaction in the course of its business by a
46569 domestic corporation, or by a foreign corporation qualified to do or doing intrastate business in
46570 this state.

46571 (b) Except as provided in Subsection 59-7-102(2), "doing business" includes:

46572 (i) the right to do business through incorporation or qualification;

46573 (ii) the owning, renting, or leasing of real or personal property within this state; and

46574 (iii) the participation in joint ventures, working and operating agreements, the
46575 performance of which takes place in this state.

46576 (11) "Domestic corporation" means a corporation that is incorporated or organized
46577 under the laws of this state.

46578 (12) (a) "Farmers' cooperative" means an association, corporation, or other
46579 organization that is:

46580 (i) (A) an association, corporation, or other organization of:

46581 (I) farmers; or

46582 (II) fruit growers; or

46583 (B) an association, corporation, or other organization that is similar to an association,
46584 corporation, or organization described in Subsection (12)(a)(i)(A); and

46585 (ii) organized and operated on a cooperative basis to:

46586 (A) (I) market the products of members of the cooperative or the products of other
46587 producers; and

46588 (II) return to the members of the cooperative or other producers the proceeds of sales
46589 less necessary marketing expenses on the basis of the quantity of the products of a member or
46590 producer or the value of the products of a member or producer; or

46591 (B) (I) purchase supplies and equipment for the use of members of the cooperative or
46592 other persons; and

46593 (II) turn over the supplies and equipment described in Subsection (12)(a)(ii)(B)(I) at

46594 actual costs plus necessary expenses to the members of the cooperative or other persons.

46595 (b) (i) Subject to Subsection (12)(b)(ii), for purposes of this Subsection (12), the
46596 commission by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
46597 Utah Administrative Rulemaking Act, shall define:

46598 (A) the terms:

46599 (I) "member"; and

46600 (II) "producer"; and

46601 (B) what constitutes an association, corporation, or other organization that is similar to
46602 an association, corporation, or organization described in Subsection (12)(a)(i)(A).

46603 (ii) The rules made under this Subsection (12)(b) shall be consistent with the filing
46604 requirements under federal law for a farmers' cooperative.

46605 (13) "Foreign corporation" means a corporation that is not incorporated or organized
46606 under the laws of this state.

46607 (14) (a) "Foreign operating company" means a corporation that:

46608 (i) is incorporated in the United States; and

46609 (ii) 80% or more of whose business activity, as determined under Section 59-7-401, is
46610 conducted outside the United States.

46611 (b) "Foreign operating company" does not include a corporation that qualifies for the
46612 Puerto Rico and Possession Tax Credit as provided in Section 936, Internal Revenue Code.

46613 (15) "Income" includes losses.

46614 (16) "Internal Revenue Code" means Title 26 of the United States Code as effective
46615 during the year in which Utah taxable income is determined.

46616 (17) "Nonbusiness income" is as defined in Section 59-7-302.

46617 (18) "Nonresident shareholder" means any shareholder of an S corporation who on the
46618 last day of the taxable year of the S corporation, is:

46619 (a) an individual not domiciled in Utah; or

46620 (b) a nonresident trust or nonresident estate, as defined in Section 59-10-103.

46621 (19) "Related expenses" means:

46622 (a) expenses directly attributable to nonbusiness income; and
46623 (b) the portion of interest or other expense indirectly attributable to both nonbusiness
46624 and business income which bears the same ratio to the aggregate amount of such interest or
46625 other expense, determined without regard to this Subsection (19), as the average amount of the
46626 asset producing the nonbusiness income bears to the average amount of all assets of the
46627 taxpayer within the taxable year.

46628 (20) "Resident shareholder" means any shareholder of an S corporation who is not a
46629 nonresident shareholder.

46630 (21) "S corporation" means an S corporation as defined in Section 1361, Internal
46631 Revenue Code.

46632 (22) "Safe harbor lease" means a lease that qualified as a safe harbor lease under
46633 Section 168, Internal Revenue Code.

46634 (23) "State of the United States" includes any of the 50 states or the District of
46635 Columbia and "United States" includes the 50 states and the District of Columbia.

46636 (24) (a) "Taxable year" means the calendar year or the fiscal year ending during such
46637 calendar year upon the basis of which the adjusted income is computed.

46638 (b) In the case of a return made for a fractional part of a year under this chapter or
46639 under rules prescribed by the commission, "taxable year" includes the period for which such
46640 return is made.

46641 (25) "Taxpayer" means any corporation subject to the tax imposed by this chapter.

46642 (26) "Threshold level of business activity" means business activity in the United States
46643 equal to or greater than 20% of the corporation's total business activity as determined under
46644 Section 59-7-401.

46645 (27) "Unadjusted income" means federal taxable income as determined on a separate
46646 return basis before intercompany eliminations as determined by the Internal Revenue Code,
46647 before the net operating loss deduction and special deductions for dividends received.

46648 (28) (a) "Unitary group" means a group of corporations that:

46649 (i) are related through common ownership; and

46650 (ii) by a preponderance of the evidence as determined by a court of competent
46651 jurisdiction or the commission, are economically interdependent with one another as
46652 demonstrated by the following factors:

- 46653 (A) centralized management;
- 46654 (B) functional integration; and
- 46655 (C) economies of scale.

46656 (b) "Unitary group" does not include S corporations.

46657 (29) "Utah net loss" means the current year Utah taxable income before Utah net loss
46658 deduction, if determined to be less than zero.

46659 (30) "Utah net loss deduction" means the amount of Utah net losses from other taxable
46660 years that may be carried back or carried forward to the current taxable year in accordance with
46661 Section 59-7-110.

46662 (31) (a) "Utah taxable income" means Utah taxable income before net loss deduction
46663 less Utah net loss deduction.

46664 (b) "Utah taxable income" includes income from tangible or intangible property located
46665 or having situs in this state, regardless of whether carried on in intrastate, interstate, or foreign
46666 commerce.

46667 (32) "Utah taxable income before net loss deduction" means apportioned income plus
46668 nonbusiness income allocable to Utah net of related expenses.

46669 (33) (a) "Water's edge combined report" means a report combining the income and
46670 activities of:

46671 (i) all members of a unitary group that are:

- 46672 (A) corporations organized or incorporated in the United States, including those
46673 corporations qualifying for the Puerto Rico and Possession Tax Credit as provided in Section
46674 936, Internal Revenue Code, in accordance with Subsection (33)(b); and

- 46675 (B) corporations organized or incorporated outside of the United States meeting the
46676 threshold level of business activity; and

46677 (ii) an affiliated group electing to file a water's edge combined report under Subsection

46678 59-7-402(2).

46679 (b) There is a rebuttable presumption that a corporation which qualifies for the Puerto
46680 Rico and Possession Tax Credit provided in Section 936, Internal Revenue Code, is part of a
46681 unitary group.

46682 (34) "Worldwide combined report" means the combination of the income and activities
46683 of all members of a unitary group irrespective of the country in which the corporations are
46684 incorporated or conduct business activity.

46685 Section 992. Section **59-7-311** is amended to read:

46686 **59-7-311. Method of apportionment of business income.**

46687 (1) All business income shall be apportioned to this state by multiplying the business
46688 income by a fraction calculated as provided in Subsection (2).

46689 (2) The fraction described in Subsection (1) is calculated as follows:

46690 (a) for a taxpayer that does not make an election authorized by Subsection (3):

46691 (i) the numerator of the fraction is the sum of:

46692 (A) the property factor as calculated under Section 59-7-312;

46693 (B) the payroll factor as calculated under Section 59-7-315; and

46694 (C) the sales factor as calculated under Section 59-7-317; and

46695 (ii) the denominator of the fraction is three; and

46696 (b) for a taxpayer that makes an election authorized by Subsection (3):

46697 (i) the numerator of the fraction is the sum of:

46698 (A) the property factor as calculated under Section 59-7-312;

46699 (B) the payroll factor as calculated under Section 59-7-315; and

46700 (C) the product of:

46701 (I) the sales factor as calculated under Section 59-7-317; and

46702 (II) two; and

46703 (ii) the denominator of the fraction is four.

46704 (3) (a) For purposes of Subsection (2) and subject to Subsection (3)(b), for taxable
46705 years beginning on or after January 1, 2006, a taxpayer may elect to calculate the fraction for

46706 apportioning business income under this section in accordance with Subsection (2)(b).

46707 (b) If a taxpayer makes the election described in Subsection (3)(a), the taxpayer may
46708 not revoke the election for a period of five taxable years.

46709 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46710 Administrative Rulemaking Act, the commission may make rules providing procedures for a
46711 taxpayer to make the election described in Subsection (3)(a).

46712 Section 993. Section **59-7-610** is amended to read:

46713 **59-7-610. Recycling market development zones tax credit.**

46714 (1) For taxable years beginning on or after January 1, 1996, a business operating in a
46715 recycling market development zone as defined in Section [~~63-38f-1102~~] 63M-1-1102 may claim
46716 a tax credit as provided in this section.

46717 (a) (i) There shall be allowed a nonrefundable tax credit of 5% of the purchase price
46718 paid for machinery and equipment used directly in:

46719 (A) commercial composting; or

46720 (B) manufacturing facilities or plant units that:

46721 (I) manufacture, process, compound, or produce recycled items of tangible personal
46722 property for sale; or

46723 (II) reduce or reuse postconsumer waste material.

46724 (ii) The Governor's Office of Economic Development shall certify that the machinery
46725 and equipment described in Subsection (1)(a)(i) are integral to the composting or recycling
46726 process:

46727 (A) on a form provided by the commission; and

46728 (B) before a taxpayer is allowed a tax credit under this section.

46729 (iii) The Governor's Office of Economic Development shall provide a taxpayer seeking
46730 to claim a tax credit under this section with a copy of the form described in Subsection
46731 (1)(a)(ii).

46732 (iv) The taxpayer described in Subsection (1)(a)(iii) shall retain a copy of the form
46733 received under Subsection (1)(a)(iii).

46734 (b) There shall be allowed a nonrefundable tax credit equal to 20% of net expenditures
46735 up to \$10,000 to third parties for rent, wages, supplies, tools, test inventory, and utilities made
46736 by the taxpayer for establishing and operating recycling or composting technology in Utah, with
46737 an annual maximum tax credit of \$2,000.

46738 (2) The total nonrefundable tax credit allowed under this section may not exceed 40%
46739 of the Utah income tax liability of the taxpayer prior to any tax credits in the taxable year of
46740 purchase prior to claiming the tax credit authorized by this section.

46741 (3) (a) Any tax credit not used for the taxable year in which the purchase price on
46742 composting or recycling machinery and equipment was paid may be carried over for credit
46743 against the business' income taxes in the three succeeding taxable years until the total tax credit
46744 amount is used.

46745 (b) Tax credits not claimed by a business on the business' state income tax return within
46746 three years are forfeited.

46747 (4) The commission shall make rules governing what information shall be filed with the
46748 commission to verify the entitlement to and amount of a tax credit.

46749 (5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after
46750 January 1, 2001, a taxpayer may not claim or carry forward a tax credit described in Subsection
46751 (1)(a) in a taxable year during which the taxpayer claims or carries forward a tax credit under
46752 Section [~~63-38f-413~~] 63M-1-413.

46753 (b) For a taxable year other than a taxable year during which the taxpayer may not claim
46754 or carry forward a tax credit in accordance with Subsection (5)(a), a taxpayer may claim or
46755 carry forward a tax credit described in Subsection (1)(a):

46756 (i) if the taxpayer may claim or carry forward the tax credit in accordance with
46757 Subsections (1) and (2); and

46758 (ii) subject to Subsections (3) and (4).

46759 (6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January
46760 1, 2001, a taxpayer may not claim a tax credit described in Subsection (1)(b) in a taxable year
46761 during which the taxpayer claims or carries forward a tax credit under Section [~~63-38f-413~~]

46762 63M-1-413.

46763 (7) A taxpayer may not claim or carry forward a tax credit available under this section
46764 for a taxable year during which the taxpayer has claimed the targeted business income tax credit
46765 available under Section [~~63-38f-503~~] 63M-1-504.

46766 Section 994. Section **59-7-612** is amended to read:

46767 **59-7-612. Tax credits for research activities conducted in the state -- Carry**
46768 **forward -- Commission to report modification or repeal of certain federal provisions --**
46769 **Utah Tax Review Commission study.**

46770 (1) (a) A taxpayer meeting the requirements of this section may claim the following
46771 nonrefundable tax credits:

46772 (i) a research tax credit of 7% of the taxpayer's qualified research expenses for the
46773 current taxable year that exceed the base amount provided for under Subsection (4);

46774 (ii) a tax credit for payments to qualified organizations for basic research as provided in
46775 Section 41(e), Internal Revenue Code, of 7% for the current taxable year that exceed the base
46776 amount provided for under Subsection (4); and

46777 (iii) a tax credit equal to 5% of the taxpayer's qualified research expenses for the current
46778 taxable year.

46779 (b) (i) Except as provided in Subsection (1)(b)(ii), a taxpayer may:

46780 (A) claim the tax credit or a portion of the tax credit for the taxable year immediately
46781 following the taxable year for which the taxpayer qualifies for the tax credit;

46782 (B) carry forward the tax credit or a portion of the tax credit as provided in Subsection
46783 (5); or

46784 (C) claim a portion of the tax credit and carry forward a portion of the tax credit as
46785 provided in Subsections (1)(b)(i)(A) and (B).

46786 (ii) A taxpayer may not carry forward the tax credit allowed by Subsection (1)(a)(iii).

46787 (c) The tax credits provided for in this section do not include the alternative incremental
46788 credit provided for in Section 41(c)(4), Internal Revenue Code.

46789 (2) For purposes of claiming a tax credit under this section, a unitary group as defined

46790 in Section 59-7-101 is considered to be one taxpayer.

46791 (3) Except as specifically provided for in this section:

46792 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
46793 Section 41, Internal Revenue Code; and

46794 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
46795 the tax credits authorized under Subsection (1).

46796 (4) For purposes of this section:

46797 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal
46798 Revenue Code, except that:

46799 (i) the base amount does not include the calculation of the alternative incremental credit
46800 provided for in Section 41(c)(4), Internal Revenue Code;

46801 (ii) a taxpayer's gross receipts include only those gross receipts attributable to sources
46802 within this state as provided in Part 3, Allocation and Apportionment of Income -- Utah
46803 UDITPA Provisions; and

46804 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
46805 the base amount, a taxpayer:

46806 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
46807 regardless of whether the taxpayer meets the requirements of Section 41(c)(3)(B)(i)(I) or (II);
46808 and

46809 (B) may not revoke an election to be treated as a start-up company under Subsection
46810 (4)(a)(iii)(A);

46811 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
46812 that the term includes only basic research conducted in this state;

46813 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
46814 that the term includes only qualified research conducted in this state;

46815 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
46816 Revenue Code, except that the term includes only:

46817 (i) in-house research expenses incurred in this state; and

46818 (ii) contract research expenses incurred in this state; and
46819 (e) a tax credit provided for in this section is not terminated if a credit terminates under
46820 Section 41, Internal Revenue Code.

46821 (5) If the amount of a tax credit claimed by a taxpayer under Subsection (1)(a)(i) or (ii)
46822 exceeds the taxpayer's tax liability under this chapter for a taxable year, the amount of the tax
46823 credit exceeding the tax liability:

46824 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
46825 and

46826 (b) may not be carried back to a taxable year preceding the current taxable year.

46827 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46828 Administrative Rulemaking Act, the commission may make rules for purposes of this section
46829 prescribing a certification process for qualified organizations to ensure that amounts paid to the
46830 qualified organizations are for basic research conducted in this state.

46831 (7) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
46832 commission shall report the modification or repeal to the Utah Tax Review Commission within
46833 60 days after the day on which the modification or repeal becomes effective.

46834 (8) (a) The Utah Tax Review Commission shall review the tax credits provided for in
46835 this section on or before October 1 of the year after the year in which the commission reports
46836 under Subsection (7) a modification or repeal of a provision of Section 41, Internal Revenue
46837 Code.

46838 (b) Notwithstanding Subsection (8)(a), the Utah Tax Review Commission is not
46839 required to review the tax credits provided for in this section if the only modification to a
46840 provision of Section 41, Internal Revenue Code, is the extension of the termination date
46841 provided for in Section 41(h), Internal Revenue Code.

46842 (c) The Utah Tax Review Commission shall address in a review under this section:

46843 (i) the cost of the tax credits provided for in this section;

46844 (ii) the purpose and effectiveness of the tax credits provided for in this section;

46845 (iii) whether the tax credits provided for in this section benefit the state; and

46846 (iv) whether the tax credits provided for in this section should be:

46847 (A) continued;

46848 (B) modified; or

46849 (C) repealed.

46850 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
46851 section, the Utah Tax Review Commission shall report its findings to the Revenue and Taxation
46852 Interim Committee on or before the November interim meeting of the year in which the Utah
46853 Tax Review Commission reviews the tax credits.

46854 Section 995. Section **59-7-613** is amended to read:

46855 **59-7-613. Credits for machinery, equipment, or both primarily used for**
46856 **conducting qualified research or basic research -- Carry forward -- Commission to report**
46857 **modification or repeal of federal credits -- Tax Review Commission study.**

46858 (1) As used in this section:

46859 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
46860 that the term includes only basic research conducted in this state.

46861 (b) "Equipment" includes:

46862 (i) computers;

46863 (ii) computer equipment; and

46864 (iii) computer software.

46865 (c) "Purchase price":

46866 (i) includes the cost of installing an item of machinery or equipment; and

46867 (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

46868 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

46869 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except
46870 that the term includes only qualified research conducted in this state.

46871 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after
46872 January 1, 1999, but beginning before December 31, 2010, a taxpayer shall qualify for the
46873 following nonrefundable credits for the taxable year in which the machinery, equipment, or both,

46874 meets the requirements of either Subsection (2)(a)(i) or (2)(a)(ii):

46875 (i) a credit of 6% of the purchase price of either machinery, equipment, or both:

46876 (A) purchased by the taxpayer during the taxable year;

46877 (B) that is not exempt from sales or use taxes; and

46878 (C) that is primarily used to conduct qualified research in this state; and

46879 (ii) a credit of 6% of the purchase price of either machinery, equipment, or both:

46880 (A) purchased by the taxpayer during the taxable year;

46881 (B) that is not exempt from sales or use taxes;

46882 (C) that is donated to a qualified organization; and

46883 (D) that is primarily used to conduct basic research in this state.

46884 (b) If a taxpayer qualifying for a credit under Subsection (2)(a) seeks to claim the

46885 credit, the taxpayer shall:

46886 (i) claim the credit or a portion of the credit for the taxable year immediately following

46887 the taxable year for which the taxpayer qualifies for the credit;

46888 (ii) carry the credit or a portion of the credit forward as provided in Subsection (5); or

46889 (iii) claim a portion of the credit and carry forward a portion of the credit as provided in

46890 Subsections (2)(b)(i) and (ii).

46891 (c) Notwithstanding Subsection (2)(a), if a taxpayer qualifies for a credit under

46892 Subsection (2)(a) for a purchase of machinery, equipment, or both, the taxpayer may not claim

46893 the credit or carry the credit forward if the machinery, equipment, or both, is primarily used to

46894 conduct qualified research in the state for a time period that is less than 12 consecutive months.

46895 (3) For purposes of claiming a credit under this section, a unitary group as defined in

46896 Section 59-7-101 is considered to be one taxpayer.

46897 (4) Notwithstanding the provisions of Section 41(h), Internal Revenue Code, the credits

46898 provided for in this section shall not terminate if the credits terminate under Section 41, Internal

46899 Revenue Code.

46900 (5) Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,

46901 governing the carry forward and carry back of federal tax credits, if the amount of a tax credit

46902 claimed by a taxpayer under this section exceeds the taxpayer's tax liability under this chapter
46903 for a taxable year, the amount of the credit exceeding the liability:

46904 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
46905 and

46906 (b) may not be carried back to a taxable year preceding the current taxable year.

46907 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46908 Administrative Rulemaking Act, the commission may make rules for purposes of this section
46909 prescribing a certification process for qualified organizations to ensure that either machinery,
46910 equipment, or both provided to the qualified organization is to be primarily used to conduct
46911 basic research in this state.

46912 (7) If a federal tax credit under Section 41, Internal Revenue Code, is modified or
46913 repealed, the commission shall report the modification or repeal to the Tax Review Commission
46914 within 60 days after the day on which the modification or repeal becomes effective.

46915 (8) (a) Except as provided in Subsection (8)(b), the Tax Review Commission shall
46916 review the credits provided for in this section on or before the earlier of:

46917 (i) October 1 of the year after the year in which the commission reports under
46918 Subsection (7) a modification or repeal of a federal tax credit under Section 41, Internal
46919 Revenue Code; or

46920 (ii) October 1, 2004.

46921 (b) Notwithstanding Subsection (8)(a), the Tax Review Commission is not required to
46922 review the credits provided for in this section if the only modification to a federal tax credit
46923 under Section 41, Internal Revenue Code, is the extension of the termination date provided for
46924 in Section 41(h), Internal Revenue Code.

46925 (c) The Tax Review Commission shall address in a review under this section the:

46926 (i) cost of the credit;

46927 (ii) purpose and effectiveness of the credit;

46928 (iii) whether the credit benefits the state; and

46929 (iv) whether the credit should be:

- 46930 (A) continued;
- 46931 (B) modified; or
- 46932 (C) repealed.
- 46933 (d) If the Tax Review Commission reviews the credits provided for in this section, the
- 46934 Tax Review Commission shall report its findings to the Revenue and Taxation Interim
- 46935 Committee on or before the November interim meeting of the year in which the Tax Review
- 46936 Commission reviews the credits.

46937 Section 996. Section **59-7-614.1** is amended to read:

46938 **59-7-614.1. Refundable tax credit for hand tools used in farming operations --**
46939 **Procedures for refund -- Transfers from General Fund to Education Fund -- Rulemaking**
46940 **authority.**

46941 (1) For taxable years beginning on or after January 1, 2004, a taxpayer may claim a
46942 refundable tax credit:

- 46943 (a) as provided in this section;
- 46944 (b) against taxes otherwise due under this chapter; and
- 46945 (c) in an amount equal to the amount of tax the taxpayer pays:
 - 46946 (i) on a purchase of a hand tool:
 - 46947 (A) if the purchase is made on or after July 1, 2004;
 - 46948 (B) if the hand tool is used or consumed primarily and directly in a farming operation in
 - 46949 the state; and
 - 46950 (C) if the unit purchase price of the hand tool is more than \$250; and
 - 46951 (ii) under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection
 - 46952 (1)(c)(i).

46953 (2) A taxpayer:

- 46954 (a) shall retain the following to establish the amount of tax the resident or nonresident
- 46955 individual paid under Chapter 12, Sales and Use Tax Act, on the purchase described in
- 46956 Subsection (1)(c)(i):
 - 46957 (i) a receipt;

46958 (ii) an invoice; or
46959 (iii) a document similar to a document described in Subsection (2)(a)(i) or (ii); and
46960 (b) may not carry forward or carry back a tax credit under this section.
46961 (3) (a) In accordance with any rules prescribed by the commission under Subsection
46962 (3)(b), the commission shall:
46963 (i) make a refund to a taxpayer that claims a tax credit under this section if the amount
46964 of the tax credit exceeds the taxpayer's tax liability under this chapter; and
46965 (ii) transfer at least annually from the General Fund into the Education Fund an amount
46966 equal to the amount of tax credit claimed under this section.
46967 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
46968 Administrative Rulemaking Act, the commission may make rules providing procedures for
46969 making:
46970 (i) a refund to a taxpayer as required by Subsection (3)(a)(i); or
46971 (ii) transfers from the General Fund into the Education Fund as required by Subsection
46972 (3)(a)(ii).
46973 Section 997. Section **59-7-703** is amended to read:
46974 **59-7-703. Payment or withholding of tax on behalf of nonresident shareholders --**
46975 **Rate.**
46976 (1) As used in this section, "return" means:
46977 (a) if a nonresident shareholder is required to file a return under this chapter, a return
46978 filed under this chapter; or
46979 (b) if a nonresident shareholder is required to file a return under Chapter 10, Individual
46980 Income Tax Act, a return filed under Chapter 10, Individual Income Tax Act.
46981 (2) (a) Except as provided in Subsection (4), an S corporation shall pay or withhold a
46982 tax on behalf of any nonresident shareholder.
46983 (b) The amount paid or withheld by an S corporation under Subsection (2)(a) shall be
46984 determined by:
46985 (i) calculating the items of income or loss from federal form 1120S, Schedule K;

46986 (ii) applying the apportionment formula to determine the amount apportioned to Utah;
46987 (iii) reducing the amount apportioned to Utah by the percentage of ownership
46988 attributable to resident shareholders; and

46989 (iv) applying the rate to the remaining balance.

46990 (3) (a) For a nonresident shareholder who is required to file a return under this chapter:

46991 (i) the nonresident shareholder may claim a credit on the nonresident shareholder's
46992 return for the amount of tax paid or withheld by the S corporation on behalf of the nonresident
46993 shareholder;

46994 (ii) if the nonresident shareholder has no other Utah source income, the nonresident
46995 shareholder may elect:

46996 (A) not to claim the credit provided under Subsection (3)(a)(i); and

46997 (B) not to file a return for the taxable year; and

46998 (iii) if the nonresident shareholder may claim credits other than the credit described in
46999 Subsection (3)(a)(i), the nonresident shareholder shall file a return to claim those credits.

47000 (b) If a nonresident shareholder is required to file a return under Chapter 10, Individual
47001 Income Tax Act, the nonresident shareholder is subject to Section 59-10-1103.

47002 (4) Notwithstanding Subsection (2), the obligation to pay or withhold a tax under
47003 Subsection (2) does not apply to an organization that is exempt under Subsection
47004 59-7-102(1)(a) from the taxes imposed by this chapter.

47005 (5) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
47006 Administrative Rulemaking Act, the commission shall by rule determine the rate at which an S
47007 corporation shall withhold for nonresident shareholders.

47008 (b) The rate described in Subsection (5)(a) shall be consistent with the composite tax
47009 rate paid by partnerships.

47010 (6) (a) If an S corporation fails to pay or withhold a tax as provided in this section, and
47011 thereafter the income subject to payment or withholding is reported and the resulting tax is paid
47012 by a nonresident shareholder, any tax required to be paid or withheld may not be collected from
47013 the S corporation.

47014 (b) A nonresident shareholder's payment under Subsection (6)(a) does not relieve the S
47015 corporation from liability for penalties or interest associated with failure to pay or withhold a
47016 tax as provided in this section.

47017 (7) Penalties, refunds, assessments, and required records for S corporations shall be
47018 governed by:

47019 (a) this chapter if a nonresident shareholder is subject to this chapter; or

47020 (b) Chapter 10, Individual Income Tax Act, if a nonresident shareholder is subject to
47021 Chapter 10, Individual Income Tax Act.

47022 (8) (a) An S corporation shall furnish each nonresident shareholder a statement
47023 showing:

47024 (i) the amount of the nonresident shareholder's share of the corporate earnings from
47025 Utah sources; and

47026 (ii) the amount of the withholding from the nonresident shareholder's share of the
47027 corporate earnings from Utah sources.

47028 (b) An S corporation shall pay the commission the amount withheld under this section:

47029 (i) by the due date of the corporation's return, not including extensions; and

47030 (ii) on forms furnished by the commission.

47031 Section 998. Section **59-8-106** is amended to read:

47032 **59-8-106. Rulemaking authority.**

47033 The commission is charged with the administration and enforcement of this chapter and
47034 may promulgate such rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, the Utah
47035 Administrative Rulemaking Act as may be required to effectuate the purposes of this chapter.

47036 Section 999. Section **59-10-103** is amended to read:

47037 **59-10-103. Definitions.**

47038 (1) As used in this chapter:

47039 (a) "Adjusted gross income":

47040 (i) for a resident or nonresident individual, is as defined in Section 62, Internal Revenue
47041 Code; or

- 47042 (ii) for a resident or nonresident estate or trust, is as calculated in Section 67(e),
47043 Internal Revenue Code.
- 47044 (b) "Adoption expenses" means:
- 47045 (i) any actual medical and hospital expenses of the mother of the adopted child which
47046 are incident to the child's birth;
- 47047 (ii) any welfare agency fees or costs;
- 47048 (iii) any child placement service fees or costs;
- 47049 (iv) any legal fees or costs; or
- 47050 (v) any other fees or costs relating to an adoption.
- 47051 (c) "Adult with a disability" means an individual who:
- 47052 (i) is 18 years of age or older;
- 47053 (ii) is eligible for services under Title 62A, Chapter 5, Services for People with
47054 Disabilities; and
- 47055 (iii) is not enrolled in:
- 47056 (A) an education program for students with disabilities that is authorized under Section
47057 53A-15-301; or
- 47058 (B) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind.
- 47059 (d) (i) For purposes of Subsection 59-10-114(2)(l), "capital gain transaction" means a
47060 transaction that results in a:
- 47061 (A) short-term capital gain; or
- 47062 (B) long-term capital gain.
- 47063 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
47064 Administrative Rulemaking Act, the commission may by rule define the term "transaction."
- 47065 (e) "Commercial domicile" means the principal place from which the trade or business
47066 of a Utah small business corporation is directed or managed.
- 47067 (f) "Corporation" includes:
- 47068 (i) associations;
- 47069 (ii) joint stock companies; and

47070 (iii) insurance companies.

47071 (g) "Dependent child with a disability" means an individual 21 years of age or younger

47072 who:

47073 (i) (A) is diagnosed by a school district representative under rules adopted by the State

47074 Board of Education as having a disability classified as:

47075 (I) autism;

47076 (II) deafness;

47077 (III) preschool developmental delay;

47078 (IV) dual sensory impairment;

47079 (V) hearing impairment;

47080 (VI) intellectual disability;

47081 (VII) multidisability;

47082 (VIII) orthopedic impairment;

47083 (IX) other health impairment;

47084 (X) traumatic brain injury; or

47085 (XI) visual impairment;

47086 (B) is not receiving residential services from:

47087 (I) the Division of Services for People with Disabilities created under Section

47088 62A-5-102; or

47089 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

47090 and

47091 (C) is enrolled in:

47092 (I) an education program for students with disabilities that is authorized under Section

47093 53A-15-301; or

47094 (II) a school established under Title 53A, Chapter 25, Schools for the Deaf and Blind;

47095 or

47096 (ii) is identified under guidelines of the Department of Health as qualified for:

47097 (A) Early Intervention; or

- 47098 (B) Infant Development Services.
- 47099 (h) "Distributable net income" is as defined in Section 643, Internal Revenue Code.
- 47100 (i) "Employee" is as defined in Section 59-10-401.
- 47101 (j) "Employer" is as defined in Section 59-10-401.
- 47102 (k) "Federal taxable income":
- 47103 (i) for a resident or nonresident individual, means taxable income as defined by Section
- 47104 63, Internal Revenue Code; or
- 47105 (ii) for a resident or nonresident estate or trust, is as calculated in Section 641(a) and
- 47106 (b), Internal Revenue Code.
- 47107 (l) "Fiduciary" means:
- 47108 (i) a guardian;
- 47109 (ii) a trustee;
- 47110 (iii) an executor;
- 47111 (iv) an administrator;
- 47112 (v) a receiver;
- 47113 (vi) a conservator; or
- 47114 (vii) any person acting in any fiduciary capacity for any individual.
- 47115 (m) "Homesteaded land diminished from the Uintah and Ouray Reservation" means the
- 47116 homesteaded land that was held to have been diminished from the Uintah and Ouray
- 47117 Reservation in Hagen v. Utah, 510 U.S. 399 (1994).
- 47118 (n) "Individual" means a natural person and includes aliens and minors.
- 47119 (o) "Irrevocable trust" means a trust in which the settlor may not revoke or terminate all
- 47120 or part of the trust without the consent of a person who has a substantial beneficial interest in
- 47121 the trust and the interest would be adversely affected by the exercise of the settlor's power to
- 47122 revoke or terminate all or part of the trust.
- 47123 (p) For purposes of Subsection 59-10-114(2)(1), "long-term capital gain" is as defined
- 47124 in Section 1222, Internal Revenue Code.
- 47125 (q) "Nonresident individual" means an individual who is not a resident of this state.

- 47126 (r) "Nonresident trust" or "nonresident estate" means a trust or estate which is not a
47127 resident estate or trust.
- 47128 (s) (i) "Partnership" includes a syndicate, group, pool, joint venture, or other
47129 unincorporated organization:
- 47130 (A) through or by means of which any business, financial operation, or venture is
47131 carried on; and
- 47132 (B) which is not, within the meaning of this chapter:
- 47133 (I) a trust;
- 47134 (II) an estate; or
- 47135 (III) a corporation.
- 47136 (ii) "Partnership" does not include any organization not included under the definition of
47137 "partnership" in Section 761, Internal Revenue Code.
- 47138 (iii) "Partner" includes a member in a syndicate, group, pool, joint venture, or
47139 organization described in Subsection (1)(s)(i).
- 47140 (t) "Qualifying military servicemember" means a member of:
- 47141 (i) The Utah Army National Guard;
- 47142 (ii) The Utah Air National Guard; or
- 47143 (iii) the following if the member is assigned to a unit that is located in the state:
- 47144 (A) The Army Reserve;
- 47145 (B) The Naval Reserve;
- 47146 (C) The Air Force Reserve;
- 47147 (D) The Marine Corps Reserve; or
- 47148 (E) The Coast Guard Reserve.
- 47149 (u) "Qualifying stock" means stock that is:
- 47150 (i) (A) common; or
- 47151 (B) preferred;
- 47152 (ii) as defined by the commission by rule, originally issued to:
- 47153 (A) a resident or nonresident individual; or

47154 (B) a partnership if the resident or nonresident individual making a subtraction from
47155 federal taxable income in accordance with Subsection 59-10-114(2)(1):
47156 (I) was a partner when the stock was issued; and
47157 (II) remains a partner until the last day of the taxable year for which the resident or
47158 nonresident individual makes the subtraction from federal taxable income in accordance with
47159 Subsection 59-10-114(2)(1); and
47160 (iii) issued:
47161 (A) by a Utah small business corporation;
47162 (B) on or after January 1, 2003; and
47163 (C) for:
47164 (I) money; or
47165 (II) other property, except for stock or securities.
47166 (v) (i) "Resident individual" means:
47167 (A) an individual who is domiciled in this state for any period of time during the taxable
47168 year, but only for the duration of the period during which the individual is domiciled in this
47169 state; or
47170 (B) an individual who is not domiciled in this state but:
47171 (I) maintains a permanent place of abode in this state; and
47172 (II) spends in the aggregate 183 or more days of the taxable year in this state.
47173 (ii) For purposes of Subsection (1)(v)(i)(B), a fraction of a calendar day shall be
47174 counted as a whole day.
47175 (w) "Resident estate" or "resident trust" is as defined in Section 75-7-103.
47176 (x) For purposes of Subsection 59-10-114(2)(1), "short-term capital gain" is as defined
47177 in Section 1222, Internal Revenue Code.
47178 (y) "Taxable income" or "state taxable income":
47179 (i) subject to Subsection 59-10-302(2), for a resident individual other than a resident
47180 individual described in Subsection (1)(y)(iii), means the resident individual's federal taxable
47181 income after making the:

- 47182 (A) additions and subtractions required by Section 59-10-114; and
47183 (B) adjustments required by Section 59-10-115;
47184 (ii) for a nonresident individual other than a nonresident individual described in
47185 Subsection (1)(y)(iii), is as defined in Section 59-10-116;
47186 (iii) for a resident or nonresident individual that collects and pays a tax described in Part
47187 12, Single Rate Individual Income Tax Act, is as defined in Section 59-10-1202;
47188 (iv) for a resident estate or trust, is as calculated under Section 59-10-201.1; and
47189 (v) for a nonresident estate or trust, is as calculated under Section 59-10-204.
47190 (z) "Taxpayer" means any individual, estate, or trust or beneficiary of an estate or trust,
47191 whose income is subject in whole or part to the tax imposed by this chapter.
47192 (aa) "Uintah and Ouray Reservation" means the lands recognized as being included
47193 within the Uintah and Ouray Reservation in:
47194 (i) Hagen v. Utah, 510 U.S. 399 (1994); and
47195 (ii) Ute Indian Tribe v. Utah, 114 F.3d 1513 (10th Cir. 1997).
47196 (bb) (i) "Utah small business corporation" means a corporation that:
47197 (A) is a small business corporation as defined in Section 1244(c)(3), Internal Revenue
47198 Code;
47199 (B) except as provided in Subsection (1)(bb)(ii), meets the requirements of Section
47200 1244(c)(1)(C), Internal Revenue Code; and
47201 (C) has its commercial domicile in this state.
47202 (ii) Notwithstanding Subsection (1)(bb)(i)(B), the time period described in Section
47203 1244(c)(1)(C) and Section 1244(c)(2), Internal Revenue Code, for determining the source of a
47204 corporation's aggregate gross receipts shall end on the last day of the taxable year for which the
47205 resident or nonresident individual makes a subtraction from federal taxable income in
47206 accordance with Subsection 59-10-114(2)(l).
47207 (cc) "Ute tribal member" means a person who is enrolled as a member of the Ute Indian
47208 Tribe of the Uintah and Ouray Reservation.
47209 (dd) "Ute tribe" means the Ute Indian Tribe of the Uintah and Ouray Reservation.

47210 (ee) "Wages" is as defined in Section 59-10-401.

47211 (2) (a) Any term used in this chapter has the same meaning as when used in comparable
47212 context in the laws of the United States relating to federal income taxes unless a different
47213 meaning is clearly required.

47214 (b) Any reference to the Internal Revenue Code or to the laws of the United States shall
47215 mean the Internal Revenue Code or other provisions of the laws of the United States relating to
47216 federal income taxes that are in effect for the taxable year.

47217 (c) Any reference to a specific section of the Internal Revenue Code or other provision
47218 of the laws of the United States relating to federal income taxes shall include any corresponding
47219 or comparable provisions of the Internal Revenue Code as hereafter amended, redesignated, or
47220 reenacted.

47221 Section 1000. Section **59-10-114** is amended to read:

47222 **59-10-114. Additions to and subtractions from federal taxable income of an**
47223 **individual.**

47224 (1) There shall be added to federal taxable income of a resident or nonresident
47225 individual:

47226 (a) the amount of any income tax imposed by this or any predecessor Utah individual
47227 income tax law and the amount of any income tax imposed by the laws of another state, the
47228 District of Columbia, or a possession of the United States, to the extent deducted from adjusted
47229 gross income in determining federal taxable income;

47230 (b) a lump sum distribution that the taxpayer does not include in adjusted gross income
47231 on the taxpayer's federal individual income tax return for the taxable year;

47232 (c) for taxable years beginning on or after January 1, 2002, the amount of a child's
47233 income calculated under Subsection (5) that:

47234 (i) a parent elects to report on the parent's federal individual income tax return for the
47235 taxable year; and

47236 (ii) the parent does not include in adjusted gross income on the parent's federal
47237 individual income tax return for the taxable year;

- 47238 (d) 25% of the personal exemptions, as defined and calculated in the Internal Revenue
47239 Code;
- 47240 (e) a withdrawal from a medical care savings account and any penalty imposed in the
47241 taxable year if:
- 47242 (i) the resident or nonresident individual did not deduct or include the amounts on the
47243 resident or nonresident individual's federal individual income tax return pursuant to Section 220,
47244 Internal Revenue Code;
- 47245 (ii) the withdrawal is subject to Subsections 31A-32a-105(1) and (2); and
47246 (iii) the withdrawal is deducted by the resident or nonresident individual under
47247 Subsection (2)(h);
- 47248 (f) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
47249 Incentive Program, from the account of a resident or nonresident individual who is an account
47250 owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
47251 withdrawn, if that amount withdrawn from the account of the resident or nonresident individual
47252 who is the account owner:
- 47253 (i) is not expended for higher education costs as defined in Section 53B-8a-102; and
47254 (ii) is:
- 47255 (A) subtracted by the resident or nonresident individual:
- 47256 (I) who is the account owner; and
47257 (II) in accordance with Subsection (2)(i); or
47258 (B) used as the basis for the resident or nonresident individual who is the account
47259 owner to claim a tax credit under Section 59-10-1206.1;
- 47260 (g) except as provided in Subsection (6), for taxable years beginning on or after January
47261 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1,
47262 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more
47263 of the following entities:
- 47264 (i) a state other than this state;
47265 (ii) the District of Columbia;

47266 (iii) a political subdivision of a state other than this state; or
47267 (iv) an agency or instrumentality of an entity described in Subsections (1)(g)(i) through
47268 (iii);
47269 (h) subject to Subsection (2)(n), any distribution received by a resident beneficiary of a
47270 resident trust of income that was taxed at the trust level for federal tax purposes, but was
47271 subtracted from state taxable income of the trust pursuant to Subsection 59-10-202(2)(c);
47272 (i) any distribution received by a resident beneficiary of a nonresident trust of
47273 undistributed distributable net income realized by the trust on or after January 1, 2004, if that
47274 undistributed distributable net income was taxed at the trust level for federal tax purposes, but
47275 was not taxed at the trust level by any state, with undistributed distributable net income
47276 considered to be distributed from the most recently accumulated undistributed distributable net
47277 income; and
47278 (j) any adoption expense:
47279 (i) for which a resident or nonresident individual receives reimbursement from another
47280 person; and
47281 (ii) to the extent to which the resident or nonresident individual deducts that adoption
47282 expense:
47283 (A) under Subsection (2)(c); or
47284 (B) from federal taxable income on a federal individual income tax return.
47285 (2) There shall be subtracted from federal taxable income of a resident or nonresident
47286 individual:
47287 (a) the interest or a dividend on obligations or securities of the United States and its
47288 possessions or of any authority, commission, or instrumentality of the United States, to the
47289 extent that interest or dividend is included in gross income for federal income tax purposes for
47290 the taxable year but exempt from state income taxes under the laws of the United States, but the
47291 amount subtracted under this Subsection (2)(a) shall be reduced by any interest on indebtedness
47292 incurred or continued to purchase or carry the obligations or securities described in this
47293 Subsection (2)(a), and by any expenses incurred in the production of interest or dividend income

47294 described in this Subsection (2)(a) to the extent that such expenses, including amortizable bond
47295 premiums, are deductible in determining federal taxable income;

47296 (b) 1/2 of the net amount of any income tax paid or payable to the United States after all
47297 allowable credits, as reported on the United States individual income tax return of the taxpayer
47298 for the same taxable year;

47299 (c) the amount of adoption expenses for one of the following taxable years as elected by
47300 the resident or nonresident individual:

47301 (i) regardless of whether a court issues an order granting the adoption, the taxable year
47302 in which the adoption expenses are:

47303 (A) paid; or

47304 (B) incurred;

47305 (ii) the taxable year in which a court issues an order granting the adoption; or

47306 (iii) any year in which the resident or nonresident individual may claim the federal
47307 adoption expenses credit under Section 23, Internal Revenue Code;

47308 (d) amounts received by taxpayers under age 65 as retirement income which, for
47309 purposes of this section, means pensions and annuities, paid from an annuity contract purchased
47310 by an employer under a plan which meets the requirements of Section 404(a)(2), Internal
47311 Revenue Code, or purchased by an employee under a plan which meets the requirements of
47312 Section 408, Internal Revenue Code, or paid by the United States, a state, or political
47313 subdivision thereof, or the District of Columbia, to the employee involved or the surviving
47314 spouse;

47315 (e) for each taxpayer age 65 or over before the close of the taxable year, a \$7,500
47316 personal retirement exemption;

47317 (f) 75% of the amount of the personal exemption, as defined and calculated in the
47318 Internal Revenue Code, for each dependent child with a disability and adult with a disability
47319 who is claimed as a dependent on a taxpayer's return;

47320 (g) subject to the limitations of Subsection (3)(e), amounts a taxpayer pays during the
47321 taxable year for health care insurance, as defined in Title 31A, Chapter 1, General Provisions:

47322 (i) for:

47323 (A) the taxpayer;

47324 (B) the taxpayer's spouse; and

47325 (C) the taxpayer's dependents; and

47326 (ii) to the extent the taxpayer does not deduct the amounts under Section 125, 162, or

47327 213, Internal Revenue Code, in determining federal taxable income for the taxable year;

47328 (h) (i) except as provided in this Subsection (2)(h), the amount of a contribution made

47329 during the taxable year on behalf of the taxpayer to a medical care savings account and interest

47330 earned on a contribution to a medical care savings account established pursuant to Title 31A,

47331 Chapter 32a, Medical Care Savings Account Act, to the extent the contribution is accepted by

47332 the account administrator as provided in the Medical Care Savings Account Act, and if the

47333 taxpayer did not deduct or include amounts on the taxpayer's federal individual income tax

47334 return pursuant to Section 220, Internal Revenue Code; and

47335 (ii) a contribution deductible under this Subsection (2)(h) may not exceed either of the

47336 following:

47337 (A) the maximum contribution allowed under the Medical Care Savings Account Act

47338 for the tax year multiplied by two for taxpayers who file a joint return, if neither spouse is

47339 covered by health care insurance as defined in Section 31A-1-301 or self-funded plan that

47340 covers the other spouse, and each spouse has a medical care savings account; or

47341 (B) the maximum contribution allowed under the Medical Care Savings Account Act

47342 for the tax year for taxpayers:

47343 (I) who do not file a joint return; or

47344 (II) who file a joint return, but do not qualify under Subsection (2)(h)(ii)(A);

47345 (i) subject to Subsection (1)(f), the amount of a qualified investment as defined in

47346 Section 53B-8a-102 that:

47347 (i) a resident or nonresident individual who is an account owner as defined in Section

47348 53B-8a-102 makes during the taxable year;

47349 (ii) the resident or nonresident individual described in Subsection (2)(i)(i) does not

47350 deduct on a federal individual income tax return; and

47351 (iii) does not exceed the maximum amount of the qualified investment that may be

47352 subtracted from federal taxable income for a taxable year in accordance with Subsections

47353 53B-8a-106(1)(e) and (f);

47354 (j) for taxable years beginning on or after January 1, 2000, any amounts paid for

47355 premiums for long-term care insurance as defined in Section 31A-1-301 to the extent the

47356 amounts paid for long-term care insurance were not deducted under Section 213, Internal

47357 Revenue Code, in determining federal taxable income;

47358 (k) for taxable years beginning on or after January 1, 2000, if the conditions of

47359 Subsection (4)(a) are met, the amount of income derived by a Ute tribal member:

47360 (i) during a time period that the Ute tribal member resides on homesteaded land

47361 diminished from the Uintah and Ouray Reservation; and

47362 (ii) from a source within the Uintah and Ouray Reservation;

47363 (l) (i) for taxable years beginning on or after January 1, 2003, the total amount of a

47364 resident or nonresident individual's short-term capital gain or long-term capital gain on a capital

47365 gain transaction:

47366 (A) that occurs on or after January 1, 2003;

47367 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

47368 (I) to purchase qualifying stock in a Utah small business corporation; and

47369 (II) within a 12-month period after the day on which the capital gain transaction occurs;

47370 and

47371 (C) if, prior to the purchase of the qualifying stock described in Subsection

47372 (2)(l)(i)(B)(I), the resident or nonresident individual did not have an ownership interest in the

47373 Utah small business corporation that issued the qualifying stock; and

47374 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

47375 Administrative Rulemaking Act, the commission may make rules:

47376 (A) defining the term "gross proceeds"; and

47377 (B) for purposes of Subsection (2)(l)(i)(C), prescribing the circumstances under which a

47378 resident or nonresident individual has an ownership interest in a Utah small business
47379 corporation;

47380 (m) for the taxable year beginning on or after January 1, 2005, but beginning on or
47381 before December 31, 2005, the first \$2,200 of income a qualifying military servicemember
47382 receives:

47383 (i) for service:

47384 (A) as a qualifying military servicemember; or
47385 (B) under an order into active service in accordance with Section 39-1-5; and

47386 (ii) to the extent that income is included in adjusted gross income on that resident or
47387 nonresident individual's federal individual income tax return for that taxable year;

47388 (n) an amount received by a resident or nonresident individual or distribution received
47389 by a resident or nonresident beneficiary of a resident trust:

47390 (i) if that amount or distribution constitutes a refund of taxes imposed by:

47391 (A) a state; or
47392 (B) the District of Columbia; and

47393 (ii) to the extent that amount or distribution is included in adjusted gross income for
47394 that taxable year on the federal individual income tax return of the resident or nonresident
47395 individual or resident or nonresident beneficiary of a resident trust;

47396 (o) the amount of a railroad retirement benefit:

47397 (i) paid:

47398 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et
47399 seq.;

47400 (B) to a resident or nonresident individual; and
47401 (C) for the taxable year; and

47402 (ii) to the extent that railroad retirement benefit is included in adjusted gross income on
47403 that resident or nonresident individual's federal individual income tax return for that taxable
47404 year; and

47405 (p) an amount:

47406 (i) received by an enrolled member of an American Indian tribe; and
47407 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
47408 part on that amount in accordance with:
47409 (A) federal law;
47410 (B) a treaty; or
47411 (C) a final decision issued by a court of competent jurisdiction.
47412 (3) (a) For purposes of Subsection (2)(d), the amount of retirement income subtracted
47413 for taxpayers under 65 shall be the lesser of the amount included in federal taxable income, or
47414 \$4,800, except that:
47415 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
47416 earned over \$32,000, the amount of the retirement income exemption that may be subtracted
47417 shall be reduced by 50 cents;
47418 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
47419 earned over \$16,000, the amount of the retirement income exemption that may be subtracted
47420 shall be reduced by 50 cents; and
47421 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,
47422 the amount of the retirement income exemption that may be subtracted shall be reduced by 50
47423 cents.
47424 (b) For purposes of Subsection (2)(e), the amount of the personal retirement exemption
47425 shall be further reduced according to the following schedule:
47426 (i) for married taxpayers filing joint returns, for each \$1 of adjusted gross income
47427 earned over \$32,000, the amount of the personal retirement exemption shall be reduced by 50
47428 cents;
47429 (ii) for married taxpayers filing separate returns, for each \$1 of adjusted gross income
47430 earned over \$16,000, the amount of the personal retirement exemption shall be reduced by 50
47431 cents; and
47432 (iii) for individual taxpayers, for each \$1 of adjusted gross income earned over \$25,000,
47433 the amount of the personal retirement exemption shall be reduced by 50 cents.

47434 (c) For purposes of Subsections (3)(a) and (b), adjusted gross income shall be
47435 calculated by adding to adjusted gross income any interest income not otherwise included in
47436 adjusted gross income.

47437 (d) For purposes of determining ownership of items of retirement income common law
47438 doctrine will be applied in all cases even though some items may have originated from service or
47439 investments in a community property state. Amounts received by the spouse of a living retiree
47440 because of the retiree's having been employed in a community property state are not deductible
47441 as retirement income of such spouse.

47442 (e) For purposes of Subsection (2)(g), a subtraction for an amount paid for health care
47443 insurance as defined in Title 31A, Chapter 1, General Provisions, is not allowed:

47444 (i) for an amount that is reimbursed or funded in whole or in part by the federal
47445 government, the state, or an agency or instrumentality of the federal government or the state;
47446 and

47447 (ii) for a taxpayer who is eligible to participate in a health plan maintained and funded in
47448 whole or in part by the taxpayer's employer or the taxpayer's spouse's employer.

47449 (4) (a) A subtraction for an amount described in Subsection (2)(k) is allowed only if:

47450 (i) the taxpayer is a Ute tribal member; and

47451 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
47452 requirements of this Subsection (4).

47453 (b) The agreement described in Subsection (4)(a):

47454 (i) may not:

47455 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

47456 (B) provide a subtraction under this section greater than or different from the

47457 subtraction described in Subsection (2)(k); or

47458 (C) affect the power of the state to establish rates of taxation; and

47459 (ii) shall:

47460 (A) provide for the implementation of the subtraction described in Subsection (2)(k);

47461 (B) be in writing;

- 47462 (C) be signed by:
- 47463 (I) the governor; and
- 47464 (II) the chair of the Business Committee of the Ute tribe;
- 47465 (D) be conditioned on obtaining any approval required by federal law; and
- 47466 (E) state the effective date of the agreement.

47467 (c) (i) The governor shall report to the commission by no later than February 1 of each
47468 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
47469 in effect.

47470 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
47471 subtraction permitted under Subsection (2)(k) is not allowed for taxable years beginning on or
47472 after the January 1 following the termination of the agreement.

47473 (d) For purposes of Subsection (2)(k) and in accordance with [~~Title 63, Chapter 46a~~]
47474 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

47475 (i) for determining whether income is derived from a source within the Uintah and
47476 Ouray Reservation; and

47477 (ii) that are substantially similar to how adjusted gross income derived from Utah
47478 sources is determined under Section 59-10-117.

47479 (5) (a) For purposes of this Subsection (5), "Form 8814" means:

47480 (i) the federal individual income tax Form 8814, Parents' Election To Report Child's
47481 Interest and Dividends; or

47482 (ii) (A) for taxable years beginning on or after January 1, 2002, a form designated by
47483 the commission in accordance with Subsection (5)(a)(ii)(B) as being substantially similar to
47484 2000 Form 8814 if for purposes of federal individual income taxes the information contained on
47485 2000 Form 8814 is reported on a form other than Form 8814; and

47486 (B) for purposes of Subsection (5)(a)(ii)(A) and in accordance with [~~Title 63, Chapter~~
47487 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make
47488 rules designating a form as being substantially similar to 2000 Form 8814 if for purposes of
47489 federal individual income taxes the information contained on 2000 Form 8814 is reported on a

47490 form other than Form 8814.

47491 (b) The amount of a child's income added to adjusted gross income under Subsection
47492 (1)(c) is equal to the difference between:

47493 (i) the lesser of:

47494 (A) the base amount specified on Form 8814; and

47495 (B) the sum of the following reported on Form 8814:

47496 (I) the child's taxable interest;

47497 (II) the child's ordinary dividends; and

47498 (III) the child's capital gain distributions; and

47499 (ii) the amount not taxed that is specified on Form 8814.

47500 (6) Notwithstanding Subsection (1)(g), interest from bonds, notes, and other evidences
47501 of indebtedness issued by an entity described in Subsections (1)(g)(i) through (iv) may not be
47502 added to federal taxable income of a resident or nonresident individual if, as annually
47503 determined by the commission:

47504 (a) for an entity described in Subsection (1)(g)(i) or (ii), the entity and all of the political
47505 subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on
47506 any part of the bonds, notes, and other evidences of indebtedness of this state; or

47507 (b) for an entity described in Subsection (1)(g)(iii) or (iv), the following do not impose
47508 a tax based on income on any part of the bonds, notes, and other evidences of indebtedness of
47509 this state:

47510 (i) the entity; or

47511 (ii) (A) the state in which the entity is located; or

47512 (B) the District of Columbia, if the entity is located within the District of Columbia.

47513 Section 1001. Section **59-10-115** is amended to read:

47514 **59-10-115. Adjustments to federal taxable income.**

47515 (1) The commission shall allow an adjustment to federal taxable income of a taxpayer if
47516 the taxpayer would otherwise:

47517 (a) receive a double tax benefit under this part; or

47518 (b) suffer a double tax detriment under this part.

47519 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

47520 Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to
47521 federal taxable income required by Subsection (1).

47522 Section 1002. Section **59-10-116** is amended to read:

47523 **59-10-116. Definitions -- Tax on nonresident individual -- Calculation --**
47524 **Exemption.**

47525 (1) For purposes of this section:

47526 (a) "Military service" is as defined in Pub. L. No. 108-189, Sec. 101.

47527 (b) "Servicemember" is as defined in Pub. L. No. 108-189, Sec. 101.

47528 (c) "State income tax percentage" means a percentage equal to a nonresident
47529 individual's adjusted gross income for the taxable year received from Utah sources, as
47530 determined under Section 59-10-117, divided by the difference between:

47531 (i) the nonresident individual's total adjusted gross income for that taxable year; and

47532 (ii) if the nonresident individual described in Subsection (1)(c)(i) is a servicemember,
47533 the compensation the servicemember receives for military service if the servicemember is
47534 serving in compliance with military orders.

47535 (d) "State taxable income" means a nonresident individual's federal taxable income after
47536 making the:

47537 (i) additions and subtractions required by Section 59-10-114; and

47538 (ii) adjustments required by Section 59-10-115.

47539 (e) "Unapportioned state tax" means the product of the:

47540 (i) difference between:

47541 (A) a nonresident individual's state taxable income; and

47542 (B) if the nonresident individual described in Subsection (1)(e)(i)(A) is a
47543 servicemember, compensation the servicemember receives for military service if the
47544 servicemember is serving in compliance with military orders; and

47545 (ii) tax rate imposed under Section 59-10-104.

47546 (2) Except as provided in Subsection (3) or Part 12, Single Rate Individual Income Tax
47547 Act, a tax is imposed on a nonresident individual in an amount equal to the product of the
47548 nonresident individual's:

47549 (a) unapportioned state tax; and

47550 (b) state income tax percentage.

47551 (3) This section does not apply to a nonresident individual exempt from taxation under
47552 Section 59-10-104.1.

47553 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
47554 Administrative Rulemaking Act, for purposes of Subsection (1), the commission may by rule
47555 define what constitutes compensation.

47556 Section 1003. Section **59-10-117** is amended to read:

47557 **59-10-117. Adjusted gross income derived from Utah sources.**

47558 (1) For purposes of Section 59-10-116, adjusted gross income derived from Utah
47559 sources includes those items includable in adjusted gross income attributable to or resulting
47560 from:

47561 (a) the ownership in this state of any interest in real or tangible personal property,
47562 including real property or property rights from which "gross income from mining," as defined by
47563 Section 613(c), Internal Revenue Code, is derived; or

47564 (b) the carrying on of a business, trade, profession, or occupation in this state.

47565 (2) For the purposes of Subsection (1):

47566 (a) income from intangible personal property, including annuities, dividends, interest,
47567 and gains from the disposition of intangible personal property shall constitute income derived
47568 from Utah sources only to the extent that such income is from property employed in a trade,
47569 business, profession, or occupation carried on in this state;

47570 (b) deductions with respect to capital losses, net long-term capital gains, and net
47571 operating losses shall be based solely on income, gain, loss, and deduction connected with Utah
47572 sources, under rules prescribed by the commission in accordance with [~~Title 63, Chapter 46a~~]
47573 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, but otherwise shall be determined

47574 in the same manner as the corresponding federal deductions;

47575 (c) salaries, wages, commissions, and compensation for personal services rendered
47576 outside this state shall not be considered to be derived from Utah sources;

47577 (d) a nonresident shareholder's distributive share of ordinary income, gain, loss, and
47578 deduction derived from or connected with Utah sources shall be determined under Section
47579 59-10-118;

47580 (e) a nonresident, other than a dealer holding property primarily for sale to customers in
47581 the ordinary course of the dealer's trade or business, may not be considered to carry on a trade,
47582 business, profession, or occupation in this state solely by reason of the purchase or sale of
47583 property for the nonresident's own account;

47584 (f) if a trade, business, profession, or occupation is carried on partly within and partly
47585 without this state, items of income, gain, loss, and deductions derived from or connected with
47586 Utah sources shall be determined in accordance with the provisions of Section 59-10-118;

47587 (g) a nonresident partner's distributive share of partnership income, gain, loss, and
47588 deduction derived from or connected with Utah sources shall be determined under Section
47589 59-10-303;

47590 (h) the share of a nonresident estate or trust and nonresident beneficiaries of any estate
47591 or trust in income, gain, loss, and deduction derived from or connected with Utah sources shall
47592 be determined under Section 59-10-207; and

47593 (i) any dividend, interest, or distributive share of income, gain, or loss from a real estate
47594 investment trust, as defined in Section 59-7-116.5, distributed or allocated to a nonresident
47595 investor in the trust, including any shareholder, beneficiary, or owner of a beneficial interest in
47596 the trust, shall be income from intangible personal property under Subsection (2)(a), and shall
47597 constitute income derived from Utah sources only to the extent the nonresident investor is
47598 employing its beneficial interest in the trust in a trade, business, profession, or occupation
47599 carried on by the investor in this state.

47600 Section 1004. Section **59-10-202** is amended to read:

47601 **59-10-202. Additions to and subtractions from federal taxable income of a**

47602 **resident or nonresident estate or trust.**

47603 (1) There shall be added to federal taxable income of a resident or nonresident estate or
47604 trust:

47605 (a) the amount of any income tax imposed by this or any predecessor Utah individual
47606 income tax law and the amount of any income tax imposed by the laws of another state, the
47607 District of Columbia, or a possession of the United States, to the extent deducted from federal
47608 adjusted total income as defined in Section 62, Internal Revenue Code, in determining federal
47609 taxable income;

47610 (b) a lump sum distribution allowable as a deduction under Section 402(d)(3) of the
47611 Internal Revenue Code, to the extent deductible under Section 62(a)(8) of the Internal Revenue
47612 Code in determining adjusted gross income;

47613 (c) except as provided in Subsection (3), for taxable years beginning on or after January
47614 1, 2003, for bonds, notes, and other evidences of indebtedness acquired on or after January 1,
47615 2003, the interest from bonds, notes, and other evidences of indebtedness issued by one or more
47616 of the following entities:

47617 (i) a state other than this state;

47618 (ii) the District of Columbia;

47619 (iii) a political subdivision of a state other than this state; or

47620 (iv) an agency or instrumentality of an entity described in Subsections (1)(c)(i) through
47621 (iii);

47622 (d) any portion of federal taxable income for a taxable year if that federal taxable
47623 income is derived from stock:

47624 (i) in an S corporation; and

47625 (ii) that is held by an electing small business trust;

47626 (e) (i) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings
47627 Incentive Program, from the account of a resident or nonresident estate or trust that is an
47628 account owner as defined in Section 53B-8a-102, for the taxable year for which the amount is
47629 withdrawn, if that amount withdrawn from the account of the resident or nonresident estate or

47630 trust that is the account owner:

47631 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

47632 (B) is subtracted by the resident or nonresident estate or trust:

47633 (I) that is the account owner; and

47634 (II) in accordance with Subsection (2)(j)(i); and

47635 (ii) the amount withdrawn under Title 53B, Chapter 8a, Higher Education Savings

47636 Incentive Program, from the account of a resident or nonresident estate or trust that is an

47637 account owner as defined in Section 53B-8a-102, for the taxable year beginning on or after

47638 January 1, 2007, but beginning on or before December 31, 2007, if that amount withdrawn from

47639 the account of the resident or nonresident estate or trust that is the account owner:

47640 (A) is not expended for higher education costs as defined in Section 53B-8a-102; and

47641 (B) is subtracted by the resident or nonresident estate or trust:

47642 (I) that is the account owner; and

47643 (II) in accordance with Subsection (2)(j)(ii); and

47644 (f) any fiduciary adjustments required by Section 59-10-210.

47645 (2) There shall be subtracted from federal taxable income of a resident or nonresident

47646 estate or trust:

47647 (a) the interest or a dividend on obligations or securities of the United States and its

47648 possessions or of any authority, commission, or instrumentality of the United States, to the

47649 extent that interest or dividend is included in gross income for federal income tax purposes for

47650 the taxable year but exempt from state income taxes under the laws of the United States, but the

47651 amount subtracted under this Subsection (2) shall be reduced by any interest on indebtedness

47652 incurred or continued to purchase or carry the obligations or securities described in this

47653 Subsection (2), and by any expenses incurred in the production of interest or dividend income

47654 described in this Subsection (2) to the extent that such expenses, including amortizable bond

47655 premiums, are deductible in determining federal taxable income;

47656 (b) 1/2 of the net amount of any income tax paid or payable to the United States after

47657 all allowable credits, as per the United States fiduciary income tax return of the taxpayer for the

47658 same taxable year;

47659 (c) income of an irrevocable resident trust if:

47660 (i) the income would not be treated as state taxable income derived from Utah sources

47661 under Section 59-10-204 if received by a nonresident trust;

47662 (ii) the trust first became a resident trust on or after January 1, 2004;

47663 (iii) no assets of the trust were held, at any time after January 1, 2003, in another

47664 resident irrevocable trust created by the same settlor or the spouse of the same settlor;

47665 (iv) the trustee of the trust is a trust company as defined in Subsection 7-5-1(1)(d);

47666 (v) the amount subtracted under this Subsection (2) is reduced to the extent the settlor

47667 or any other person is treated as an owner of any portion of the trust under Subtitle A,

47668 Subchapter J, Subpart E of the Internal Revenue Code; and

47669 (vi) the amount subtracted under this Subsection (2) is reduced by any interest on

47670 indebtedness incurred or continued to purchase or carry the assets generating the income

47671 described in this Subsection (2), and by any expenses incurred in the production of income

47672 described in this Subsection (2), to the extent that those expenses, including amortizable bond

47673 premiums, are deductible in determining federal taxable income;

47674 (d) if the conditions of Subsection (4)(a) are met, the amount of income of a resident or

47675 nonresident estate or trust derived from a deceased Ute tribal member:

47676 (i) during a time period that the Ute tribal member resided on homesteaded land

47677 diminished from the Uintah and Ouray Reservation; and

47678 (ii) from a source within the Uintah and Ouray Reservation;

47679 (e) (i) for taxable years beginning on or after January 1, 2003, the total amount of a

47680 resident or nonresident estate's or trust's short-term capital gain or long-term capital gain on a

47681 capital gain transaction:

47682 (A) that occurs on or after January 1, 2003;

47683 (B) if 70% or more of the gross proceeds of the capital gain transaction are expended:

47684 (I) to purchase qualifying stock in a Utah small business corporation; and

47685 (II) within a 12-month period after the day on which the capital gain transaction occurs;

47686 and

47687 (C) if, prior to the purchase of the qualifying stock described in Subsection

47688 (2)(e)(i)(B)(I), the resident or nonresident estate or trust did not have an ownership interest in

47689 the Utah small business corporation that issued the qualifying stock; and

47690 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

47691 Administrative Rulemaking Act, the commission may make rules:

47692 (A) defining the term "gross proceeds"; and

47693 (B) for purposes of Subsection (2)(e)(i)(C), prescribing the circumstances under which

47694 a resident or nonresident estate or trust has an ownership interest in a Utah small business

47695 corporation;

47696 (f) for the taxable year beginning on or after January 1, 2005, but beginning on or

47697 before December 31, 2005, the first \$2,200 of income of a resident or nonresident estate or

47698 trust that is derived from a deceased qualifying military servicemember:

47699 (i) for service:

47700 (A) as a qualifying military servicemember; or

47701 (B) under an order into active service in accordance with Section 39-1-5; and

47702 (ii) to the extent that income is included in total income on that resident or nonresident

47703 estate's or trust's federal income tax return for estates and trusts for that taxable year;

47704 (g) any amount:

47705 (i) received by a resident or nonresident estate or trust;

47706 (ii) that constitutes a refund of taxes imposed by:

47707 (A) a state; or

47708 (B) the District of Columbia; and

47709 (iii) to the extent that amount is included in total income on that resident or nonresident

47710 estate's or trust's federal tax return for estates and trusts for that taxable year;

47711 (h) the amount of a railroad retirement benefit:

47712 (i) paid:

47713 (A) in accordance with The Railroad Retirement Act of 1974, 45 U.S.C. Sec. 231 et

47714 seq.;

47715 (B) to a resident or nonresident estate or trust derived from a deceased resident or
47716 nonresident individual; and

47717 (C) for the taxable year; and

47718 (ii) to the extent that railroad retirement benefit is included in total income on that
47719 resident or nonresident estate's or trust's federal tax return for estates and trusts;

47720 (i) an amount:

47721 (i) received by a resident or nonresident estate or trust if that amount is derived from a
47722 deceased enrolled member of an American Indian tribe; and

47723 (ii) to the extent that the state is not authorized or permitted to impose a tax under this
47724 part on that amount in accordance with:

47725 (A) federal law;

47726 (B) a treaty; or

47727 (C) a final decision issued by a court of competent jurisdiction;

47728 (j) (i) subject to Subsection (1)(e)(i), for taxable years beginning on or after January 1,
47729 2007, the amount of a qualified investment as defined in Section 53B-8a-102 that:

47730 (A) a resident or nonresident estate or trust that is an account owner as defined in
47731 Section 53B-8a-102 makes during the taxable year;

47732 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(i)(A) does
47733 not deduct on a federal tax return for estates and trusts; and

47734 (C) does not exceed the maximum amount of the qualified investment that may be
47735 subtracted from federal taxable income for a taxable year in accordance with Subsections
47736 53B-8a-106(1)(e) and (f); and

47737 (ii) subject to Subsection (1)(e)(ii), for the taxable year beginning on or after January 1,
47738 2007, but beginning on or before December 31, 2007 only, and in addition to any subtraction a
47739 resident or nonresident estate or trust that is an account owner as defined in Section
47740 53B-8a-102 makes in accordance with Subsection (2)(j)(i), the amount of a qualified investment
47741 as defined in Section 53B-8a-102 that:

47742 (A) a resident or nonresident estate or trust that is an account owner as defined in
47743 Section 53B-8a-102 could have subtracted under Subsection (2)(j)(i) for the taxable year
47744 beginning on or after January 1, 2006, but beginning on or before December 31, 2006, had the
47745 subtraction under Subsection (2)(j)(i) been in effect for the taxable year beginning on or after
47746 January 1, 2006, but beginning on or before December 31, 2006;

47747 (B) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A)
47748 makes during the taxable year beginning on or after January 1, 2006, but beginning on or before
47749 December 31, 2006;

47750 (C) the resident or nonresident estate or trust described in Subsection (2)(j)(ii)(A) does
47751 not deduct on a federal tax return for estates and trusts; and

47752 (D) does not exceed the maximum amount of the qualified investment that may be
47753 subtracted from federal taxable income:

47754 (I) for the taxable year beginning on or after January 1, 2006, but beginning on or
47755 before December 31, 2006; and

47756 (II) in accordance with Subsections 53B-8a-106(1)(e) and (f); and

47757 (k) any fiduciary adjustments required by Section 59-10-210.

47758 (3) Notwithstanding Subsection (1)(c), interest from bonds, notes, and other evidences
47759 of indebtedness issued by an entity described in Subsections (1)(c)(i) through (iv) may not be
47760 added to federal taxable income of a resident or nonresident estate or trust if, as annually
47761 determined by the commission:

47762 (a) for an entity described in Subsection (1)(c)(i) or (ii), the entity and all of the political
47763 subdivisions, agencies, or instrumentalities of the entity do not impose a tax based on income on
47764 any part of the bonds, notes, and other evidences of indebtedness of this state; or

47765 (b) for an entity described in Subsection (1)(c)(iii) or (iv), the following do not impose a
47766 tax based on income on any part of the bonds, notes, and other evidences of indebtedness of this
47767 state:

47768 (i) the entity; or

47769 (ii) (A) the state in which the entity is located; or

- 47770 (B) the District of Columbia, if the entity is located within the District of Columbia.
- 47771 (4) (a) A subtraction for an amount described in Subsection (2)(d) is allowed only if:
- 47772 (i) the income is derived from a deceased Ute tribal member; and
- 47773 (ii) the governor and the Ute tribe execute and maintain an agreement meeting the
- 47774 requirements of this Subsection (4).
- 47775 (b) The agreement described in Subsection (4)(a):
- 47776 (i) may not:
- 47777 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;
- 47778 (B) provide a subtraction under this section greater than or different from the
- 47779 subtraction described in Subsection (2)(d); or
- 47780 (C) affect the power of the state to establish rates of taxation; and
- 47781 (ii) shall:
- 47782 (A) provide for the implementation of the subtraction described in Subsection (2)(d);
- 47783 (B) be in writing;
- 47784 (C) be signed by:
- 47785 (I) the governor; and
- 47786 (II) the chair of the Business Committee of the Ute tribe;
- 47787 (D) be conditioned on obtaining any approval required by federal law; and
- 47788 (E) state the effective date of the agreement.
- 47789 (c) (i) The governor shall report to the commission by no later than February 1 of each
- 47790 year regarding whether or not an agreement meeting the requirements of this Subsection (4) is
- 47791 in effect.
- 47792 (ii) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 47793 subtraction permitted under Subsection (2)(d) is not allowed for taxable years beginning on or
- 47794 after the January 1 following the termination of the agreement.
- 47795 (d) For purposes of Subsection (2)(d) and in accordance with [~~Title 63, Chapter 46a~~]
- 47796 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
- 47797 (i) for determining whether income is derived from a source within the Uintah and

47798 Ouray Reservation; and

47799 (ii) that are substantially similar to how adjusted gross income derived from Utah
47800 sources is determined under Section 59-10-117.

47801 Section 1005. Section **59-10-209.1** is amended to read:

47802 **59-10-209.1. Adjustments to state taxable income.**

47803 (1) The commission shall allow an adjustment to state taxable income of a resident or
47804 nonresident estate or trust if the resident or nonresident estate or trust would otherwise:

47805 (a) receive a double tax benefit under this chapter; or

47806 (b) suffer a double tax detriment under this chapter.

47807 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

47808 Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to
47809 state taxable income required by Subsection (1).

47810 Section 1006. Section **59-10-210** is amended to read:

47811 **59-10-210. Fiduciary adjustments.**

47812 (1) A share of the fiduciary adjustments described in Subsection (2) shall be added to or
47813 subtracted from federal taxable income:

47814 (a) of:

47815 (i) a resident or nonresident estate or trust; or

47816 (ii) a resident or nonresident beneficiary of a resident or nonresident estate or trust; and

47817 (b) as provided in this section.

47818 (2) For purposes of Subsection (1), the fiduciary adjustments are the following
47819 amounts:

47820 (a) the additions to and subtractions from federal taxable income of a resident or
47821 nonresident estate or trust required by Section 59-10-202, except for Subsection
47822 59-10-202(2)(b); and

47823 (b) a tax credit claimed by a resident or nonresident estate or trust as allowed by:

47824 (i) Section 59-6-102;

47825 (ii) Part 10, Nonrefundable Tax Credit Act;

- 47826 (iii) Part 11, Refundable Tax Credit Act;
- 47827 (iv) Section 59-13-202;
- 47828 (v) Section [~~63-38f-413~~] 63M-1-413; or
- 47829 (vi) Section [~~63-38f-503~~] 63M-1-504.

47830 (3) (a) The respective shares of an estate or trust and its beneficiaries, including for the
47831 purpose of this allocation a nonresident beneficiary, in the state fiduciary adjustments, shall be
47832 allocated in proportion to their respective shares of federal distributable net income of the estate
47833 or trust.

47834 (b) If the estate or trust described in Subsection (3)(a) has no federal distributable net
47835 income for the taxable year, the share of each beneficiary in the fiduciary adjustments shall be
47836 allocated in proportion to that beneficiary's share of the estate or trust income for the taxable
47837 year that is, under state law or the governing instrument, required to be distributed currently
47838 plus any other amounts of that income distributed in that taxable year.

47839 (c) After making the allocations required by Subsections (3)(a) and (b), any balance of
47840 the fiduciary adjustments shall be allocated to the estate or trust.

47841 (4) (a) The commission shall allow a fiduciary to use a method for determining the
47842 allocation of the fiduciary adjustments described in Subsection (2) other than the method
47843 described in Subsection (3) if using the method described in Subsection (3) results in an
47844 inequity:

- 47845 (i) in allocating the fiduciary adjustments described in Subsection (2); and
 - 47846 (ii) if the inequity is substantial:
 - 47847 (A) in amount; and
 - 47848 (B) in relation to the total amount of the fiduciary adjustments described in Subsection
- 47849 (2).

47850 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
47851 Administrative Rulemaking Act, the commission may make rules authorizing a fiduciary to use a
47852 method for determining the allocation of the fiduciary adjustments described in Subsection (2)
47853 other than the method described in Subsection (3) if using the method described in Subsection

- 47854 (3) results in an inequity:
- 47855 (i) in allocating the fiduciary adjustments described in Subsection (2); and
- 47856 (ii) if the inequity is substantial:
- 47857 (A) in amount; and
- 47858 (B) in relation to the total amount of the fiduciary adjustments described in Subsection
- 47859 (2).

47860 Section 1007. Section **59-10-405.5** is amended to read:

47861 **59-10-405.5. Definitions -- Withholding tax license requirements -- Penalty --**
47862 **Application process and requirements -- Fee not required -- Bonds.**

- 47863 (1) As used in this section:
- 47864 (a) "applicant" means a person that:
- 47865 (i) is required by this section to obtain a license; and
- 47866 (ii) submits an application:
- 47867 (A) to the commission; and
- 47868 (B) for a license under this section;
- 47869 (b) "application" means an application for a license under this section;
- 47870 (c) "fiduciary of the applicant" means a person that:
- 47871 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 47872 for an applicant; and
- 47873 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
- 47874 (B) is a director of the applicant described in Subsection (1)(c)(i);
- 47875 (C) is an employee of the applicant described in Subsection (1)(c)(i);
- 47876 (D) is a partner of the applicant described in Subsection (1)(c)(i);
- 47877 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
- 47878 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
- 47879 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
- 47880 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 47881 Administrative Rulemaking Act;

- 47882 (d) "fiduciary of the licensee" means a person that:
- 47883 (i) is required to collect, truthfully account for, and pay over an amount under this part
- 47884 for a licensee; and
- 47885 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
- 47886 (B) is a director of the licensee described in Subsection (1)(d)(i);
- 47887 (C) is an employee of the licensee described in Subsection (1)(d)(i);
- 47888 (D) is a partner of the licensee described in Subsection (1)(d)(i);
- 47889 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
- 47890 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a
- 47891 relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission
- 47892 by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 47893 Administrative Rulemaking Act;
- 47894 (e) "license" means a license under this section; and
- 47895 (f) "licensee" means a person that is licensed under this section by the commission.
- 47896 (2) The following persons are guilty of a criminal violation as provided in Section
- 47897 59-1-401:
- 47898 (a) a person that:
- 47899 (i) is required to withhold, report, or remit any amounts under this part; and
- 47900 (ii) engages in business within the state before obtaining a license under this section; or
- 47901 (b) a person that:
- 47902 (i) pays wages under this part; and
- 47903 (ii) engages in business within the state before obtaining a license under this section.
- 47904 (3) The license described in Subsection (2):
- 47905 (a) shall be granted and issued:
- 47906 (i) by the commission in accordance with this section;
- 47907 (ii) without a license fee; and
- 47908 (iii) if:
- 47909 (A) an applicant:

- 47910 (I) states the applicant's name and address in the application; and
- 47911 (II) provides other information in the application that the commission may require; and
- 47912 (B) the person meets the requirements of this section to be granted a license as
- 47913 determined by the commission;
- 47914 (b) may not be assigned to another person; and
- 47915 (c) is valid:
- 47916 (i) only for the person named on the license; and
- 47917 (ii) until:
- 47918 (A) the person described in Subsection (3)(c)(i):
- 47919 (I) ceases to do business; or
- 47920 (II) changes that person's business address; or
- 47921 (B) the commission revokes the license.
- 47922 (4) The commission shall review an application and determine whether:
- 47923 (a) the applicant meets the requirements of this section to be issued a license; and
- 47924 (b) a bond is required to be posted with the commission in accordance with Subsections
- 47925 (5) and (6) before the applicant may be issued a license.
- 47926 (5) (a) An applicant shall post a bond with the commission before the commission may
- 47927 issue the applicant a license if:
- 47928 (i) a license under this section was revoked for a delinquency under this part for:
- 47929 (A) the applicant;
- 47930 (B) a fiduciary of the applicant; or
- 47931 (C) a person for which the applicant or the fiduciary of the applicant is required to
- 47932 collect, truthfully account for, and pay over an amount under this part; or
- 47933 (ii) there is a delinquency in withholding, reporting, or remitting any amount under this
- 47934 part for:
- 47935 (A) an applicant;
- 47936 (B) a fiduciary of the applicant; or
- 47937 (C) a person for which the applicant or the fiduciary of the applicant is required to

47938 collect, truthfully account for, and pay over an amount under this part.

47939 (b) If the commission determines it is necessary to ensure compliance with this part, the

47940 commission may require a licensee to:

47941 (i) for a licensee that has not posted a bond under this section with the commission,

47942 post a bond with the commission in accordance with Subsection (6); or

47943 (ii) for a licensee that has posted a bond under this section with the commission,

47944 increase the amount of the bond posted with the commission.

47945 (6) (a) A bond required by Subsection (5) shall be:

47946 (i) executed by:

47947 (A) for an applicant, the applicant as principal, with a corporate surety; or

47948 (B) for a licensee, the licensee as principal, with a corporate surety; and

47949 (ii) payable to the commission conditioned upon the faithful performance of all of the

47950 requirements of this part including:

47951 (A) the withholding or remitting of any amount under this part;

47952 (B) the payment of any:

47953 (I) penalty as provided in Section 59-1-401; or

47954 (II) interest as provided in Section 59-1-402; or

47955 (C) any other obligation of the:

47956 (I) applicant under this part; or

47957 (II) licensee under this part.

47958 (b) Except as provided in Subsection (6)(d), the commission shall calculate the amount

47959 of a bond required by Subsection (5) on the basis of:

47960 (i) commission estimates of:

47961 (A) for an applicant, any amounts the applicant withholds, reports, or remits under this

47962 part; or

47963 (B) for a licensee, any amounts the licensee withholds, reports, or remits under this

47964 part; and

47965 (ii) any amount of a delinquency described in Subsection (6)(c).

47966 (c) Except as provided in Subsection (6)(d), for purposes of Subsection (6)(b)(ii):
47967 (i) for an applicant, the amount of the delinquency is the sum of:
47968 (A) the amount of any delinquency that served as a basis for revoking the license under
47969 this section of:
47970 (I) the applicant;
47971 (II) a fiduciary of the applicant; or
47972 (III) a person for which the applicant or the fiduciary of the applicant is required to
47973 collect, truthfully account for, and pay over an amount under this part; or
47974 (B) the amount that any of the following owe under this part:
47975 (I) the applicant;
47976 (II) a fiduciary of the applicant; and
47977 (III) a person for which the applicant or the fiduciary of the applicant is required to
47978 collect, truthfully account for, and pay over an amount under this part; or
47979 (ii) for a licensee, the amount of the delinquency is the sum of:
47980 (A) the amount of any delinquency that served as a basis for revoking the license under
47981 this section of:
47982 (I) the licensee;
47983 (II) a fiduciary of the licensee; or
47984 (III) a person for which the licensee or the fiduciary of the licensee is required to
47985 collect, truthfully account for, and pay over an amount under this part; or
47986 (B) the amount that any of the following owe under this part:
47987 (I) the licensee;
47988 (II) a fiduciary of the licensee; and
47989 (III) a person for which the licensee or the fiduciary of the licensee is required to
47990 collect, truthfully account for, and pay over an amount under this part.
47991 (d) Notwithstanding Subsection (6)(b) or (c), a bond required by Subsection (5) may
47992 not:
47993 (i) be less than \$25,000; or

- 47994 (ii) exceed \$500,000.
- 47995 (7) (a) The commission shall revoke a license under this section if:
- 47996 (i) a licensee violates any provision of this part; and
- 47997 (ii) before the commission revokes the license the commission provides the licensee:
- 47998 (A) reasonable notice; and
- 47999 (B) a hearing.
- 48000 (b) If the commission revokes a licensee's license in accordance with Subsection (7)(a),
- 48001 the commission may not issue another license to that licensee until that licensee complies with
- 48002 the requirements of this part, including:
- 48003 (i) paying any:
- 48004 (A) amounts due under this part;
- 48005 (B) penalty as provided in Section 59-1-401; or
- 48006 (C) interest as provided in Section 59-1-402; and
- 48007 (ii) posting a bond in accordance with Subsections (5) and (6).
- 48008 Section 1008. Section **59-10-514** is amended to read:
- 48009 **59-10-514. Return filing requirements -- Rulemaking authority.**
- 48010 (1) Subject to Subsection (3):
- 48011 (a) an individual income tax return filed for a tax imposed in accordance with Part 1,
- 48012 Determination and Reporting of Tax Liability and Information, shall be filed with the
- 48013 commission:
- 48014 (i) except as provided in Subsection (1)(a)(ii), on or before the 15th day of the fourth
- 48015 month following the last day of the taxpayer's taxable year; or
- 48016 (ii) on or before the day on which a federal individual income tax return is due under the
- 48017 Internal Revenue Code if the Internal Revenue Code provides a due date for filing that federal
- 48018 individual income tax return that is different from the due date described in Subsection (1)(a)(i);
- 48019 (b) a fiduciary income tax return filed for a tax imposed in accordance with Part 2,
- 48020 Trusts and Estates, shall be filed with the commission:
- 48021 (i) except as provided in Subsection (1)(b)(ii), on or before the 15th day of the fourth

48022 month following the last day of the taxpayer's taxable year; or

48023 (ii) on or before the day on which a federal tax return for estates and trusts is due under
48024 the Internal Revenue Code if the Internal Revenue Code provides a due date for filing that
48025 federal tax return for estates and trusts that is different from the due date described in
48026 Subsection (1)(b)(i); or

48027 (c) a return filed in accordance with Section 59-10-507, shall be filed with the
48028 commission:

48029 (i) except as provided in Subsection (1)(c)(ii), in accordance with Section 59-10-507;
48030 or

48031 (ii) on or before the day on which a federal return of partnership income is due under
48032 the Internal Revenue Code if the Internal Revenue Code provides a due date for filing that
48033 federal return of partnership income that is different from the due date described in Subsection
48034 (1)(c)(i).

48035 (2) A person required to make and file a return under this chapter shall, without
48036 assessment, notice, or demand, pay any tax due:

48037 (a) to the commission; and

48038 (b) before the due date for filing the return determined without regard to any extension
48039 of time for filing the return.

48040 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48041 Administrative Rulemaking Act, the commission may make rules prescribing what constitutes
48042 filing a return with the commission.

48043 Section 1009. Section **59-10-514.1** is amended to read:

48044 **59-10-514.1. Definitions -- Requirement to file returns using scan technology or**
48045 **by electronic means -- Exceptions -- Waiver.**

48046 (1) As used in this section:

48047 (a) (i) "electronic" means using a technology other than scan technology; and

48048 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48049 Administrative Rulemaking Act, the commission may make rules defining "technology";

48050 (b) (i) except as provided in Subsection (1)(b)(ii), "income tax return preparer" means
48051 an individual that prepares for compensation a return required to be filed by this chapter;
48052 (ii) notwithstanding Subsection (1)(b)(i), "income tax return preparer" does not include
48053 an individual who:
48054 (A) performs only one or more of the following relating to a return required to be filed
48055 by this chapter:
48056 (I) types the return;
48057 (II) reproduces the return; or
48058 (III) performs an action similar to Subsection (1)(b)(ii)(A)(I) or (II) as determined by
48059 the commission by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
48060 Utah Administrative Rulemaking Act; or
48061 (B) prepares a return required to be filed by this chapter:
48062 (I) of the individual's employer or an officer or employee of the employer if the
48063 individual is regularly and continuously employed by that employer;
48064 (II) of any person if that individual is a fiduciary for that person; or
48065 (III) for a taxpayer in response to a tax order issued to that taxpayer;
48066 (c) "prepare" means to prepare a substantial portion or more of a return required to be
48067 filed by this chapter;
48068 (d) (i) except as provided in Subsection (1)(d)(ii), "qualifying return" means a return
48069 required to be filed by this chapter for any taxable year that begins on or after the January 1
48070 described in Subsection (2)(c)(i); and
48071 (ii) notwithstanding Subsection (1)(d)(i), "qualifying return" does not include:
48072 (A) an amended return; or
48073 (B) (I) a return filed for any taxable year that begins before the first day of the current
48074 taxable year; and
48075 (II) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48076 Administrative Rulemaking Act, the commission may make rules defining "current taxable
48077 year"; and

48078 (e) (i) "scan technology" means technology that:

48079 (A) allows a return to be scanned; and

48080 (B) is approved by the commission; and

48081 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48082 Administrative Rulemaking Act, the commission may by rule specify what types of technology
48083 constitute scan technology.

48084 (2) (a) Subject to Subsections (2)(b) and (c) and except as provided in Subsection (3),
48085 an income tax return preparer shall file all qualifying returns using scan technology or by
48086 electronic means if the income tax return preparer prepares in any calendar year beginning on or
48087 after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

48088 (b) (i) For purposes of Subsection (2)(a), if two or more income tax return preparers
48089 are affiliated with the same establishment, the total number of returns required to be filed by this
48090 chapter that are prepared in a calendar year beginning on or after January 1, 2005, by all of the
48091 income tax return preparers that are affiliated with that establishment shall be included in
48092 determining whether an income tax return preparer prepares in a calendar year beginning on or
48093 after January 1, 2005, a total of 101 or more returns required to be filed by this chapter.

48094 (ii) For purposes of Subsection (2)(b)(i), in accordance with [~~Title 63, Chapter 46a~~]
48095 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule
48096 determine the circumstances under which two or more income tax return preparers are affiliated
48097 with the same establishment.

48098 (c) If an income tax return preparer is required by this Subsection (2) to file all
48099 qualifying returns using scan technology or by electronic means, the income tax return preparer
48100 shall file those qualifying returns using scan technology or by electronic means:

48101 (i) beginning on January 1 of the first calendar year immediately following the day on
48102 which the income tax return preparer meets the requirements of this Subsection (2); and

48103 (ii) for all calendar years after the calendar year described in Subsection (2)(c)(i).

48104 (3) Notwithstanding Subsection (2), an income tax return preparer is not required to file
48105 a qualifying return using scan technology or by electronic means if:

48106 (a) a schedule required to be attached to the qualifying return cannot be filed using scan
48107 technology or by electronic means;

48108 (b) the taxpayer for which the qualifying return is prepared requests in writing that the
48109 income tax return preparer not file the qualifying return using scan technology or by electronic
48110 means; or

48111 (c) subject to Subsection (4), the commission waives for one or more qualifying returns
48112 filed by the income tax return preparer the requirement imposed by this section to file the
48113 qualifying returns using scan technology or by electronic means.

48114 (4) (a) For purposes of Subsection (3)(c), the commission may waive for one or more
48115 qualifying returns filed by an income tax return preparer the requirement imposed by this section
48116 to file the qualifying returns using scan technology or by electronic means if the income tax
48117 return preparer demonstrates to the commission that it would be an undue hardship to file the
48118 qualifying returns using scan technology or by electronic means.

48119 (b) For purposes of Subsection (4)(a) and in accordance with [~~Title 63, Chapter 46a~~]
48120 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall by rule define
48121 the circumstances that constitute an undue hardship to file a qualifying return using scan
48122 technology or by electronic means.

48123 Section 1010. Section **59-10-549** is amended to read:

48124 **59-10-549. Contributions for education.**

48125 (1) Except as provided in Section 59-10-551, a taxpayer that files a return pursuant to
48126 Section 59-10-502 may designate on the return a contribution as provided in this section to:

48127 (a) (i) the foundation of any school district if that foundation is exempt from federal
48128 income taxation under Section 501(c)(3), Internal Revenue Code; or

48129 (ii) a school district described in Title 53A, Chapter 2, School Districts, if the school
48130 district has not established a foundation;

48131 (b) a college campus of the Utah College of Applied Technology listed in Section
48132 53B-2a-105; or

48133 (c) for taxable years beginning on or after January 1, 2004, but beginning on or before

48134 December 31, 2006, the Uniform School Fund.

48135 (2) (a) A taxpayer may designate as a contribution under this section any whole dollar
48136 amount of \$1 or more.

48137 (b) (i) If the taxpayer is owed an individual income tax refund for the taxable year, the
48138 amount of a contribution under this section shall be deducted from the taxpayer's individual
48139 income tax refund.

48140 (ii) If the taxpayer is not owed an individual income tax refund for the taxable year, the
48141 taxpayer may remit a contribution under this section with the taxpayer's individual income tax
48142 return.

48143 (c) If a taxpayer files a joint return, the contribution under this section shall be a joint
48144 contribution.

48145 (d) A contribution under this section is irrevocable during the taxable year for which the
48146 taxpayer makes the contribution.

48147 (3) If a taxpayer designates an amount as a contribution under:

48148 (a) Subsection (1)(a)(i), but does not designate a particular school district foundation to
48149 receive the contribution, the contribution shall be made to the Utah State Office of Education to
48150 be distributed to one or more associations of foundations:

48151 (i) if those foundations that are members of the association are established in
48152 accordance with Section 53A-4-205; and

48153 (ii) as determined by the Utah State Office of Education; or

48154 (b) Subsection (1)(a)(ii), but does not designate a particular school district to receive
48155 the contribution, the contribution shall be made to the Utah State Office of Education.

48156 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48157 Administrative Rulemaking Act, the commission may make rules to implement this section.

48158 (5) The commission shall:

48159 (a) determine annually the total amount of contributions designated in accordance with
48160 this section; and

48161 (b) report this amount to the state treasurer.

48162 (6) The state treasurer shall credit any contributions reported to the state treasurer in
48163 accordance with Subsection (5):

48164 (a) subject to Subsection (3), if a taxpayer designates a contribution to an entity listed in
48165 Subsection (1)(a) or (b) in accordance with this section, to the entity that is designated by the
48166 taxpayer; or

48167 (b) if a taxpayer designates a contribution to the Uniform School Fund under
48168 Subsection (1)(c) in accordance with this section, to the Uniform School Fund.

48169 Section 1011. Section **59-10-1007** is amended to read:

48170 **59-10-1007. Recycling market development zones tax credit.**

48171 (1) For taxable years beginning on or after January 1, 1996, a claimant, estate, or trust
48172 in a recycling market development zone as defined in Section [~~63-38f-1102~~] 63M-1-1102 may
48173 claim a nonrefundable tax credit as provided in this section.

48174 (a) (i) There shall be allowed a tax credit of 5% of the purchase price paid for
48175 machinery and equipment used directly in:

48176 (A) commercial composting; or

48177 (B) manufacturing facilities or plant units that:

48178 (I) manufacture, process, compound, or produce recycled items of tangible personal
48179 property for sale; or

48180 (II) reduce or reuse postconsumer waste material.

48181 (ii) The Governor's Office of Economic Development shall certify that the machinery
48182 and equipment described in Subsection (1)(a)(i) are integral to the composting or recycling
48183 process:

48184 (A) on a form provided by the commission; and

48185 (B) before a claimant, estate, or trust is allowed a tax credit under this section.

48186 (iii) The Governor's Office of Economic Development shall provide a claimant, estate,
48187 or trust seeking to claim a tax credit under this section with a copy of the form described in
48188 Subsection (1)(a)(ii).

48189 (iv) The claimant, estate, or trust described in Subsection (1)(a)(iii) shall retain a copy

48190 of the form received under Subsection (1)(a)(iii).

48191 (b) There shall be allowed a tax credit equal to 20% of net expenditures up to \$10,000
48192 to third parties for rent, wages, supplies, tools, test inventory, and utilities made by the claimant,
48193 estate, or trust for establishing and operating recycling or composting technology in Utah, with
48194 an annual maximum tax credit of \$2,000.

48195 (2) The total tax credit allowed under this section may not exceed 40% of the Utah
48196 income tax liability of the claimant, estate, or trust prior to any tax credits in the taxable year of
48197 purchase prior to claiming the tax credit authorized by this section.

48198 (3) (a) Any tax credit not used for the taxable year in which the purchase price on
48199 composting or recycling machinery and equipment was paid may be carried forward against the
48200 claimant's, estate's, or trusts's tax liability under this chapter in the three succeeding taxable
48201 years until the total tax credit amount is used.

48202 (b) Tax credits not claimed by a claimant, estate, or trust on the claimant's, estate's, or
48203 trust's tax return under this chapter within three years are forfeited.

48204 (4) The commission shall make rules governing what information shall be filed with the
48205 commission to verify the entitlement to and amount of a tax credit.

48206 (5) (a) Notwithstanding Subsection (1)(a), for taxable years beginning on or after
48207 January 1, 2001, a claimant, estate, or trust may not claim or carry forward a tax credit
48208 described in Subsection (1)(a) in a taxable year during which the claimant, estate, or trust claims
48209 or carries forward a tax credit under Section [~~63-38f-413~~] 63M-1-413.

48210 (b) For a taxable year other than a taxable year during which the claimant, estate, or
48211 trust may not claim or carry forward a tax credit in accordance with Subsection (5)(a), a
48212 claimant, estate, or trust may claim or carry forward a tax credit described in Subsection (1)(a):

48213 (i) if the claimant, estate, or trust may claim or carry forward the tax credit in
48214 accordance with Subsections (1) and (2); and

48215 (ii) subject to Subsections (3) and (4).

48216 (6) Notwithstanding Subsection (1)(b), for taxable years beginning on or after January
48217 1, 2001, a claimant, estate, or trust may not claim a tax credit described in Subsection (1)(b) in

48218 a taxable year during which the claimant, estate, or trust claims or carries forward a tax credit
48219 under Section [~~63-38f-413~~] 63M-1-413.

48220 (7) A claimant, estate, or trust may not claim or carry forward a tax credit available
48221 under this section for a taxable year during which the claimant, estate, or trust has claimed the
48222 targeted business income tax credit available under Section [~~63-38f-503~~] 63M-1-504.

48223 Section 1012. Section **59-10-1012** is amended to read:

48224 **59-10-1012. Tax credits for research activities conducted in the state -- Carry**
48225 **forward -- Commission to report modification or repeal of certain federal provisions --**
48226 **Utah Tax Review Commission study.**

48227 (1) (a) A claimant, estate, or trust meeting the requirements of this section may claim
48228 the following nonrefundable tax credits:

48229 (i) a research tax credit of 7% of the claimant's, estate's, or trust's qualified research
48230 expenses for the current taxable year that exceed the base amount provided for under
48231 Subsection (3);

48232 (ii) a tax credit for payments to qualified organizations for basic research as provided in
48233 Section 41(e), Internal Revenue Code of 7% for the current taxable year that exceed the base
48234 amount provided for under Subsection (3); and

48235 (iii) a tax credit equal to 5% of the claimant's, estate's, or trust's qualified research
48236 expenses for the current taxable year.

48237 (b) (i) Except as provided in Subsection (1)(b)(ii), a claimant, estate, or trust may:

48238 (A) claim the tax credit or a portion of the tax credit for the taxable year immediately
48239 following the taxable year for which the claimant, estate, or trust qualifies for the tax credit;

48240 (B) carry forward the tax credit or a portion of the tax credit as provided in Subsection
48241 (4); or

48242 (C) claim a portion of the tax credit and carry forward a portion of the tax credit as
48243 provided in Subsections (1)(b)(i)(A) and (B).

48244 (ii) A claimant, estate, or trust may not carry forward the tax credit allowed by
48245 Subsection (1)(a)(iii).

48246 (c) The tax credits provided for in this section do not include the alternative incremental
48247 credit provided for in Section 41(c)(4), Internal Revenue Code.

48248 (2) Except as specifically provided for in this section:

48249 (a) the tax credits authorized under Subsection (1) shall be calculated as provided in
48250 Section 41, Internal Revenue Code; and

48251 (b) the definitions provided in Section 41, Internal Revenue Code, apply in calculating
48252 the tax credits authorized under Subsection (1).

48253 (3) For purposes of this section:

48254 (a) the base amount shall be calculated as provided in Sections 41(c) and 41(h), Internal
48255 Revenue Code, except that:

48256 (i) the base amount does not include the calculation of the alternative incremental credit
48257 provided for in Section 41(c)(4), Internal Revenue Code;

48258 (ii) a claimant's, estate's, or trust's gross receipts include only those gross receipts
48259 attributable to sources within this state as provided in Section 59-10-118; and

48260 (iii) notwithstanding Section 41(c), Internal Revenue Code, for purposes of calculating
48261 the base amount, a claimant, estate, or trust:

48262 (A) may elect to be treated as a start-up company as provided in Section 41(c)(3)(B)
48263 regardless of whether the claimant, estate, or trust meets the requirements of Section
48264 41(c)(3)(B)(i)(I) or (II); and

48265 (B) may not revoke an election to be treated as a start-up company under Subsection
48266 (3)(a)(iii)(A);

48267 (b) "basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
48268 that the term includes only basic research conducted in this state;

48269 (c) "qualified research" is as defined in Section 41(d), Internal Revenue Code, except
48270 that the term includes only qualified research conducted in this state;

48271 (d) "qualified research expenses" is as defined and calculated in Section 41(b), Internal
48272 Revenue Code, except that the term includes only:

48273 (i) in-house research expenses incurred in this state; and

- 48274 (ii) contract research expenses incurred in this state; and
- 48275 (e) a tax credit provided for in this section is not terminated if a credit terminates under
- 48276 Section 41, Internal Revenue Code.
- 48277 (4) If the amount of a tax credit claimed by a claimant, estate, or trust under Subsection
- 48278 (1)(a)(i) or (ii) exceeds the claimant's, estate's, or trust's tax liability under this chapter for a
- 48279 taxable year, the amount of the tax credit exceeding the tax liability:
- 48280 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
- 48281 and
- 48282 (b) may not be carried back to a taxable year preceding the current taxable year.
- 48283 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 48284 Administrative Rulemaking Act, the commission may make rules for purposes of this section
- 48285 prescribing a certification process for qualified organizations to ensure that amounts paid to the
- 48286 qualified organizations are for basic research conducted in this state.
- 48287 (6) If a provision of Section 41, Internal Revenue Code, is modified or repealed, the
- 48288 commission shall report the modification or repeal to the Utah Tax Review Commission within
- 48289 60 days after the day on which the modification or repeal becomes effective.
- 48290 (7) (a) The Utah Tax Review Commission shall review the tax credits provided for in
- 48291 this section on or before October 1 of the year after the year in which the commission reports
- 48292 under Subsection (6) a modification or repeal of a provision of Section 41, Internal Revenue
- 48293 Code.
- 48294 (b) Notwithstanding Subsection (7)(a), the Utah Tax Review Commission is not
- 48295 required to review the tax credits provided for in this section if the only modification to a
- 48296 provision of Section 41, Internal Revenue Code, is the extension of the termination date
- 48297 provided for in Section 41(h), Internal Revenue Code.
- 48298 (c) The Utah Tax Review Commission shall address in a review under this section:
- 48299 (i) the cost of the tax credits provided for in this section;
- 48300 (ii) the purpose and effectiveness of the tax credits provided for in this section;
- 48301 (iii) whether the tax credits provided for in this section benefit the state; and

48302 (iv) whether the tax credits provided for in this section should be:

48303 (A) continued;

48304 (B) modified; or

48305 (C) repealed.

48306 (d) If the Utah Tax Review Commission reviews the tax credits provided for in this
48307 section, the Utah Tax Review Commission shall report its findings to the Revenue and Taxation
48308 Interim Committee on or before the November interim meeting of the year in which the Utah
48309 Tax Review Commission reviews the tax credits.

48310 Section 1013. Section **59-10-1013** is amended to read:

48311 **59-10-1013. Credits for machinery, equipment, or both primarily used for**
48312 **conducting qualified research or basic research -- Carry forward -- Commission to report**
48313 **modification or repeal of federal credits.**

48314 (1) As used in this section:

48315 (a) "Basic research" is as defined in Section 41(e)(7), Internal Revenue Code, except
48316 that the term includes only basic research conducted in this state.

48317 (b) "Equipment" includes:

48318 (i) computers;

48319 (ii) computer equipment; and

48320 (iii) computer software.

48321 (c) "Purchase price":

48322 (i) includes the cost of installing an item of machinery or equipment; and

48323 (ii) does not include sales or use taxes imposed on an item of machinery or equipment.

48324 (d) "Qualified organization" is as defined in Section 41(e)(6), Internal Revenue Code.

48325 (e) "Qualified research" is as defined in Section 41(d), Internal Revenue Code, except
48326 that the term includes only qualified research conducted in this state.

48327 (2) (a) Except as provided in Subsection (2)(c), for taxable years beginning on or after
48328 January 1, 1999, but beginning before December 31, 2010, a claimant, estate, or trust shall
48329 qualify for the following nonrefundable tax credits for the taxable year in which the machinery,

48330 equipment, or both, meets the requirements of either Subsection (2)(a)(i) or (2)(a)(ii):
48331 (i) a tax credit of 6% of the purchase price of either machinery, equipment, or both:
48332 (A) purchased by the claimant, estate, or trust during the taxable year;
48333 (B) that is not exempt from sales or use taxes; and
48334 (C) that is primarily used to conduct qualified research in this state; and
48335 (ii) a tax credit of 6% of the purchase price paid by the claimant, estate, or trust for
48336 either machinery, equipment, or both:
48337 (A) purchased by the claimant, estate, or trust during the taxable year;
48338 (B) that is not exempt from sales or use taxes;
48339 (C) that is donated to a qualified organization; and
48340 (D) that is primarily used to conduct basic research in this state.
48341 (b) If a claimant, estate, or trust qualifying for a tax credit under Subsection (2)(a)
48342 seeks to claim the tax credit, the claimant, estate, or trust shall:
48343 (i) claim the tax credit or a portion of the tax credit for the taxable year immediately
48344 following the taxable year for which the claimant, estate, or trust qualifies for the tax credit;
48345 (ii) carry the tax credit or a portion of the tax credit forward as provided in Subsection
48346 (5); or
48347 (iii) claim a portion of the tax credit and carry forward a portion of the tax credit as
48348 provided in Subsections (2)(b)(i) and (ii).
48349 (c) Notwithstanding Subsection (2)(a), if a claimant, estate, or trust qualifies for a tax
48350 credit under Subsection (2)(a) for a purchase of machinery, equipment, or both, the claimant,
48351 estate, or trust may not claim the tax credit or carry the tax credit forward if the machinery,
48352 equipment, or both, is primarily used to conduct qualified research in the state for a time period
48353 that is less than 12 consecutive months.
48354 (3) For purposes of claiming a tax credit under this section, a unitary group as defined
48355 in Section 59-7-101 is considered to be one claimant.
48356 (4) Notwithstanding the provisions of Section 41(h), Internal Revenue Code, the tax
48357 credits provided for in this section shall not terminate if the credits terminate under Section 41,

48358 Internal Revenue Code.

48359 (5) Notwithstanding the provisions of Sections 39 and 41(g), Internal Revenue Code,
48360 governing the carry forward and carry back of federal tax credits, if the amount of a tax credit
48361 claimed by a claimant, estate, or trust under this section exceeds a claimant's, estate's, or trust's
48362 tax liability under this chapter for a taxable year, the amount of the tax credit exceeding the
48363 liability:

48364 (a) may be carried forward for a period that does not exceed the next 14 taxable years;
48365 and

48366 (b) may not be carried back to a taxable year preceding the current taxable year.

48367 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48368 Administrative Rulemaking Act, the commission may make rules for purposes of this section
48369 prescribing a certification process for qualified organizations to ensure that either machinery,
48370 equipment, or both provided to the qualified organization is to be primarily used to conduct
48371 basic research in this state.

48372 (7) If a federal credit under Section 41, Internal Revenue Code, is modified or repealed,
48373 the commission shall report the modification or repeal to the Tax Review Commission within 60
48374 days after the day on which the modification or repeal becomes effective.

48375 Section 1014. Section **59-10-1015** is amended to read:

48376 **59-10-1015. Definitions -- Tax credit for live organ donation expenses --**

48377 **Rulemaking authority.**

48378 (1) As used in this section:

48379 (a) "human organ" means:

48380 (i) human bone marrow; or

48381 (ii) any part of a human:

48382 (A) intestine;

48383 (B) kidney;

48384 (C) liver;

48385 (D) lung; or

48386 (E) pancreas;

48387 (b) "live organ donation" means that an individual who is living donates one or more of

48388 that individual's human organs:

48389 (i) to another human; and

48390 (ii) to be transplanted:

48391 (A) using a medical procedure; and

48392 (B) to the body of the other human; and

48393 (c) (i) "live organ donation expenses" means the total amount of expenses:

48394 (A) incurred by a claimant; and

48395 (B) that:

48396 (I) are not reimbursed to that claimant by any person;

48397 (II) are directly related to a live organ donation by:

48398 (Aa) the claimant; or

48399 (Bb) another individual that the claimant is allowed to claim as a dependent in

48400 accordance with Section 151, Internal Revenue Code; and

48401 (III) are for:

48402 (Aa) travel;

48403 (Bb) lodging; or

48404 (Cc) a lost wage; and

48405 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48406 Administrative Rulemaking Act, the commission may by rule define "lost wage."

48407 (2) For taxable years beginning on or after January 1, 2005, a claimant may claim a

48408 nonrefundable tax credit:

48409 (a) as provided in this section;

48410 (b) against taxes otherwise due under this chapter;

48411 (c) for live organ donation expenses incurred during the taxable year for which the live

48412 organ donation occurs; and

48413 (d) in an amount equal to the lesser of:

48414 (i) the actual amount of the live organ donation expenses; or

48415 (ii) \$10,000.

48416 (3) If the amount of a tax credit under this section exceeds a claimant's tax liability
48417 under this chapter for a taxable year, the amount of the tax credit that exceeds the claimant's tax
48418 liability may be carried forward for a period that does not exceed the next five taxable years.

48419 Section 1015. Section **59-10-1105** is amended to read:

48420 **59-10-1105. Tax credit for hand tools used in farming operations -- Procedures**
48421 **for refund -- Transfers from General Fund to Education Fund -- Rulemaking authority.**

48422 (1) For taxable years beginning on or after January 1, 2004, a claimant, estate, or trust
48423 may claim a refundable tax credit:

48424 (a) as provided in this section;

48425 (b) against taxes otherwise due under this chapter; and

48426 (c) in an amount equal to the amount of tax the claimant, estate, or trust pays:

48427 (i) on a purchase of a hand tool:

48428 (A) if the purchase is made on or after July 1, 2004;

48429 (B) if the hand tool is used or consumed primarily and directly in a farming operation in
48430 the state; and

48431 (C) if the unit purchase price of the hand tool is more than \$250; and

48432 (ii) under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection
48433 (1)(c)(i).

48434 (2) A claimant, estate, or trust:

48435 (a) shall retain the following to establish the amount of tax the claimant, estate, or trust
48436 paid under Chapter 12, Sales and Use Tax Act, on the purchase described in Subsection

48437 (1)(c)(i):

48438 (i) a receipt;

48439 (ii) an invoice; or

48440 (iii) a document similar to a document described in Subsection (2)(a)(i) or (ii); and

48441 (b) may not carry forward or carry back a tax credit under this section.

48442 (3) (a) In accordance with any rules prescribed by the commission under Subsection
48443 (3)(b), the commission shall:

48444 (i) make a refund to a claimant, estate, or trust that claims a tax credit under this section
48445 if the amount of the tax credit exceeds the claimant's, estate's, or trust's tax liability under this
48446 chapter; and

48447 (ii) transfer at least annually from the General Fund into the Education Fund an amount
48448 equal to the amount of tax credit claimed under this section.

48449 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48450 Administrative Rulemaking Act, the commission may make rules providing procedures for
48451 making:

48452 (i) a refund to a claimant, estate, or trust as required by Subsection (3)(a)(i); or

48453 (ii) transfers from the General Fund into the Education Fund as required by Subsection
48454 (3)(a)(ii).

48455 Section 1016. Section **59-10-1205** is amended to read:

48456 **59-10-1205. Adjustments to adjusted gross income of a resident or nonresident**
48457 **individual.**

48458 (1) In calculating state taxable income for purposes of this part, the commission shall
48459 allow an adjustment to adjusted gross income of a resident or nonresident individual if the
48460 resident or nonresident individual would otherwise:

48461 (a) receive a double tax benefit under this part; or

48462 (b) suffer a double tax detriment under this part.

48463 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48464 Administrative Rulemaking Act, the commission may make rules to allow for the adjustment to
48465 adjusted gross income required by Subsection (1).

48466 Section 1017. Section **59-11-113** is amended to read:

48467 **59-11-113. Administration by commission -- Action for collection of tax --**

48468 **Limitation of action -- Limit for refund or credit of tax -- Appeal.**

48469 (1) The commission is charged with the administration and enforcement of this chapter

48470 and may promulgate rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
48471 Administrative Rulemaking Act, to effectuate the purposes of this chapter.

48472 (2) The commission shall collect the tax provided for under this chapter, including
48473 applicable interest and penalties, and shall represent this state in all matters pertaining to
48474 collection, either before courts or otherwise. The commission may institute proceedings for the
48475 collection of this tax, and any interest and penalties on the tax, in the district court of any county
48476 in which any portion of the property is situated. For this purpose the commission may call to its
48477 assistance the attorney general and the various county attorneys throughout the state.

48478 (3) (a) Except as provided in Subsections (4) through (7), the commission shall assess a
48479 tax under this chapter within three years after a taxpayer files a return.

48480 (b) Except as provided in Subsections (4) through (7), if the commission does not assess
48481 a tax under this chapter within the three-year period provided in Subsection (3)(a), the
48482 commission may not file an action to collect the tax.

48483 (4) Notwithstanding Subsection (3), the commission may assess a tax at any time if a
48484 taxpayer:

48485 (a) files a false or fraudulent return with intent to evade; or

48486 (b) does not file a return.

48487 (5) Notwithstanding Subsection (3), beginning on July 1, 1998, the commission may
48488 extend the period to make an assessment or to commence a proceeding to collect the tax under
48489 this chapter if:

48490 (a) the three-year period under Subsection (3) has not expired; and

48491 (b) the commission and the taxpayer sign a written agreement:

48492 (i) authorizing the extension; and

48493 (ii) providing for the length of the extension.

48494 (6) If the commission delays an audit at the request of a taxpayer, the commission may
48495 make an assessment as provided in Subsection (7) if:

48496 (a) the taxpayer subsequently refuses to agree to an extension request by the
48497 commission; and

48498 (b) the three-year period under Subsection (3) expires before the commission completes
48499 the audit.

48500 (7) An assessment under Subsection (6) shall be:

48501 (a) for the time period for which the commission could not make an assessment because
48502 of the expiration of the three-year period; and

48503 (b) in an amount equal to the difference between:

48504 (i) the commission's estimate of the amount of taxes the taxpayer would have been
48505 assessed for the time period described in Subsection (7)(a); and

48506 (ii) the amount of taxes the taxpayer actually paid for the time period described in
48507 Subsection (7)(a).

48508 (8) A taxpayer shall:

48509 (a) notify the commission within 90 days after a final determination of a change made in
48510 a taxpayer's net income on the taxpayer's federal estate tax return if:

48511 (i) the change is made because:

48512 (A) the taxpayer filed an amended federal return; or

48513 (B) of an action by the federal government; and

48514 (ii) the change affects the taxpayer's state tax liability; and

48515 (b) if the taxpayer is required to notify the commission of a change as provided in
48516 Subsection (8)(a)(i), file a copy of:

48517 (i) the amended federal return; and

48518 (ii) an amended state return which conforms to the changes on the federal return.

48519 (9) (a) The commission may assess a deficiency in state estate taxes as a result of a
48520 change in a taxpayer's net income under Subsection (8):

48521 (i) within three years after a taxpayer files an amended return under Subsection (8)(b) if
48522 the taxpayer files an amended return; or

48523 (ii) within six years after the change if a taxpayer does not file an amended return under
48524 Subsection (8)(b).

48525 (b) The amount of a deficiency assessed under Subsection (9)(a) may not exceed the

48526 amount of the increase in Utah tax attributable to the change in the taxpayer's net income under
48527 Subsection (8)(a).

48528 (10) (a) Except as provided in Subsection (10)(b), the commission may not make a
48529 credit or refund unless the taxpayer files a claim with the commission within three years of the
48530 date of overpayment.

48531 (b) Notwithstanding Subsection (10)(a), beginning on July 1, 1998, the commission
48532 shall extend the period for a taxpayer to file a claim under Subsection (10)(a) if:

48533 (i) the three-year period under Subsection (10)(a) has not expired; and

48534 (ii) the commission and the taxpayer sign a written agreement:

48535 (A) authorizing the extension; and

48536 (B) providing for the length of the extension.

48537 (11) Any party to a proceeding before the district court concerning the tax imposed by
48538 this chapter, including the commission, may appeal from the order, judgment, or decree entered
48539 by the district court.

48540 Section 1018. Section **59-12-102** is amended to read:

48541 **59-12-102. Definitions.**

48542 As used in this chapter:

48543 (1) (a) "Admission or user fees" includes season passes.

48544 (b) "Admission or user fees" does not include annual membership dues to private
48545 organizations.

48546 (2) "Agreement" means the Streamlined Sales and Use Tax Agreement described in
48547 Section 59-12-102.1.

48548 (3) "Agreement combined tax rate" means the sum of the tax rates:

48549 (a) listed under Subsection (4); and

48550 (b) that are imposed within a local taxing jurisdiction.

48551 (4) "Agreement sales and use tax" means a tax imposed under:

48552 (a) Subsection 59-12-103(2)(a)(i);

48553 (b) Subsection 59-12-103(2)(b)(i);

- 48554 (c) Subsection 59-12-103(2)(c)(i);
- 48555 (d) Subsection 59-12-103(2)(d)(i);
- 48556 (e) Subsection 59-12-103(2)(e)(ii)(A);
- 48557 (f) Subsection 59-12-103(2)(e)(iii)(A);
- 48558 (g) Section 59-12-204;
- 48559 (h) Section 59-12-401;
- 48560 (i) Section 59-12-402;
- 48561 (j) Section 59-12-501;
- 48562 (k) Section 59-12-502;
- 48563 (l) Section 59-12-703;
- 48564 (m) Section 59-12-802;
- 48565 (n) Section 59-12-804;
- 48566 (o) Section 59-12-1001;
- 48567 (p) Section 59-12-1102;
- 48568 (q) Section 59-12-1302;
- 48569 (r) Section 59-12-1402;
- 48570 (s) Section 59-12-1503; or
- 48571 (t) Section 59-12-1703.
- 48572 (5) "Aircraft" is as defined in Section 72-10-102.
- 48573 (6) "Alcoholic beverage" means a beverage that:
 - 48574 (a) is suitable for human consumption; and
 - 48575 (b) contains .5% or more alcohol by volume.
- 48576 (7) "Area agency on aging" is as defined in Section 62A-3-101.
- 48577 (8) "Assisted amusement device" means an amusement device, skill device, or ride
- 48578 device that is started and stopped by an individual:
 - 48579 (a) who is not the purchaser or renter of the right to use or operate the amusement
 - 48580 device, skill device, or ride device; and
 - 48581 (b) at the direction of the seller of the right to use the amusement device, skill device, or

48582 ride device.

48583 (9) "Assisted cleaning or washing of tangible personal property" means cleaning or
48584 washing of tangible personal property if the cleaning or washing labor is primarily performed by
48585 an individual:

48586 (a) who is not the purchaser of the cleaning or washing of the tangible personal
48587 property; and

48588 (b) at the direction of the seller of the cleaning or washing of the tangible personal
48589 property.

48590 (10) "Authorized carrier" means:

48591 (a) in the case of vehicles operated over public highways, the holder of credentials
48592 indicating that the vehicle is or will be operated pursuant to both the International Registration
48593 Plan and the International Fuel Tax Agreement;

48594 (b) in the case of aircraft, the holder of a Federal Aviation Administration operating
48595 certificate or air carrier's operating certificate; or

48596 (c) in the case of locomotives, freight cars, railroad work equipment, or other rolling
48597 stock, the holder of a certificate issued by the United States Surface Transportation Board.

48598 (11) (a) Except as provided in Subsection (11)(b), "biomass energy" means any of the
48599 following that is used as the primary source of energy to produce fuel or electricity:

48600 (i) material from a plant or tree; or

48601 (ii) other organic matter that is available on a renewable basis, including:

48602 (A) slash and brush from forests and woodlands;

48603 (B) animal waste;

48604 (C) methane produced:

48605 (I) at landfills; or

48606 (II) as a byproduct of the treatment of wastewater residuals;

48607 (D) aquatic plants; and

48608 (E) agricultural products.

48609 (b) "Biomass energy" does not include:

- 48610 (i) black liquor;
- 48611 (ii) treated woods; or
- 48612 (iii) biomass from municipal solid waste other than methane produced:
- 48613 (A) at landfills; or
- 48614 (B) as a byproduct of the treatment of wastewater residuals.
- 48615 (12) (a) "Bundled transaction" means the sale of two or more items of tangible personal
- 48616 property if:
 - 48617 (i) one or more of the items of tangible personal property is food and food ingredients;
 - 48618 and
 - 48619 (ii) the items of tangible personal property are:
 - 48620 (A) distinct and identifiable; and
 - 48621 (B) sold for one price that is not itemized.
 - 48622 (b) "Bundled transaction" does not include the sale of tangible personal property if the
 - 48623 sales price varies, or is negotiable, on the basis of the selection by the purchaser of the items of
 - 48624 tangible personal property included in the transaction.
 - 48625 (c) For purposes of Subsection (12)(a)(ii)(A), tangible personal property that is distinct
 - 48626 and identifiable does not include:
 - 48627 (i) packaging that:
 - 48628 (A) accompanies the sale of the tangible personal property; and
 - 48629 (B) is incidental or immaterial to the sale of the tangible personal property;
 - 48630 (ii) tangible personal property provided free of charge with the purchase of another item
 - 48631 of tangible personal property; or
 - 48632 (iii) an item of tangible personal property included in the definition of "purchase price."
 - 48633 (d) For purposes of Subsection (12)(c)(ii), an item of tangible personal property is
 - 48634 provided free of charge with the purchase of another item of tangible personal property if the
 - 48635 sales price of the purchased item of tangible personal property does not vary depending on the
 - 48636 inclusion of the tangible personal property provided free of charge.
 - 48637 (13) "Certified automated system" means software certified by the governing board of

48638 the agreement in accordance with Section 59-12-102.1 that:

48639 (a) calculates the agreement sales and use tax imposed within a local taxing jurisdiction:

48640 (i) on a transaction; and

48641 (ii) in the states that are members of the agreement;

48642 (b) determines the amount of agreement sales and use tax to remit to a state that is a

48643 member of the agreement; and

48644 (c) maintains a record of the transaction described in Subsection (13)(a)(i).

48645 (14) "Certified service provider" means an agent certified:

48646 (a) by the governing board of the agreement in accordance with Section 59-12-102.1;

48647 and

48648 (b) to perform all of a seller's sales and use tax functions for an agreement sales and use

48649 tax other than the seller's obligation under Section 59-12-107.4 to remit a tax on the seller's

48650 own purchases.

48651 (15) (a) Subject to Subsection (15)(b), "clothing" means all human wearing apparel

48652 suitable for general use.

48653 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48654 Administrative Rulemaking Act, the commission shall make rules:

48655 (i) listing the items that constitute "clothing"; and

48656 (ii) that are consistent with the list of items that constitute "clothing" under the

48657 agreement.

48658 (16) "Coal-to-liquid" means the process of converting coal into a liquid synthetic fuel.

48659 (17) "Commercial use" means the use of gas, electricity, heat, coal, fuel oil, or other

48660 fuels that does not constitute industrial use under Subsection (42) or residential use under

48661 Subsection (80).

48662 (18) (a) "Common carrier" means a person engaged in or transacting the business of

48663 transporting passengers, freight, merchandise, or other property for hire within this state.

48664 (b) (i) "Common carrier" does not include a person who, at the time the person is

48665 traveling to or from that person's place of employment, transports a passenger to or from the

48666 passenger's place of employment.

48667 (ii) For purposes of Subsection (18)(b)(i), in accordance with [~~Title 63, Chapter 46a]~~

48668 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules

48669 defining what constitutes a person's place of employment.

48670 (19) "Component part" includes:

48671 (a) poultry, dairy, and other livestock feed, and their components;

48672 (b) baling ties and twine used in the baling of hay and straw;

48673 (c) fuel used for providing temperature control of orchards and commercial

48674 greenhouses doing a majority of their business in wholesale sales, and for providing power for

48675 off-highway type farm machinery; and

48676 (d) feed, seeds, and seedlings.

48677 (20) "Computer" means an electronic device that accepts information:

48678 (a) (i) in digital form; or

48679 (ii) in a form similar to digital form; and

48680 (b) manipulates that information for a result based on a sequence of instructions.

48681 (21) "Computer software" means a set of coded instructions designed to cause:

48682 (a) a computer to perform a task; or

48683 (b) automatic data processing equipment to perform a task.

48684 (22) "Construction materials" means any tangible personal property that will be

48685 converted into real property.

48686 (23) "Delivered electronically" means delivered to a purchaser by means other than

48687 tangible storage media.

48688 (24) (a) "Delivery charge" means a charge:

48689 (i) by a seller of:

48690 (A) tangible personal property; or

48691 (B) services; and

48692 (ii) for preparation and delivery of the tangible personal property or services described

48693 in Subsection (24)(a)(i) to a location designated by the purchaser.

- 48694 (b) "Delivery charge" includes a charge for the following:
- 48695 (i) transportation;
- 48696 (ii) shipping;
- 48697 (iii) postage;
- 48698 (iv) handling;
- 48699 (v) crating; or
- 48700 (vi) packing.
- 48701 (25) (a) "Dental prosthesis" means the following if fabricated in a laboratory:
- 48702 (i) a bridge;
- 48703 (ii) a crown if that crown covers at least 75% of a tooth structure;
- 48704 (iii) a denture;
- 48705 (iv) an implant;
- 48706 (v) an orthodontic device designed to:
- 48707 (A) retain the position or spacing of teeth; and
- 48708 (B) replace a missing tooth;
- 48709 (vi) a partial denture; or
- 48710 (vii) a device similar to Subsections (25)(a)(i) through (vi).
- 48711 (b) "Dental prosthesis" does not include an appliance or device, other than a device
- 48712 described in Subsection (25)(a), if that appliance or device is used in orthodontic therapy to
- 48713 apply force to the teeth and their supporting structures to:
- 48714 (i) produce changes in their relationship to each other; and
- 48715 (ii) control their growth and development.
- 48716 (26) "Dietary supplement" means a product, other than tobacco, that:
- 48717 (a) is intended to supplement the diet;
- 48718 (b) contains one or more of the following dietary ingredients:
- 48719 (i) a vitamin;
- 48720 (ii) a mineral;
- 48721 (iii) an herb or other botanical;

- 48722 (iv) an amino acid;
- 48723 (v) a dietary substance for use by humans to supplement the diet by increasing the total
- 48724 dietary intake; or
- 48725 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient
- 48726 described in Subsections (26)(b)(i) through (v);
- 48727 (c) (i) except as provided in Subsection (26)(c)(ii), is intended for ingestion in:
- 48728 (A) tablet form;
- 48729 (B) capsule form;
- 48730 (C) powder form;
- 48731 (D) softgel form;
- 48732 (E) gelcap form; or
- 48733 (F) liquid form; or
- 48734 (ii) notwithstanding Subsection (26)(c)(i), if the product is not intended for ingestion in
- 48735 a form described in Subsections (26)(c)(i)(A) through (F), is not represented:
- 48736 (A) as conventional food; and
- 48737 (B) for use as a sole item of:
- 48738 (I) a meal; or
- 48739 (II) the diet; and
- 48740 (d) is required to be labeled as a dietary supplement:
- 48741 (i) identifiable by the "Supplemental Facts" box found on the label; and
- 48742 (ii) as required by 21 C.F.R. Sec. 101.36.
- 48743 (27) (a) "Direct mail" means printed material delivered or distributed by United States
- 48744 mail or other delivery service:
- 48745 (i) to:
- 48746 (A) a mass audience; or
- 48747 (B) addressees on a mailing list provided by a purchaser of the mailing list; and
- 48748 (ii) if the cost of the printed material is not billed directly to the recipients.
- 48749 (b) "Direct mail" includes tangible personal property supplied directly or indirectly by a

48750 purchaser to a seller of direct mail for inclusion in a package containing the printed material.

48751 (c) "Direct mail" does not include multiple items of printed material delivered to a single
48752 address.

48753 (28) (a) "Disposable home medical equipment or supplies" means medical equipment or
48754 supplies that:

48755 (i) cannot withstand repeated use; and

48756 (ii) are purchased by, for, or on behalf of a person other than:

48757 (A) a health care facility as defined in Section 26-21-2;

48758 (B) a health care provider as defined in Section 78-14-3;

48759 (C) an office of a health care provider described in Subsection (28)(a)(ii)(B); or

48760 (D) a person similar to a person described in Subsections (28)(a)(ii)(A) through (C).

48761 (b) "Disposable home medical equipment or supplies" does not include:

48762 (i) a drug;

48763 (ii) durable medical equipment;

48764 (iii) a hearing aid;

48765 (iv) a hearing aid accessory;

48766 (v) mobility enhancing equipment; or

48767 (vi) tangible personal property used to correct impaired vision, including:

48768 (A) eyeglasses; or

48769 (B) contact lenses.

48770 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

48771 Administrative Rulemaking Act, the commission may by rule define what constitutes medical
48772 equipment or supplies.

48773 (29) (a) "Drug" means a compound, substance, or preparation, or a component of a
48774 compound, substance, or preparation that is:

48775 (i) recognized in:

48776 (A) the official United States Pharmacopoeia;

48777 (B) the official Homeopathic Pharmacopoeia of the United States;

- 48778 (C) the official National Formulary; or
- 48779 (D) a supplement to a publication listed in Subsections (29)(a)(i)(A) through (C);
- 48780 (ii) intended for use in the:
- 48781 (A) diagnosis of disease;
- 48782 (B) cure of disease;
- 48783 (C) mitigation of disease;
- 48784 (D) treatment of disease; or
- 48785 (E) prevention of disease; or
- 48786 (iii) intended to affect:
- 48787 (A) the structure of the body; or
- 48788 (B) any function of the body.
- 48789 (b) "Drug" does not include:
- 48790 (i) food and food ingredients;
- 48791 (ii) a dietary supplement;
- 48792 (iii) an alcoholic beverage; or
- 48793 (iv) a prosthetic device.
- 48794 (30) (a) Except as provided in Subsection (30)(c), "durable medical equipment" means
- 48795 equipment that:
- 48796 (i) can withstand repeated use;
- 48797 (ii) is primarily and customarily used to serve a medical purpose;
- 48798 (iii) generally is not useful to a person in the absence of illness or injury; and
- 48799 (iv) is not worn in or on the body.
- 48800 (b) "Durable medical equipment" includes parts used in the repair or replacement of the
- 48801 equipment described in Subsection (30)(a).
- 48802 (c) Notwithstanding Subsection (30)(a), "durable medical equipment" does not include
- 48803 mobility enhancing equipment.
- 48804 (31) "Electronic" means:
- 48805 (a) relating to technology; and

- 48806 (b) having:
- 48807 (i) electrical capabilities;
- 48808 (ii) digital capabilities;
- 48809 (iii) magnetic capabilities;
- 48810 (iv) wireless capabilities;
- 48811 (v) optical capabilities;
- 48812 (vi) electromagnetic capabilities; or
- 48813 (vii) capabilities similar to Subsections (31)(b)(i) through (vi).
- 48814 (32) "Employee" is as defined in Section 59-10-401.
- 48815 (33) "Fixed guideway" means a public transit facility that uses and occupies:
- 48816 (a) rail for the use of public transit; or
- 48817 (b) a separate right-of-way for the use of public transit.
- 48818 (34) (a) "Food and food ingredients" means substances:
- 48819 (i) regardless of whether the substances are in:
- 48820 (A) liquid form;
- 48821 (B) concentrated form;
- 48822 (C) solid form;
- 48823 (D) frozen form;
- 48824 (E) dried form; or
- 48825 (F) dehydrated form; and
- 48826 (ii) that are:
- 48827 (A) sold for:
- 48828 (I) ingestion by humans; or
- 48829 (II) chewing by humans; and
- 48830 (B) consumed for the substance's:
- 48831 (I) taste; or
- 48832 (II) nutritional value.
- 48833 (b) "Food and food ingredients" includes an item described in Subsection (66)(b)(iii).

- 48834 (c) "Food and food ingredients" does not include:
- 48835 (i) an alcoholic beverage;
- 48836 (ii) tobacco; or
- 48837 (iii) prepared food.
- 48838 (35) (a) "Fundraising sales" means sales:
- 48839 (i) (A) made by a school; or
- 48840 (B) made by a school student;
- 48841 (ii) that are for the purpose of raising funds for the school to purchase equipment,
- 48842 materials, or provide transportation; and
- 48843 (iii) that are part of an officially sanctioned school activity.
- 48844 (b) For purposes of Subsection (35)(a)(iii), "officially sanctioned school activity" means
- 48845 a school activity:
- 48846 (i) that is conducted in accordance with a formal policy adopted by the school or school
- 48847 district governing the authorization and supervision of fundraising activities;
- 48848 (ii) that does not directly or indirectly compensate an individual teacher or other
- 48849 educational personnel by direct payment, commissions, or payment in kind; and
- 48850 (iii) the net or gross revenues from which are deposited in a dedicated account
- 48851 controlled by the school or school district.
- 48852 (36) "Geothermal energy" means energy contained in heat that continuously flows
- 48853 outward from the earth that is used as the sole source of energy to produce electricity.
- 48854 (37) "Governing board of the agreement" means the governing board of the agreement
- 48855 that is:
- 48856 (a) authorized to administer the agreement; and
- 48857 (b) established in accordance with the agreement.
- 48858 (38) (a) For purposes of Subsection 59-12-104(41), "governmental entity" means:
- 48859 (i) the executive branch of the state, including all departments, institutions, boards,
- 48860 divisions, bureaus, offices, commissions, and committees;
- 48861 (ii) the judicial branch of the state, including the courts, the Judicial Council, the Office

- 48862 of the Court Administrator, and similar administrative units in the judicial branch;
- 48863 (iii) the legislative branch of the state, including the House of Representatives, the
48864 Senate, the Legislative Printing Office, the Office of Legislative Research and General Counsel,
48865 the Office of the Legislative Auditor General, and the Office of the Legislative Fiscal Analyst;
- 48866 (iv) the National Guard;
- 48867 (v) an independent entity as defined in Section 63E-1-102; or
- 48868 (vi) a political subdivision as defined in Section 17B-1-102.
- 48869 (b) "Governmental entity" does not include the state systems of public and higher
48870 education, including:
- 48871 (i) a college campus of the Utah College of Applied Technology;
- 48872 (ii) a school;
- 48873 (iii) the State Board of Education;
- 48874 (iv) the State Board of Regents; or
- 48875 (v) a state institution of higher education as defined in Section 53B-3-102.
- 48876 (39) (a) "Hearing aid" means:
- 48877 (i) an instrument or device having an electronic component that is designed to:
- 48878 (A) (I) improve impaired human hearing; or
- 48879 (II) correct impaired human hearing; and
- 48880 (B) (I) be worn in the human ear; or
- 48881 (II) affixed behind the human ear;
- 48882 (ii) an instrument or device that is surgically implanted into the cochlea; or
- 48883 (iii) a telephone amplifying device.
- 48884 (b) "Hearing aid" does not include:
- 48885 (i) except as provided in Subsection (39)(a)(i)(B) or (39)(a)(ii), an instrument or device
48886 having an electronic component that is designed to be worn on the body;
- 48887 (ii) except as provided in Subsection (39)(a)(iii), an assistive listening device or system
48888 designed to be used by one individual, including:
- 48889 (A) a personal amplifying system;

- 48890 (B) a personal FM system;
- 48891 (C) a television listening system; or
- 48892 (D) a device or system similar to a device or system described in Subsections
- 48893 (39)(b)(ii)(A) through (C); or
- 48894 (iii) an assistive listening device or system designed to be used by more than one
- 48895 individual, including:
 - 48896 (A) a device or system installed in:
 - 48897 (I) an auditorium;
 - 48898 (II) a church;
 - 48899 (III) a conference room;
 - 48900 (IV) a synagogue; or
 - 48901 (V) a theater; or
 - 48902 (B) a device or system similar to a device or system described in Subsections
 - 48903 (39)(b)(iii)(A)(I) through (V).
- 48904 (40) (a) "Hearing aid accessory" means a hearing aid:
 - 48905 (i) component;
 - 48906 (ii) attachment; or
 - 48907 (iii) accessory.
- 48908 (b) "Hearing aid accessory" includes:
 - 48909 (i) a hearing aid neck loop;
 - 48910 (ii) a hearing aid cord;
 - 48911 (iii) a hearing aid ear mold;
 - 48912 (iv) hearing aid tubing;
 - 48913 (v) a hearing aid ear hook; or
 - 48914 (vi) a hearing aid remote control.
- 48915 (c) "Hearing aid accessory" does not include:
 - 48916 (i) a component, attachment, or accessory designed to be used only with an:
 - 48917 (A) instrument or device described in Subsection (39)(b)(i); or

- 48918 (B) assistive listening device or system described in Subsection (39)(b)(ii) or (iii); or
- 48919 (ii) a hearing aid battery.
- 48920 (41) "Hydroelectric energy" means water used as the sole source of energy to produce
- 48921 electricity.
- 48922 (42) "Industrial use" means the use of natural gas, electricity, heat, coal, fuel oil, or
- 48923 other fuels:
- 48924 (a) in mining or extraction of minerals;
- 48925 (b) in agricultural operations to produce an agricultural product up to the time of
- 48926 harvest or placing the agricultural product into a storage facility, including:
- 48927 (i) commercial greenhouses;
- 48928 (ii) irrigation pumps;
- 48929 (iii) farm machinery;
- 48930 (iv) implements of husbandry as defined in Subsection 41-1a-102(23) that are not
- 48931 registered under Title 41, Chapter 1a, Part 2, Registration; and
- 48932 (v) other farming activities;
- 48933 (c) in manufacturing tangible personal property at an establishment described in SIC
- 48934 Codes 2000 to 3999 of the 1987 Standard Industrial Classification Manual of the federal
- 48935 Executive Office of the President, Office of Management and Budget;
- 48936 (d) by a scrap recycler if:
- 48937 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 48938 one or more of the following items into prepared grades of processed materials for use in new
- 48939 products:
- 48940 (A) iron;
- 48941 (B) steel;
- 48942 (C) nonferrous metal;
- 48943 (D) paper;
- 48944 (E) glass;
- 48945 (F) plastic;

- 48946 (G) textile; or
- 48947 (H) rubber; and
- 48948 (ii) the new products under Subsection (42)(d)(i) would otherwise be made with
- 48949 nonrecycled materials; or
- 48950 (e) in producing a form of energy or steam described in Subsection 54-2-1(2)(a) by a
- 48951 cogeneration facility as defined in Section 54-2-1.
- 48952 (43) (a) Except as provided in Subsection (43)(b), "installation charge" means a charge
- 48953 for installing tangible personal property.
- 48954 (b) Notwithstanding Subsection (43)(a), "installation charge" does not include a charge
- 48955 for repairs or renovations of tangible personal property.
- 48956 (44) (a) "Lease" or "rental" means a transfer of possession or control of tangible
- 48957 personal property for:
- 48958 (i) (A) a fixed term; or
- 48959 (B) an indeterminate term; and
- 48960 (ii) consideration.
- 48961 (b) "Lease" or "rental" includes an agreement covering a motor vehicle and trailer if the
- 48962 amount of consideration may be increased or decreased by reference to the amount realized
- 48963 upon sale or disposition of the property as defined in Section 7701(h)(1), Internal Revenue
- 48964 Code.
- 48965 (c) "Lease" or "rental" does not include:
- 48966 (i) a transfer of possession or control of property under a security agreement or
- 48967 deferred payment plan that requires the transfer of title upon completion of the required
- 48968 payments;
- 48969 (ii) a transfer of possession or control of property under an agreement that requires the
- 48970 transfer of title:
- 48971 (A) upon completion of required payments; and
- 48972 (B) if the payment of an option price does not exceed the greater of:
- 48973 (I) \$100; or

- 48974 (II) 1% of the total required payments; or
- 48975 (iii) providing tangible personal property along with an operator for a fixed period of
- 48976 time or an indeterminate period of time if the operator is necessary for equipment to perform as
- 48977 designed.
- 48978 (d) For purposes of Subsection (44)(c)(iii), an operator is necessary for equipment to
- 48979 perform as designed if the operator's duties exceed the:
- 48980 (i) set-up of tangible personal property;
- 48981 (ii) maintenance of tangible personal property; or
- 48982 (iii) inspection of tangible personal property.
- 48983 (45) "Load and leave" means delivery to a purchaser by use of a tangible storage media
- 48984 if the tangible storage media is not physically transferred to the purchaser.
- 48985 (46) "Local taxing jurisdiction" means a:
- 48986 (a) county that is authorized to impose an agreement sales and use tax;
- 48987 (b) city that is authorized to impose an agreement sales and use tax; or
- 48988 (c) town that is authorized to impose an agreement sales and use tax.
- 48989 (47) "Manufactured home" is as defined in Section 58-56-3.
- 48990 (48) For purposes of Section 59-12-104, "manufacturing facility" means:
- 48991 (a) an establishment described in SIC Codes 2000 to 3999 of the 1987 Standard
- 48992 Industrial Classification Manual of the federal Executive Office of the President, Office of
- 48993 Management and Budget;
- 48994 (b) a scrap recycler if:
- 48995 (i) from a fixed location, the scrap recycler utilizes machinery or equipment to process
- 48996 one or more of the following items into prepared grades of processed materials for use in new
- 48997 products:
- 48998 (A) iron;
- 48999 (B) steel;
- 49000 (C) nonferrous metal;
- 49001 (D) paper;

- 49002 (E) glass;
- 49003 (F) plastic;
- 49004 (G) textile; or
- 49005 (H) rubber; and
- 49006 (ii) the new products under Subsection (48)(b)(i) would otherwise be made with
- 49007 nonrecycled materials; or
- 49008 (c) a cogeneration facility as defined in Section 54-2-1.
- 49009 (49) "Member of the immediate family of the producer" means a person who is related
- 49010 to a producer described in Subsection 59-12-104(20)(a) as a:
- 49011 (a) child or stepchild, regardless of whether the child or stepchild is:
- 49012 (i) an adopted child or adopted stepchild; or
- 49013 (ii) a foster child or foster stepchild;
- 49014 (b) grandchild or stepgrandchild;
- 49015 (c) grandparent or stepgrandparent;
- 49016 (d) nephew or stepnephew;
- 49017 (e) niece or stepniece;
- 49018 (f) parent or stepparent;
- 49019 (g) sibling or stepsibling;
- 49020 (h) spouse;
- 49021 (i) person who is the spouse of a person described in Subsections (49)(a) through (g);
- 49022 or
- 49023 (j) person similar to a person described in Subsections (49)(a) through (i) as determined
- 49024 by the commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
- 49025 3, Utah Administrative Rulemaking Act.
- 49026 (50) "Mobile home" is as defined in Section 58-56-3.
- 49027 (51) "Mobile telecommunications service" is as defined in the Mobile
- 49028 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.
- 49029 (52) (a) Except as provided in Subsection (52)(c), "mobility enhancing equipment"

49030 means equipment that is:

49031 (i) primarily and customarily used to provide or increase the ability to move from one
49032 place to another;

49033 (ii) appropriate for use in a:

49034 (A) home; or

49035 (B) motor vehicle; and

49036 (iii) not generally used by persons with normal mobility.

49037 (b) "Mobility enhancing equipment" includes parts used in the repair or replacement of
49038 the equipment described in Subsection (52)(a).

49039 (c) Notwithstanding Subsection (52)(a), "mobility enhancing equipment" does not
49040 include:

49041 (i) a motor vehicle;

49042 (ii) equipment on a motor vehicle if that equipment is normally provided by the motor
49043 vehicle manufacturer;

49044 (iii) durable medical equipment; or

49045 (iv) a prosthetic device.

49046 (53) "Model 1 seller" means a seller that has selected a certified service provider as the
49047 seller's agent to perform all of the seller's sales and use tax functions for agreement sales and
49048 use taxes other than the seller's obligation under Section 59-12-107.4 to remit a tax on the
49049 seller's own purchases.

49050 (54) "Model 2 seller" means a seller that:

49051 (a) except as provided in Subsection (54)(b), has selected a certified automated system
49052 to perform the seller's sales tax functions for agreement sales and use taxes; and

49053 (b) notwithstanding Subsection (54)(a), retains responsibility for remitting all of the
49054 sales tax:

49055 (i) collected by the seller; and

49056 (ii) to the appropriate local taxing jurisdiction.

49057 (55) (a) Subject to Subsection (55)(b), "model 3 seller" means a seller that has:

- 49058 (i) sales in at least five states that are members of the agreement;
- 49059 (ii) total annual sales revenues of at least \$500,000,000;
- 49060 (iii) a proprietary system that calculates the amount of tax:
- 49061 (A) for an agreement sales and use tax; and
- 49062 (B) due to each local taxing jurisdiction; and
- 49063 (iv) entered into a performance agreement with the governing board of the agreement.
- 49064 (b) For purposes of Subsection (55)(a), "model 3 seller" includes an affiliated group of
- 49065 sellers using the same proprietary system.
- 49066 (56) "Modular home" means a modular unit as defined in Section 58-56-3.
- 49067 (57) "Motor vehicle" is as defined in Section 41-1a-102.
- 49068 (58) "Oil shale" means a group of fine black to dark brown shales containing bituminous
- 49069 material that yields petroleum upon distillation.
- 49070 (59) (a) "Other fuels" means products that burn independently to produce heat or
- 49071 energy.
- 49072 (b) "Other fuels" includes oxygen when it is used in the manufacturing of tangible
- 49073 personal property.
- 49074 (60) "Pawnbroker" is as defined in Section 13-32a-102.
- 49075 (61) "Pawn transaction" is as defined in Section 13-32a-102.
- 49076 (62) (a) "Permanently attached to real property" means that for tangible personal
- 49077 property attached to real property:
- 49078 (i) the attachment of the tangible personal property to the real property:
- 49079 (A) is essential to the use of the tangible personal property; and
- 49080 (B) suggests that the tangible personal property will remain attached to the real
- 49081 property in the same place over the useful life of the tangible personal property; or
- 49082 (ii) if the tangible personal property is detached from the real property, the detachment
- 49083 would:
- 49084 (A) cause substantial damage to the tangible personal property; or
- 49085 (B) require substantial alteration or repair of the real property to which the tangible

49086 personal property is attached.

49087 (b) "Permanently attached to real property" includes:

49088 (i) the attachment of an accessory to the tangible personal property if the accessory is:

49089 (A) essential to the operation of the tangible personal property; and

49090 (B) attached only to facilitate the operation of the tangible personal property;

49091 (ii) a temporary detachment of tangible personal property from real property for a repair

49092 or renovation if the repair or renovation is performed where the tangible personal property and

49093 real property are located; or

49094 (iii) an attachment of the following tangible personal property to real property,

49095 regardless of whether the attachment to real property is only through a line that supplies water,

49096 electricity, gas, telephone, cable, or supplies a similar item as determined by the commission by

49097 rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative

49098 Rulemaking Act:

49099 (A) property attached to oil, gas, or water pipelines, other than the property listed in

49100 Subsection (62)(c)(iii);

49101 (B) a hot water heater;

49102 (C) a water softener system; or

49103 (D) a water filtration system, other than a water filtration system manufactured as part

49104 of a refrigerator.

49105 (c) "Permanently attached to real property" does not include:

49106 (i) the attachment of portable or movable tangible personal property to real property if

49107 that portable or movable tangible personal property is attached to real property only for:

49108 (A) convenience;

49109 (B) stability; or

49110 (C) for an obvious temporary purpose;

49111 (ii) the detachment of tangible personal property from real property other than the

49112 detachment described in Subsection (62)(b)(ii); or

49113 (iii) an attachment of the following tangible personal property to real property if the

49114 attachment to real property is only through a line that supplies water, electricity, gas, telephone,
49115 cable, or supplies a similar item as determined by the commission by rule made in accordance
49116 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act:

49117 (A) a refrigerator;

49118 (B) a washer;

49119 (C) a dryer;

49120 (D) a stove;

49121 (E) a television;

49122 (F) a computer;

49123 (G) a telephone; or

49124 (H) tangible personal property similar to Subsections (62)(c)(iii)(A) through (G) as
49125 determined by the commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title
49126 63G, Chapter 3, Utah Administrative Rulemaking Act.

49127 (63) "Person" includes any individual, firm, partnership, joint venture, association,
49128 corporation, estate, trust, business trust, receiver, syndicate, this state, any county, city,
49129 municipality, district, or other local governmental entity of the state, or any group or
49130 combination acting as a unit.

49131 (64) "Place of primary use":

49132 (a) for telephone service other than mobile telecommunications service, means the
49133 street address representative of where the purchaser's use of the telephone service primarily
49134 occurs, which shall be:

49135 (i) the residential street address of the purchaser; or

49136 (ii) the primary business street address of the purchaser; or

49137 (b) for mobile telecommunications service, is as defined in the Mobile
49138 Telecommunications Sourcing Act, 4 U.S.C. Sec. 124.

49139 (65) "Postproduction" means an activity related to the finishing or duplication of a
49140 medium described in Subsection 59-12-104(56)(a).

49141 (66) (a) "Prepared food" means:

- 49142 (i) food:
- 49143 (A) sold in a heated state; or
- 49144 (B) heated by a seller;
- 49145 (ii) two or more food ingredients mixed or combined by the seller for sale as a single
- 49146 item; or
- 49147 (iii) except as provided in Subsection (66)(c), food sold with an eating utensil provided
- 49148 by the seller, including a:
 - 49149 (A) plate;
 - 49150 (B) knife;
 - 49151 (C) fork;
 - 49152 (D) spoon;
 - 49153 (E) glass;
 - 49154 (F) cup;
 - 49155 (G) napkin; or
 - 49156 (H) straw.
- 49157 (b) "Prepared food" does not include:
- 49158 (i) food that a seller only:
 - 49159 (A) cuts;
 - 49160 (B) repackages; or
 - 49161 (C) pasteurizes; or
- 49162 (ii) (A) the following:
 - 49163 (I) raw egg;
 - 49164 (II) raw fish;
 - 49165 (III) raw meat;
 - 49166 (IV) raw poultry; or
 - 49167 (V) a food containing an item described in Subsections (66)(b)(ii)(A)(I) through (IV);
- 49168 and
- 49169 (B) if the Food and Drug Administration recommends in Chapter 3, Part 401.11 of the

49170 Food and Drug Administration's Food Code that a consumer cook the items described in
49171 Subsection (66)(b)(ii)(A) to prevent food borne illness; or
49172 (iii) the following if sold without eating utensils provided by the seller:
49173 (A) food and food ingredients sold by a seller if the seller's proper primary classification
49174 under the 2002 North American Industry Classification System of the federal Executive Office
49175 of the President, Office of Management and Budget, is manufacturing in Sector 311, Food
49176 Manufacturing, except for Subsector 3118, Bakeries and Tortilla Manufacturing;
49177 (B) food and food ingredients sold in an unheated state:
49178 (I) by weight or volume; and
49179 (II) as a single item; or
49180 (C) a bakery item, including:
49181 (I) a bagel;
49182 (II) a bar;
49183 (III) a biscuit;
49184 (IV) bread;
49185 (V) a bun;
49186 (VI) a cake;
49187 (VII) a cookie;
49188 (VIII) a croissant;
49189 (IX) a danish;
49190 (X) a donut;
49191 (XI) a muffin;
49192 (XII) a pastry;
49193 (XIII) a pie;
49194 (XIV) a roll;
49195 (XV) a tart;
49196 (XVI) a torte; or
49197 (XVII) a tortilla.

49198 (c) Notwithstanding Subsection (66)(a)(iii), an eating utensil provided by the seller does
49199 not include the following used to transport the food:

49200 (i) a container; or

49201 (ii) packaging.

49202 (67) "Prescription" means an order, formula, or recipe that is issued:

49203 (a) (i) orally;

49204 (ii) in writing;

49205 (iii) electronically; or

49206 (iv) by any other manner of transmission; and

49207 (b) by a licensed practitioner authorized by the laws of a state.

49208 (68) (a) Except as provided in Subsection (68)(b)(ii) or (iii), "prewritten computer
49209 software" means computer software that is not designed and developed:

49210 (i) by the author or other creator of the computer software; and

49211 (ii) to the specifications of a specific purchaser.

49212 (b) "Prewritten computer software" includes:

49213 (i) a prewritten upgrade to computer software if the prewritten upgrade to the
49214 computer software is not designed and developed:

49215 (A) by the author or other creator of the computer software; and

49216 (B) to the specifications of a specific purchaser;

49217 (ii) notwithstanding Subsection (68)(a), computer software designed and developed by
49218 the author or other creator of the computer software to the specifications of a specific purchaser
49219 if the computer software is sold to a person other than the purchaser; or

49220 (iii) notwithstanding Subsection (68)(a) and except as provided in Subsection (68)(c),
49221 prewritten computer software or a prewritten portion of prewritten computer software:

49222 (A) that is modified or enhanced to any degree; and

49223 (B) if the modification or enhancement described in Subsection (68)(b)(iii)(A) is
49224 designed and developed to the specifications of a specific purchaser.

49225 (c) Notwithstanding Subsection (68)(b)(iii), "prewritten computer software" does not

49226 include a modification or enhancement described in Subsection (68)(b)(iii) if the charges for the
49227 modification or enhancement are:

- 49228 (i) reasonable; and
- 49229 (ii) separately stated on the invoice or other statement of price provided to the
49230 purchaser.

49231 (69) (a) "Prosthetic device" means a device that is worn on or in the body to:

- 49232 (i) artificially replace a missing portion of the body;
- 49233 (ii) prevent or correct a physical deformity or physical malfunction; or
- 49234 (iii) support a weak or deformed portion of the body.

49235 (b) "Prosthetic device" includes:

- 49236 (i) parts used in the repairs or renovation of a prosthetic device;
- 49237 (ii) replacement parts for a prosthetic device; or
- 49238 (iii) a dental prosthesis.

49239 (c) "Prosthetic device" does not include:

- 49240 (i) corrective eyeglasses;
- 49241 (ii) contact lenses; or
- 49242 (iii) hearing aids.

49243 (70) (a) "Protective equipment" means an item:

- 49244 (i) for human wear; and
- 49245 (ii) that is:
 - 49246 (A) designed as protection:
 - 49247 (I) to the wearer against injury or disease; or
 - 49248 (II) against damage or injury of other persons or property; and
 - 49249 (B) not suitable for general use.

49250 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

49251 Administrative Rulemaking Act, the commission shall make rules:

- 49252 (i) listing the items that constitute "protective equipment"; and
- 49253 (ii) that are consistent with the list of items that constitute "protective equipment" under

49254 the agreement.

49255 (71) (a) For purposes of Subsection 59-12-104(41), "publication" means any written or
49256 printed matter, other than a photocopy:

49257 (i) regardless of:

49258 (A) characteristics;

49259 (B) copyright;

49260 (C) form;

49261 (D) format;

49262 (E) method of reproduction; or

49263 (F) source; and

49264 (ii) made available in printed or electronic format.

49265 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

49266 Administrative Rulemaking Act, the commission may by rule define the term "photocopy."

49267 (72) (a) "Purchase price" and "sales price" mean the total amount of consideration:

49268 (i) valued in money; and

49269 (ii) for which tangible personal property or services are:

49270 (A) sold;

49271 (B) leased; or

49272 (C) rented.

49273 (b) "Purchase price" and "sales price" include:

49274 (i) the seller's cost of the tangible personal property or services sold;

49275 (ii) expenses of the seller, including:

49276 (A) the cost of materials used;

49277 (B) a labor cost;

49278 (C) a service cost;

49279 (D) interest;

49280 (E) a loss;

49281 (F) the cost of transportation to the seller; or

- 49282 (G) a tax imposed on the seller; or
- 49283 (iii) a charge by the seller for any service necessary to complete the sale.
- 49284 (c) "Purchase price" and "sales price" do not include:
- 49285 (i) a discount:
- 49286 (A) in a form including:
- 49287 (I) cash;
- 49288 (II) term; or
- 49289 (III) coupon;
- 49290 (B) that is allowed by a seller;
- 49291 (C) taken by a purchaser on a sale; and
- 49292 (D) that is not reimbursed by a third party; or
- 49293 (ii) the following if separately stated on an invoice, bill of sale, or similar document
- 49294 provided to the purchaser:
- 49295 (A) the amount of a trade-in;
- 49296 (B) the following from credit extended on the sale of tangible personal property or
- 49297 services:
- 49298 (I) interest charges;
- 49299 (II) financing charges; or
- 49300 (III) carrying charges;
- 49301 (C) a tax or fee legally imposed directly on the consumer;
- 49302 (D) a delivery charge; or
- 49303 (E) an installation charge.
- 49304 (73) "Purchaser" means a person to whom:
- 49305 (a) a sale of tangible personal property is made; or
- 49306 (b) a service is furnished.
- 49307 (74) "Regularly rented" means:
- 49308 (a) rented to a guest for value three or more times during a calendar year; or
- 49309 (b) advertised or held out to the public as a place that is regularly rented to guests for

49310 value.

49311 (75) "Renewable energy" means:

49312 (a) biomass energy;

49313 (b) hydroelectric energy;

49314 (c) geothermal energy;

49315 (d) solar energy; or

49316 (e) wind energy.

49317 (76) (a) "Renewable energy production facility" means a facility that:

49318 (i) uses renewable energy to produce electricity; and

49319 (ii) has a production capacity of 20 kilowatts or greater.

49320 (b) A facility is a renewable energy production facility regardless of whether the facility

49321 is:

49322 (i) connected to an electric grid; or

49323 (ii) located on the premises of an electricity consumer.

49324 (77) "Rental" is as defined in Subsection (44).

49325 (78) "Repairs or renovations of tangible personal property" means:

49326 (a) a repair or renovation of tangible personal property that is not permanently attached
49327 to real property; or

49328 (b) attaching tangible personal property to other tangible personal property if the other
49329 tangible personal property to which the tangible personal property is attached is not
49330 permanently attached to real property.

49331 (79) "Research and development" means the process of inquiry or experimentation
49332 aimed at the discovery of facts, devices, technologies, or applications and the process of
49333 preparing those devices, technologies, or applications for marketing.

49334 (80) "Residential use" means the use in or around a home, apartment building, sleeping
49335 quarters, and similar facilities or accommodations.

49336 (81) "Retail sale" or "sale at retail" means a sale, lease, or rental for a purpose other
49337 than:

- 49338 (a) resale;
- 49339 (b) sublease; or
- 49340 (c) subrent.
- 49341 (82) (a) "Retailer" means any person engaged in a regularly organized business in
- 49342 tangible personal property or any other taxable transaction under Subsection 59-12-103(1), and
- 49343 who is selling to the user or consumer and not for resale.
- 49344 (b) "Retailer" includes commission merchants, auctioneers, and any person regularly
- 49345 engaged in the business of selling to users or consumers within the state.
- 49346 (83) (a) "Sale" means any transfer of title, exchange, or barter, conditional or otherwise,
- 49347 in any manner, of tangible personal property or any other taxable transaction under Subsection
- 49348 59-12-103(1), for consideration.
- 49349 (b) "Sale" includes:
- 49350 (i) installment and credit sales;
- 49351 (ii) any closed transaction constituting a sale;
- 49352 (iii) any sale of electrical energy, gas, services, or entertainment taxable under this
- 49353 chapter;
- 49354 (iv) any transaction if the possession of property is transferred but the seller retains the
- 49355 title as security for the payment of the price; and
- 49356 (v) any transaction under which right to possession, operation, or use of any article of
- 49357 tangible personal property is granted under a lease or contract and the transfer of possession
- 49358 would be taxable if an outright sale were made.
- 49359 (84) "Sale at retail" is as defined in Subsection (81).
- 49360 (85) "Sale-leaseback transaction" means a transaction by which title to tangible personal
- 49361 property that is subject to a tax under this chapter is transferred:
- 49362 (a) by a purchaser-lessee;
- 49363 (b) to a lessor;
- 49364 (c) for consideration; and
- 49365 (d) if:

- 49366 (i) the purchaser-lessee paid sales and use tax on the purchaser-lessee's initial purchase
49367 of the tangible personal property;
- 49368 (ii) the sale of the tangible personal property to the lessor is intended as a form of
49369 financing:
- 49370 (A) for the property; and
49371 (B) to the purchaser-lessee; and
- 49372 (iii) in accordance with generally accepted accounting principles, the purchaser-lessee is
49373 required to:
- 49374 (A) capitalize the property for financial reporting purposes; and
49375 (B) account for the lease payments as payments made under a financing arrangement.
- 49376 (86) "Sales price" is as defined in Subsection (72).
- 49377 (87) (a) "Sales relating to schools" means the following sales by, amounts paid to, or
49378 amounts charged by a school:
- 49379 (i) sales that are directly related to the school's educational functions or activities
49380 including:
- 49381 (A) the sale of:
49382 (I) textbooks;
49383 (II) textbook fees;
49384 (III) laboratory fees;
49385 (IV) laboratory supplies; or
49386 (V) safety equipment;
- 49387 (B) the sale of a uniform, protective equipment, or sports or recreational equipment
49388 that:
- 49389 (I) a student is specifically required to wear as a condition of participation in a
49390 school-related event or school-related activity; and
49391 (II) is not readily adaptable to general or continued usage to the extent that it takes the
49392 place of ordinary clothing;
- 49393 (C) sales of the following if the net or gross revenues generated by the sales are

- 49394 deposited into a school district fund or school fund dedicated to school meals:
- 49395 (I) food and food ingredients; or
- 49396 (II) prepared food; or
- 49397 (D) transportation charges for official school activities; or
- 49398 (ii) amounts paid to or amounts charged by a school for admission to a school-related
- 49399 event or school-related activity.
- 49400 (b) "Sales relating to schools" does not include:
- 49401 (i) bookstore sales of items that are not educational materials or supplies;
- 49402 (ii) except as provided in Subsection (87)(a)(i)(B):
- 49403 (A) clothing;
- 49404 (B) clothing accessories or equipment;
- 49405 (C) protective equipment; or
- 49406 (D) sports or recreational equipment; or
- 49407 (iii) amounts paid to or amounts charged by a school for admission to a school-related
- 49408 event or school-related activity if the amounts paid or charged are passed through to a person:
- 49409 (A) other than a:
- 49410 (I) school;
- 49411 (II) nonprofit organization authorized by a school board or a governing body of a
- 49412 private school to organize and direct a competitive secondary school activity; or
- 49413 (III) nonprofit association authorized by a school board or a governing body of a
- 49414 private school to organize and direct a competitive secondary school activity; and
- 49415 (B) that is required to collect sales and use taxes under this chapter.
- 49416 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 49417 Administrative Rulemaking Act, the commission may make rules defining the term "passed
- 49418 through."
- 49419 (88) For purposes of this section and Section 59-12-104, "school":
- 49420 (a) means:
- 49421 (i) an elementary school or a secondary school that:

- 49422 (A) is a:
- 49423 (I) public school; or
- 49424 (II) private school; and
- 49425 (B) provides instruction for one or more grades kindergarten through 12; or
- 49426 (ii) a public school district; and
- 49427 (b) includes the Electronic High School as defined in Section 53A-15-1002.
- 49428 (89) "Seller" means a person that makes a sale, lease, or rental of:
- 49429 (a) tangible personal property; or
- 49430 (b) a service.
- 49431 (90) (a) "Semiconductor fabricating, processing, research, or development materials"
- 49432 means tangible personal property:
- 49433 (i) used primarily in the process of:
- 49434 (A) (I) manufacturing a semiconductor;
- 49435 (II) fabricating a semiconductor; or
- 49436 (III) research or development of a:
- 49437 (Aa) semiconductor; or
- 49438 (Bb) semiconductor manufacturing process; or
- 49439 (B) maintaining an environment suitable for a semiconductor; or
- 49440 (ii) consumed primarily in the process of:
- 49441 (A) (I) manufacturing a semiconductor;
- 49442 (II) fabricating a semiconductor; or
- 49443 (III) research or development of a:
- 49444 (Aa) semiconductor; or
- 49445 (Bb) semiconductor manufacturing process; or
- 49446 (B) maintaining an environment suitable for a semiconductor.
- 49447 (b) "Semiconductor fabricating, processing, research, or development materials"
- 49448 includes:
- 49449 (i) parts used in the repairs or renovations of tangible personal property described in

- 49450 Subsection (90)(a); or
- 49451 (ii) a chemical, catalyst, or other material used to:
- 49452 (A) produce or induce in a semiconductor a:
- 49453 (I) chemical change; or
- 49454 (II) physical change;
- 49455 (B) remove impurities from a semiconductor; or
- 49456 (C) improve the marketable condition of a semiconductor.
- 49457 (91) "Senior citizen center" means a facility having the primary purpose of providing
- 49458 services to the aged as defined in Section 62A-3-101.
- 49459 (92) "Simplified electronic return" means the electronic return:
- 49460 (a) described in Section 318(C) of the agreement; and
- 49461 (b) approved by the governing board of the agreement.
- 49462 (93) "Solar energy" means the sun used as the sole source of energy for producing
- 49463 electricity.
- 49464 (94) (a) "Sports or recreational equipment" means an item:
- 49465 (i) designed for human use; and
- 49466 (ii) that is:
- 49467 (A) worn in conjunction with:
- 49468 (I) an athletic activity; or
- 49469 (II) a recreational activity; and
- 49470 (B) not suitable for general use.
- 49471 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 49472 Administrative Rulemaking Act, the commission shall make rules:
- 49473 (i) listing the items that constitute "sports or recreational equipment"; and
- 49474 (ii) that are consistent with the list of items that constitute "sports or recreational
- 49475 equipment" under the agreement.
- 49476 (95) "State" means the state of Utah, its departments, and agencies.
- 49477 (96) "Storage" means any keeping or retention of tangible personal property or any

49478 other taxable transaction under Subsection 59-12-103(1), in this state for any purpose except
49479 sale in the regular course of business.

49480 (97) (a) "Tangible personal property" means personal property that:

49481 (i) may be:

49482 (A) seen;

49483 (B) weighed;

49484 (C) measured;

49485 (D) felt; or

49486 (E) touched; or

49487 (ii) is in any manner perceptible to the senses.

49488 (b) "Tangible personal property" includes:

49489 (i) electricity;

49490 (ii) water;

49491 (iii) gas;

49492 (iv) steam; or

49493 (v) prewritten computer software.

49494 (98) "Tar sands" means impregnated sands that yield mixtures of liquid hydrocarbon
49495 and require further processing other than mechanical blending before becoming finished
49496 petroleum products.

49497 (99) (a) "Telecommunications enabling or facilitating equipment, machinery, or
49498 software" means an item listed in Subsection (99)(b) if that item is purchased or leased primarily
49499 to enable or facilitate one or more of the following to function:

49500 (i) telecommunications switching or routing equipment, machinery, or software; or

49501 (ii) telecommunications transmission equipment, machinery, or software.

49502 (b) The following apply to Subsection (99)(a):

49503 (i) a pole;

49504 (ii) software;

49505 (iii) a supplementary power supply;

- 49506 (iv) temperature or environmental equipment or machinery;
- 49507 (v) test equipment;
- 49508 (vi) a tower; or
- 49509 (vii) equipment, machinery, or software that functions similarly to an item listed in
- 49510 Subsections (99)(b)(i) through (vi) as determined by the commission by rule made in
- 49511 accordance with Subsection (99)(c).
- 49512 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 49513 Administrative Rulemaking Act, the commission may by rule define what constitutes equipment,
- 49514 machinery, or software that functions similarly to an item listed in Subsections (99)(b)(i)
- 49515 through (vi).
- 49516 (100) "Telecommunications equipment, machinery, or software required for 911
- 49517 service" means equipment, machinery, or software that is required to comply with 47 C.F.R.
- 49518 Sec. 20.18.
- 49519 (101) "Telecommunications maintenance or repair equipment, machinery, or software"
- 49520 means equipment, machinery, or software purchased or leased primarily to maintain or repair
- 49521 one or more of the following, regardless of whether the equipment, machinery, or software is
- 49522 purchased or leased as a spare part or as an upgrade or modification to one or more of the
- 49523 following:
- 49524 (a) telecommunications enabling or facilitating equipment, machinery, or software;
- 49525 (b) telecommunications switching or routing equipment, machinery, or software; or
- 49526 (c) telecommunications transmission equipment, machinery, or software.
- 49527 (102) (a) "Telecommunications switching or routing equipment, machinery, or
- 49528 software" means an item listed in Subsection (102)(b) if that item is purchased or leased
- 49529 primarily for switching or routing:
- 49530 (i) voice communications;
- 49531 (ii) data communications; or
- 49532 (iii) telephone service.
- 49533 (b) The following apply to Subsection (102)(a):

- 49534 (i) a bridge;
- 49535 (ii) a computer;
- 49536 (iii) a cross connect;
- 49537 (iv) a modem;
- 49538 (v) a multiplexer;
- 49539 (vi) plug in circuitry;
- 49540 (vii) a router;
- 49541 (viii) software;
- 49542 (ix) a switch; or
- 49543 (x) equipment, machinery, or software that functions similarly to an item listed in

49544 Subsections (102)(b)(i) through (ix) as determined by the commission by rule made in
49545 accordance with Subsection (102)(c).

49546 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
49547 Administrative Rulemaking Act, the commission may by rule define what constitutes equipment,
49548 machinery, or software that functions similarly to an item listed in Subsections (102)(b)(i)
49549 through (ix).

49550 (103) (a) "Telecommunications transmission equipment, machinery, or software" means
49551 an item listed in Subsection (103)(b) if that item is purchased or leased primarily for sending,
49552 receiving, or transporting:

- 49553 (i) voice communications;
- 49554 (ii) data communications; or
- 49555 (iii) telephone service.

49556 (b) The following apply to Subsection (103)(a):

- 49557 (i) an amplifier;
- 49558 (ii) a cable;
- 49559 (iii) a closure;
- 49560 (iv) a conduit;
- 49561 (v) a controller;

- 49562 (vi) a duplexer;
- 49563 (vii) a filter;
- 49564 (viii) an input device;
- 49565 (ix) an input/output device;
- 49566 (x) an insulator;
- 49567 (xi) microwave machinery or equipment;
- 49568 (xii) an oscillator;
- 49569 (xiii) an output device;
- 49570 (xiv) a pedestal;
- 49571 (xv) a power converter;
- 49572 (xvi) a power supply;
- 49573 (xvii) a radio channel;
- 49574 (xviii) a radio receiver;
- 49575 (xix) a radio transmitter;
- 49576 (xx) a repeater;
- 49577 (xxi) software;
- 49578 (xxii) a terminal;
- 49579 (xxiii) a timing unit;
- 49580 (xxiv) a transformer;
- 49581 (xxv) a wire; or
- 49582 (xxvi) equipment, machinery, or software that functions similarly to an item listed in
- 49583 Subsections (103)(b)(i) through (xxv) as determined by the commission by rule made in
- 49584 accordance with Subsection (103)(c).
- 49585 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 49586 Administrative Rulemaking Act, the commission may by rule define what constitutes equipment,
- 49587 machinery, or software that functions similarly to an item listed in Subsections (103)(b)(i)
- 49588 through (xxv).
- 49589 (104) (a) "Telephone service" means a two-way transmission:

- 49590 (i) by:
- 49591 (A) wire;
- 49592 (B) radio;
- 49593 (C) lightwave; or
- 49594 (D) other electromagnetic means; and
- 49595 (ii) of one or more of the following:
- 49596 (A) a sign;
- 49597 (B) a signal;
- 49598 (C) writing;
- 49599 (D) an image;
- 49600 (E) sound;
- 49601 (F) a message;
- 49602 (G) data; or
- 49603 (H) other information of any nature.
- 49604 (b) "Telephone service" includes:
- 49605 (i) mobile telecommunications service;
- 49606 (ii) private communications service; or
- 49607 (iii) automated digital telephone answering service.
- 49608 (c) "Telephone service" does not include a service or a transaction that a state or a
- 49609 political subdivision of a state is prohibited from taxing as of July 1, 2001, under the Internet
- 49610 Tax Freedom Act, Pub. L. No. 105-277.
- 49611 (105) Notwithstanding where a call is billed or paid, "telephone service address" means:
- 49612 (a) if the location described in this Subsection (105)(a) is known, the location of the
- 49613 telephone service equipment:
- 49614 (i) to which a call is charged; and
- 49615 (ii) from which the call originates or terminates;
- 49616 (b) if the location described in Subsection (105)(a) is not known but the location
- 49617 described in this Subsection (105)(b) is known, the location of the origination point of the signal

49618 of the telephone service first identified by:

49619 (i) the telecommunications system of the seller; or

49620 (ii) if the system used to transport the signal is not that of the seller, information
49621 received by the seller from its service provider; or

49622 (c) if the locations described in Subsection (105)(a) or (b) are not known, the location
49623 of a purchaser's primary place of use.

49624 (106) (a) "Telephone service provider" means a person that:

49625 (i) owns, controls, operates, or manages a telephone service; and

49626 (ii) engages in an activity described in Subsection (106)(a)(i) for the shared use with or
49627 resale to any person of the telephone service.

49628 (b) A person described in Subsection (106)(a) is a telephone service provider whether
49629 or not the Public Service Commission of Utah regulates:

49630 (i) that person; or

49631 (ii) the telephone service that the person owns, controls, operates, or manages.

49632 (107) "Tobacco" means:

49633 (a) a cigarette;

49634 (b) a cigar;

49635 (c) chewing tobacco;

49636 (d) pipe tobacco; or

49637 (e) any other item that contains tobacco.

49638 (108) "Unassisted amusement device" means an amusement device, skill device, or ride
49639 device that is started and stopped by the purchaser or renter of the right to use or operate the
49640 amusement device, skill device, or ride device.

49641 (109) (a) "Use" means the exercise of any right or power over tangible personal
49642 property under Subsection 59-12-103(1), incident to the ownership or the leasing of that
49643 property, item, or service.

49644 (b) "Use" does not include the sale, display, demonstration, or trial of that property in
49645 the regular course of business and held for resale.

- 49646 (110) (a) Subject to Subsection (110)(b), "vehicle" means the following that are
49647 required to be titled, registered, or titled and registered:
- 49648 (i) an aircraft as defined in Section 72-10-102;
 - 49649 (ii) a vehicle as defined in Section 41-1a-102;
 - 49650 (iii) an off-highway vehicle as defined in Section 41-22-2; or
 - 49651 (iv) a vessel as defined in Section 41-1a-102.
- 49652 (b) For purposes of Subsection 59-12-104(33) only, "vehicle" includes:
- 49653 (i) a vehicle described in Subsection (110)(a); or
 - 49654 (ii) (A) a locomotive;
 - 49655 (B) a freight car;
 - 49656 (C) railroad work equipment; or
 - 49657 (D) other railroad rolling stock.
- 49658 (111) "Vehicle dealer" means a person engaged in the business of buying, selling, or
49659 exchanging a vehicle as defined in Subsection (110).
- 49660 (112) (a) Except as provided in Subsection (112)(b), "waste energy facility" means a
49661 facility that generates electricity:
- 49662 (i) using as the primary source of energy waste materials that would be placed in a
49663 landfill or refuse pit if it were not used to generate electricity, including:
 - 49664 (A) tires;
 - 49665 (B) waste coal; or
 - 49666 (C) oil shale; and
 - 49667 (ii) in amounts greater than actually required for the operation of the facility.
- 49668 (b) "Waste energy facility" does not include a facility that incinerates:
- 49669 (i) municipal solid waste;
 - 49670 (ii) hospital waste as defined in 40 C.F.R. 60.51c; or
 - 49671 (iii) medical/infectious waste as defined in 40 C.F.R. 60.51c.
- 49672 (113) "Watercraft" means a vessel as defined in Section 73-18-2.
- 49673 (114) "Wind energy" means wind used as the sole source of energy to produce

49674 electricity.

49675 (115) "ZIP Code" means a Zoning Improvement Plan Code assigned to a geographic
49676 location by the United States Postal Service.

49677 Section 1019. Section **59-12-104** is amended to read:

49678 **59-12-104. Exemptions.**

49679 The following sales and uses are exempt from the taxes imposed by this chapter:

49680 (1) sales of aviation fuel, motor fuel, and special fuel subject to a Utah state excise tax
49681 under Chapter 13, Motor and Special Fuel Tax Act;

49682 (2) sales to the state, its institutions, and its political subdivisions; however, this
49683 exemption does not apply to sales of:

49684 (a) construction materials except:

49685 (i) construction materials purchased by or on behalf of institutions of the public
49686 education system as defined in Utah Constitution Article X, Section 2, provided the
49687 construction materials are clearly identified and segregated and installed or converted to real
49688 property which is owned by institutions of the public education system; and

49689 (ii) construction materials purchased by the state, its institutions, or its political
49690 subdivisions which are installed or converted to real property by employees of the state, its
49691 institutions, or its political subdivisions; or

49692 (b) tangible personal property in connection with the construction, operation,
49693 maintenance, repair, or replacement of a project, as defined in Section 11-13-103, or facilities
49694 providing additional project capacity, as defined in Section 11-13-103;

49695 (3) (a) sales of an item described in Subsection (3)(b) from a vending machine if:

49696 (i) the proceeds of each sale do not exceed \$1; and

49697 (ii) the seller or operator of the vending machine reports an amount equal to 150% of
49698 the cost of the item described in Subsection (3)(b) as goods consumed; and

49699 (b) Subsection (3)(a) applies to:

49700 (i) food and food ingredients; or

49701 (ii) prepared food;

- 49702 (4) sales of the following to a commercial airline carrier for in-flight consumption:
- 49703 (a) food and food ingredients;
- 49704 (b) prepared food; or
- 49705 (c) services related to Subsection (4)(a) or (b);
- 49706 (5) sales of parts and equipment for installation in aircraft operated by common carriers
- 49707 in interstate or foreign commerce;
- 49708 (6) sales of commercials, motion picture films, prerecorded audio program tapes or
- 49709 records, and prerecorded video tapes by a producer, distributor, or studio to a motion picture
- 49710 exhibitor, distributor, or commercial television or radio broadcaster;
- 49711 (7) (a) subject to Subsection (7)(b), sales of cleaning or washing of tangible personal
- 49712 property if the cleaning or washing of the tangible personal property is not assisted cleaning or
- 49713 washing of tangible personal property;
- 49714 (b) if a seller that sells at the same business location assisted cleaning or washing of
- 49715 tangible personal property and cleaning or washing of tangible personal property that is not
- 49716 assisted cleaning or washing of tangible personal property, the exemption described in
- 49717 Subsection (7)(a) applies if the seller separately accounts for the sales of the assisted cleaning or
- 49718 washing of the tangible personal property; and
- 49719 (c) for purposes of Subsection (7)(b) and in accordance with [~~Title 63, Chapter 46a~~]
- 49720 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:
- 49721 (i) governing the circumstances under which sales are at the same business location; and
- 49722 (ii) establishing the procedures and requirements for a seller to separately account for
- 49723 sales of assisted cleaning or washing of tangible personal property;
- 49724 (8) sales made to or by religious or charitable institutions in the conduct of their regular
- 49725 religious or charitable functions and activities, if the requirements of Section 59-12-104.1 are
- 49726 fulfilled;
- 49727 (9) sales of a vehicle of a type required to be registered under the motor vehicle laws of
- 49728 this state if the vehicle is:
- 49729 (a) not registered in this state; and

- 49730 (b) (i) not used in this state; or
- 49731 (ii) used in this state:
- 49732 (A) if the vehicle is not used to conduct business, for a time period that does not exceed
- 49733 the longer of:
- 49734 (I) 30 days in any calendar year; or
- 49735 (II) the time period necessary to transport the vehicle to the borders of this state; or
- 49736 (B) if the vehicle is used to conduct business, for the time period necessary to transport
- 49737 the vehicle to the borders of this state;
- 49738 (10) (a) amounts paid for an item described in Subsection (10)(b) if:
- 49739 (i) the item is intended for human use; and
- 49740 (ii) (A) a prescription was issued for the item; or
- 49741 (B) the item was purchased by a hospital or other medical facility; and
- 49742 (b) (i) Subsection (10)(a) applies to:
- 49743 (A) a drug;
- 49744 (B) a syringe; or
- 49745 (C) a stoma supply; and
- 49746 (ii) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 49747 Administrative Rulemaking Act, the commission may by rule define the terms:
- 49748 (A) "syringe"; or
- 49749 (B) "stoma supply";
- 49750 (11) sales or use of property, materials, or services used in the construction of or
- 49751 incorporated in pollution control facilities allowed by Sections 19-2-123 through 19-2-127;
- 49752 (12) (a) sales of an item described in Subsection (12)(c) served by:
- 49753 (i) the following if the item described in Subsection (12)(c) is not available to the
- 49754 general public:
- 49755 (A) a church; or
- 49756 (B) a charitable institution;
- 49757 (ii) an institution of higher education if:

- 49758 (A) the item described in Subsection (12)(c) is not available to the general public; or
- 49759 (B) the item described in Subsection (12)(c) is prepaid as part of a student meal plan
- 49760 offered by the institution of higher education; or
- 49761 (b) sales of an item described in Subsection (12)(c) provided for a patient by:
 - 49762 (i) a medical facility; or
 - 49763 (ii) a nursing facility; and
- 49764 (c) Subsections (12)(a) and (b) apply to:
 - 49765 (i) food and food ingredients;
 - 49766 (ii) prepared food; or
 - 49767 (iii) alcoholic beverages;
- 49768 (13) (a) except as provided in Subsection (13)(b), the sale of tangible personal property
- 49769 by a person:
 - 49770 (i) regardless of the number of transactions involving the sale of that tangible personal
 - 49771 property by that person; and
 - 49772 (ii) not regularly engaged in the business of selling that type of tangible personal
 - 49773 property;
 - 49774 (b) this Subsection (13) does not apply if:
 - 49775 (i) the sale is one of a series of sales of a character to indicate that the person is
 - 49776 regularly engaged in the business of selling that type of tangible personal property;
 - 49777 (ii) the person holds that person out as regularly engaged in the business of selling that
 - 49778 type of tangible personal property;
 - 49779 (iii) the person sells an item of tangible personal property that the person purchased as a
 - 49780 sale that is exempt under Subsection (25); or
 - 49781 (iv) the sale is of a vehicle or vessel required to be titled or registered under the laws of
 - 49782 this state in which case the tax is based upon:
 - 49783 (A) the bill of sale or other written evidence of value of the vehicle or vessel being sold;
 - 49784 or
 - 49785 (B) in the absence of a bill of sale or other written evidence of value, the fair market

49786 value of the vehicle or vessel being sold at the time of the sale as determined by the commission;
49787 and

49788 (c) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
49789 Administrative Rulemaking Act, the commission shall make rules establishing the circumstances
49790 under which:

49791 (i) a person is regularly engaged in the business of selling a type of tangible personal
49792 property;

49793 (ii) a sale of tangible personal property is one of a series of sales of a character to
49794 indicate that a person is regularly engaged in the business of selling that type of tangible
49795 personal property; or

49796 (iii) a person holds that person out as regularly engaged in the business of selling a type
49797 of tangible personal property;

49798 (14) (a) except as provided in Subsection (14)(b), amounts paid or charged on or after
49799 July 1, 2006, for a purchase or lease by a manufacturing facility other than a cogeneration
49800 facility, for the following:

49801 (i) machinery and equipment that:

49802 (A) is used:

49803 (I) for a manufacturing facility other than a manufacturing facility that is a scrap
49804 recycler described in Subsection 59-12-102(48)(b):

49805 (Aa) in the manufacturing process; and

49806 (Bb) to manufacture an item sold as tangible personal property; or

49807 (II) for a manufacturing facility that is a scrap recycler described in Subsection
49808 59-12-102(48)(b), to process an item sold as tangible personal property; and

49809 (B) has an economic life of three or more years; and

49810 (ii) normal operating repair or replacement parts that:

49811 (A) have an economic life of three or more years; and

49812 (B) are used:

49813 (I) for a manufacturing facility in the state other than a manufacturing facility that is a

49814 scrap recycler described in Subsection 59-12-102(48)(b), in the manufacturing process; or

49815 (II) for a manufacturing facility in the state that is a scrap recycler described in

49816 Subsection 59-12-102(48)(b), to process an item sold as tangible personal property;

49817 (b) (i) amounts paid or charged on or after July 1, 2005, for a purchase or lease by a

49818 manufacturing facility that is a cogeneration facility placed in service on or after May 1, 2006,

49819 for the following:

49820 (A) machinery and equipment that:

49821 (I) is used:

49822 (Aa) in the manufacturing process; and

49823 (Bb) to manufacture an item sold as tangible personal property; and

49824 (II) has an economic life of three or more years; and

49825 (B) normal operating repair or replacement parts that:

49826 (I) are used in the manufacturing process in a manufacturing facility in the state; and

49827 (II) have an economic life of three or more years; and

49828 (ii) for amounts paid or charged on or after July 1, 2005, but on or before June 30,

49829 2006, for a purchase or lease described in Subsection (14)(b)(i), a cogeneration facility may

49830 claim the exemption allowed by Subsection (14)(b)(i) by filing for a refund:

49831 (A) for sales and use taxes paid under this chapter on the purchase or lease payment;

49832 and

49833 (B) in accordance with Section 59-12-110;

49834 (c) amounts paid or charged for a purchase or lease made on or after January 1, 2008,

49835 by an establishment described in NAICS Subsector 212, Mining (except Oil and Gas), or

49836 NAICS Code 213113, Support Activities for Coal Mining, 213114, Support Activities for

49837 Metal Mining, or 213115, Support Activities for Nonmetallic Minerals (except Fuels) Mining,

49838 of the 2002 North American Industry Classification System of the federal Executive Office of

49839 the President, Office of Management and Budget:

49840 (i) machinery and equipment that:

49841 (A) are used in:

49842 (I) the production process, other than the production of real property; or
49843 (II) research and development; and
49844 (B) have an economic life of three or more years; and
49845 (ii) normal operating repair or replacement parts that:
49846 (A) have an economic life of three or more years; and
49847 (B) are used in:
49848 (I) the production process, other than the production of real property, in an
49849 establishment described in this Subsection (14)(c) in the state; or
49850 (II) research and development in an establishment described in this Subsection (14)(c)
49851 in the state;
49852 (d) for purposes of this Subsection (14) and in accordance with [~~Title 63, Chapter 46a]~~
49853 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission:
49854 (i) shall by rule define the term "establishment"; and
49855 (ii) may by rule define what constitutes:
49856 (A) processing an item sold as tangible personal property;
49857 (B) the production process, other than the production of real property; or
49858 (C) research and development; and
49859 (e) on or before October 1, 2011, and every five years after October 1, 2011, the
49860 commission shall:
49861 (i) review the exemptions described in this Subsection (14) and make recommendations
49862 to the Revenue and Taxation Interim Committee concerning whether the exemptions should be
49863 continued, modified, or repealed; and
49864 (ii) include in its report:
49865 (A) the cost of the exemptions;
49866 (B) the purpose and effectiveness of the exemptions; and
49867 (C) the benefits of the exemptions to the state;
49868 (15) (a) sales of the following if the requirements of Subsection (15)(b) are met:
49869 (i) tooling;

49870 (ii) special tooling;

49871 (iii) support equipment;

49872 (iv) special test equipment; or

49873 (v) parts used in the repairs or renovations of tooling or equipment described in

49874 Subsections (15)(a)(i) through (iv); and

49875 (b) sales of tooling, equipment, or parts described in Subsection (15)(a) are exempt if:

49876 (i) the tooling, equipment, or parts are used or consumed exclusively in the performance

49877 of any aerospace or electronics industry contract with the United States government or any

49878 subcontract under that contract; and

49879 (ii) under the terms of the contract or subcontract described in Subsection (15)(b)(i),

49880 title to the tooling, equipment, or parts is vested in the United States government as evidenced

49881 by:

49882 (A) a government identification tag placed on the tooling, equipment, or parts; or

49883 (B) listing on a government-approved property record if placing a government

49884 identification tag on the tooling, equipment, or parts is impractical;

49885 (16) sales of newspapers or newspaper subscriptions;

49886 (17) (a) except as provided in Subsection (17)(b), tangible personal property traded in

49887 as full or part payment of the purchase price, except that for purposes of calculating sales or use

49888 tax upon vehicles not sold by a vehicle dealer, trade-ins are limited to other vehicles only, and

49889 the tax is based upon:

49890 (i) the bill of sale or other written evidence of value of the vehicle being sold and the

49891 vehicle being traded in; or

49892 (ii) in the absence of a bill of sale or other written evidence of value, the then existing

49893 fair market value of the vehicle being sold and the vehicle being traded in, as determined by the

49894 commission; and

49895 (b) notwithstanding Subsection (17)(a), Subsection (17)(a) does not apply to the

49896 following items of tangible personal property traded in as full or part payment of the purchase

49897 price:

- 49898 (i) money;
- 49899 (ii) electricity;
- 49900 (iii) water;
- 49901 (iv) gas; or
- 49902 (v) steam;
- 49903 (18) (a) (i) except as provided in Subsection (18)(b), sales of tangible personal property
- 49904 used or consumed primarily and directly in farming operations, regardless of whether the
- 49905 tangible personal property:
- 49906 (A) becomes part of real estate; or
- 49907 (B) is installed by a:
- 49908 (I) farmer;
- 49909 (II) contractor; or
- 49910 (III) subcontractor; or
- 49911 (ii) sales of parts used in the repairs or renovations of tangible personal property if the
- 49912 tangible personal property is exempt under Subsection (18)(a)(i); and
- 49913 (b) notwithstanding Subsection (18)(a), amounts paid or charged for the following
- 49914 tangible personal property are subject to the taxes imposed by this chapter:
- 49915 (i) (A) subject to Subsection (18)(b)(i)(B), the following tangible personal property if
- 49916 the tangible personal property is used in a manner that is incidental to farming:
- 49917 (I) machinery;
- 49918 (II) equipment;
- 49919 (III) materials; or
- 49920 (IV) supplies; and
- 49921 (B) tangible personal property that is considered to be used in a manner that is
- 49922 incidental to farming includes:
- 49923 (I) hand tools; or
- 49924 (II) maintenance and janitorial equipment and supplies;
- 49925 (ii) (A) subject to Subsection (18)(b)(ii)(B), tangible personal property if the tangible

49926 personal property is used in an activity other than farming; and
49927 (B) tangible personal property that is considered to be used in an activity other than
49928 farming includes:
49929 (I) office equipment and supplies; or
49930 (II) equipment and supplies used in:
49931 (Aa) the sale or distribution of farm products;
49932 (Bb) research; or
49933 (Cc) transportation; or
49934 (iii) a vehicle required to be registered by the laws of this state during the period ending
49935 two years after the date of the vehicle's purchase;
49936 (19) sales of hay;
49937 (20) exclusive sale during the harvest season of seasonal crops, seedling plants, or
49938 garden, farm, or other agricultural produce if the seasonal crops are, seedling plants are, or
49939 garden, farm, or other agricultural produce is sold by:
49940 (a) the producer of the seasonal crops, seedling plants, or garden, farm, or other
49941 agricultural produce;
49942 (b) an employee of the producer described in Subsection (20)(a); or
49943 (c) a member of the immediate family of the producer described in Subsection (20)(a);
49944 (21) purchases made using a coupon as defined in 7 U.S.C. Sec. 2012 that is issued
49945 under the Food Stamp Program, 7 U.S.C. Sec. 2011 et seq.;;
49946 (22) sales of nonreturnable containers, nonreturnable labels, nonreturnable bags,
49947 nonreturnable shipping cases, and nonreturnable casings to a manufacturer, processor,
49948 wholesaler, or retailer for use in packaging tangible personal property to be sold by that
49949 manufacturer, processor, wholesaler, or retailer;
49950 (23) property stored in the state for resale;
49951 (24) (a) purchases of property if:
49952 (i) the property is:
49953 (A) purchased outside of this state;

49954 (B) brought into this state:
49955 (I) at any time after the purchase described in Subsection (24)(a)(i)(A); and
49956 (II) by a nonresident person who is not living or working in this state at the time of the
49957 purchase;
49958 (C) used for the personal use or enjoyment of the nonresident person described in
49959 Subsection (24)(a)(i)(B)(II) while that nonresident person is within the state; and
49960 (D) not used in conducting business in this state; and
49961 (ii) for:
49962 (A) property other than the property described in Subsection (24)(a)(ii)(B), the first use
49963 of the property for a purpose for which the property is designed occurs outside of this state;
49964 (B) a boat, the boat is registered outside of this state; or
49965 (C) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
49966 outside of this state;
49967 (b) the exemption provided for in Subsection (24)(a) does not apply to:
49968 (i) a lease or rental of property; or
49969 (ii) a sale of a vehicle exempt under Subsection (33); and
49970 (c) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
49971 Administrative Rulemaking Act, for purposes of Subsection (24)(a), the commission may by
49972 rule define what constitutes the following:
49973 (i) conducting business in this state if that phrase has the same meaning in this
49974 Subsection (24) as in Subsection (66);
49975 (ii) the first use of property if that phrase has the same meaning in this Subsection (24)
49976 as in Subsection (66); or
49977 (iii) a purpose for which property is designed if that phrase has the same meaning in this
49978 Subsection (24) as in Subsection (66);
49979 (25) property purchased for resale in this state, in the regular course of business, either
49980 in its original form or as an ingredient or component part of a manufactured or compounded
49981 product;

49982 (26) property upon which a sales or use tax was paid to some other state, or one of its
49983 subdivisions, except that the state shall be paid any difference between the tax paid and the tax
49984 imposed by this part and Part 2, Local Sales and Use Tax Act, and no adjustment is allowed if
49985 the tax paid was greater than the tax imposed by this part and Part 2, Local Sales and Use Tax
49986 Act;

49987 (27) any sale of a service described in Subsections 59-12-103(1)(b), (c), and (d) to a
49988 person for use in compounding a service taxable under the subsections;

49989 (28) purchases made in accordance with the special supplemental nutrition program for
49990 women, infants, and children established in 42 U.S.C. Sec. 1786;

49991 (29) beginning on July 1, 1999, through June 30, 2014, sales or leases of rolls, rollers,
49992 refractory brick, electric motors, or other replacement parts used in the furnaces, mills, or ovens
49993 of a steel mill described in SIC Code 3312 of the 1987 Standard Industrial Classification Manual
49994 of the federal Executive Office of the President, Office of Management and Budget;

49995 (30) sales of a boat of a type required to be registered under Title 73, Chapter 18, State
49996 Boating Act, a boat trailer, or an outboard motor if the boat, boat trailer, or outboard motor is:

49997 (a) not registered in this state; and

49998 (b) (i) not used in this state; or

49999 (ii) used in this state:

50000 (A) if the boat, boat trailer, or outboard motor is not used to conduct business, for a
50001 time period that does not exceed the longer of:

50002 (I) 30 days in any calendar year; or

50003 (II) the time period necessary to transport the boat, boat trailer, or outboard motor to
50004 the borders of this state; or

50005 (B) if the boat, boat trailer, or outboard motor is used to conduct business, for the time
50006 period necessary to transport the boat, boat trailer, or outboard motor to the borders of this
50007 state;

50008 (31) sales of aircraft manufactured in Utah if sold for delivery and use outside Utah
50009 where a sales or use tax is not imposed, even if the title is passed in Utah;

- 50010 (32) amounts paid for the purchase of telephone service for purposes of providing
- 50011 telephone service;
- 50012 (33) sales, leases, or uses of the following:
- 50013 (a) a vehicle by an authorized carrier; or
- 50014 (b) tangible personal property that is installed on a vehicle:
- 50015 (i) sold or leased to or used by an authorized carrier; and
- 50016 (ii) before the vehicle is placed in service for the first time;
- 50017 (34) (a) 45% of the sales price of any new manufactured home; and
- 50018 (b) 100% of the sales price of any used manufactured home;
- 50019 (35) sales relating to schools and fundraising sales;
- 50020 (36) sales or rentals of durable medical equipment if:
- 50021 (a) a person presents a prescription for the durable medical equipment; and
- 50022 (b) the durable medical equipment is used for home use only;
- 50023 (37) (a) sales to a ski resort of electricity to operate a passenger ropeway as defined in
- 50024 Section 72-11-102; and
- 50025 (b) the commission shall by rule determine the method for calculating sales exempt
- 50026 under Subsection (37)(a) that are not separately metered and accounted for in utility billings;
- 50027 (38) sales to a ski resort of:
- 50028 (a) snowmaking equipment;
- 50029 (b) ski slope grooming equipment;
- 50030 (c) passenger ropeways as defined in Section 72-11-102; or
- 50031 (d) parts used in the repairs or renovations of equipment or passenger ropeways
- 50032 described in Subsections (38)(a) through (c);
- 50033 (39) sales of natural gas, electricity, heat, coal, fuel oil, or other fuels for industrial use;
- 50034 (40) (a) subject to Subsection (40)(b), sales or rentals of the right to use or operate for
- 50035 amusement, entertainment, or recreation an unassisted amusement device as defined in Section
- 50036 59-12-102;
- 50037 (b) if a seller that sells or rents at the same business location the right to use or operate

50038 for amusement, entertainment, or recreation one or more unassisted amusement devices and one
50039 or more assisted amusement devices, the exemption described in Subsection (40)(a) applies if
50040 the seller separately accounts for the sales or rentals of the right to use or operate for
50041 amusement, entertainment, or recreation for the assisted amusement devices; and

50042 (c) for purposes of Subsection (40)(b) and in accordance with [~~Title 63, Chapter 46a~~]
50043 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may make rules:

50044 (i) governing the circumstances under which sales are at the same business location; and

50045 (ii) establishing the procedures and requirements for a seller to separately account for
50046 the sales or rentals of the right to use or operate for amusement, entertainment, or recreation for
50047 assisted amusement devices;

50048 (41) (a) sales of photocopies by:

50049 (i) a governmental entity; or

50050 (ii) an entity within the state system of public education, including:

50051 (A) a school; or

50052 (B) the State Board of Education; or

50053 (b) sales of publications by a governmental entity;

50054 (42) amounts paid for admission to an athletic event at an institution of higher
50055 education that is subject to the provisions of Title IX of the Education Amendments of 1972, 20
50056 U.S.C. Sec. 1681 et seq.;

50057 (43) sales of telephone service charged to a prepaid telephone calling card;

50058 (44) (a) sales of:

50059 (i) hearing aids;

50060 (ii) hearing aid accessories; or

50061 (iii) except as provided in Subsection (44)(b), parts used in the repairs or renovations of
50062 hearing aids or hearing aid accessories; and

50063 (b) for purposes of this Subsection (44), notwithstanding Subsection (44)(a)(iii), "parts"
50064 does not include batteries;

50065 (45) (a) sales made to or by:

- 50066 (i) an area agency on aging; or
- 50067 (ii) a senior citizen center owned by a county, city, or town; or
- 50068 (b) sales made by a senior citizen center that contracts with an area agency on aging;
- 50069 (46) sales or leases of semiconductor fabricating, processing, research, or development
- 50070 materials regardless of whether the semiconductor fabricating, processing, research, or
- 50071 development materials:
- 50072 (a) actually come into contact with a semiconductor; or
- 50073 (b) ultimately become incorporated into real property;
- 50074 (47) an amount paid by or charged to a purchaser for accommodations and services
- 50075 described in Subsection 59-12-103(1)(i) to the extent the amount is exempt under Section
- 50076 59-12-104.2;
- 50077 (48) beginning on September 1, 2001, the lease or use of a vehicle issued a temporary
- 50078 sports event registration certificate in accordance with Section 41-3-306 for the event period
- 50079 specified on the temporary sports event registration certificate;
- 50080 (49) sales or uses of electricity, if the sales or uses are:
- 50081 (a) made under a tariff adopted by the Public Service Commission of Utah only for
- 50082 purchase of electricity produced from a new wind, geothermal, biomass, or solar power energy
- 50083 source, as designated in the tariff by the Public Service Commission of Utah; and
- 50084 (b) for an amount of electricity that is:
- 50085 (i) unrelated to the amount of electricity used by the person purchasing the electricity
- 50086 under the tariff described in Subsection (49)(a); and
- 50087 (ii) equivalent to the number of kilowatthours specified in the tariff described in
- 50088 Subsection (49)(a) that may be purchased under the tariff described in Subsection (49)(a);
- 50089 (50) sales or rentals of mobility enhancing equipment if a person presents a prescription
- 50090 for the mobility enhancing equipment;
- 50091 (51) sales of water in a:
- 50092 (a) pipe;
- 50093 (b) conduit;

- 50094 (c) ditch; or
- 50095 (d) reservoir;
- 50096 (52) sales of currency or coinage that constitute legal tender of the United States or of a
- 50097 foreign nation;
- 50098 (53) (a) sales of an item described in Subsection (53)(b) if the item:
- 50099 (i) does not constitute legal tender of any nation; and
- 50100 (ii) has a gold, silver, or platinum content of 80% or more; and
- 50101 (b) Subsection (53)(a) applies to a gold, silver, or platinum:
- 50102 (i) ingot;
- 50103 (ii) bar;
- 50104 (iii) medallion; or
- 50105 (iv) decorative coin;
- 50106 (54) amounts paid on a sale-leaseback transaction;
- 50107 (55) sales of a prosthetic device:
- 50108 (a) for use on or in a human;
- 50109 (b) for which a prescription is issued; and
- 50110 (c) to a person that presents a prescription for the prosthetic device;
- 50111 (56) (a) except as provided in Subsection (56)(b), purchases, leases, or rentals of
- 50112 machinery or equipment by an establishment described in Subsection (56)(c) if the machinery or
- 50113 equipment is primarily used in the production or postproduction of the following media for
- 50114 commercial distribution:
- 50115 (i) a motion picture;
- 50116 (ii) a television program;
- 50117 (iii) a movie made for television;
- 50118 (iv) a music video;
- 50119 (v) a commercial;
- 50120 (vi) a documentary; or
- 50121 (vii) a medium similar to Subsections (56)(a)(i) through (vi) as determined by the

50122 commission by administrative rule made in accordance with Subsection (56)(d); or
50123 (b) notwithstanding Subsection (56)(a), purchases, leases, or rentals of machinery or
50124 equipment by an establishment described in Subsection (56)(c) that is used for the production or
50125 postproduction of the following are subject to the taxes imposed by this chapter:
50126 (i) a live musical performance;
50127 (ii) a live news program; or
50128 (iii) a live sporting event;
50129 (c) the following establishments listed in the 1997 North American Industry
50130 Classification System of the federal Executive Office of the President, Office of Management
50131 and Budget, apply to Subsections (56)(a) and (b):
50132 (i) NAICS Code 512110; or
50133 (ii) NAICS Code 51219; and
50134 (d) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
50135 Administrative Rulemaking Act, the commission may by rule:
50136 (i) prescribe what constitutes a medium similar to Subsections (56)(a)(i) through (vi);
50137 or
50138 (ii) define:
50139 (A) "commercial distribution";
50140 (B) "live musical performance";
50141 (C) "live news program"; or
50142 (D) "live sporting event";
50143 (57) (a) leases of seven or more years or purchases made on or after July 1, 2004 but
50144 on or before June 30, 2009, of machinery or equipment that:
50145 (i) is leased or purchased for or by a facility that:
50146 (A) is a renewable energy production facility;
50147 (B) is located in the state; and
50148 (C) (I) becomes operational on or after July 1, 2004; or
50149 (II) has its generation capacity increased by one or more megawatts on or after July 1,

50150 2004 as a result of the use of the machinery or equipment;

50151 (ii) has an economic life of five or more years; and

50152 (iii) is used to make the facility or the increase in capacity of the facility described in

50153 Subsection (57)(a)(i) operational up to the point of interconnection with an existing

50154 transmission grid including:

50155 (A) a wind turbine;

50156 (B) generating equipment;

50157 (C) a control and monitoring system;

50158 (D) a power line;

50159 (E) substation equipment;

50160 (F) lighting;

50161 (G) fencing;

50162 (H) pipes; or

50163 (I) other equipment used for locating a power line or pole; and

50164 (b) this Subsection (57) does not apply to:

50165 (i) machinery or equipment used in construction of:

50166 (A) a new renewable energy production facility; or

50167 (B) the increase in the capacity of a renewable energy production facility;

50168 (ii) contracted services required for construction and routine maintenance activities; and

50169 (iii) unless the machinery or equipment is used or acquired for an increase in capacity of

50170 the facility described in Subsection (57)(a)(i)(C)(II), machinery or equipment used or acquired

50171 after:

50172 (A) the renewable energy production facility described in Subsection (57)(a)(i) is

50173 operational as described in Subsection (57)(a)(iii); or

50174 (B) the increased capacity described in Subsection (57)(a)(i) is operational as described

50175 in Subsection (57)(a)(iii);

50176 (58) (a) leases of seven or more years or purchases made on or after July 1, 2004 but

50177 on or before June 30, 2009, of machinery or equipment that:

- 50178 (i) is leased or purchased for or by a facility that:
- 50179 (A) is a waste energy production facility;
- 50180 (B) is located in the state; and
- 50181 (C) (I) becomes operational on or after July 1, 2004; or
- 50182 (II) has its generation capacity increased by one or more megawatts on or after July 1,
- 50183 2004 as a result of the use of the machinery or equipment;
- 50184 (ii) has an economic life of five or more years; and
- 50185 (iii) is used to make the facility or the increase in capacity of the facility described in
- 50186 Subsection (58)(a)(i) operational up to the point of interconnection with an existing
- 50187 transmission grid including:
- 50188 (A) generating equipment;
- 50189 (B) a control and monitoring system;
- 50190 (C) a power line;
- 50191 (D) substation equipment;
- 50192 (E) lighting;
- 50193 (F) fencing;
- 50194 (G) pipes; or
- 50195 (H) other equipment used for locating a power line or pole; and
- 50196 (b) this Subsection (58) does not apply to:
- 50197 (i) machinery or equipment used in construction of:
- 50198 (A) a new waste energy facility; or
- 50199 (B) the increase in the capacity of a waste energy facility;
- 50200 (ii) contracted services required for construction and routine maintenance activities; and
- 50201 (iii) unless the machinery or equipment is used or acquired for an increase in capacity
- 50202 described in Subsection (58)(a)(i)(C)(II), machinery or equipment used or acquired after:
- 50203 (A) the waste energy facility described in Subsection (58)(a)(i) is operational as
- 50204 described in Subsection (58)(a)(iii); or
- 50205 (B) the increased capacity described in Subsection (58)(a)(i) is operational as described

50206 in Subsection (58)(a)(iii);

50207 (59) (a) leases of five or more years or purchases made on or after July 1, 2004 but on

50208 or before June 30, 2009, of machinery or equipment that:

50209 (i) is leased or purchased for or by a facility that:

50210 (A) is located in the state;

50211 (B) produces fuel from biomass energy including:

50212 (I) methanol; or

50213 (II) ethanol; and

50214 (C) (I) becomes operational on or after July 1, 2004; or

50215 (II) has its capacity to produce fuel increase by 25% or more on or after July 1, 2004 as

50216 a result of the installation of the machinery or equipment;

50217 (ii) has an economic life of five or more years; and

50218 (iii) is installed on the facility described in Subsection (59)(a)(i);

50219 (b) this Subsection (59) does not apply to:

50220 (i) machinery or equipment used in construction of:

50221 (A) a new facility described in Subsection (59)(a)(i); or

50222 (B) the increase in capacity of the facility described in Subsection (59)(a)(i); or

50223 (ii) contracted services required for construction and routine maintenance activities; and

50224 (iii) unless the machinery or equipment is used or acquired for an increase in capacity

50225 described in Subsection (59)(a)(i)(C)(II), machinery or equipment used or acquired after:

50226 (A) the facility described in Subsection (59)(a)(i) is operational; or

50227 (B) the increased capacity described in Subsection (59)(a)(i) is operational;

50228 (60) amounts paid to a purchaser as a rebate from the manufacturer of a new vehicle for

50229 purchasing the new vehicle;

50230 (61) (a) subject to Subsection (61)(b), sales of tangible personal property to persons

50231 within this state that is subsequently shipped outside the state and incorporated pursuant to

50232 contract into and becomes a part of real property located outside of this state, except to the

50233 extent that the other state or political entity imposes a sales, use, gross receipts, or other similar

50234 transaction excise tax on it against which the other state or political entity allows a credit for
50235 taxes imposed by this chapter; and

50236 (b) the exemption provided for in Subsection (61)(a):

50237 (i) is allowed only if the exemption is applied:

50238 (A) in calculating the purchase price of the tangible personal property; and

50239 (B) to a written contract that is in effect on July 1, 2004; and

50240 (ii) (A) does not apply beginning on the day on which the contract described in
50241 Subsection (61)(b)(i):

50242 (I) is substantially modified; or

50243 (II) terminates; and

50244 (B) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
50245 Administrative Rulemaking Act, the commission may by rule prescribe the circumstances under
50246 which a contract is substantially modified;

50247 (62) purchases:

50248 (a) of one or more of the following items in printed or electronic format:

50249 (i) a list containing information that includes one or more:

50250 (A) names; or

50251 (B) addresses; or

50252 (ii) a database containing information that includes one or more:

50253 (A) names; or

50254 (B) addresses; and

50255 (b) used to send direct mail;

50256 (63) redemptions or repurchases of property by a person if that property was:

50257 (a) delivered to a pawnbroker as part of a pawn transaction; and

50258 (b) redeemed or repurchased within the time period established in a written agreement
50259 between the person and the pawnbroker for redeeming or repurchasing the property;

50260 (64) (a) purchases or leases of an item described in Subsection (64)(b) if the item:

50261 (i) is purchased or leased by, or on behalf of, a telephone service provider; and

- 50262 (ii) has a useful economic life of one or more years; and
- 50263 (b) the following apply to Subsection (64)(a):
- 50264 (i) telecommunications enabling or facilitating equipment, machinery, or software;
- 50265 (ii) telecommunications equipment, machinery, or software required for 911 service;
- 50266 (iii) telecommunications maintenance or repair equipment, machinery, or software;
- 50267 (iv) telecommunications switching or routing equipment, machinery, or software; or
- 50268 (v) telecommunications transmission equipment, machinery, or software;
- 50269 (65) (a) beginning on July 1, 2006, and ending on June 30, 2016, purchases of tangible
- 50270 personal property used in the research and development of coal-to-liquids, oil shale, or tar sands
- 50271 technology; and
- 50272 (b) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 50273 Administrative Rulemaking Act, the commission may, for purposes of Subsection (65)(a), make
- 50274 rules defining what constitutes tangible personal property used in the research and development
- 50275 of coal-to-liquids, oil shale, and tar sands technology;
- 50276 (66) (a) purchases of property if:
- 50277 (i) the property is:
- 50278 (A) purchased outside of this state;
- 50279 (B) brought into this state at any time after the purchase described in Subsection
- 50280 (66)(a)(i)(A); and
- 50281 (C) used in conducting business in this state; and
- 50282 (ii) for:
- 50283 (A) property other than the property described in Subsection (66)(a)(ii)(B), the first use
- 50284 of the property for a purpose for which the property is designed occurs outside of this state; or
- 50285 (B) a vehicle other than a vehicle sold to an authorized carrier, the vehicle is registered
- 50286 outside of this state;
- 50287 (b) the exemption provided for in Subsection (66)(a) does not apply to:
- 50288 (i) a lease or rental of property; or
- 50289 (ii) a sale of a vehicle exempt under Subsection (33); and

50290 (c) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
50291 Administrative Rulemaking Act, for purposes of Subsection (66)(a), the commission may by
50292 rule define what constitutes the following:
50293 (i) conducting business in this state if that phrase has the same meaning in this
50294 Subsection (66) as in Subsection (24);
50295 (ii) the first use of property if that phrase has the same meaning in this Subsection (66)
50296 as in Subsection (24); or
50297 (iii) a purpose for which property is designed if that phrase has the same meaning in this
50298 Subsection (66) as in Subsection (24);
50299 (67) sales of disposable home medical equipment or supplies if:
50300 (a) a person presents a prescription for the disposable home medical equipment or
50301 supplies;
50302 (b) the disposable home medical equipment or supplies are used exclusively by the
50303 person to whom the prescription described in Subsection (67)(a) is issued; and
50304 (c) the disposable home medical equipment and supplies are listed as eligible for
50305 payment under:
50306 (i) Title XVIII, federal Social Security Act; or
50307 (ii) the state plan for medical assistance under Title XIX, federal Social Security Act;
50308 and
50309 (68) sales to a public transit district under Title 17B, Chapter 2a, Part 8, Public Transit
50310 District Act, or to a subcontractor of a public transit district, including sales of construction
50311 materials that are to be installed or converted to real property owned by the public transit
50312 district.
50313 Section 1020. Section **59-12-104.1** is amended to read:
50314 **59-12-104.1. Exemptions for religious or charitable institutions.**
50315 (1) Except as provided in Section 59-12-104, sales made by religious or charitable
50316 institutions or organizations are exempt from the sales and use tax imposed by this chapter if the
50317 sale is made in the conduct of the institution's or organization's regular religious or charitable

50318 functions or activities.

50319 (2) (a) Except as provided in Section 59-12-104, sales made to a religious or charitable
50320 institution or organization are exempt from the sales and use tax imposed by this chapter if the
50321 sale is made in the conduct of the institution's or organization's regular religious or charitable
50322 functions and activities.

50323 (b) In order to facilitate the efficient administration of the exemption granted by this
50324 section, the exemption shall be administered as follows:

50325 (i) the exemption shall be at point of sale if the sale is in the amount of at least \$1,000;

50326 (ii) except as provided in Subsection (2)(b)(iii), if the sale is less than \$1,000, the
50327 exemption shall be in the form of a refund of sales or use taxes paid at the point of sale; and

50328 (iii) notwithstanding Subsection (2)(b)(ii), the exemption under this section shall be at
50329 point of sale if the sale is:

50330 (A) made pursuant to a contract between the seller and the charitable or religious
50331 institution or organization; or

50332 (B) made by a public utility, as defined in Section 54-2-1, to a religious or charitable
50333 institution or organization.

50334 (3) (a) Religious or charitable institutions or organizations entitled to a refund under
50335 Subsection (2)(b)(ii) may apply to the commission for the refund of sales or use taxes paid.

50336 (b) The commission shall designate the following by commission rule adopted in
50337 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
50338 Act:

50339 (i) procedures for applying for a sales and use tax refund;

50340 (ii) standards for determining and verifying the amount of purchase at the point of sale;

50341 (iii) procedures for submitting a request for refund on a monthly basis anytime the
50342 taxpayer has accumulated \$100 or more in sales tax payments; and

50343 (iv) procedures for submitting a request for refund on a quarterly basis for any
50344 cumulative amount of sales tax payments.

50345 Section 1021. Section **59-12-106** is amended to read:

50346 **59-12-106. Definitions -- Sales and use tax license requirements -- Penalty --**
50347 **Application process and requirements -- No fee -- Bonds -- Presumption of taxability --**
50348 **Exemption certificates -- Exemption certificate license number to accompany contract**
50349 **bids.**

- 50350 (1) As used in this section:
- 50351 (a) "applicant" means a person that:
- 50352 (i) is required by this section to obtain a license; and
- 50353 (ii) submits an application:
- 50354 (A) to the commission; and
- 50355 (B) for a license under this section;
- 50356 (b) "application" means an application for a license under this section;
- 50357 (c) "fiduciary of the applicant" means a person that:
- 50358 (i) is required to collect, truthfully account for, and pay over a tax under this chapter for
- 50359 an applicant; and
- 50360 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
- 50361 (B) is a director of the applicant described in Subsection (1)(c)(i);
- 50362 (C) is an employee of the applicant described in Subsection (1)(c)(i);
- 50363 (D) is a partner of the applicant described in Subsection (1)(c)(i);
- 50364 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
- 50365 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
- 50366 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
- 50367 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 50368 Administrative Rulemaking Act;
- 50369 (d) "fiduciary of the licensee" means a person that:
- 50370 (i) is required to collect, truthfully account for, and pay over a tax under this chapter for
- 50371 a licensee; and
- 50372 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
- 50373 (B) is a director of the licensee described in Subsection (1)(d)(i);

50374 (C) is an employee of the licensee described in Subsection (1)(d)(i);
50375 (D) is a partner of the licensee described in Subsection (1)(d)(i);
50376 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
50377 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a
50378 relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission
50379 by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
50380 Administrative Rulemaking Act;

50381 (e) "license" means a license under this section; and
50382 (f) "licensee" means a person that is licensed under this section by the commission.

50383 (2) (a) It is unlawful for any person required to collect a tax under this chapter to
50384 engage in business within the state without first having obtained a license to do so.

50385 (b) The license described in Subsection (2)(a):
50386 (i) shall be granted and issued by the commission;
50387 (ii) is not assignable;
50388 (iii) is valid only for the person in whose name the license is issued;
50389 (iv) is valid until:
50390 (A) the person described in Subsection (2)(b)(iii):
50391 (I) ceases to do business; or
50392 (II) changes that person's business address; or
50393 (B) the license is revoked by the commission; and
50394 (v) subject to Subsection (2)(d), shall be granted by the commission only upon an
50395 application that:
50396 (A) states the name and address of the applicant; and
50397 (B) provides other information the commission may require.

50398 (c) At the time an applicant makes an application under Subsection (2)(b)(v), the
50399 commission shall notify the applicant of the responsibilities and liability of a business owner
50400 successor under Section 59-12-112.

50401 (d) The commission shall review an application and determine whether the applicant:

- 50402 (i) meets the requirements of this section to be issued a license; and
- 50403 (ii) is required to post a bond with the commission in accordance with Subsections
- 50404 (2)(e) and (f) before the applicant may be issued a license.
- 50405 (e) (i) An applicant shall post a bond with the commission before the commission may
- 50406 issue the applicant a license if:
- 50407 (A) a license under this section was revoked for a delinquency under this chapter for:
- 50408 (I) the applicant;
- 50409 (II) a fiduciary of the applicant; or
- 50410 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 50411 collect, truthfully account for, and pay over a tax under this chapter; or
- 50412 (B) there is a delinquency in paying a tax under this chapter for:
- 50413 (I) the applicant;
- 50414 (II) a fiduciary of the applicant; or
- 50415 (III) a person for which the applicant or the fiduciary of the applicant is required to
- 50416 collect, truthfully account for, and pay over a tax under this chapter.
- 50417 (ii) If the commission determines it is necessary to ensure compliance with this chapter,
- 50418 the commission may require a licensee to:
- 50419 (A) for a licensee that has not posted a bond under this section with the commission,
- 50420 post a bond with the commission in accordance with Subsection (2)(f); or
- 50421 (B) for a licensee that has posted a bond under this section with the commission,
- 50422 increase the amount of the bond posted with the commission.
- 50423 (f) (i) A bond required by Subsection (2)(e) shall be:
- 50424 (A) executed by:
- 50425 (I) for an applicant, the applicant as principal, with a corporate surety; or
- 50426 (II) for a licensee, the licensee as principal, with a corporate surety; and
- 50427 (B) payable to the commission conditioned upon the faithful performance of all of the
- 50428 requirements of this chapter including:
- 50429 (I) the payment of any tax under this chapter;

- 50430 (II) the payment of any:
- 50431 (Aa) penalty as provided in Section 59-1-401; or
- 50432 (Bb) interest as provided in Section 59-1-402; or
- 50433 (III) any other obligation of the:
- 50434 (Aa) applicant under this chapter; or
- 50435 (Bb) licensee under this chapter.
- 50436 (ii) Except as provided in Subsection (2)(f)(iv), the commission shall calculate the
- 50437 amount of a bond required by Subsection (2)(e) on the basis of:
- 50438 (A) commission estimates of:
- 50439 (I) an applicant's tax liability under this chapter; or
- 50440 (II) a licensee's tax liability under this chapter; and
- 50441 (B) any amount of a delinquency described in Subsection (2)(f)(iii).
- 50442 (iii) Except as provided in Subsection (2)(f)(iv), for purposes of Subsection
- 50443 (2)(f)(ii)(B):
- 50444 (A) for an applicant, the amount of the delinquency is the sum of:
- 50445 (I) the amount of any delinquency that served as a basis for revoking the license under
- 50446 this section of:
- 50447 (Aa) the applicant;
- 50448 (Bb) a fiduciary of the applicant; or
- 50449 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
- 50450 collect, truthfully account for, and pay over a tax under this chapter; or
- 50451 (II) the amount of tax that any of the following owe under this chapter:
- 50452 (Aa) the applicant;
- 50453 (Bb) a fiduciary of the applicant; and
- 50454 (Cc) a person for which the applicant or the fiduciary of the applicant is required to
- 50455 collect, truthfully account for, and pay over a tax under this chapter; or
- 50456 (B) for a licensee, the amount of the delinquency is the sum of:
- 50457 (I) the amount of any delinquency that served as a basis for revoking the license under

50458 this section of:

50459 (Aa) the licensee;

50460 (Bb) a fiduciary of the licensee; or

50461 (Cc) a person for which the licensee or the fiduciary of the licensee is required to

50462 collect, truthfully account for, and pay over a tax under this chapter; or

50463 (II) the amount of tax that any of the following owe under this chapter:

50464 (Aa) the licensee;

50465 (Bb) a fiduciary of the licensee; and

50466 (Cc) a person for which the licensee or the fiduciary of the licensee is required to

50467 collect, truthfully account for, and pay over a tax under this chapter.

50468 (iv) Notwithstanding Subsection (2)(f)(ii) or (2)(f)(iii), a bond required by Subsection

50469 (2)(e) may not:

50470 (A) be less than \$25,000; or

50471 (B) exceed \$500,000.

50472 (g) If business is transacted at two or more separate places by one person, a separate

50473 license for each place of business is required.

50474 (h) (i) The commission shall, on a reasonable notice and after a hearing, revoke the

50475 license of any licensee violating any provisions of this chapter.

50476 (ii) A license may not be issued to a licensee described in Subsection (2)(h)(i) until the

50477 licensee has complied with the requirements of this chapter, including:

50478 (A) paying any:

50479 (I) tax due under this chapter;

50480 (II) penalty as provided in Section 59-1-401; or

50481 (III) interest as provided in Section 59-1-402; and

50482 (B) posting a bond in accordance with Subsections (2)(e) and (f).

50483 (i) Any person required to collect a tax under this chapter within this state without

50484 having secured a license to do so is guilty of a criminal violation as provided in Section

50485 59-1-401.

50486 (j) A license:
50487 (i) is not required for any person engaged exclusively in the business of selling
50488 commodities that are exempt from taxation under this chapter; and
50489 (ii) shall be issued to the person by the commission without a license fee.

50490 (3) (a) For the purpose of the proper administration of this chapter and to prevent
50491 evasion of the tax and the duty to collect the tax, it shall be presumed that tangible personal
50492 property or any other taxable transaction under Subsection 59-12-103(1) sold by any person for
50493 delivery in this state is sold for storage, use, or other consumption in this state unless the person
50494 selling the property, item, or service has taken from the purchaser an exemption certificate:
50495 (i) bearing the name and address of the purchaser; and
50496 (ii) providing that the property, item, or service was exempted under Section
50497 59-12-104.

50498 (b) An exemption certificate described in Subsection (3)(a):
50499 (i) shall contain information as prescribed by the commission; and
50500 (ii) if a paper exemption certificate is used, shall be signed by the purchaser.

50501 (c) Except as provided in Subsection (3)(d), a seller that has taken an exemption
50502 certificate from a purchaser in accordance with this Subsection (3) with respect to a transaction
50503 is not liable to collect a tax under this chapter:
50504 (i) on that transaction; and
50505 (ii) if the commission or a court of competent jurisdiction subsequently determines that
50506 the purchaser improperly claimed the exemption.

50507 (d) Notwithstanding Subsection (3)(c), Subsection (3)(c) does not apply to a seller that:
50508 (i) fraudulently fails to collect a tax under this chapter; or
50509 (ii) solicits a purchaser to participate in improperly claiming an exemption from a tax
50510 under this chapter.

50511 (4) A person filing a contract bid with the state or a political subdivision of the state for
50512 the sale of tangible personal property or any other taxable transaction under Subsection
50513 59-12-103(1) shall include with the bid the number of the license issued to that person under

50514 Subsection (2).

50515 Section 1022. Section **59-12-107** is amended to read:

50516 **59-12-107. Collection, remittance, and payment of tax by sellers or other persons**

50517 **-- Returns -- Direct payment by purchaser of vehicle -- Other liability for collection --**

50518 **Rulemaking authority -- Credits -- Treatment of bad debt -- Penalties.**

50519 (1) (a) Except as provided in Subsection (1)(d) or Section 59-12-107.1 and subject to

50520 Subsection (1)(e), each seller shall pay or collect and remit the sales and use taxes imposed by

50521 this chapter if within this state the seller:

50522 (i) has or utilizes:

50523 (A) an office;

50524 (B) a distribution house;

50525 (C) a sales house;

50526 (D) a warehouse;

50527 (E) a service enterprise; or

50528 (F) a place of business similar to Subsections (1)(a)(i)(A) through (E);

50529 (ii) maintains a stock of goods;

50530 (iii) regularly solicits orders, regardless of whether or not the orders are accepted in the

50531 state, unless the seller's only activity in the state is:

50532 (A) advertising; or

50533 (B) solicitation by:

50534 (I) direct mail;

50535 (II) electronic mail;

50536 (III) the Internet;

50537 (IV) telephone; or

50538 (V) a means similar to Subsection (1)(a)(iii)(A) or (B);

50539 (iv) regularly engages in the delivery of property in the state other than by:

50540 (A) common carrier; or

50541 (B) United States mail; or

- 50542 (v) regularly engages in an activity directly related to the leasing or servicing of
50543 property located within the state.
- 50544 (b) A seller that does not meet one or more of the criteria provided for in Subsection
50545 (1)(a):
- 50546 (i) except as provided in Subsection (1)(b)(ii), may voluntarily:
- 50547 (A) collect a tax on a transaction described in Subsection 59-12-103(1); and
- 50548 (B) remit the tax to the commission as provided in this part; or
- 50549 (ii) notwithstanding Subsection (1)(b)(i), shall collect a tax on a transaction described in
50550 Subsection 59-12-103(1) if Section 59-12-103.1 requires the seller to collect the tax.
- 50551 (c) A person shall pay a use tax imposed by this chapter on a transaction described in
50552 Subsection 59-12-103(1) if:
- 50553 (i) the seller did not collect a tax imposed by this chapter on the transaction; and
- 50554 (ii) the person:
- 50555 (A) stores the tangible personal property in the state;
- 50556 (B) uses the tangible personal property in the state; or
- 50557 (C) consumes the tangible personal property in the state.
- 50558 (d) The ownership of property that is located at the premises of a printer's facility with
50559 which the retailer has contracted for printing and that consists of the final printed product,
50560 property that becomes a part of the final printed product, or copy from which the printed
50561 product is produced, shall not result in the retailer being considered to have or maintain an
50562 office, distribution house, sales house, warehouse, service enterprise, or other place of business,
50563 or to maintain a stock of goods, within this state.
- 50564 (e) (i) As used in this Subsection (1)(e):
- 50565 (A) "affiliated group" is as defined in Section 59-7-101, except that "affiliated group"
50566 includes a corporation that is qualified to do business but is not otherwise doing business in this
50567 state;
- 50568 (B) "common ownership" is as defined in Section 59-7-101;
- 50569 (C) "related seller" means a seller that:

50570 (I) is not required to pay or collect and remit sales and use taxes under Subsection
50571 (1)(a) or Section 59-12-103.1;

50572 (II) is:

50573 (Aa) related to a seller that is required to pay or collect and remit sales and use taxes
50574 under Subsection (1)(a) as part of an affiliated group or because of common ownership; or

50575 (Bb) a limited liability company owned by the parent corporation of an affiliated group
50576 if that parent corporation of the affiliated group is required to pay or collect and remit sales and
50577 use taxes under Subsection (1)(a); and

50578 (III) does not voluntarily collect and remit a tax under Subsection (1)(b)(i).

50579 (ii) A seller is not required to pay or collect and remit sales and use taxes under
50580 Subsection (1)(a):

50581 (A) if the seller is a related seller;

50582 (B) if the seller to which the related seller is related does not engage in any of the
50583 following activities on behalf of the related seller:

50584 (I) advertising;

50585 (II) marketing;

50586 (III) sales; or

50587 (IV) other services; and

50588 (C) if the seller to which the related seller is related accepts the return of an item sold by
50589 the related seller, the seller to which the related seller is related accepts the return of that item:

50590 (I) sold by a seller that is not a related seller; and

50591 (II) on the same terms as the return of an item sold by that seller to which the related
50592 seller is related.

50593 (2) (a) Except as provided in Section 59-12-107.1, a tax under this chapter shall be
50594 collected from a purchaser.

50595 (b) A seller may not collect as tax an amount, without regard to fractional parts of one
50596 cent, in excess of the tax computed at the rates prescribed by this chapter.

50597 (c) (i) Each seller shall:

- 50598 (A) give the purchaser a receipt for the tax collected; or
- 50599 (B) bill the tax as a separate item and declare the name of this state and the seller's sales
50600 and use tax license number on the invoice for the sale.
- 50601 (ii) The receipt or invoice is prima facie evidence that the seller has collected the tax
50602 and relieves the purchaser of the liability for reporting the tax to the commission as a consumer.
- 50603 (d) A seller is not required to maintain a separate account for the tax collected, but is
50604 considered to be a person charged with receipt, safekeeping, and transfer of public moneys.
- 50605 (e) Taxes collected by a seller pursuant to this chapter shall be held in trust for the
50606 benefit of the state and for payment to the commission in the manner and at the time provided
50607 for in this chapter.
- 50608 (f) If any seller, during any reporting period, collects as a tax an amount in excess of the
50609 lawful state and local percentage of total taxable sales allowed under this chapter, the seller shall
50610 remit to the commission the full amount of the tax imposed under this chapter, plus any excess.
- 50611 (g) If the accounting methods regularly employed by the seller in the transaction of the
50612 seller's business are such that reports of sales made during a calendar month or quarterly period
50613 will impose unnecessary hardships, the commission may accept reports at intervals that will, in
50614 the commission's opinion, better suit the convenience of the taxpayer or seller and will not
50615 jeopardize collection of the tax.
- 50616 (3) (a) Except as provided in Subsection (4) and Section 59-12-108, the sales or use tax
50617 imposed by this chapter is due and payable to the commission quarterly on or before the last day
50618 of the month next succeeding each calendar quarterly period.
- 50619 (b) (i) Each seller shall, on or before the last day of the month next succeeding each
50620 calendar quarterly period, file with the commission a return for the preceding quarterly period.
- 50621 (ii) The seller shall remit with the return under Subsection (3)(b)(i) the amount of the
50622 tax required under this chapter to be collected or paid for the period covered by the return.
- 50623 (c) Each return shall contain information and be in a form the commission prescribes by
50624 rule.
- 50625 (d) The sales tax as computed in the return shall be based upon the total nonexempt

50626 sales made during the period, including both cash and charge sales.

50627 (e) The use tax as computed in the return shall be based upon the total amount of sales
50628 and purchases for storage, use, or other consumption in this state made during the period,
50629 including both by cash and by charge.

50630 (f) (i) Subject to Subsection (3)(f)(ii) and in accordance with [~~Title 63, Chapter 46a~~]
50631 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission may by rule extend
50632 the time for making returns and paying the taxes.

50633 (ii) An extension under Subsection (3)(f)(i) may not be for more than 90 days.

50634 (g) The commission may require returns and payment of the tax to be made for other
50635 than quarterly periods if the commission considers it necessary in order to ensure the payment
50636 of the tax imposed by this chapter.

50637 (4) (a) On each vehicle sale made by other than a regular licensed vehicle dealer, the
50638 purchaser shall pay the sales or use tax directly to the commission if the vehicle is subject to
50639 titling or registration under the laws of this state.

50640 (b) The commission shall collect the tax described in Subsection (4)(a) when the vehicle
50641 is titled or registered.

50642 (5) If any sale of tangible personal property or any other taxable transaction under
50643 Subsection 59-12-103(1), is made by a wholesaler to a retailer, the wholesaler is not responsible
50644 for the collection or payment of the tax imposed on the sale and the retailer is responsible for
50645 the collection or payment of the tax imposed on the sale if:

50646 (a) the retailer represents that the personal property is purchased by the retailer for
50647 resale; and

50648 (b) the personal property is not subsequently resold.

50649 (6) If any sale of property or service subject to the tax is made to a person prepaying
50650 sales or use tax in accordance with [~~Title 63, Chapter 51~~] Title 63M, Chapter 5, Resource
50651 Development, or to a contractor or subcontractor of that person, the person to whom such
50652 payment or consideration is payable is not responsible for the collection or payment of the sales
50653 or use tax and the person prepaying the sales or use tax is responsible for the collection or

50654 payment of the sales or use tax if the person prepaying the sales or use tax represents that the
50655 amount prepaid as sales or use tax has not been fully credited against sales or use tax due and
50656 payable under the rules promulgated by the commission.

50657 (7) (a) For purposes of this Subsection (7):

50658 (i) Except as provided in Subsection (7)(a)(ii), "bad debt" is as defined in Section 166,
50659 Internal Revenue Code.

50660 (ii) Notwithstanding Subsection (7)(a)(i), "bad debt" does not include:

50661 (A) an amount included in the purchase price of tangible personal property or a service
50662 that is:

50663 (I) not a transaction described in Subsection 59-12-103(1); or

50664 (II) exempt under Section 59-12-104;

50665 (B) a financing charge;

50666 (C) interest;

50667 (D) a tax imposed under this chapter on the purchase price of tangible personal
50668 property or a service;

50669 (E) an uncollectible amount on tangible personal property that:

50670 (I) is subject to a tax under this chapter; and

50671 (II) remains in the possession of a seller until the full purchase price is paid;

50672 (F) an expense incurred in attempting to collect any debt; or

50673 (G) an amount that a seller does not collect on repossessed property.

50674 (b) A seller may deduct bad debt from the total amount from which a tax under this
50675 chapter is calculated on a return.

50676 (c) A seller may file a refund claim with the commission if:

50677 (i) the amount of bad debt for the time period described in Subsection (7)(e) exceeds
50678 the amount of the seller's sales that are subject to a tax under this chapter for that same time
50679 period; and

50680 (ii) as provided in Section 59-12-110.

50681 (d) A bad debt deduction under this section may not include interest.

50682 (e) A bad debt may be deducted under this Subsection (7) on a return for the time
50683 period during which the bad debt:

- 50684 (i) is written off as uncollectible in the seller's books and records; and
- 50685 (ii) would be eligible for a bad debt deduction:

- 50686 (A) for federal income tax purposes; and
- 50687 (B) if the seller were required to file a federal income tax return.

50688 (f) If a seller recovers any portion of bad debt for which the seller makes a deduction or
50689 claims a refund under this Subsection (7), the seller shall report and remit a tax under this
50690 chapter:

- 50691 (i) on the portion of the bad debt the seller recovers; and
- 50692 (ii) on a return filed for the time period for which the portion of the bad debt is
50693 recovered.

50694 (g) For purposes of reporting a recovery of a portion of bad debt under Subsection
50695 (7)(f), a seller shall apply amounts received on the bad debt in the following order:

- 50696 (i) in a proportional amount:

- 50697 (A) to the purchase price of the tangible personal property or service; and
- 50698 (B) to the tax due under this chapter on the tangible personal property or service; and

- 50699 (ii) to:

- 50700 (A) interest charges;
- 50701 (B) service charges; and
- 50702 (C) other charges.

50703 (8) (a) A seller may not, with intent to evade any tax, fail to timely remit the full amount
50704 of tax required by this chapter.

- 50705 (b) A violation of this section is punishable as provided in Section 59-1-401.

- 50706 (c) Each person who fails to pay any tax to the state or any amount of tax required to
50707 be paid to the state, except amounts determined to be due by the commission under Sections
50708 59-12-110 and 59-12-111, within the time required by this chapter, or who fails to file any
50709 return as required by this chapter, shall pay, in addition to the tax, penalties and interest as

50710 provided in Section 59-12-110.

50711 (d) For purposes of prosecution under this section, each quarterly tax period in which a
50712 seller, with intent to evade any tax, collects a tax and fails to timely remit the full amount of the
50713 tax required to be remitted, constitutes a separate offense.

50714 Section 1023. Section **59-12-107.1** is amended to read:

50715 **59-12-107.1. Direct payment permit.**

50716 (1) The commission may issue a direct payment permit to a seller that:

50717 (a) obtains a license under Section 59-12-106;

50718 (b) is required to remit taxes under this chapter by electronic funds transfer in
50719 accordance with Subsection 59-12-108(1);

50720 (c) has a record of timely payment of taxes under this chapter as determined by the
50721 commission; and

50722 (d) demonstrates to the commission that the seller has the ability to determine the
50723 appropriate location of a transaction under Section 59-12-207 for each transaction for which the
50724 seller makes a purchase using the direct payment permit.

50725 (2) A direct payment permit may not be used in connection with the following
50726 transactions:

50727 (a) a purchase of the following purchased in the same transaction:

50728 (i) prepared food; and

50729 (ii) food and food ingredients;

50730 (b) amounts paid or charged for accommodations and services described in Subsection
50731 59-12-103(1)(i);

50732 (c) amounts paid or charged for admission or user fees under Subsection
50733 59-12-103(1)(f);

50734 (d) a purchase of:

50735 (i) a motor vehicle;

50736 (ii) an aircraft;

50737 (iii) a watercraft;

- 50738 (iv) a modular home;
- 50739 (v) a manufactured home; or
- 50740 (vi) a mobile home;
- 50741 (e) amounts paid under Subsection 59-12-103(1)(b); or
- 50742 (f) sales under Subsection 59-12-103(1)(c).
- 50743 (3) The holder of a direct payment permit shall:
- 50744 (a) present evidence of the direct payment permit to a seller at the time the holder of the
- 50745 direct payment permit makes a purchase using the direct payment permit;
- 50746 (b) determine the appropriate location of a transaction under Section 59-12-207 for
- 50747 each transaction for which the holder of the direct payment permit makes a purchase using the
- 50748 direct payment permit;
- 50749 (c) notwithstanding Section 59-12-107, determine the amount of any sales and use tax
- 50750 due on each transaction for which the holder of the direct payment permit uses the direct
- 50751 payment permit;
- 50752 (d) report and remit to the commission the sales and use tax described in Subsection
- 50753 (3)(c) at the same time and in the same manner as the holder of the direct payment permit
- 50754 reports and remits a tax under this chapter; and
- 50755 (e) maintain records:
- 50756 (i) that indicate the appropriate location of a transaction under Section 59-12-207 for
- 50757 each transaction for which a purchase is made using the direct payment permit; and
- 50758 (ii) necessary to determine the amount described in Subsection (3)(c) for each
- 50759 transaction for which the holder of the direct payment permit uses the direct payment permit.
- 50760 (4) A seller that is presented evidence of a direct payment permit at the time of a
- 50761 transaction:
- 50762 (a) notwithstanding Section 59-12-107, may not collect sales and use tax on the
- 50763 transaction;
- 50764 (b) shall, for a period of three years from the date the seller files a return with the
- 50765 commission reporting the transaction, retain records to verify that the transaction was made

50766 using a direct payment permit; and

50767 (c) notwithstanding Section 59-12-107, is not liable for sales and use tax on the
50768 transaction.

50769 (5) The holder of a direct payment permit may calculate the amount the holder of the
50770 direct payment permit may retain under Section 59-12-108 on the amount described in
50771 Subsection (3)(c):

50772 (a) for each transaction for which the holder of the direct payment permit uses the
50773 direct payment permit; and

50774 (b) that the holder of the direct payment permit remits to the commission under this
50775 section.

50776 (6) The commission may revoke a direct payment permit issued under this section at
50777 any time if the holder of the direct payment permit fails to comply with any provision of this
50778 chapter.

50779 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
50780 Administrative Rulemaking Act, the commission may make rules to administer this section.
50781 Section 1024. Section **59-12-108** is amended to read:

50782 **59-12-108. Monthly payment -- Amount of tax a seller may retain -- Penalty --**
50783 **Certain amounts allocated to local taxing jurisdictions.**

50784 (1) (a) Notwithstanding Section 59-12-107, a seller that has a tax liability under this
50785 chapter of \$50,000 or more for the previous calendar year shall:

50786 (i) file a return with the commission:

50787 (A) monthly on or before the last day of the month immediately following the month for
50788 which the seller collects a tax under this chapter; and

50789 (B) for the month for which the seller collects a tax under this chapter; and

50790 (ii) remit with the return required by Subsection (1)(a)(i) the amount the person is
50791 required to remit to the commission for each tax, fee, or charge described in Subsection (1)(b):

50792 (A) if that seller's tax liability under this chapter for the previous calendar year is less
50793 than \$96,000, by any method permitted by the commission; or

50794 (B) if that seller's tax liability under this chapter for the previous calendar year is
50795 \$96,000 or more, by electronic funds transfer.

50796 (b) Subsections (1)(a)(i) and (ii) apply to the following taxes, fees, or charges:
50797 (i) a tax under Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;
50798 (ii) a fee under Section 19-6-716;
50799 (iii) a fee under Section 19-6-805;
50800 (iv) a charge under Section 69-2-5.5; or
50801 (v) a tax under this chapter.

50802 (c) Notwithstanding Subsection (1)(a)(ii) and in accordance with [~~Title 63, Chapter~~
50803 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall make
50804 rules providing for a method for making same-day payments other than by electronic funds
50805 transfer if making payments by electronic funds transfer fails.

50806 (d) In accordance with [~~Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
50807 Administrative Rulemaking Act, the commission shall establish by rule procedures and
50808 requirements for determining the amount a seller is required to remit to the commission under
50809 this Subsection (1).

50810 (2) (a) Except as provided in Subsection (3), a seller subject to Subsection (1) or a
50811 seller described in Subsection (4) may retain each month the amount allowed by this Subsection
50812 (2).

50813 (b) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain
50814 each month 1.31% of any amounts the seller is required to remit to the commission:

50815 (i) for a transaction described in Subsection 59-12-103(1) that is subject to a state tax
50816 and a local tax imposed in accordance with the following, for the month for which the seller is
50817 filing a return in accordance with Subsection (1):

50818 (A) Subsection 59-12-103(2)(a);
50819 (B) Subsection 59-12-103(2)(b);
50820 (C) Subsection 59-12-103(2)(d), except for the state tax and the local tax imposed on
50821 the amounts paid or charged for food and food ingredients in accordance with Subsections

50822 59-12-103(2)(d)(i)(C) and (2)(d)(ii); and
50823 (D) Subsection 59-12-103(2)(e); and
50824 (ii) for an agreement sales and use tax.
50825 (c) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
50826 retain each month the amount calculated under Subsection (2)(c)(ii) for a transaction described
50827 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed in
50828 accordance with Subsection 59-12-103(2)(c).
50829 (ii) For purposes of Subsection (2)(c)(i), the amount a seller may retain is an amount
50830 equal to the sum of:
50831 (A) 1.31% of any amounts the seller is required to remit to the commission for:
50832 (I) the state tax and the local tax imposed in accordance with Subsection
50833 59-12-103(2)(c);
50834 (II) the month for which the seller is filing a return in accordance with Subsection (1);
50835 and
50836 (III) an agreement sales and use tax; and
50837 (B) 1.31% of the difference between:
50838 (I) the amounts the seller would have been required to remit to the commission:
50839 (Aa) in accordance with Subsection 59-12-103(2)(a) if the transaction had been subject
50840 to the state tax and the local tax imposed in accordance with Subsection 59-12-103(2)(a);
50841 (Bb) for the month for which the seller is filing a return in accordance with Subsection
50842 (1); and
50843 (Cc) for an agreement sales and use tax; and
50844 (II) the amounts the seller is required to remit to the commission for:
50845 (Aa) the state tax and the local tax imposed in accordance with Subsection
50846 59-12-103(2)(c);
50847 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
50848 and
50849 (Cc) an agreement sales and use tax.

50850 (d) (i) A seller subject to Subsection (1) or a seller described in Subsection (4) may
50851 retain each month the amount calculated under Subsection (2)(d)(ii) for a transaction described
50852 in Subsection 59-12-103(1) that is subject to the state tax and the local tax imposed on the
50853 amounts paid or charged for food and food ingredients in accordance with Subsections
50854 59-12-103(2)(d)(i)(C) and (2)(d)(ii).

50855 (ii) For purposes of Subsection (2)(d)(i), the amount a seller may retain is an amount
50856 equal to the sum of:

50857 (A) 1.31% of any amounts the seller is required to remit to the commission for:

50858 (I) the state tax and the local tax imposed on the amounts paid or charged for food and
50859 food ingredients in accordance with Subsections 59-12-103(2)(d)(i)(C) and (2)(d)(ii);

50860 (II) the month for which the seller is filing a return in accordance with Subsection (1);
50861 and

50862 (III) an agreement sales and use tax; and

50863 (B) 1.31% of the difference between:

50864 (I) the amounts the seller would have been required to remit to the commission:

50865 (Aa) in accordance with Subsections 59-12-103(2)(d)(i)(A) and (2)(d)(ii) if the
50866 transaction had been subject to the state tax and the local tax imposed in accordance with
50867 Subsections 59-12-103(2)(d)(i)(A) and (2)(d)(ii);

50868 (Bb) for the month for which the seller is filing a return in accordance with Subsection
50869 (1); and

50870 (Cc) for an agreement sales and use tax; and

50871 (II) the amounts the seller is required to remit to the commission for:

50872 (Aa) the state tax and the local tax imposed in accordance with Subsections
50873 59-12-103(2)(d)(i)(C) and (2)(d)(ii);

50874 (Bb) the month for which the seller is filing a return in accordance with Subsection (1);
50875 and

50876 (Cc) an agreement sales and use tax.

50877 (e) A seller subject to Subsection (1) or a seller described in Subsection (4) may retain

50878 each month 1% of any amounts the seller is required to remit to the commission:

50879 (i) for the month for which the seller is filing a return in accordance with Subsection

50880 (1); and

50881 (ii) under:

50882 (A) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act;

50883 (B) Subsection 59-12-603(1)(a)(i)(A); or

50884 (C) Subsection 59-12-603(1)(a)(i)(B).

50885 (3) A state government entity that is required to remit taxes monthly in accordance with

50886 Subsection (1) may not retain any amount under Subsection (2).

50887 (4) A seller that has a tax liability under this chapter for the previous calendar year of

50888 less than \$50,000 may:

50889 (a) voluntarily meet the requirements of Subsection (1); and

50890 (b) if the seller voluntarily meets the requirements of Subsection (1), retain the amounts

50891 allowed by Subsection (2).

50892 (5) Penalties for late payment shall be as provided in Section 59-1-401.

50893 (6) (a) For any amounts required to be remitted to the commission under this part, the

50894 commission shall each month calculate an amount equal to the difference between:

50895 (i) the total amount retained for that month by all sellers had the percentages listed

50896 under Subsections (2)(b), (2)(c)(ii), and (2)(d)(ii) been 1.5%; and

50897 (ii) the total amount retained for that month by all sellers at the percentages listed under

50898 Subsections (2)(b), (2)(c)(ii), and (2)(d)(ii).

50899 (b) The commission shall each month allocate the amount calculated under Subsection

50900 (6)(a) to each county, city, and town on the basis of the proportion of agreement sales and use

50901 tax that the commission distributes to each county, city, and town for that month compared to

50902 the total agreement sales and use tax that the commission distributes for that month to all

50903 counties, cities, and towns.

50904 Section 1025. Section **59-12-110** is amended to read:

50905 **59-12-110. Overpayments, deficiencies, and refunds procedures.**

50906 (1) (a) As soon as practicable after a return is filed, the commission shall examine the
50907 return.

50908 (b) If the commission determines that the correct amount of tax to be remitted is greater
50909 or less than the amount shown to be due on the return, the commission shall recompute the tax.

50910 (c) If the amount paid exceeds the amount due, the excess, plus interest as provided in
50911 Section 59-1-402, shall be credited or refunded to the taxpayer as provided in Subsection (2).

50912 (d) The commission may not credit or refund to the taxpayer interest on an
50913 overpayment under Subsection (1)(c) if the commission determines that the overpayment was
50914 made for the purpose of investment.

50915 (2) (a) If a taxpayer pays a tax, penalty, or interest more than once or the commission
50916 erroneously receives, collects, or computes any tax, penalty, or interest, including an
50917 overpayment described in Subsection (1)(c), the commission shall:

50918 (i) credit the amount of tax, penalty, or interest paid by the taxpayer against any
50919 amounts of tax, penalties, or interest the taxpayer owes; and

50920 (ii) refund any balance to the taxpayer or the taxpayer's successors, administrators,
50921 executors, or assigns.

50922 (b) Except as provided in Subsections (2)(c) and (d) or Section 19-2-124, a taxpayer
50923 shall file a claim with the commission to obtain a refund or credit under this Subsection (2)
50924 within three years from the day on which the taxpayer overpaid the tax, penalty, or interest.

50925 (c) Notwithstanding Subsection (2)(b), beginning on July 1, 1998, the commission shall
50926 extend the period for a taxpayer to file a claim under Subsection (2)(b) if:

50927 (i) the three-year period under Subsection (2)(b) has not expired; and

50928 (ii) the commission and the taxpayer sign a written agreement:

50929 (A) authorizing the extension; and

50930 (B) providing for the length of the extension.

50931 (d) Notwithstanding Subsection (2)(b), a seller that files a claim for a refund under
50932 Subsection 59-12-107 (7)(c) for bad debt shall file the claim with the commission within three
50933 years from the date on which the seller could first claim the refund for the bad debt.

50934 (e) A taxpayer may file a claim to obtain a refund or credit under this Subsection (2)
50935 regardless of whether the taxpayer received or objected to a notice of deficiency or a notice of
50936 assessment as provided in Subsection 59-12-114(1).

50937 (f) A taxpayer may obtain a refund under this Subsection (2) of a tax paid under this
50938 chapter on a transaction that is taxable under Section 59-12-103 if:

50939 (i) the sale or use was exempt from sales and use taxes under Section 59-12-104 on the
50940 date of purchase; and

50941 (ii) except as provided in Subsection (2)(c), the taxpayer files a claim for a refund with
50942 the commission as provided in Subsections (2)(b) through (e).

50943 (g) If the commission denies a claim for a refund or credit under this Subsection (2), the
50944 taxpayer may request a redetermination of the denial by filing a petition or request for agency
50945 action with the commission as provided in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
50946 Administrative Procedures Act.

50947 (3) If the commission erroneously determines an amount to be due from a taxpayer, the
50948 commission shall authorize the amounts to be cancelled upon its records.

50949 (4) (a) Subject to the provisions of Subsection (4)(b), the commission may impose on a
50950 deficiency under this section:

50951 (i) a penalty as provided in Section 59-1-401; and

50952 (ii) interest as provided in Section 59-1-402.

50953 (b) The commission may impose a penalty and interest on the entire deficiency if any
50954 part of the deficiency is due to:

50955 (i) negligence;

50956 (ii) intentional disregard of law or rule; or

50957 (iii) fraud with intent to evade the tax.

50958 (5) (a) Except as provided in Subsection (5)(b), a taxpayer shall pay a tax deficiency,
50959 including penalties or interest under this section, within ten days after the commission provides
50960 the taxpayer notice and demand of the deficiency, penalty, or interest.

50961 (b) Notwithstanding Subsection (5)(a), a taxpayer may pay a tax deficiency, penalty, or

50962 interest within 30 days after the commission provides the taxpayer notice and demand of the
50963 deficiency, penalty, or interest if the commission determines:

50964 (i) that a greater amount was due than was shown on the return; and

50965 (ii) the tax is not in jeopardy.

50966 (6) (a) Except as provided in Subsections (6)(c) through (f), the commission shall
50967 assess the amount of taxes imposed by this chapter, and any penalties and interest, within three
50968 years after a taxpayer files a return.

50969 (b) Except as provided in Subsections (6)(c) through (f), if the commission does not
50970 make an assessment under Subsection (6)(a) within three years, the commission may not
50971 commence a proceeding for the collection of the taxes after the expiration of the three-year
50972 period.

50973 (c) Notwithstanding Subsections (6)(a) and (b), the commission may make an
50974 assessment or commence a proceeding to collect a tax at any time if a deficiency is due to:

50975 (i) fraud; or

50976 (ii) failure to file a return.

50977 (d) Notwithstanding Subsections (6)(a) and (b), beginning on July 1, 1998, the
50978 commission may extend the period to make an assessment or to commence a proceeding to
50979 collect the tax under this chapter if:

50980 (i) the three-year period under this Subsection (6) has not expired; and

50981 (ii) the commission and the taxpayer sign a written agreement:

50982 (A) authorizing the extension; and

50983 (B) providing for the length of the extension.

50984 (e) If the commission delays an audit at the request of a taxpayer, the commission may
50985 make an assessment as provided in Subsection (6)(f) if:

50986 (i) the taxpayer subsequently refuses to agree to an extension request by the
50987 commission; and

50988 (ii) the three-year period under this Subsection (6) expires before the commission
50989 completes the audit.

- 50990 (f) An assessment under Subsection (6)(e) shall be:
- 50991 (i) for the time period for which the commission could not make an assessment because
- 50992 of the expiration of the three-year period; and
- 50993 (ii) in an amount equal to the difference between:
- 50994 (A) the commission's estimate of the amount of taxes the taxpayer would have been
- 50995 assessed for the time period described in Subsection (6)(f)(i); and
- 50996 (B) the amount of taxes the taxpayer actually paid for the time period described in
- 50997 Subsection (6)(f)(i).

50998 Section 1026. Section **59-12-114** is amended to read:

50999 **59-12-114. Taxpayer objections -- Available remedies.**

51000 (1) A taxpayer may object to a notice of deficiency or notice of assessment issued by

51001 the commission by applying to the commission as provided in [~~Title 63, Chapter 46b~~] Title 63G,

51002 Chapter 4, Administrative Procedures Act.

51003 (2) A taxpayer who has not previously adjudicated a tax deficiency as provided in

51004 Subsection (1) may object to a final assessment issued by the commission by:

- 51005 (a) paying the tax; and
- 51006 (b) filing a claim for a refund as provided in Section 59-12-110.

51007 Section 1027. Section **59-12-207** is amended to read:

51008 **59-12-207. Report of tax collections -- Point of sale when retailer has no**

51009 **permanent place of business or more than one place of business is determined by rule of**

51010 **commission -- Public utilities -- Telecommunications service.**

51011 (1) Except as provided in Subsection (5), any sales and use taxes collected under this

51012 part shall be reported to the commission on forms that accurately identify the location where the

51013 transaction resulting in a tax under this chapter is consummated.

51014 (2) Except as provided in Subsection (5), for purposes of this part, the location of

51015 where a transaction is consummated:

- 51016 (a) is determined under rules of the commission if:
- 51017 (i) a retailer has no permanent place of business in the state; or

- 51018 (ii) has more than one place of business;
- 51019 (b) is where a purchaser receives the following products or services sold by a public
- 51020 utility, as defined in Section 54-2-1, to that purchaser:
- 51021 (i) gas; or
- 51022 (ii) electricity; and
- 51023 (c) is as provided in Section 59-12-207.4 for a service described in Section
- 51024 59-12-207.4.
- 51025 (3) The form required under Subsection (1) shall:
- 51026 (a) accompany the sales and use tax returns required under this chapter; and
- 51027 (b) identify the location of any transaction consummated during the return filing period.
- 51028 (4) Subject to Subsection (5) and in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 51029 Chapter 3, Utah Administrative Rulemaking Act, the commission shall make rules regarding the
- 51030 determination of the location of where under Subsection (2)(a) a transaction is consummated.
- 51031 (5) Notwithstanding Subsections (1) and (2), mobile telecommunications service is
- 51032 subject to the sourcing rules provided in the Mobile Telecommunications Sourcing Act, 4
- 51033 U.S.C. Sec. 116 et seq.
- 51034 Section 1028. Section **59-12-208.1** is amended to read:
- 51035 **59-12-208.1. Enactment or repeal of tax -- Effective date -- Notice requirements.**
- 51036 (1) For purposes of this section:
- 51037 (a) "Annexation" means an annexation to:
- 51038 (i) a county under Title 17, Chapter 2, Annexation to County; or
- 51039 (ii) a city or town under Title 10, Chapter 2, Part 4, Annexation.
- 51040 (b) "Annexing area" means an area that is annexed into a county, city, or town.
- 51041 (2) (a) Except as provided in Subsection (2)(c) or (d), if, on or after July 1, 2004, a
- 51042 county, city, or town enacts or repeals a tax under this part, the enactment or repeal shall take
- 51043 effect:
- 51044 (i) on the first day of a calendar quarter; and
- 51045 (ii) after a 90-day period beginning on the date the commission receives notice meeting

51046 the requirements of Subsection (2)(b) from the county, city, or town.

51047 (b) The notice described in Subsection (2)(a)(ii) shall state:

51048 (i) that the county, city, or town will enact or repeal a tax under this part;

51049 (ii) the statutory authority for the tax described in Subsection (2)(b)(i);

51050 (iii) the effective date of the tax described in Subsection (2)(b)(i); and

51051 (iv) if the county, city, or town enacts the tax described in Subsection (2)(b)(i), the rate
51052 of the tax.

51053 (c) (i) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
51054 (2)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

51055 (A) that begins after the effective date of the enactment of the tax; and

51056 (B) if the billing period for the transaction begins before the effective date of the
51057 enactment of the tax under Section 59-12-204.

51058 (ii) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
51059 (2)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

51060 (A) that began before the effective date of the repeal of the tax; and

51061 (B) if the billing period for the transaction begins before the effective date of the repeal
51062 of the tax imposed under Section 59-12-204.

51063 (iii) Subsections (2)(c)(i) and (ii) apply to transactions subject to a tax under:

51064 (A) Subsection 59-12-103(1)(b);

51065 (B) Subsection 59-12-103(1)(c);

51066 (C) Subsection 59-12-103(1)(d);

51067 (D) Subsection 59-12-103(1)(e);

51068 (E) Subsection 59-12-103(1)(f);

51069 (F) Subsection 59-12-103(1)(g);

51070 (G) Subsection 59-12-103(1)(h);

51071 (H) Subsection 59-12-103(1)(i);

51072 (I) Subsection 59-12-103(1)(j); or

51073 (J) Subsection 59-12-103(1)(k).

51074 (d) (i) Notwithstanding Subsection (2)(a), if a tax due under this chapter on a catalogue
51075 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment
51076 or repeal of a tax described in Subsection (2)(a) takes effect:

51077 (A) on the first day of a calendar quarter; and

51078 (B) beginning 60 days after the effective date of the enactment or repeal under
51079 Subsection (2)(a).

51080 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51081 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51082 (3) (a) Except as provided in Subsection (3)(c) or (d), if, for an annexation that occurs
51083 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
51084 part for an annexing area, the enactment or repeal shall take effect:

51085 (i) on the first day of a calendar quarter; and

51086 (ii) after a 90-day period beginning on the date the commission receives notice meeting
51087 the requirements of Subsection (3)(b) from the county, city, or town that annexes the annexing
51088 area.

51089 (b) The notice described in Subsection (3)(a)(ii) shall state:

51090 (i) that the annexation described in Subsection (3)(a) will result in an enactment or
51091 repeal of a tax under this part for the annexing area;

51092 (ii) the statutory authority for the tax described in Subsection (3)(b)(i);

51093 (iii) the effective date of the tax described in Subsection (3)(b)(i); and

51094 (iv) the rate of the tax described in Subsection (3)(b)(i).

51095 (c) (i) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51096 (3)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

51097 (A) that begins after the effective date of the enactment of the tax; and

51098 (B) if the billing period for the transaction begins before the effective date of the
51099 enactment of the tax under Section 59-12-204.

51100 (ii) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51101 (3)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

51102 (A) that began before the effective date of the repeal of the tax; and
51103 (B) if the billing period for the transaction begins before the effective date of the repeal
51104 of the tax imposed under Section 59-12-204.

51105 (iii) Subsections (3)(c)(i) and (ii) apply to transactions subject to a tax under:
51106 (A) Subsection 59-12-103(1)(b);
51107 (B) Subsection 59-12-103(1)(c);
51108 (C) Subsection 59-12-103(1)(d);
51109 (D) Subsection 59-12-103(1)(e);
51110 (E) Subsection 59-12-103(1)(f);
51111 (F) Subsection 59-12-103(1)(g);
51112 (G) Subsection 59-12-103(1)(h);
51113 (H) Subsection 59-12-103(1)(i);
51114 (I) Subsection 59-12-103(1)(j); or
51115 (J) Subsection 59-12-103(1)(k).

51116 (d) (i) Notwithstanding Subsection (3)(a), if a tax due under this chapter on a catalogue
51117 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment
51118 or repeal of a tax described in Subsection (3)(a) takes effect:
51119 (A) on the first day of a calendar quarter; and
51120 (B) beginning 60 days after the effective date of the enactment or repeal under
51121 Subsection (3)(a).

51122 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51123 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
51124 Section 1029. Section **59-12-209** is amended to read:
51125 **59-12-209. Participation of counties, cities, and towns in administration and**
51126 **enforcement of local option sales and use tax.**

51127 (1) Notwithstanding the provisions of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
51128 Administrative Procedures Act, a county, city, or town shall not have the right to any of the
51129 following, except as specifically allowed by Subsection (2) and Section 59-12-210:

51130 (a) to inspect, review, or have access to any taxpayer sales and use tax records; or

51131 (b) to be informed of, participate in, intervene in, or appeal from any adjudicative

51132 proceeding commenced pursuant to Section [~~63-46b-3~~] 63G-4-201 to determine the liability of

51133 any taxpayer for sales and use tax imposed pursuant to Title 59, Chapter 12, Sales and Use Tax

51134 Act.

51135 (2) Counties, cities, and towns shall have access to records and information on file with

51136 the commission, and shall have the right to notice of, and such rights to intervene in or to appeal

51137 from, a proposed final agency action of the commission as follows:

51138 (a) If the commission, following a formal adjudicative proceeding commenced pursuant

51139 to [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, proposes to

51140 take final agency action that would reduce the amount of sales and use tax liability alleged in the

51141 notice of deficiency, the commission shall provide notice of a proposed agency action to each

51142 qualified county, city, and town.

51143 (b) For purposes of this section, a county, city, or town is a qualified county, city, or

51144 town if a proposed final agency action reduces the local option sales and use tax distributable to

51145 that county, city, or town by more than \$10,000 below the amount of the tax that would have

51146 been distributable to that county, city, or town had a notice of deficiency, as described in

51147 Section 59-12-110, not been reduced.

51148 (c) A qualified county, city, or town may designate a representative who shall have the

51149 right to review the record of the formal hearing and any other commission records relating to a

51150 proposed final agency action subject to the confidentiality provisions of Section 59-1-403.

51151 (d) No later than ten days after receiving the notice of the commission's proposed final

51152 agency action, a qualified county, city, or town may file a notice of intervention with the

51153 commission.

51154 (e) No later than 20 days after filing a notice of intervention, if a qualified county, city,

51155 or town objects to the proposed final agency action, that qualified county, city, or town may file

51156 a petition for reconsideration with the commission and shall serve copies of the petition on the

51157 taxpayer and the appropriate division in the commission.

51158 (f) The taxpayer and appropriate division in the commission may each file a response to
51159 the petition for reconsideration within 20 days of receipt of the petition for reconsideration.

51160 (g) After consideration of the petition for reconsideration and any response, and any
51161 additional proceeding the commission considers appropriate, the commission may affirm,
51162 modify, or amend its proposed final agency action. The taxpayer and any qualified county, city,
51163 or town that has filed a petition for reconsideration may appeal the final agency action.

51164 Section 1030. Section **59-12-210** is amended to read:

51165 **59-12-210. Commission to provide data to counties.**

51166 (1) (a) The commission shall provide to each county the sales and use tax collection
51167 data necessary to verify that the local sales and use tax revenues collected by the commission
51168 are distributed to each county, city, and town in accordance with Sections 59-12-205,
51169 59-12-206, 59-12-207, and 59-12-207.4.

51170 (b) The data described in Subsection (1)(a) shall include the commission's reports of
51171 seller sales, sales and use tax distribution reports, and a breakdown of local revenues.

51172 (2) (a) In addition to the access to information provided in Subsection (1) and Section
51173 59-12-109, the commission shall provide a county, city, or town with copies of returns and
51174 other information required by this chapter relating to a tax under this chapter.

51175 (b) The information described in Subsection (2)(a) is available only in official matters
51176 and must be requested in writing by the chief executive officer or the chief executive officer's
51177 designee.

51178 (c) The request described in Subsection (2)(b) shall specifically indicate the information
51179 being sought and how the information will be used.

51180 (d) Information received pursuant to the request described in Subsection (2)(b) shall be:

51181 (i) classified as private or protected under Section [~~63-2-302~~] 63G-2-302 or [~~63-2-304~~]
51182 63G-2-305; and

51183 (ii) subject to the confidentiality provisions of Section 59-1-403.

51184 Section 1031. Section **59-12-301** is amended to read:

51185 **59-12-301. Transient room tax -- Rate -- Expenditure of revenues -- Enactment**

51186 **or repeal of tax -- Tax rate change -- Effective date -- Notice requirements.**

51187 (1) (a) A county legislative body may impose a tax on charges for the accommodations
 51188 and services described in Subsection 59-12-103(1)(i) at a rate of not to exceed 4.25% beginning
 51189 on or after October 1, 2006.

51190 (b) Subject to Subsection (2), the revenues raised from the tax imposed under
 51191 Subsection (1)(a) shall be used for the purposes listed in Section 17-31-2.

51192 (c) The tax imposed under Subsection (1)(a) shall be in addition to the tax imposed
 51193 under Part 6, Tourism, Recreation, Cultural, and Convention Facilities Tax.

51194 (2) If a county legislative body of a county of the first class imposes a tax under this
 51195 section, beginning on July 1, 2007, and ending on June 30, 2027, each year the first 15% of the
 51196 revenues collected from the tax authorized by Subsection (1)(a) within that county shall be:

51197 (a) deposited into the Transient Room Tax Fund created by Section [~~63-38f-2203~~]
 51198 63M-1-2203; and

51199 (b) expended as provided in Section [~~63-38f-2203~~] 63M-1-2203.

51200 (3) Subject to Subsection (4), a county legislative body:

51201 (a) may increase or decrease the tax authorized under this part; and

51202 (b) shall regulate the tax authorized under this part by ordinance.

51203 (4) (a) For purposes of this Subsection (4):

51204 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
 51205 Annexation to County.

51206 (ii) "Annexing area" means an area that is annexed into a county.

51207 (b) (i) Except as provided in Subsection (4)(c), if, on or after July 1, 2004, a county
 51208 enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal, or
 51209 change shall take effect:

51210 (A) on the first day of a calendar quarter; and

51211 (B) after a 90-day period beginning on the date the commission receives notice meeting
 51212 the requirements of Subsection (4)(b)(ii) from the county.

51213 (ii) The notice described in Subsection (4)(b)(i)(B) shall state:

51214 (A) that the county will enact or repeal a tax or change the rate of a tax under this part;
51215 (B) the statutory authority for the tax described in Subsection (4)(b)(ii)(A);
51216 (C) the effective date of the tax described in Subsection (4)(b)(ii)(A); and
51217 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
51218 (4)(b)(ii)(A), the rate of the tax.

51219 (c) (i) Notwithstanding Subsection (4)(b)(i), for a transaction described in Subsection
51220 (4)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
51221 first billing period:

51222 (A) that begins after the effective date of the enactment of the tax or the tax rate
51223 increase; and

51224 (B) if the billing period for the transaction begins before the effective date of the
51225 enactment of the tax or the tax rate increase imposed under this section.

51226 (ii) Notwithstanding Subsection (4)(b)(i), for a transaction described in Subsection
51227 (4)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
51228 billing period:

51229 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
51230 and

51231 (B) if the billing period for the transaction begins before the effective date of the repeal
51232 of the tax or the tax rate decrease imposed under this section.

51233 (iii) Subsections (4)(c)(i) and (ii) apply to transactions subject to a tax under Subsection
51234 59-12-103(1)(i).

51235 (d) (i) Except as provided in Subsection (4)(e), if, for an annexation that occurs on or
51236 after July 1, 2004, the annexation will result in the enactment, repeal, or a change in the rate of
51237 a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

51238 (A) on the first day of a calendar quarter; and

51239 (B) after a 90-day period beginning on the date the commission receives notice meeting
51240 the requirements of Subsection (4)(d)(ii) from the county that annexes the annexing area.

51241 (ii) The notice described in Subsection (4)(d)(i)(B) shall state:

51242 (A) that the annexation described in Subsection (4)(d)(i) will result in an enactment,
51243 repeal, or change in the rate of a tax under this part for the annexing area;

51244 (B) the statutory authority for the tax described in Subsection (4)(d)(ii)(A);

51245 (C) the effective date of the tax described in Subsection(4)(d)(ii)(A); and

51246 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
51247 (4)(d)(ii)(A), the rate of the tax.

51248 (e) (i) Notwithstanding Subsection(4)(d)(i), for a transaction described in Subsection
51249 (4)(e)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
51250 first billing period:

51251 (A) that begins after the effective date of the enactment of the tax or the tax rate
51252 increase; and

51253 (B) if the billing period for the transaction begins before the effective date of the
51254 enactment of the tax or the tax rate increase imposed under this section.

51255 (ii) Notwithstanding Subsection(4)(d)(i), for a transaction described in Subsection
51256 (4)(e)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
51257 billing period:

51258 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
51259 and

51260 (B) if the billing period for the transaction begins before the effective date of the repeal
51261 of the tax or the tax rate decrease imposed under this section.

51262 (iii) Subsections(4)(e)(i) and (ii) apply to transactions subject to a tax under Subsection
51263 59-12-103(1)(i).

51264 Section 1032. Section **59-12-403** is amended to read:

51265 **59-12-403. Enactment or repeal of tax -- Tax rate change -- Effective date --**
51266 **Notice requirements -- Administration, collection, and enforcement of tax.**

51267 (1) For purposes of this section:

51268 (a) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part
51269 4, Annexation.

51270 (b) "Annexing area" means an area that is annexed into a city or town.

51271 (2) (a) Except as provided in Subsection (2)(c) or (d), if, on or after April 1, 2008, a

51272 city or town enacts or repeals a tax or changes the rate of a tax under this part, the enactment,

51273 repeal, or change shall take effect:

51274 (i) on the first day of a calendar quarter; and

51275 (ii) after a 90-day period beginning on the date the commission receives notice meeting

51276 the requirements of Subsection (2)(b) from the city or town.

51277 (b) The notice described in Subsection (2)(a)(ii) shall state:

51278 (i) that the city or town will enact or repeal a tax or change the rate of a tax under this

51279 part;

51280 (ii) the statutory authority for the tax described in Subsection (2)(b)(i);

51281 (iii) the effective date of the tax described in Subsection (2)(b)(i); and

51282 (iv) if the city or town enacts the tax or changes the rate of the tax described in

51283 Subsection (2)(b)(i), the rate of the tax.

51284 (c) (i) Notwithstanding Subsection (2)(a), for a transaction described in Subsection

51285 (2)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the

51286 first billing period:

51287 (A) that begins after the effective date of the enactment of the tax or the tax rate

51288 increase; and

51289 (B) if the billing period for the transaction begins before the effective date of the

51290 enactment of the tax or the tax rate increase imposed under:

51291 (I) Section 59-12-401; or

51292 (II) Section 59-12-402.

51293 (ii) Notwithstanding Subsection (2)(a), for a transaction described in Subsection

51294 (2)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last

51295 billing period:

51296 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;

51297 and

- 51298 (B) if the billing period for the transaction begins before the effective date of the repeal
51299 of the tax or the tax rate decrease imposed under:
- 51300 (I) Section 59-12-401; or
51301 (II) Section 59-12-402.
- 51302 (iii) Subsections (2)(c)(i) and (ii) apply to transactions subject to a tax under:
- 51303 (A) Subsection 59-12-103(1)(b);
51304 (B) Subsection 59-12-103(1)(c);
51305 (C) Subsection 59-12-103(1)(d);
51306 (D) Subsection 59-12-103(1)(e);
51307 (E) Subsection 59-12-103(1)(f);
51308 (F) Subsection 59-12-103(1)(g);
51309 (G) Subsection 59-12-103(1)(h);
51310 (H) Subsection 59-12-103(1)(i);
51311 (I) Subsection 59-12-103(1)(j); or
51312 (J) Subsection 59-12-103(1)(k).
- 51313 (d) (i) Notwithstanding Subsection (2)(a), if a tax due under this chapter on a catalogue
51314 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment,
51315 repeal, or change in the rate of a tax described in Subsection (2)(a) takes effect:
- 51316 (A) on the first day of a calendar quarter; and
51317 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
51318 rate of the tax under Subsection (2)(a).
- 51319 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51320 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 51321 (3) (a) Except as provided in Subsection (3)(c) or (d), if, for an annexation that occurs
51322 on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate
51323 of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:
- 51324 (i) on the first day of a calendar quarter; and
51325 (ii) after a 90-day period beginning on the date the commission receives notice meeting

51326 the requirements of Subsection (3)(b) from the city or town that annexes the annexing area.

51327 (b) The notice described in Subsection (3)(a)(ii) shall state:

51328 (i) that the annexation described in Subsection (3)(a) will result in an enactment, repeal,
51329 or change in the rate of a tax under this part for the annexing area;

51330 (ii) the statutory authority for the tax described in Subsection (3)(b)(i);

51331 (iii) the effective date of the tax described in Subsection (3)(b)(i); and

51332 (iv) if the city or town enacts the tax or changes the rate of the tax described in
51333 Subsection (3)(b)(i), the rate of the tax.

51334 (c) (i) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51335 (3)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
51336 first billing period:

51337 (A) that begins after the effective date of the enactment of the tax or the tax rate
51338 increase; and

51339 (B) if the billing period for the transaction begins before the effective date of the
51340 enactment of the tax or the tax rate increase imposed under:

51341 (I) Section 59-12-401; or

51342 (II) Section 59-12-402.

51343 (ii) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51344 (3)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
51345 billing period:

51346 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
51347 and

51348 (B) if the billing period for the transaction begins before the effective date of the repeal
51349 of the tax or the tax rate decrease imposed under:

51350 (I) Section 59-12-401; or

51351 (II) Section 59-12-402.

51352 (iii) Subsections (3)(c)(i) and (ii) apply to transactions subject to a tax under:

51353 (A) Subsection 59-12-103(1)(b);

51354 (B) Subsection 59-12-103(1)(c);
51355 (C) Subsection 59-12-103(1)(d);
51356 (D) Subsection 59-12-103(1)(e);
51357 (E) Subsection 59-12-103(1)(f);
51358 (F) Subsection 59-12-103(1)(g);
51359 (G) Subsection 59-12-103(1)(h);
51360 (H) Subsection 59-12-103(1)(i);
51361 (I) Subsection 59-12-103(1)(j); or
51362 (J) Subsection 59-12-103(1)(k).
51363 (d) (i) Notwithstanding Subsection (3)(a), if a tax due under this chapter on a catalogue
51364 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment,
51365 repeal, or change in the rate of a tax described in Subsection (3)(a) takes effect:
51366 (A) on the first day of a calendar quarter; and
51367 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
51368 rate of the tax under Subsection (3)(a).
51369 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51370 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
51371 (4) (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be
51372 administered, collected, and enforced in accordance with:
51373 (i) the same procedures used to administer, collect, and enforce the tax under:
51374 (A) Part 1, Tax Collection; or
51375 (B) Part 2, Local Sales and Use Tax Act; and
51376 (ii) Chapter 1, General Taxation Policies.
51377 (b) Notwithstanding Subsection (4)(a), a tax under this part is not subject to
51378 Subsections 59-12-205(2) through (7).
51379 Section 1033. Section **59-12-504** is amended to read:
51380 **59-12-504. Enactment or repeal of tax -- Effective date -- Notice requirements --**
51381 **Administration, collection, and enforcement of tax.**

- 51382 (1) For purposes of this section:
- 51383 (a) "Annexation" means an annexation to:
- 51384 (i) a county under Title 17, Chapter 2, Annexation to County; or
- 51385 (ii) a city or town under Title 10, Chapter 2, Part 4, Annexation.
- 51386 (b) "Annexing area" means an area that is annexed into a county, city, or town.
- 51387 (2) (a) Except as provided in Subsection (2)(c) or (d), if, on or after April 1, 2008, a
- 51388 county, city, or town enacts or repeals a tax under this part, the enactment or repeal shall take
- 51389 effect:
- 51390 (i) on the first day of a calendar quarter; and
- 51391 (ii) after a 90-day period beginning on the date the commission receives notice meeting
- 51392 the requirements of Subsection (2)(b) from the county, city, or town.
- 51393 (b) The notice described in Subsection (2)(a)(ii) shall state:
- 51394 (i) that the county, city, or town will enact or repeal a tax under this part;
- 51395 (ii) the statutory authority for the tax described in Subsection (2)(b)(i);
- 51396 (iii) the effective date of the tax described in Subsection (2)(b)(i); and
- 51397 (iv) if the county, city, or town enacts the tax described in Subsection (2)(b)(i), the rate
- 51398 of the tax.
- 51399 (c) (i) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
- 51400 (2)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 51401 (A) that begins after the effective date of the enactment of the tax; and
- 51402 (B) if the billing period for the transaction begins before the effective date of the
- 51403 enactment of the tax under:
- 51404 (I) Section 59-12-501; or
- 51405 (II) Section 59-12-502.
- 51406 (ii) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
- 51407 (2)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 51408 (A) that began before the effective date of the repeal of the tax; and
- 51409 (B) if the billing period for the transaction begins before the effective date of the repeal

51410 of the tax imposed under:

51411 (I) Section 59-12-501; or

51412 (II) Section 59-12-502.

51413 (iii) Subsections (2)(c)(i) and (ii) apply to transactions subject to a tax under:

51414 (A) Subsection 59-12-103(1)(b);

51415 (B) Subsection 59-12-103(1)(c);

51416 (C) Subsection 59-12-103(1)(d);

51417 (D) Subsection 59-12-103(1)(e);

51418 (E) Subsection 59-12-103(1)(f);

51419 (F) Subsection 59-12-103(1)(g);

51420 (G) Subsection 59-12-103(1)(h);

51421 (H) Subsection 59-12-103(1)(i);

51422 (I) Subsection 59-12-103(1)(j); or

51423 (J) Subsection 59-12-103(1)(k).

51424 (d) (i) Notwithstanding Subsection (2)(a), if a tax due under this chapter on a catalogue

51425 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment

51426 or repeal of a tax described in Subsection (2)(a) takes effect:

51427 (A) on the first day of a calendar quarter; and

51428 (B) beginning 60 days after the effective date of the enactment or repeal under

51429 Subsection (2)(a).

51430 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

51431 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51432 (3) (a) Except as provided in Subsection (3)(c) or (d), if, for an annexation that occurs

51433 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this

51434 part for an annexing area, the enactment or repeal shall take effect:

51435 (i) on the first day of a calendar quarter; and

51436 (ii) after a 90-day period beginning on the date the commission receives notice meeting

51437 the requirements of Subsection (3)(b) from the county, city, or town that annexes the annexing

51438 area.

51439 (b) The notice described in Subsection (3)(a)(ii) shall state:

51440 (i) that the annexation described in Subsection (3)(a) will result in an enactment or
51441 repeal of a tax under this part for the annexing area;

51442 (ii) the statutory authority for the tax described in Subsection (3)(b)(i);

51443 (iii) the effective date of the tax described in Subsection (3)(b)(i); and

51444 (iv) the rate of the tax described in Subsection (3)(b)(i).

51445 (c) (i) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51446 (3)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

51447 (A) that begins after the effective date of the enactment of the tax; and

51448 (B) if the billing period for the transaction begins before the effective date of the
51449 enactment of the tax under:

51450 (I) Section 59-12-501; or

51451 (II) Section 59-12-502.

51452 (ii) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51453 (3)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

51454 (A) that began before the effective date of the repeal of the tax; and

51455 (B) if the billing period for the transaction begins before the effective date of the repeal
51456 of the tax imposed under:

51457 (I) Section 59-12-501; or

51458 (II) Section 59-12-502.

51459 (iii) Subsections (3)(c)(i) and (ii) apply to transactions subject to a tax under:

51460 (A) Subsection 59-12-103(1)(b);

51461 (B) Subsection 59-12-103(1)(c);

51462 (C) Subsection 59-12-103(1)(d);

51463 (D) Subsection 59-12-103(1)(e);

51464 (E) Subsection 59-12-103(1)(f);

51465 (F) Subsection 59-12-103(1)(g);

51466 (G) Subsection 59-12-103(1)(h);

51467 (H) Subsection 59-12-103(1)(i);

51468 (I) Subsection 59-12-103(1)(j); or

51469 (J) Subsection 59-12-103(1)(k).

51470 (d) (i) Notwithstanding Subsection (3)(a), if a tax due under this chapter on a catalogue
51471 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment
51472 or repeal of a tax described in Subsection (3)(a) takes effect:

51473 (A) on the first day of a calendar quarter; and

51474 (B) beginning 60 days after the effective date of the enactment or repeal under
51475 Subsection (3)(a).

51476 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51477 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51478 (4) (a) Except as provided in Subsection (4)(b), a tax authorized under this part shall be
51479 administered, collected, and enforced in accordance with:

51480 (i) the same procedures used to administer, collect, and enforce the tax under:

51481 (A) Part 1, Tax Collection; or

51482 (B) Part 2, Local Sales and Use Tax Act; and

51483 (ii) Chapter 1, General Taxation Policies.

51484 (b) Notwithstanding Subsection (4)(a), a tax under this part is not subject to
51485 Subsections 59-12-205(2) through (7).

51486 Section 1034. Section **59-12-703** is amended to read:

51487 **59-12-703. Opinion question election -- Base -- Rate -- Imposition of tax -- Uses of**
51488 **tax monies -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

51489 (1) (a) (i) A county legislative body may submit an opinion question to the residents of
51490 that county, by majority vote of all members of the legislative body, so that each resident of the
51491 county, except residents in municipalities that have already imposed a sales and use tax under
51492 Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological
51493 Organizations or Facilities, has an opportunity to express the resident's opinion on the

51494 imposition of a local sales and use tax of .1% on the transactions described in Subsection
51495 59-12-103(1) located within the county, to fund recreational and zoological facilities, botanical,
51496 cultural, and zoological organizations, and rural radio stations, in that county.

51497 (ii) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a
51498 tax under this section on:

51499 (A) the sales and uses described in Section 59-12-104 to the extent the sales and uses
51500 are exempt from taxation under Section 59-12-104;

51501 (B) sales and uses within municipalities that have already imposed a sales and use tax
51502 under Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and
51503 Zoological Organizations or Facilities;

51504 (C) amounts paid or charged by a seller that collects a tax under Subsection
51505 59-12-107(1)(b); and

51506 (D) except as provided in Subsection (1)(c), amounts paid or charged for food and food
51507 ingredients.

51508 (b) For purposes of this Subsection (1), the location of a transaction shall be determined
51509 in accordance with Section 59-12-207.

51510 (c) A county legislative body imposing a tax under this section shall impose the tax on
51511 amounts paid or charged for food and food ingredients if:

51512 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
51513 food and food ingredients and tangible personal property other than food and food ingredients;
51514 and

51515 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
51516 accordance with Subsection 59-12-107(1)(b).

51517 (d) The election shall follow the procedures outlined in Title 11, Chapter 14, Local
51518 Government Bonding Act.

51519 (2) (a) If the county legislative body determines that a majority of the county's
51520 registered voters voting on the imposition of the tax have voted in favor of the imposition of the
51521 tax as prescribed in Subsection (1)(a), the county legislative body may impose the tax by a

51522 majority vote of all members of the legislative body on the transactions:

51523 (i) described in Subsection (1); and

51524 (ii) within the county, including the cities and towns located in the county, except those
51525 cities and towns that have already imposed a sales and use tax under Part 14, City or Town
51526 Option Funding For Botanical, Cultural, Recreational, and Zoological Organizations or
51527 Facilities.

51528 (b) A county legislative body may revise county ordinances to reflect statutory changes
51529 to the distribution formula or eligible recipients of revenues generated from a tax imposed under
51530 Subsection (2)(a):

51531 (i) after the county legislative body submits an opinion question to residents of the
51532 county in accordance with Subsection (1) giving them the opportunity to express their opinion
51533 on the proposed revisions to county ordinances; and

51534 (ii) if the county legislative body determines that a majority of those voting on the
51535 opinion question have voted in favor of the revisions.

51536 (3) The monies generated from any tax imposed under Subsection (2) shall be used for
51537 funding:

51538 (a) recreational and zoological facilities located within the county or a city or town
51539 located in the county, except a city or town that has already imposed a sales and use tax under
51540 Part 14, City or Town Option Funding For Botanical, Cultural, Recreational, and Zoological
51541 Organizations or Facilities; and

51542 (b) ongoing operating expenses of:

51543 (i) recreational facilities described in Subsection (3)(a);

51544 (ii) botanical, cultural, and zoological organizations within the county; and

51545 (iii) rural radio stations within the county.

51546 (4) (a) A tax authorized under this part shall be:

51547 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
51548 accordance with:

51549 (A) the same procedures used to administer, collect, and enforce the tax under:

51550 (I) Part 1, Tax Collection; or
51551 (II) Part 2, Local Sales and Use Tax Act; and
51552 (B) Chapter 1, General Taxation Policies; and
51553 (ii) levied for a period of ten years and may be reauthorized at the end of the ten-year
51554 period in accordance with this section.
51555 (b) Notwithstanding Subsection (4)(a)(i), a tax under this part is not subject to
51556 Subsections 59-12-205(2) through (7).
51557 (5) (a) For purposes of this Subsection (5):
51558 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
51559 Annexation to County.
51560 (ii) "Annexing area" means an area that is annexed into a county.
51561 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
51562 county enacts or repeals a tax under this part, the enactment or repeal shall take effect:
51563 (A) on the first day of a calendar quarter; and
51564 (B) after a 90-day period beginning on the date the commission receives notice meeting
51565 the requirements of Subsection (5)(b)(ii) from the county.
51566 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
51567 (A) that the county will enact or repeal a tax under this part;
51568 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
51569 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
51570 (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.
51571 (c) (i) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
51572 (5)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
51573 (A) that begins after the effective date of the enactment of the tax; and
51574 (B) if the billing period for the transaction begins before the effective date of the
51575 enactment of the tax under this section.
51576 (ii) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
51577 (5)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

51578 (A) that began before the effective date of the repeal of the tax; and
51579 (B) if the billing period for the transaction begins before the effective date of the repeal
51580 of the tax imposed under this section.

51581 (iii) Subsections (5)(c)(i) and (ii) apply to transactions subject to a tax under:
51582 (A) Subsection 59-12-103(1)(b);
51583 (B) Subsection 59-12-103(1)(c);
51584 (C) Subsection 59-12-103(1)(d);
51585 (D) Subsection 59-12-103(1)(e);
51586 (E) Subsection 59-12-103(1)(f);
51587 (F) Subsection 59-12-103(1)(g);
51588 (G) Subsection 59-12-103(1)(h);
51589 (H) Subsection 59-12-103(1)(i);
51590 (I) Subsection 59-12-103(1)(j); or
51591 (J) Subsection 59-12-103(1)(k).

51592 (d) (i) Notwithstanding Subsection (5)(b)(i), if a tax due under this chapter on a
51593 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
51594 enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
51595 (A) on the first day of a calendar quarter; and
51596 (B) beginning 60 days after the effective date of the enactment or repeal under
51597 Subsection (5)(b)(i).

51598 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51599 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51600 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
51601 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
51602 part for an annexing area, the enactment or repeal shall take effect:
51603 (A) on the first day of a calendar quarter; and
51604 (B) after a 90-day period beginning on the date the commission receives notice meeting
51605 the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.

- 51606 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
- 51607 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
- 51608 repeal of a tax under this part for the annexing area;
- 51609 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
- 51610 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
- 51611 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).
- 51612 (f) (i) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 51613 (5)(f)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 51614 (A) that begins after the effective date of the enactment of the tax; and
- 51615 (B) if the billing period for the transaction begins before the effective date of the
- 51616 enactment of the tax under this section.
- 51617 (ii) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 51618 (5)(f)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 51619 (A) that began before the effective date of the repeal of the tax; and
- 51620 (B) if the billing period for the transaction begins before the effective date of the repeal
- 51621 of the tax imposed under this section.
- 51622 (iii) Subsections (5)(f)(i) and (ii) apply to transactions subject to a tax under:
- 51623 (A) Subsection 59-12-103(1)(b);
- 51624 (B) Subsection 59-12-103(1)(c);
- 51625 (C) Subsection 59-12-103(1)(d);
- 51626 (D) Subsection 59-12-103(1)(e);
- 51627 (E) Subsection 59-12-103(1)(f);
- 51628 (F) Subsection 59-12-103(1)(g);
- 51629 (G) Subsection 59-12-103(1)(h);
- 51630 (H) Subsection 59-12-103(1)(i);
- 51631 (I) Subsection 59-12-103(1)(j); or
- 51632 (J) Subsection 59-12-103(1)(k).
- 51633 (g) (i) Notwithstanding Subsection (5)(e)(i), if a tax due under this chapter on a

51634 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
51635 enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

51636 (A) on the first day of a calendar quarter; and

51637 (B) beginning 60 days after the effective date of the enactment or repeal under

51638 Subsection (5)(e)(i).

51639 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

51640 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51641 Section 1035. Section **59-12-806** is amended to read:

51642 **59-12-806. Enactment or repeal of tax -- Tax rate change -- Effective date --**

51643 **Notice requirements.**

51644 (1) For purposes of this section:

51645 (a) "Annexation" means an annexation to:

51646 (i) a county under Title 17, Chapter 2, Annexation to County; or

51647 (ii) a city under Title 10, Chapter 2, Part 4, Annexation.

51648 (b) "Annexing area" means an area that is annexed into a county or city.

51649 (2) (a) Except as provided in Subsection (2)(c) or (d), if, on or after July 1, 2004, a
51650 county or city enacts or repeals a tax or changes the rate of a tax under this part, the enactment,
51651 repeal, or change shall take effect:

51652 (i) on the first day of a calendar quarter; and

51653 (ii) after a 90-day period beginning on the date the commission receives notice meeting
51654 the requirements of Subsection (2)(b) from the county or city.

51655 (b) The notice described in Subsection (2)(a)(ii) shall state:

51656 (i) that the county or city will enact or repeal a tax or change the rate of a tax under this
51657 part;

51658 (ii) the statutory authority for the tax described in Subsection (2)(b)(i);

51659 (iii) the effective date of the tax described in Subsection (2)(b)(i); and

51660 (iv) if the county or city enacts the tax or changes the rate of the tax described in
51661 Subsection (2)(b)(i), the rate of the tax.

51662 (c) (i) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
51663 (2)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
51664 first billing period:

51665 (A) that begins after the effective date of the enactment of the tax or the tax rate
51666 increase; and

51667 (B) if the billing period for the transaction begins before the effective date of the
51668 enactment of the tax or the tax rate increase imposed under:

51669 (I) Section 59-12-802; or

51670 (II) Section 59-12-804.

51671 (ii) Notwithstanding Subsection (2)(a), for a transaction described in Subsection
51672 (2)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
51673 billing period:

51674 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
51675 and

51676 (B) if the billing period for the transaction begins before the effective date of the repeal
51677 of the tax or the tax rate decrease imposed under:

51678 (I) Section 59-12-802; or

51679 (II) Section 59-12-804.

51680 (iii) Subsections (2)(c)(i) and (ii) apply to transactions subject to a tax under:

51681 (A) Subsection 59-12-103(1)(b);

51682 (B) Subsection 59-12-103(1)(c);

51683 (C) Subsection 59-12-103(1)(d);

51684 (D) Subsection 59-12-103(1)(e);

51685 (E) Subsection 59-12-103(1)(f);

51686 (F) Subsection 59-12-103(1)(g);

51687 (G) Subsection 59-12-103(1)(h);

51688 (H) Subsection 59-12-103(1)(i);

51689 (I) Subsection 59-12-103(1)(j); or

51690 (J) Subsection 59-12-103(1)(k).

51691 (d) (i) Notwithstanding Subsection (2)(a), if a tax due under this chapter on a catalogue
51692 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment,
51693 repeal, or change in the rate of a tax described in Subsection (2)(a) takes effect:

51694 (A) on the first day of a calendar quarter; and

51695 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
51696 rate of the tax under Subsection (2)(a).

51697 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51698 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51699 (3) (a) Except as provided in Subsection (3)(c) or (d), if, for an annexation that occurs
51700 on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate
51701 of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

51702 (i) on the first day of a calendar quarter; and

51703 (ii) after a 90-day period beginning on the date the commission receives notice meeting
51704 the requirements of Subsection (3)(b) from the county or city that annexes the annexing area.

51705 (b) The notice described in Subsection (3)(a)(ii) shall state:

51706 (i) that the annexation described in Subsection (3)(a) will result in an enactment, repeal,
51707 or change in the rate of a tax under this part for the annexing area;

51708 (ii) the statutory authority for the tax described in Subsection (3)(b)(i);

51709 (iii) the effective date of the tax described in Subsection (3)(b)(i); and

51710 (iv) if the county or city enacts the tax or changes the rate of the tax described in
51711 Subsection (3)(b)(i), the rate of the tax.

51712 (c) (i) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
51713 (3)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
51714 first billing period:

51715 (A) that begins after the effective date of the enactment of the tax or the tax rate
51716 increase; and

51717 (B) if the billing period for the transaction begins before the effective date of the

- 51718 enactment of the tax or the tax rate increase imposed under:
- 51719 (I) Section 59-12-802; or
- 51720 (II) Section 59-12-804.
- 51721 (ii) Notwithstanding Subsection (3)(a), for a transaction described in Subsection
- 51722 (3)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
- 51723 billing period:
- 51724 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
- 51725 and
- 51726 (B) if the billing period for the transaction begins before the effective date of the repeal
- 51727 of the tax or the tax rate decrease imposed under:
- 51728 (I) Section 59-12-802; or
- 51729 (II) Section 59-12-804.
- 51730 (iii) Subsections (3)(c)(i) and (ii) apply to transactions subject to a tax under:
- 51731 (A) Subsection 59-12-103(1)(b);
- 51732 (B) Subsection 59-12-103(1)(c);
- 51733 (C) Subsection 59-12-103(1)(d);
- 51734 (D) Subsection 59-12-103(1)(e);
- 51735 (E) Subsection 59-12-103(1)(f);
- 51736 (F) Subsection 59-12-103(1)(g);
- 51737 (G) Subsection 59-12-103(1)(h);
- 51738 (H) Subsection 59-12-103(1)(i);
- 51739 (I) Subsection 59-12-103(1)(j); or
- 51740 (J) Subsection 59-12-103(1)(k).
- 51741 (d) (i) Notwithstanding Subsection (3)(a), if a tax due under this chapter on a catalogue
- 51742 sale is computed on the basis of sales and use tax rates published in the catalogue, an enactment,
- 51743 repeal, or change in the rate of a tax described in Subsection (3)(a) takes effect:
- 51744 (A) on the first day of a calendar quarter; and
- 51745 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the

51746 rate of a tax under Subsection (3)(a).

51747 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

51748 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51749 Section 1036. Section **59-12-902** is amended to read:

51750 **59-12-902. Sales tax refund for qualified emergency food agencies -- Use of**
51751 **amounts received as refund -- Administration -- Rulemaking authority.**

51752 (1) Beginning on January 1, 1998, a qualified emergency food agency may claim a sales
51753 tax refund as provided in this section on the pounds of food and food ingredients donated to the
51754 qualified emergency food agency.

51755 (2) (a) Subject to the adjustments provided for in Subsection (2)(b), a qualified
51756 emergency food agency may claim a refund in an amount equal to the pounds of food and food
51757 ingredients donated to the qualified emergency food agency multiplied by:

51758 (i) \$1.70; and

51759 (ii) the sum of:

51760 (A) 4.75%; and

51761 (B) the sum of the tax rates provided for in Subsection (2)(b).

51762 (b) Tax rates authorized under the following apply to Subsection (2)(a)(ii)(B):

51763 (i) the tax rate authorized by Section 59-12-204;

51764 (ii) the tax rate authorized by Section 59-12-501 or Section 59-12-1001, but only if all
51765 of the counties, cities, and towns in the state impose the tax:

51766 (A) under Section 59-12-501; or

51767 (B) under Section 59-12-1001;

51768 (iii) the tax rate authorized by Section 59-12-502, but only if all of the counties, cities,
51769 and towns in the state impose the tax under Section 59-12-502;

51770 (iv) the tax rate authorized by Section 59-12-703, but only if all of the counties in the
51771 state impose the tax under Section 59-12-703; and

51772 (v) the tax rate authorized by Section 59-12-1102, but only if all of the counties in the
51773 state impose the tax under Section 59-12-1102.

51774 (c) Beginning on January 1, 1999, the commission shall annually adjust on or before the
51775 second Monday of February the \$1.70 provided in Subsection (2)(a)(i) by a percentage equal to
51776 the percentage difference between the food at home category of the Consumer Price Index for:

- 51777 (i) the preceding calendar year; and
- 51778 (ii) calendar year 1997.

51779 (3) To claim a sales tax refund under this section, a qualified emergency food agency
51780 shall file an application with the commission.

51781 (4) A qualified emergency food agency may use amounts received as a sales tax refund
51782 under this section only for a purpose related to:

- 51783 (a) warehousing and distributing food and food ingredients to other agencies and
51784 organizations providing food and food ingredients to low-income persons; or
- 51785 (b) providing food and food ingredients directly to low-income persons.

51786 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51787 Administrative Rulemaking Act, the commission may make rules providing procedures for
51788 implementing the sales tax refund under this section, including:

- 51789 (a) standards for determining and verifying the amount of the sales tax refund; and
- 51790 (b) procedures for a qualified emergency food agency to apply for a sales tax refund,
51791 including the frequency with which a qualified emergency food agency may apply for a sales tax
51792 refund.

51793 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51794 Administrative Rulemaking Act, the Division of Housing and Community Development may
51795 establish rules providing for the certification of emergency food agencies to claim a refund
51796 under this part.

51797 Section 1037. Section **59-12-1001** is amended to read:

51798 **59-12-1001. Authority to impose tax for highways or to fund a system for public**
51799 **transit -- Base -- Rate -- Ordinance requirements -- Voter approval requirements --**
51800 **Election requirements -- Notice of election requirements -- Exceptions to voter approval**
51801 **requirements -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

51802 (1) (a) A city or town in which the transactions described in Subsection 59-12-103(1)
51803 are not subject to a sales and use tax under Section 59-12-501 may as provided in this part
51804 impose a sales and use tax of:

51805 (i) beginning on January 1, 1998, and ending on December 31, 2007, .25% on the
51806 transactions described in Subsection 59-12-103(1) located within the city or town; or

51807 (ii) beginning on January 1, 2008, .30% on the transactions described in Subsection
51808 59-12-103(1) located within the city or town.

51809 (b) Notwithstanding Subsection (1)(a), a city or town may not impose a tax under this
51810 section on:

51811 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
51812 exempt from taxation under Section 59-12-104;

51813 (ii) amounts paid or charged by a seller that collects a tax under Subsection
51814 59-12-107(1)(b); and

51815 (iii) except as provided in Subsection (1)(d), amounts paid or charged for food and food
51816 ingredients.

51817 (c) For purposes of this Subsection (1), the location of a transaction shall be determined
51818 in accordance with Section 59-12-207.

51819 (d) A city or town imposing a tax under this section shall impose the tax on amounts
51820 paid or charged for food and food ingredients if:

51821 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
51822 food and food ingredients and tangible personal property other than food and food ingredients;
51823 and

51824 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
51825 accordance with Subsection 59-12-107(1)(b).

51826 (2) (a) A city or town imposing a tax under this part may use the revenues generated by
51827 the tax:

51828 (i) for the construction and maintenance of highways under the jurisdiction of the city
51829 or town imposing the tax;

- 51830 (ii) subject to Subsection (2)(b), to fund a system for public transit; or
- 51831 (iii) for a combination of the purposes described in Subsections (2)(a)(i) and (ii).
- 51832 (b) (i) For purposes of Subsection (2)(a)(ii) and except as provided in Subsection
- 51833 (2)(b)(ii), "public transit" is as defined in Section 17B-2a-802.
- 51834 (ii) Notwithstanding Subsection (2)(b)(i), "public transit" does not include a fixed
- 51835 guideway system.
- 51836 (3) To impose a tax under this part, the governing body of the city or town shall:
- 51837 (a) pass an ordinance approving the tax; and
- 51838 (b) except as provided in Subsection (7) or (8), obtain voter approval for the tax as
- 51839 provided in Subsection (4).
- 51840 (4) To obtain voter approval for a tax under Subsection (3)(b), a city or town shall:
- 51841 (a) hold an election during:
- 51842 (i) a regular general election; or
- 51843 (ii) a municipal general election; and
- 51844 (b) publish notice of the election:
- 51845 (i) 15 days or more before the day on which the election is held; and
- 51846 (ii) in a newspaper of general circulation in the city or town.
- 51847 (5) An ordinance approving a tax under this part shall provide an effective date for the
- 51848 tax as provided in Subsection (6).
- 51849 (6) (a) For purposes of this Subsection (6):
- 51850 (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part
- 51851 4, Annexation.
- 51852 (ii) "Annexing area" means an area that is annexed into a city or town.
- 51853 (b) (i) Except as provided in Subsection (6)(c) or (d), if, on or after April 1, 2008, a city
- 51854 or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:
- 51855 (A) on the first day of a calendar quarter; and
- 51856 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 51857 the requirements of Subsection (6)(b)(ii) from the city or town.

- 51858 (ii) The notice described in Subsection (6)(b)(i)(B) shall state:
- 51859 (A) that the city or town will enact or repeal a tax under this part;
- 51860 (B) the statutory authority for the tax described in Subsection (6)(b)(ii)(A);
- 51861 (C) the effective date of the tax described in Subsection (6)(b)(ii)(A); and
- 51862 (D) if the city or town enacts the tax described in Subsection (6)(b)(ii)(A), the rate of
- 51863 the tax.
- 51864 (c) (i) Notwithstanding Subsection (6)(b)(i), for a transaction described in Subsection
- 51865 (6)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 51866 (A) that begins after the effective date of the enactment of the tax; and
- 51867 (B) if the billing period for the transaction begins before the effective date of the
- 51868 enactment of the tax under Subsection (1).
- 51869 (ii) Notwithstanding Subsection (6)(b)(i), for a transaction described in Subsection
- 51870 (6)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 51871 (A) that began before the effective date of the repeal of the tax; and
- 51872 (B) if the billing period for the transaction begins before the effective date of the repeal
- 51873 of the tax imposed under Subsection (1).
- 51874 (iii) Subsections (6)(c)(i) and (ii) apply to transactions subject to a tax under:
- 51875 (A) Subsection 59-12-103(1)(b);
- 51876 (B) Subsection 59-12-103(1)(c);
- 51877 (C) Subsection 59-12-103(1)(d);
- 51878 (D) Subsection 59-12-103(1)(e);
- 51879 (E) Subsection 59-12-103(1)(f);
- 51880 (F) Subsection 59-12-103(1)(g);
- 51881 (G) Subsection 59-12-103(1)(h);
- 51882 (H) Subsection 59-12-103(1)(i);
- 51883 (I) Subsection 59-12-103(1)(j); or
- 51884 (J) Subsection 59-12-103(1)(k).
- 51885 (d) (i) Notwithstanding Subsection (6)(b)(i), if a tax due under this chapter on a

51886 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
51887 enactment or repeal of a tax described in Subsection (6)(b)(i) takes effect:

51888 (A) on the first day of a calendar quarter; and

51889 (B) beginning 60 days after the effective date of the enactment or repeal under
51890 Subsection (6)(b)(i).

51891 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
51892 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51893 (e) (i) Except as provided in Subsection (6)(f) or (g), if, for an annexation that occurs
51894 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
51895 part for an annexing area, the enactment or repeal shall take effect:

51896 (A) on the first day of a calendar quarter; and

51897 (B) after a 90-day period beginning on the date the commission receives notice meeting
51898 the requirements of Subsection (6)(e)(ii) from the city or town that annexes the annexing area.

51899 (ii) The notice described in Subsection (6)(e)(i)(B) shall state:

51900 (A) that the annexation described in Subsection (6)(e)(i) will result in an enactment or
51901 repeal of a tax under this part for the annexing area;

51902 (B) the statutory authority for the tax described in Subsection (6)(e)(ii)(A);

51903 (C) the effective date of the tax described in Subsection (6)(e)(ii)(A); and

51904 (D) the rate of the tax described in Subsection (6)(e)(ii)(A).

51905 (f) (i) Notwithstanding Subsection (6)(e)(i), for a transaction described in Subsection
51906 (6)(f)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

51907 (A) that begins after the effective date of the enactment of the tax; and

51908 (B) if the billing period for the transaction begins before the effective date of the
51909 enactment of the tax under Subsection (1).

51910 (ii) Notwithstanding Subsection (6)(e)(i), for a transaction described in Subsection
51911 (6)(f)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

51912 (A) that began before the effective date of the repeal of the tax; and

51913 (B) if the billing period for the transaction begins before the effective date of the repeal

51914 of the tax imposed under Subsection (1).

51915 (iii) Subsections (6)(f)(i) and (ii) apply to transactions subject to a tax under:

51916 (A) Subsection 59-12-103(1)(b);

51917 (B) Subsection 59-12-103(1)(c);

51918 (C) Subsection 59-12-103(1)(d);

51919 (D) Subsection 59-12-103(1)(e);

51920 (E) Subsection 59-12-103(1)(f);

51921 (F) Subsection 59-12-103(1)(g);

51922 (G) Subsection 59-12-103(1)(h);

51923 (H) Subsection 59-12-103(1)(i);

51924 (I) Subsection 59-12-103(1)(j); or

51925 (J) Subsection 59-12-103(1)(k).

51926 (g) (i) Notwithstanding Subsection (6)(e)(i), if a tax due under this chapter on a

51927 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an

51928 enactment or repeal of a tax described in Subsection (6)(e)(i) takes effect:

51929 (A) on the first day of a calendar quarter; and

51930 (B) beginning 60 days after the effective date of the enactment or repeal under

51931 Subsection (6)(e)(i).

51932 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

51933 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

51934 (7) (a) Except as provided in Subsection (7)(b), a city or town is not subject to the

51935 voter approval requirements of Subsection (3)(b) if:

51936 (i) on or before January 1, 1996, the city or town imposed a license fee or tax on

51937 businesses based on gross receipts pursuant to Section 10-1-203; or

51938 (ii) the city or town:

51939 (A) on or before June 30, 2002, obtained voter approval in accordance with Subsection

51940 (3)(b) to impose a tax under this part for a purpose described in Subsection (2)(a)(i); and

51941 (B) on or after July 1, 2002, uses the revenues generated by a tax under this part for a

51942 purpose described in Subsection (2)(a).

51943 (b) Notwithstanding Subsection (7)(a), the exception from the voter approval
51944 requirements in Subsection (7)(a)(i) does not apply to a city or town that, on or before January
51945 1, 1996, imposed a license fee or tax on only one class of businesses based on gross receipts
51946 pursuant to Section 10-1-203.

51947 (8) A city or town is not subject to the voter approval requirements of Subsection
51948 (3)(b) if:

51949 (a) on December 31, 2007, the city or town imposes a tax of .25% under this section;
51950 and

51951 (b) on or after January 1, 2008, the city or town increases the tax rate under this section
51952 to .30%.

51953 Section 1038. Section **59-12-1102** is amended to read:

51954 **59-12-1102. Base -- Rate -- Imposition of tax -- Distribution of revenue --**
51955 **Administration -- Enactment or repeal of tax -- Effective date -- Notice requirements.**

51956 (1) (a) (i) Subject to Subsections (2) through (5), and in addition to any other tax
51957 authorized by this chapter, a county may impose by ordinance a county option sales and use tax
51958 of .25% upon the transactions described in Subsection 59-12-103(1).

51959 (ii) Notwithstanding Subsection (1)(a)(i), a county may not impose a tax under this
51960 section on:

51961 (A) the sales and uses described in Section 59-12-104 to the extent the sales and uses
51962 are exempt from taxation under Section 59-12-104; and

51963 (B) any amounts paid or charged by a seller that collects a tax under Subsection
51964 59-12-107(1)(b) unless all of the counties in the state impose a tax under this section.

51965 (b) For purposes of this Subsection (1), the location of a transaction shall be determined
51966 in accordance with Section 59-12-207.

51967 (c) The county option sales and use tax under this section shall be imposed:

51968 (i) upon transactions that are located within the county, including transactions that are
51969 located within municipalities in the county; and

51970 (ii) except as provided in Subsection (1)(d) or (5), beginning on the first day of January:
51971 (A) of the next calendar year after adoption of the ordinance imposing the tax if the
51972 ordinance is adopted on or before May 25; or
51973 (B) of the second calendar year after adoption of the ordinance imposing the tax if the
51974 ordinance is adopted after May 25.
51975 (d) Notwithstanding Subsection (1)(c)(ii), the county option sales and use tax under this
51976 section shall be imposed:
51977 (i) beginning January 1, 1998, if an ordinance adopting the tax imposed on or before
51978 September 4, 1997; or
51979 (ii) beginning January 1, 1999, if an ordinance adopting the tax is imposed during 1997
51980 but after September 4, 1997.
51981 (2) (a) Before imposing a county option sales and use tax under Subsection (1), a
51982 county shall hold two public hearings on separate days in geographically diverse locations in
51983 the county.
51984 (b) (i) At least one of the hearings required by Subsection (2)(a) shall have a starting
51985 time of no earlier than 6 p.m.
51986 (ii) The earlier of the hearings required by Subsection (2)(a) shall be no less than seven
51987 days after the day the first advertisement required by Subsection (2)(c) is published.
51988 (c) (i) Before holding the public hearings required by Subsection (2)(a), the county shall
51989 advertise in a newspaper of general circulation in the county:
51990 (A) its intent to adopt a county option sales and use tax;
51991 (B) the date, time, and location of each public hearing; and
51992 (C) a statement that the purpose of each public hearing is to obtain public comments
51993 regarding the proposed tax.
51994 (ii) The advertisement shall be published once each week for the two weeks preceding
51995 the earlier of the two public hearings.
51996 (iii) The advertisement shall be no less than 1/8 page in size, and the type used shall be
51997 no smaller than 18 point and surrounded by a 1/4-inch border.

51998 (iv) The advertisement may not be placed in that portion of the newspaper where legal
51999 notices and classified advertisements appear.

52000 (v) Whenever possible:

52001 (A) the advertisement shall appear in a newspaper that is published at least five days a
52002 week, unless the only newspaper in the county is published less than five days a week; and

52003 (B) the newspaper selected shall be one of general interest and readership in the
52004 community, and not one of limited subject matter.

52005 (d) The adoption of an ordinance imposing a county option sales and use tax is subject
52006 to a local referendum election as provided in Title 20A, Chapter 7, Part 6, Local Referenda -
52007 Procedures, except that:

52008 (i) notwithstanding Subsection 20A-7-609(2)(a), the county clerk shall hold a
52009 referendum election that qualifies for the ballot on the earlier of the next regular general election
52010 date or the next municipal general election date more than 155 days after adoption of an
52011 ordinance under this section;

52012 (ii) for 1997 only, the 120-day period in Subsection 20A-7-606(1) shall be 30 days; and

52013 (iii) the deadlines in Subsections 20A-7-606(2) and (3) do not apply, and the clerk shall
52014 take the actions required by those subsections before the referendum election.

52015 (3) (a) If the aggregate population of the counties imposing a county option sales and
52016 use tax under Subsection (1) is less than 75% of the state population, the tax levied under
52017 Subsection (1) shall be distributed to the county in which the tax was collected.

52018 (b) If the aggregate population of the counties imposing a county option sales and use
52019 tax under Subsection (1) is greater than or equal to 75% of the state population:

52020 (i) 50% of the tax collected under Subsection (1) in each county shall be distributed to
52021 the county in which the tax was collected; and

52022 (ii) except as provided in Subsection (3)(c), 50% of the tax collected under Subsection
52023 (1) in each county shall be distributed proportionately among all counties imposing the tax,
52024 based on the total population of each county.

52025 (c) If the amount to be distributed annually to a county under Subsection (3)(b)(ii),

52026 when combined with the amount distributed to the county under Subsection (3)(b)(i), does not
52027 equal at least \$75,000, then:

52028 (i) the amount to be distributed annually to that county under Subsection (3)(b)(ii) shall
52029 be increased so that, when combined with the amount distributed to the county under
52030 Subsection (3)(b)(i), the amount distributed annually to the county is \$75,000; and

52031 (ii) the amount to be distributed annually to all other counties under Subsection
52032 (3)(b)(ii) shall be reduced proportionately to offset the additional amount distributed under
52033 Subsection (3)(c)(i).

52034 (d) The commission shall establish rules to implement the distribution of the tax under
52035 Subsections (3)(a), (b), and (c).

52036 (e) Notwithstanding Subsections (3)(a) and (b), if a county imposes a tax under this
52037 section on any amounts paid or charged by a seller that collects a tax in accordance with
52038 Subsection 59-12-107(1)(b), the revenues generated by the tax shall be distributed as provided
52039 in Subsection 59-12-103(3)(c).

52040 (4) (a) Except as provided in Subsection (4)(b) or (c), a tax authorized under this part
52041 shall be administered, collected, and enforced in accordance with:

52042 (i) the same procedures used to administer, collect, and enforce the tax under:

52043 (A) Part 1, Tax Collection; or

52044 (B) Part 2, Local Sales and Use Tax Act; and

52045 (ii) Chapter 1, General Taxation Policies.

52046 (b) Notwithstanding Subsection (4)(a), a tax under this part is not subject to
52047 Subsections 59-12-205(2) through (7).

52048 (c) Notwithstanding Subsection (4)(a), the fee charged by the commission under
52049 Section 59-12-206 shall be based on the distribution amounts resulting after all the applicable
52050 distribution calculations under Subsection (3) have been made.

52051 (5) (a) For purposes of this Subsection (5):

52052 (i) "Annexation" means an annexation to a county under Title 17, Chapter 2,
52053 Annexation to County.

- 52054 (ii) "Annexing area" means an area that is annexed into a county.
- 52055 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
- 52056 county enacts or repeals a tax under this part:
- 52057 (A) (I) the enactment shall take effect as provided in Subsection (1)(c); or
- 52058 (II) the repeal shall take effect on the first day of a calendar quarter; and
- 52059 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 52060 the requirements of Subsection (5)(b)(ii) from the county.
- 52061 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:
- 52062 (A) that the county will enact or repeal a tax under this part;
- 52063 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);
- 52064 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and
- 52065 (D) if the county enacts the tax described in Subsection (5)(b)(ii)(A), the rate of the tax.
- 52066 (c) (i) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
- 52067 (5)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 52068 (A) that begins after the effective date of the enactment of the tax; and
- 52069 (B) if the billing period for the transaction begins before the effective date of the
- 52070 enactment of the tax under Subsection (1).
- 52071 (ii) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
- 52072 (5)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 52073 (A) that began before the effective date of the repeal of the tax; and
- 52074 (B) if the billing period for the transaction begins before the effective date of the repeal
- 52075 of the tax imposed under Subsection (1).
- 52076 (iii) Subsections (5)(c)(i) and (ii) apply to transactions subject to a tax under:
- 52077 (A) Subsection 59-12-103(1)(b);
- 52078 (B) Subsection 59-12-103(1)(c);
- 52079 (C) Subsection 59-12-103(1)(d);
- 52080 (D) Subsection 59-12-103(1)(e);
- 52081 (E) Subsection 59-12-103(1)(f);

- 52082 (F) Subsection 59-12-103(1)(g);
- 52083 (G) Subsection 59-12-103(1)(h);
- 52084 (H) Subsection 59-12-103(1)(i);
- 52085 (I) Subsection 59-12-103(1)(j); or
- 52086 (J) Subsection 59-12-103(1)(k).
- 52087 (d) (i) Notwithstanding Subsection (5)(b)(i), if a tax due under this chapter on a
- 52088 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 52089 enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
- 52090 (A) on the first day of a calendar quarter; and
- 52091 (B) beginning 60 days after the effective date of the enactment or repeal under
- 52092 Subsection (5)(b)(i).
- 52093 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 52094 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 52095 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
- 52096 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
- 52097 part for an annexing area, the enactment or repeal shall take effect:
- 52098 (A) on the first day of a calendar quarter; and
- 52099 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 52100 the requirements of Subsection (5)(e)(ii) from the county that annexes the annexing area.
- 52101 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
- 52102 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
- 52103 repeal of a tax under this part for the annexing area;
- 52104 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
- 52105 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
- 52106 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).
- 52107 (f) (i) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 52108 (5)(f)(iii), the enactment of a tax shall take effect on the first day of the first billing period:
- 52109 (A) that begins after the effective date of the enactment of the tax; and

52110 (B) if the billing period for the transaction begins before the effective date of the
52111 enactment of the tax under Subsection (1).

52112 (ii) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
52113 (5)(f)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

52114 (A) that began before the effective date of the repeal of the tax; and

52115 (B) if the billing period for the transaction begins before the effective date of the repeal
52116 of the tax imposed under Subsection (1).

52117 (iii) Subsections (5)(f)(i) and (ii) apply to transactions subject to a tax under:

52118 (A) Subsection 59-12-103(1)(b);

52119 (B) Subsection 59-12-103(1)(c);

52120 (C) Subsection 59-12-103(1)(d);

52121 (D) Subsection 59-12-103(1)(e);

52122 (E) Subsection 59-12-103(1)(f);

52123 (F) Subsection 59-12-103(1)(g);

52124 (G) Subsection 59-12-103(1)(h);

52125 (H) Subsection 59-12-103(1)(i);

52126 (I) Subsection 59-12-103(1)(j); or

52127 (J) Subsection 59-12-103(1)(k).

52128 (g) (i) Notwithstanding Subsection (5)(e)(i), if a tax due under this chapter on a
52129 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
52130 enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:

52131 (A) on the first day of a calendar quarter; and

52132 (B) beginning 60 days after the effective date of the enactment or repeal under
52133 Subsection (5)(e)(i).

52134 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

52135 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

52136 Section 1039. Section **59-12-1302** is amended to read:

52137 **59-12-1302. Imposition of tax -- Base -- Rate -- Enactment or repeal of tax -- Tax**

52138 **rate change -- Effective date -- Notice requirements.**

52139 (1) Beginning on or after January 1, 1998, the governing body of a town may impose a
52140 tax as provided in this part in an amount that does not exceed 1%.

52141 (2) A town may impose a tax as provided in this part if the town imposed a license fee
52142 or tax on businesses based on gross receipts under Section 10-1-203 on or before January 1,
52143 1996.

52144 (3) A town imposing a tax under this section shall:

52145 (a) except as provided in Subsection (4), impose the tax on the transactions described in
52146 Subsection 59-12-103(1) located within the town; and

52147 (b) provide an effective date for the tax as provided in Subsection (5).

52148 (4) (a) Notwithstanding Subsection (3)(a), a town may not impose a tax under this
52149 section on:

52150 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
52151 exempt from taxation under Section 59-12-104;

52152 (ii) amounts paid or charged by a seller that collects a tax under Subsection
52153 59-12-107(1)(b); and

52154 (iii) except as provided in Subsection (4)(c), amounts paid or charged for food and food
52155 ingredients.

52156 (b) For purposes of this Subsection (4), the location of a transaction shall be determined
52157 in accordance with Section 59-12-207.

52158 (c) A town imposing a tax under this section shall impose the tax on amounts paid or
52159 charged for food and food ingredients if:

52160 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
52161 food and food ingredients and tangible personal property other than food and food ingredients;
52162 and

52163 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
52164 accordance with Subsection 59-12-107(1)(b).

52165 (5) (a) For purposes of this Subsection (5):

52166 (i) "Annexation" means an annexation to a town under Title 10, Chapter 2, Part 4,
52167 Annexation.

52168 (ii) "Annexing area" means an area that is annexed into a town.

52169 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a
52170 town enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal,
52171 or change shall take effect:

52172 (A) on the first day of a calendar quarter; and

52173 (B) after a 90-day period beginning on the date the commission receives notice meeting
52174 the requirements of Subsection (5)(b)(ii) from the town.

52175 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:

52176 (A) that the town will enact or repeal a tax or change the rate of a tax under this part;

52177 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

52178 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

52179 (D) if the town enacts the tax or changes the rate of the tax described in Subsection
52180 (5)(b)(ii)(A), the rate of the tax.

52181 (c) (i) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
52182 (5)(c)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
52183 first billing period:

52184 (A) that begins after the effective date of the enactment of the tax or the tax rate
52185 increase; and

52186 (B) if the billing period for the transaction begins before the effective date of the
52187 enactment of the tax or the tax rate increase imposed under Subsection (1).

52188 (ii) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
52189 (5)(c)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
52190 billing period:

52191 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
52192 and

52193 (B) if the billing period for the transaction begins before the effective date of the repeal

52194 of the tax or the tax rate decrease imposed under Subsection (1).

52195 (iii) Subsections (5)(c)(i) and (ii) apply to transactions subject to a tax under:

52196 (A) Subsection 59-12-103(1)(b);

52197 (B) Subsection 59-12-103(1)(c);

52198 (C) Subsection 59-12-103(1)(d);

52199 (D) Subsection 59-12-103(1)(e);

52200 (E) Subsection 59-12-103(1)(f);

52201 (F) Subsection 59-12-103(1)(g);

52202 (G) Subsection 59-12-103(1)(h);

52203 (H) Subsection 59-12-103(1)(i);

52204 (I) Subsection 59-12-103(1)(j); or

52205 (J) Subsection 59-12-103(1)(k).

52206 (d) (i) Notwithstanding Subsection (5)(b)(i), if a tax due under this chapter on a

52207 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an

52208 enactment, repeal, or change in the rate of a tax described in Subsection (5)(b)(i) takes effect:

52209 (A) on the first day of a calendar quarter; and

52210 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the

52211 rate of the tax under Subsection (5)(b)(i).

52212 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

52213 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

52214 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs

52215 on or after July 1, 2004, the annexation will result in the enactment, repeal, or change in the rate

52216 of a tax under this part for an annexing area, the enactment, repeal, or change shall take effect:

52217 (A) on the first day of a calendar quarter; and

52218 (B) after a 90-day period beginning on the date the commission receives notice meeting

52219 the requirements of Subsection (5)(e)(ii) from the town that annexes the annexing area.

52220 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:

52221 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment,

- 52222 repeal, or change in the rate of a tax under this part for the annexing area;
- 52223 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
- 52224 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
- 52225 (D) if the town enacts the tax or changes the rate of the tax described in Subsection
- 52226 (5)(e)(ii)(A), the rate of the tax.
- 52227 (f) (i) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 52228 (5)(f)(iii), the enactment of a tax or a tax rate increase shall take effect on the first day of the
- 52229 first billing period:
- 52230 (A) that begins after the effective date of the enactment of the tax or the tax rate
- 52231 increase; and
- 52232 (B) if the billing period for the transaction begins before the effective date of the
- 52233 enactment of the tax or the tax rate increase imposed under Subsection (1).
- 52234 (ii) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 52235 (5)(f)(iii), the repeal of a tax or a tax rate decrease shall take effect on the first day of the last
- 52236 billing period:
- 52237 (A) that began before the effective date of the repeal of the tax or the tax rate decrease;
- 52238 and
- 52239 (B) if the billing period for the transaction begins before the effective date of the repeal
- 52240 of the tax or the tax rate decrease imposed under Subsection (1).
- 52241 (iii) Subsections (5)(f)(i) and (ii) apply to transactions subject to a tax under:
- 52242 (A) Subsection 59-12-103(1)(b);
- 52243 (B) Subsection 59-12-103(1)(c);
- 52244 (C) Subsection 59-12-103(1)(d);
- 52245 (D) Subsection 59-12-103(1)(e);
- 52246 (E) Subsection 59-12-103(1)(f);
- 52247 (F) Subsection 59-12-103(1)(g);
- 52248 (G) Subsection 59-12-103(1)(h);
- 52249 (H) Subsection 59-12-103(1)(i);

52250 (I) Subsection 59-12-103(1)(j); or
 52251 (J) Subsection 59-12-103(1)(k).
 52252 (g) (i) Notwithstanding Subsection (5)(e)(i), if a tax due under this chapter on a
 52253 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
 52254 enactment, repeal, or change in the rate of a tax described in Subsection (5)(e)(i) takes effect:
 52255 (A) on the first day of a calendar quarter; and
 52256 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
 52257 rate of the tax under Subsection (5)(e)(i).
 52258 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 52259 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
 52260 (6) The commission shall:
 52261 (a) except as provided in Subsection (6)(c), distribute the revenues generated by the tax
 52262 under this section to the town imposing the tax;
 52263 (b) except as provided in Subsection (7), administer, collect, and enforce the tax
 52264 authorized under this section in accordance with:
 52265 (i) the same procedures used to administer, collect, and enforce the tax under:
 52266 (A) Part 1, Tax Collection; or
 52267 (B) Part 2, Local Sales and Use Tax Act; and
 52268 (ii) Chapter 1, General Taxation Policies; and
 52269 (c) deduct from the distribution under Subsection (6)(a) an administrative charge for
 52270 collecting the tax as provided in Section 59-12-206.
 52271 (7) Notwithstanding Subsection (6)(b), a tax under this section is not subject to
 52272 Subsections 59-12-205(2) through (7).
 52273 Section 1040. Section **59-12-1402** is amended to read:
 52274 **59-12-1402. Opinion question election -- Base -- Rate -- Imposition of tax -- Uses**
 52275 **of tax monies -- Enactment or repeal of tax -- Effective date -- Notice requirements.**
 52276 (1) (a) (i) Subject to Subsection (6), beginning on January 1, 2003, a city or town
 52277 legislative body subject to this part may submit an opinion question to the residents of that city

52278 or town, by majority vote of all members of the legislative body, so that each resident of the city
52279 or town has an opportunity to express the resident's opinion on the imposition of a local sales
52280 and use tax of .1% on the transactions described in Subsection 59-12-103(1) located within the
52281 city or town, to fund recreational and zoological facilities and botanical, cultural, and zoological
52282 organizations in that city or town.

52283 (ii) Notwithstanding Subsection (1)(a)(i), a city or town legislative body may not
52284 impose a tax under this section:

52285 (A) if the county in which the city or town is located imposes a tax under Part 7,
52286 County Option Funding for Botanical, Cultural, Recreational, and Zoological Organizations or
52287 Facilities;

52288 (B) on the sales and uses described in Section 59-12-104 to the extent the sales and
52289 uses are exempt from taxation under Section 59-12-104;

52290 (C) on amounts paid or charged by a seller that collects a tax under Subsection
52291 59-12-107(1)(b); and

52292 (D) except as provided in Subsection (1)(c), on amounts paid or charged for food and
52293 food ingredients.

52294 (b) For purposes of this Subsection (1), the location of a transaction shall be determined
52295 in accordance with Section 59-12-207.

52296 (c) A city or town legislative body imposing a tax under this section shall impose the tax
52297 on amounts paid or charged for food and food ingredients if:

52298 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
52299 food and food ingredients and tangible personal property other than food and food ingredients;
52300 and

52301 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
52302 accordance with Subsection 59-12-107(1)(b).

52303 (d) The election shall be held at a regular general election or a municipal general
52304 election, as those terms are defined in Section 20A-1-102, and shall follow the procedures
52305 outlined in Title 11, Chapter 14, Local Government Bonding Act, except as provided in

52306 Subsection (6).

52307 (2) If the city or town legislative body determines that a majority of the city's or town's
52308 registered voters voting on the imposition of the tax have voted in favor of the imposition of the
52309 tax as prescribed in Subsection (1)(a), the city or town legislative body may impose the tax by a
52310 majority vote of all members of the legislative body.

52311 (3) The monies generated from any tax imposed under Subsection (2) shall be used for
52312 financing:

52313 (a) recreational and zoological facilities within the city or town or within the geographic
52314 area of entities that are parties to an interlocal agreement, to which the city or town is a party,
52315 providing for recreational or zoological facilities; and

52316 (b) ongoing operating expenses of botanical, cultural, and zoological organizations
52317 within the city or town or within the geographic area of entities that are parties to an interlocal
52318 agreement, to which the city or town is a party, providing for the support of botanical, cultural,
52319 or zoological organizations.

52320 (4) (a) A tax authorized under this part shall be:

52321 (i) except as provided in Subsection (4)(b), administered, collected, and enforced in
52322 accordance with:

52323 (A) the same procedures used to administer, collect, and enforce the tax under:

52324 (I) Part 1, Tax Collection; or

52325 (II) Part 2, Local Sales and Use Tax Act; and

52326 (B) Chapter 1, General Taxation Policies; and

52327 (ii) (A) levied for a period of eight years; and

52328 (B) may be reauthorized at the end of the eight-year period in accordance with this
52329 section.

52330 (b) Notwithstanding Subsection (4)(a)(i), a tax under this section is not subject to
52331 Subsections 59-12-205(2) through (7).

52332 (5) (a) For purposes of this Subsection (5):

52333 (i) "Annexation" means an annexation to a city or town under Title 10, Chapter 2, Part

52334 4, Annexation.

52335 (ii) "Annexing area" means an area that is annexed into a city or town.

52336 (b) (i) Except as provided in Subsection (5)(c) or (d), if, on or after July 1, 2004, a city
52337 or town enacts or repeals a tax under this part, the enactment or repeal shall take effect:

52338 (A) on the first day of a calendar quarter; and

52339 (B) after a 90-day period beginning on the date the commission receives notice meeting
52340 the requirements of Subsection (5)(b)(ii) from the city or town.

52341 (ii) The notice described in Subsection (5)(b)(i)(B) shall state:

52342 (A) that the city or town will enact or repeal a tax under this part;

52343 (B) the statutory authority for the tax described in Subsection (5)(b)(ii)(A);

52344 (C) the effective date of the tax described in Subsection (5)(b)(ii)(A); and

52345 (D) if the city or town enacts the tax described in Subsection (5)(b)(ii)(A), the rate of
52346 the tax.

52347 (c) (i) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
52348 (5)(c)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

52349 (A) that begins after the effective date of the enactment of the tax; and

52350 (B) if the billing period for the transaction begins before the effective date of the
52351 enactment of the tax under this section.

52352 (ii) Notwithstanding Subsection (5)(b)(i), for a transaction described in Subsection
52353 (5)(c)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

52354 (A) that began before the effective date of the repeal of the tax; and

52355 (B) if the billing period for the transaction begins before the effective date of the repeal
52356 of the tax imposed under this section.

52357 (iii) Subsections (5)(c)(i) and (ii) apply to transactions subject to a tax under:

52358 (A) Subsection 59-12-103(1)(b);

52359 (B) Subsection 59-12-103(1)(c);

52360 (C) Subsection 59-12-103(1)(d);

52361 (D) Subsection 59-12-103(1)(e);

- 52362 (E) Subsection 59-12-103(1)(f);
- 52363 (F) Subsection 59-12-103(1)(g);
- 52364 (G) Subsection 59-12-103(1)(h);
- 52365 (H) Subsection 59-12-103(1)(i);
- 52366 (I) Subsection 59-12-103(1)(j); or
- 52367 (J) Subsection 59-12-103(1)(k).
- 52368 (d) (i) Notwithstanding Subsection (5)(b)(i), if a tax due under this chapter on a
- 52369 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 52370 enactment or repeal of a tax described in Subsection (5)(b)(i) takes effect:
- 52371 (A) on the first day of a calendar quarter; and
- 52372 (B) beginning 60 days after the effective date of the enactment or repeal under
- 52373 Subsection (5)(b)(i).
- 52374 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 52375 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 52376 (e) (i) Except as provided in Subsection (5)(f) or (g), if, for an annexation that occurs
- 52377 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
- 52378 part for an annexing area, the enactment or repeal shall take effect:
- 52379 (A) on the first day of a calendar quarter; and
- 52380 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 52381 the requirements of Subsection (5)(e)(ii) from the city or town that annexes the annexing area.
- 52382 (ii) The notice described in Subsection (5)(e)(i)(B) shall state:
- 52383 (A) that the annexation described in Subsection (5)(e)(i) will result in an enactment or
- 52384 repeal a tax under this part for the annexing area;
- 52385 (B) the statutory authority for the tax described in Subsection (5)(e)(ii)(A);
- 52386 (C) the effective date of the tax described in Subsection (5)(e)(ii)(A); and
- 52387 (D) the rate of the tax described in Subsection (5)(e)(ii)(A).
- 52388 (f) (i) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 52389 (5)(f)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

- 52390 (A) that begins after the effective date of the enactment of the tax; and
- 52391 (B) if the billing period for the transaction begins before the effective date of the
- 52392 enactment of the tax under this section.
- 52393 (ii) Notwithstanding Subsection (5)(e)(i), for a transaction described in Subsection
- 52394 (5)(f)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 52395 (A) that began before the effective date of the repeal of the tax; and
- 52396 (B) if the billing period for the transaction begins before the effective date of the repeal
- 52397 of the tax imposed under this section.
- 52398 (iii) Subsections (5)(f)(i) and (ii) apply to transactions subject to a tax under:
- 52399 (A) Subsection 59-12-103(1)(b);
- 52400 (B) Subsection 59-12-103(1)(c);
- 52401 (C) Subsection 59-12-103(1)(d);
- 52402 (D) Subsection 59-12-103(1)(e);
- 52403 (E) Subsection 59-12-103(1)(f);
- 52404 (F) Subsection 59-12-103(1)(g);
- 52405 (G) Subsection 59-12-103(1)(h);
- 52406 (H) Subsection 59-12-103(1)(i);
- 52407 (I) Subsection 59-12-103(1)(j); or
- 52408 (J) Subsection 59-12-103(1)(k).
- 52409 (g) (i) Notwithstanding Subsection (5)(e)(i), if a tax due under this chapter on a
- 52410 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 52411 enactment or repeal of a tax described in Subsection (5)(e)(i) takes effect:
- 52412 (A) on the first day of a calendar quarter; and
- 52413 (B) beginning 60 days after the effective date of the enactment or repeal under
- 52414 Subsection (5)(e)(i).
- 52415 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 52416 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 52417 (6) (a) Before a city or town legislative body submits an opinion question to the

52418 residents of the city or town under Subsection (1)(a)(i), the city or town legislative body shall:

52419 (i) submit to the county legislative body in which the city or town is located a written
52420 notice of the intent to submit the opinion question to the residents of the city or town; and

52421 (ii) receive from the county legislative body:

52422 (A) a written resolution passed by the county legislative body stating that the county
52423 legislative body is not seeking to impose a tax under Part 7, County Option Funding for
52424 Botanical, Cultural, Recreational, and Zoological Organizations or Facilities; or

52425 (B) a written statement that in accordance with Subsection (6)(b) the results of a county
52426 opinion question submitted to the residents of the county under Part 7, County Option Funding
52427 for Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, permit the city
52428 or town legislative body to submit the opinion question to the residents of the city or town in
52429 accordance with this part.

52430 (b) (i) Within 60 days after the day the county legislative body receives from a city or
52431 town legislative body described in Subsection (6)(a) the notice of the intent to submit an opinion
52432 question to the residents of the city or town, the county legislative body shall provide the city or
52433 town legislative body:

52434 (A) the written resolution described in Subsection (6)(a)(ii)(A); or

52435 (B) written notice that the county legislative body will submit an opinion question to the
52436 residents of the county under Part 7, County Option Funding for Botanical, Cultural,
52437 Recreational, and Zoological Organizations or Facilities, for the county to impose a tax under
52438 that part.

52439 (ii) If the county legislative body provides the city or town legislative body the written
52440 notice that the county legislative body will submit an opinion question as provided in Subsection
52441 (6)(b)(i)(B), the county legislative body shall submit the opinion question by no later than, from
52442 the date the county legislative body sends the written notice, the later of:

52443 (A) a 12-month period;

52444 (B) the next regular primary election; or

52445 (C) the next regular general election.

52446 (iii) Within 30 days of the date of the canvass of the election at which the opinion
 52447 question under Subsection (6)(b)(ii) is voted on, the county legislative body shall provide the
 52448 city or town legislative body described in Subsection (6)(a) written results of the opinion
 52449 question submitted by the county legislative body under Part 7, County Option Funding for
 52450 Botanical, Cultural, Recreational, and Zoological Organizations or Facilities, indicating that:

52451 (A) (I) the city or town legislative body may not impose a tax under this part because a
 52452 majority of the county's registered voters voted in favor of the county imposing the tax and the
 52453 county legislative body by a majority vote approved the imposition of the tax; or

52454 (II) for at least 12 months from the date the written results are submitted to the city or
 52455 town legislative body, the city or town legislative body may not submit to the county legislative
 52456 body a written notice of the intent to submit an opinion question under this part because a
 52457 majority of the county's registered voters voted against the county imposing the tax and the
 52458 majority of the registered voters who are residents of the city or town described in Subsection
 52459 (6)(a) voted against the imposition of the county tax; or

52460 (B) the city or town legislative body may submit the opinion question to the residents of
 52461 the city or town in accordance with this part because although a majority of the county's
 52462 registered voters voted against the county imposing the tax, the majority of the registered voters
 52463 who are residents of the city or town voted for the imposition of the county tax.

52464 (c) Notwithstanding Subsection (6)(b), at any time a county legislative body may
 52465 provide a city or town legislative body described in Subsection (6)(a) a written resolution
 52466 passed by the county legislative body stating that the county legislative body is not seeking to
 52467 impose a tax under Part 7, County Option Funding for Botanical, Cultural, Recreational, and
 52468 Zoological Organizations or Facilities, which permits the city or town legislative body to submit
 52469 under Subsection (1)(a)(i) an opinion question to the city's or town's residents.

52470 Section 1041. Section **59-12-1503** is amended to read:

52471 **59-12-1503. Opinion question election -- Base -- Rate -- Imposition of tax -- Use**
 52472 **of tax revenues -- Administration, collection, and enforcement of tax by commission --**
 52473 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**

52474 (1) (a) Subject to the other provisions of this part, the county legislative body of a
52475 qualifying county may impose a sales and use tax of:
52476 (i) beginning on April 1, 2004, and ending on December 31, 2007, .25%:
52477 (A) on the transactions:
52478 (I) described in Subsection 59-12-103(1); and
52479 (II) within the county, including the cities and towns within the county;
52480 (B) for the purposes determined by the county legislative body in accordance with
52481 Subsection (2); and
52482 (C) in addition to any other sales and use tax authorized under this chapter; or
52483 (ii) beginning on January 1, 2008, up to .30%:
52484 (A) on the transactions:
52485 (I) described in Subsection 59-12-103(1); and
52486 (II) within the county, including the cities and towns within the county;
52487 (B) for the purposes determined by the county legislative body in accordance with
52488 Subsection (2); and
52489 (C) in addition to any other sales and use tax authorized under this chapter.
52490 (b) Notwithstanding Subsection (1)(a), a county legislative body may not impose a tax
52491 under this section on:
52492 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
52493 exempt from taxation under Section 59-12-104;
52494 (ii) amounts paid or charged by a seller that collects a tax under Subsection
52495 59-12-107(1)(b); and
52496 (iii) except as provided in Subsection (1)(d), amounts paid or charged for food and food
52497 ingredients.
52498 (c) For purposes of this Subsection (1), the location of a transaction shall be determined
52499 in accordance with Section 59-12-207.
52500 (d) A county legislative body imposing a tax under this section shall impose the tax on
52501 amounts paid or charged for food and food ingredients if:

52502 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
52503 food and food ingredients and tangible personal property other than food and food ingredients;
52504 and

52505 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
52506 accordance with Subsection 59-12-107(1)(b).

52507 (2) (a) Subject to Subsection (2)(b), before obtaining the approval required by
52508 Subsection (3), a county legislative body shall adopt a resolution specifying the percentage of
52509 revenues the county will receive from the tax under this part that will be allocated to fund one
52510 or more of the following:

52511 (i) a project or service relating to a fixed guideway system for the portion of the project
52512 or service that is performed within the county;

52513 (ii) a project or service relating to a system for public transit for the portion of the
52514 project or service that is performed within the county; or

52515 (iii) the following relating to a state highway or a local highway of regional significance
52516 within the county:

52517 (A) a project beginning on or after the day on which a county legislative body imposes a
52518 tax under this part only within the county involving:

52519 (I) new construction;

52520 (II) a renovation;

52521 (III) an improvement; or

52522 (IV) an environmental study;

52523 (B) debt service on a project described in Subsections (2)(a)(iii)(A)(I) through (IV); or

52524 (C) bond issuance costs relating to a project described in Subsections (2)(a)(iii)(A)(I)
52525 through (IV).

52526 (b) (i) A county legislative body shall in the resolution required by Subsection (2)(a)
52527 allocate as required by Subsection (2)(a) 100% of the revenues the county will receive from the
52528 tax under this part.

52529 (ii) For purposes of this Subsection (2)(b), the revenues a county will receive from the

52530 tax under this part do not include amounts retained by the commission in accordance with
52531 Subsection (8).

52532 (3) (a) Except as provided in Subsection (3)(d), before imposing a tax under this part, a
52533 county legislative body shall:

52534 (i) obtain approval from a majority of the members of the county legislative body to:

52535 (A) impose the tax; and

52536 (B) allocate the revenues the county will receive from the tax in accordance with the
52537 resolution adopted in accordance with Subsection (2); and

52538 (ii) subject to Subsection (3)(b), submit an opinion question to the county's registered
52539 voters voting on the imposition of the tax so that each registered voter has the opportunity to
52540 express the registered voter's opinion on whether a tax should be imposed under this part.

52541 (b) The opinion question required by Subsection (3)(a)(ii) shall state the allocations
52542 specified in the resolution:

52543 (i) adopted in accordance with Subsection (2); and

52544 (ii) approved by the county legislative body in accordance with Subsection (3)(a).

52545 (c) The election required by this Subsection (3) shall be held:

52546 (i) (A) at a regular general election; and

52547 (B) in accordance with the procedures and requirements of Title 20A, Election Code,
52548 governing regular general elections; or

52549 (ii) (A) at a special election called by the county legislative body;

52550 (B) only on the date of a municipal general election provided in Subsection
52551 20A-1-202(1); and

52552 (C) in accordance with the procedures and requirements of Section 20A-1-203.

52553 (d) A county is not subject to the voter approval requirements of this section if:

52554 (i) on December 31, 2007, the county imposes a tax of .25% under this section; and

52555 (ii) on or after January 1, 2008, the county increases the tax rate under this section to
52556 up to .30%.

52557 (4) (a) Subject to Subsection (8), if a county legislative body determines that a majority

52558 of the county's registered voters voting on the imposition of the tax have voted in favor of the
52559 imposition of the tax in accordance with Subsection (3), the county legislative body may impose
52560 the tax by a majority vote of all of the members of the county legislative body.

52561 (b) If a county legislative body imposes a tax under Subsection (4)(a), the revenues
52562 generated by the tax shall be:

52563 (i) allocated in accordance with the allocations specified in the resolution under
52564 Subsection (2); and

52565 (ii) expended as provided in this part.

52566 (5) If a county legislative body allocates revenues generated by the tax for a project
52567 described in Subsection (2)(a)(iii)(A), before beginning the state highway project within the
52568 county, the county legislative body shall:

52569 (a) obtain approval from the Transportation Commission to complete the project; and

52570 (b) enter into an interlocal agreement:

52571 (i) established in accordance with Title 11, Chapter 13, Interlocal Cooperation Act;

52572 (ii) with the Department of Transportation; and

52573 (iii) to complete the project.

52574 (6) (a) If after a county legislative body imposes a tax under Subsection (4) the county
52575 legislative body seeks to change the allocation of the tax specified in the resolution under
52576 Subsection (2), the county legislative body may change the allocation of the tax by:

52577 (i) adopting a resolution in accordance with Subsection (2) specifying the percentage of
52578 revenues the county will receive from the tax under this part that will be allocated to fund one
52579 or more of the systems or projects described in Subsection (2);

52580 (ii) obtaining approval to change the allocation of the tax from a majority of the
52581 members of the county legislative body; and

52582 (iii) (A) submitting an opinion question to the county's registered voters voting on
52583 changing the allocation of the tax so that each registered voter has the opportunity to express
52584 the registered voter's opinion on whether the allocation of the tax should be changed; and

52585 (B) obtaining approval to change the allocation of the tax from a majority of the

52586 county's registered voters voting on changing the allocation of the tax.

52587 (b) (i) The opinion question required by Subsection (6)(a)(iii) shall state the allocations
52588 specified in the resolution:

52589 (A) adopted in accordance with Subsection (6)(a)(i); and

52590 (B) approved by the county legislative body in accordance with Subsection (6)(a)(ii).

52591 (ii) The election required by Subsection (6)(a)(iii) shall follow the procedures and
52592 requirements of Title 11, Chapter 14, Local Government Bonding Act.

52593 (7) (a) (i) Except as provided in Subsection (7)(a)(ii), revenues generated by a tax
52594 under this part that are allocated for a purpose described in Subsection (2)(a)(i) or (ii) shall be
52595 transmitted:

52596 (A) by the commission;

52597 (B) to the county;

52598 (C) monthly; and

52599 (D) by electronic funds transfer.

52600 (ii) Notwithstanding Subsection (7)(a)(i), a county may request that the commission
52601 transfer the revenues described in Subsection (7)(a)(i):

52602 (A) directly to a public transit district:

52603 (I) organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act; and

52604 (II) designated by the county; and

52605 (B) by providing written notice to the commission:

52606 (I) requesting the revenues to be transferred directly to a public transit district as
52607 provided in Subsection (7)(a)(ii)(A); and

52608 (II) designating the public transit district to which the revenues are requested to be
52609 transferred.

52610 (b) Revenues generated by a tax under this part that are allocated for a purpose
52611 described in Subsection (2)(a)(iii) shall be:

52612 (i) deposited into the State Highway Projects Within Counties Fund created by Section
52613 72-2-121.1; and

52614 (ii) expended as provided in Section 72-2-121.1.

52615 (8) (a) (i) Except as provided in Subsection (8)(a)(ii), the tax authorized under this part

52616 shall be administered, collected, and enforced in accordance with:

52617 (A) the same procedures used to administer, collect, and enforce the tax under:

52618 (I) Part 1, Tax Collection; or

52619 (II) Part 2, Local Sales and Use Tax Act; and

52620 (B) Chapter 1, General Taxation Policies.

52621 (ii) Notwithstanding Subsection (8)(a)(i), a tax under this part is not subject to

52622 Subsections 59-12-205(2) through (7).

52623 (b) (i) The commission may retain an amount of tax collected under this part of not to

52624 exceed the lesser of:

52625 (A) 1.5%; or

52626 (B) an amount equal to the cost to the commission of administering this part.

52627 (ii) Any amount the commission retains under Subsection (8)(b)(i) shall be:

52628 (A) placed in the Sales and Use Tax Administrative Fees Account; and

52629 (B) used as provided in Subsection 59-12-206(2).

52630 (9) (a) (i) Except as provided in Subsection (9)(b) or (c), if, on or after April 1, 2008, a

52631 county enacts or repeals a tax under this part, the enactment or repeal shall take effect:

52632 (A) on the first day of a calendar quarter; and

52633 (B) after a 90-day period beginning on the date the commission receives notice meeting

52634 the requirements of Subsection (9)(a)(ii) from the county.

52635 (ii) The notice described in Subsection (9)(a)(i)(B) shall state:

52636 (A) that the county will enact or repeal a tax under this part;

52637 (B) the statutory authority for the tax described in Subsection (9)(a)(ii)(A);

52638 (C) the effective date of the tax described in Subsection (9)(a)(ii)(A); and

52639 (D) if the county enacts the tax described in Subsection (9)(a)(ii)(A), the rate of the tax.

52640 (b) (i) Notwithstanding Subsection (9)(a)(i), for a transaction described in Subsection

52641 (9)(b)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

- 52642 (A) that begins after the effective date of the enactment of the tax; and
- 52643 (B) if the billing period for the transaction begins before the effective date of the
- 52644 enactment of the tax under Subsection (1).
- 52645 (ii) Notwithstanding Subsection (9)(a)(i), for a transaction described in Subsection
- 52646 (9)(b)(iii), the repeal of a tax shall take effect on the first day of the last billing period:
- 52647 (A) that began before the effective date of the repeal of the tax; and
- 52648 (B) if the billing period for the transaction begins before the effective date of the repeal
- 52649 of the tax imposed under Subsection (1).
- 52650 (iii) Subsections (9)(b)(i) and (ii) apply to transactions subject to a tax under:
- 52651 (A) Subsection 59-12-103(1)(b);
- 52652 (B) Subsection 59-12-103(1)(c);
- 52653 (C) Subsection 59-12-103(1)(d);
- 52654 (D) Subsection 59-12-103(1)(e);
- 52655 (E) Subsection 59-12-103(1)(f);
- 52656 (F) Subsection 59-12-103(1)(g);
- 52657 (G) Subsection 59-12-103(1)(h);
- 52658 (H) Subsection 59-12-103(1)(i);
- 52659 (I) Subsection 59-12-103(1)(j); or
- 52660 (J) Subsection 59-12-103(1)(k).
- 52661 (c) (i) Notwithstanding Subsection (9)(a)(i), if a tax due under this chapter on a
- 52662 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 52663 enactment or repeal of a tax described in Subsection (9)(a)(i) takes effect:
- 52664 (A) on the first day of a calendar quarter; and
- 52665 (B) beginning 60 days after the effective date of the enactment or repeal under
- 52666 Subsection (9)(a)(i).
- 52667 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 52668 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 52669 (d) (i) Except as provided in Subsection (9)(e) or (f), if, for an annexation that occurs

52670 on or after July 1, 2004, the annexation will result in the enactment or repeal of a tax under this
52671 part for an annexing area, the enactment or repeal shall take effect:

52672 (A) on the first day of a calendar quarter; and

52673 (B) after a 90-day period beginning on the date the commission receives notice meeting
52674 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.

52675 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:

52676 (A) that the annexation described in Subsection (9)(d)(i)(B) will result in an enactment
52677 or repeal of a tax under this part for the annexing area;

52678 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);

52679 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and

52680 (D) the rate of the tax described in Subsection (9)(d)(ii)(A).

52681 (e) (i) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
52682 (9)(e)(iii), the enactment of a tax shall take effect on the first day of the first billing period:

52683 (A) that begins after the effective date of the enactment of the tax; and

52684 (B) if the billing period for the transaction begins before the effective date of the
52685 enactment of the tax under Subsection (1).

52686 (ii) Notwithstanding Subsection (9)(d)(i), for a transaction described in Subsection
52687 (9)(e)(iii), the repeal of a tax shall take effect on the first day of the last billing period:

52688 (A) that began before the effective date of the repeal of the tax; and

52689 (B) if the billing period for the transaction begins before the effective date of the repeal
52690 of the tax imposed under Subsection (1).

52691 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:

52692 (A) Subsection 59-12-103(1)(b);

52693 (B) Subsection 59-12-103(1)(c);

52694 (C) Subsection 59-12-103(1)(d);

52695 (D) Subsection 59-12-103(1)(e);

52696 (E) Subsection 59-12-103(1)(f);

52697 (F) Subsection 59-12-103(1)(g);

- 52698 (G) Subsection 59-12-103(1)(h);
- 52699 (H) Subsection 59-12-103(1)(i);
- 52700 (I) Subsection 59-12-103(1)(j); or
- 52701 (J) Subsection 59-12-103(1)(k).
- 52702 (f) (i) Notwithstanding Subsection (9)(d)(i), if a tax due under this chapter on a
- 52703 catalogue sale is computed on the basis of sales and use tax rates published in the catalogue, an
- 52704 enactment or repeal of a tax described in Subsection (9)(d)(i) takes effect:
- 52705 (A) on the first day of a calendar quarter; and
- 52706 (B) beginning 60 days after the effective date of the enactment or repeal under
- 52707 Subsection (9)(d)(i).
- 52708 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 52709 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
- 52710 (10) A county that imposed a sales and use tax under this section prior to July 1, 2007,
- 52711 may expend revenues allocated in the resolution for the purpose described in Subsection
- 52712 (2)(a)(iii) on local highway of regional significance projects in addition to or in substitution of
- 52713 state highway projects within the county.
- 52714 Section 1042. Section **59-12-1703** is amended to read:
- 52715 **59-12-1703. Opinion question election -- Base -- Rate -- Imposition of tax -- Use**
- 52716 **of tax revenues -- Administration, collection, and enforcement of tax by commission --**
- 52717 **Administrative fee -- Enactment or repeal of tax -- Annexation -- Notice.**
- 52718 (1) (a) Subject to the other provisions of this part, a county legislative body may impose
- 52719 a sales and use tax of up to .25%:
- 52720 (i) on the transactions:
- 52721 (A) described in Subsection 59-12-103(1); and
- 52722 (B) within the county, including the cities and towns within the county;
- 52723 (ii) for the purposes described in Subsection (4); and
- 52724 (iii) in addition to any other sales and use tax authorized under this chapter.
- 52725 (b) Notwithstanding Subsection (1)(a)(i), a county legislative body may not impose a

52726 tax under this section on:

52727 (i) the sales and uses described in Section 59-12-104 to the extent the sales and uses are
52728 exempt from taxation under Section 59-12-104;

52729 (ii) amounts paid or charged by a seller that collects a tax under Subsection
52730 59-12-107(1)(b); and

52731 (iii) except as provided in Subsection (1)(d), amounts paid or charged for food and food
52732 ingredients.

52733 (c) For purposes of this Subsection (1), the location of a transaction shall be determined
52734 in accordance with Section 59-12-207.

52735 (d) A county legislative body imposing a tax under this section shall impose the tax on
52736 amounts paid or charged for food and food ingredients if:

52737 (i) the food and food ingredients are sold as part of a bundled transaction attributable to
52738 food and food ingredients and tangible personal property other than food and food ingredients;
52739 and

52740 (ii) the seller collecting the tax is a seller other than a seller that collects a tax in
52741 accordance with Subsection 59-12-107(1)(b).

52742 (2) (a) Except as provided in Subsection (2)(d), before imposing a tax under this part, a
52743 county legislative body shall:

52744 (i) obtain approval from a majority of the members of the county legislative body to
52745 impose the tax; and

52746 (ii) submit an opinion question to the county's registered voters voting on the
52747 imposition of the tax so that each registered voter has the opportunity to express the registered
52748 voter's opinion on whether a tax should be imposed under this part.

52749 (b) (i) In a county of the first or second class, the opinion question required by
52750 Subsection (2)(a)(ii) shall state the following:

52751 "Shall (insert the name of the county), Utah, be authorized to impose a (insert the
52752 amount of the sales and use tax up to .25%) sales and use tax for corridor preservation,
52753 congestion mitigation, or to expand capacity for regionally significant transportation facilities?"

52754 (ii) In a county of the third, fourth, fifth, or sixth class, the opinion question required by
52755 Subsection (2)(a)(ii) shall state the following:

52756 "Shall (insert the name of the county), Utah, be authorized to impose a (insert the
52757 amount of the sales and use tax up to .25%) sales and use tax for transportation projects,
52758 corridor preservation, congestion mitigation, or to expand capacity for regionally significant
52759 transportation facilities?"

52760 (c) Except as provided in Subsection (2)(d), the election required by this Subsection (2)
52761 shall be held:

52762 (i) at a regular general election conducted in accordance with the procedures and
52763 requirements of Title 20A, Election Code, governing regular elections; or

52764 (ii) at a special election called by the county legislative body that is:

52765 (A) held only on the date of a municipal general election as provided in Subsection
52766 20A-1-202(1); and

52767 (B) authorized in accordance with the procedures and requirements of Section
52768 20A-1-203.

52769 (d) Notwithstanding Subsection (2)(a) or (c), if a county seeks to impose a tax under
52770 this part on or after April 1, 2007, but on or before December 31, 2007, the county legislative
52771 body shall:

52772 (i) obtain the approval required by Subsection (2)(a)(i) within five calendar days of
52773 September 20, 2006;

52774 (ii) direct the county clerk to submit the opinion question required by Subsection
52775 (2)(a)(ii) during the November 7, 2006 general election; and

52776 (iii) hold the election required by this section on November 7, 2006.

52777 (3) If a county legislative body determines that a majority of the county's registered
52778 voters voting on the imposition of the tax have voted in favor of the imposition of the tax in
52779 accordance with Subsection (2), the county legislative body shall impose the tax in accordance
52780 with this section.

52781 (4) (a) Subject to Subsections (5) and (6), the revenues generated by a tax under this

52782 part may only be expended for:

52783 (i) a project or service:

52784 (A) relating to a regionally significant transportation facility;

52785 (B) for the portion of the project or service that is performed within the county;

52786 (C) for new capacity or congestion mitigation if the project or service is performed

52787 within a county:

52788 (I) of the first class;

52789 (II) of the second class; or

52790 (III) that is part of an area metropolitan planning organization;

52791 (D) (I) if the project or service is a principal arterial highway or a minor arterial

52792 highway in a county of the first or second class, that is part of the county and municipal master

52793 plan and part of:

52794 (Aa) the statewide long-range plan; or

52795 (Bb) the regional transportation plan of the area metropolitan planning organization if a

52796 metropolitan planning organization exists for the area; or

52797 (II) if the project or service is for a fixed guideway or an airport, that is part of the

52798 regional transportation plan of the area metropolitan planning organization if a metropolitan

52799 planning organization exists for the area; and

52800 (E) that is on a priority list:

52801 (I) created by the county's council of governments in accordance with Subsection (5);

52802 and

52803 (II) approved by the county legislative body in accordance with Subsection (6);

52804 (ii) corridor preservation for a project described in Subsection (4)(a)(i) as provided in

52805 Subsection (7)(b); or

52806 (iii) any debt service and bond issuance costs related to a project described in

52807 Subsection (4)(a)(i) or (ii).

52808 (b) In a county of the first or second class, a regionally significant transportation facility

52809 project or service described in Subsection (4)(a)(i)(A) must have a funded year priority

52810 designation on a Statewide Transportation Improvement Program and Transportation
52811 Improvement Program if the project or service described in Subsection (4)(a)(i) is:

- 52812 (i) a principal arterial highway as defined in Section 72-4-102.5;
- 52813 (ii) a minor arterial highway as defined in Section 72-4-102.5; or
- 52814 (iii) a major collector highway:
 - 52815 (A) as defined in Section 72-4-102.5; and
 - 52816 (B) in a rural area.
- 52817 (c) Notwithstanding the designated use of revenues in Subsection (4)(a), of the
52818 revenues generated by the tax imposed under this section by any county of the first or second
52819 class, 25% or more shall be expended for the purpose described in Subsection (4)(a)(ii).
- 52820 (d) For purposes of this Subsection (4), the revenues a county will receive from a tax
52821 under this part do not include amounts retained by the commission in accordance with
52822 Subsection (8).
- 52823 (5) (a) The county's council of governments shall create a priority list of regionally
52824 significant transportation facility projects described in Subsection (4)(a) using the process
52825 described in Subsection (5)(b) and present the priority list to the county's legislative body for
52826 approval as described in Subsection (6).
- 52827 (b) Subject to Sections 59-12-1704 and 59-12-1705, a council of governments shall
52828 establish a council of governments' endorsement process which includes prioritization and
52829 application procedures for use of the revenues a county will receive from a tax under this part.
- 52830 (6) (a) The council of governments shall submit the priority list described in Subsection
52831 (5) to the county's legislative body and obtain approval of the list from a majority of the
52832 members of the county legislative body.
- 52833 (b) A county's council of governments may only submit one priority list per calendar
52834 year.
- 52835 (c) A county legislative body may only consider and approve one priority list per
52836 calendar year.
- 52837 (7) (a) (i) Except as provided in Subsections (7)(a)(ii) and (7)(b), revenues described in

52838 Subsection (4) shall be transmitted:
52839 (A) by the commission;
52840 (B) to the county;
52841 (C) monthly; and
52842 (D) by electronic funds transfer.
52843 (ii) A county may request that the commission transfer a portion of the revenues
52844 described in Subsection (4):
52845 (A) directly to a public transit district:
52846 (I) organized under Title 17B, Chapter 2a, Part 8, Public Transit District Act; and
52847 (II) designated by the county; and
52848 (B) by providing written notice to the commission:
52849 (I) requesting the revenues to be transferred directly to a public transit district as
52850 provided in Subsection (7)(a)(ii)(A); and
52851 (II) designating the public transit district to which the revenues are requested to be
52852 transferred.
52853 (b) (i) Except as provided in Subsection (7)(b)(ii), revenues generated by a tax under
52854 this part that are allocated for a purpose described in Subsection (4)(a)(ii) shall be:
52855 (A) deposited in or transferred to the Local Transportation Corridor Preservation Fund
52856 created by Section 72-2-117.5; and
52857 (B) expended as provided in Section 72-2-117.5.
52858 (ii) In a county of the first class, revenues generated by a tax under this part that are
52859 allocated for a purpose described in Subsection (4)(a)(ii) shall be:
52860 (A) deposited in or transferred to the County of the First Class State Highway Projects
52861 Fund created by Section 72-2-121; and
52862 (B) expended as provided in Section 72-2-121.
52863 (8) (a) (i) Except as provided in Subsection (8)(b), the tax authorized under this part
52864 shall be administered, collected, and enforced in accordance with:
52865 (A) the same procedures used to administer, collect, and enforce the tax under:

52866 (I) Part 1, Tax Collection; or
52867 (II) Part 2, Local Sales and Use Tax Act; and
52868 (B) Chapter 1, General Taxation Policies.
52869 (ii) A tax under this part is not subject to Subsections 59-12-205(2) through (7).
52870 (b) (i) The commission may retain an amount of tax collected under this part of not to
52871 exceed the lesser of:
52872 (A) 1.5%; or
52873 (B) an amount equal to the cost to the commission of administering this part.
52874 (ii) Any amount the commission retains under Subsection (8)(b)(i) shall be:
52875 (A) placed in the Sales and Use Tax Administrative Fees Account; and
52876 (B) used as provided in Subsection 59-12-206(2).
52877 (9) (a) (i) Except as provided in Subsection (9)(b) or (c), if, on or after April 1, 2007, a
52878 county enacts or repeals a tax or changes the rate of a tax under this part, the enactment, repeal,
52879 or change shall take effect:
52880 (A) on the first day of a calendar quarter; and
52881 (B) after a 90-day period beginning on the date the commission receives notice meeting
52882 the requirements of Subsection (9)(a)(ii) from the county.
52883 (ii) The notice described in Subsection (9)(a)(i)(B) shall state:
52884 (A) that the county will enact, repeal, or change the rate of a tax under this part;
52885 (B) the statutory authority for the tax described in Subsection (9)(a)(ii)(A);
52886 (C) the effective date of the tax described in Subsection (9)(a)(ii)(A); and
52887 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
52888 (9)(a)(ii)(A), the rate of the tax.
52889 (b) (i) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
52890 transaction begins before the effective date of the enactment of the tax or tax rate increase
52891 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first
52892 day of the first billing period that begins after the effective date of the enactment of the tax or
52893 the tax rate increase.

52894 (ii) For a transaction described in Subsection (9)(b)(iii), if the billing period for the
52895 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
52896 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
52897 first day of the last billing period that began before the effective date of the repeal of the tax or
52898 the tax rate decrease.

52899 (iii) Subsections (9)(b)(i) and (ii) apply to transactions subject to a tax under:

52900 (A) Subsection 59-12-103(1)(b);

52901 (B) Subsection 59-12-103(1)(c);

52902 (C) Subsection 59-12-103(1)(d);

52903 (D) Subsection 59-12-103(1)(e);

52904 (E) Subsection 59-12-103(1)(f);

52905 (F) Subsection 59-12-103(1)(g);

52906 (G) Subsection 59-12-103(1)(h);

52907 (H) Subsection 59-12-103(1)(i);

52908 (I) Subsection 59-12-103(1)(j); or

52909 (J) Subsection 59-12-103(1)(k).

52910 (c) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
52911 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
52912 a tax described in Subsection (9)(a)(i) takes effect:

52913 (A) on the first day of a calendar quarter; and

52914 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
52915 rate of the tax under Subsection (9)(a)(i).

52916 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
52917 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

52918 (d) (i) Except as provided in Subsection (9)(e) or (f), if, for an annexation that occurs
52919 on or after April 1, 2007, the annexation will result in the enactment, repeal, or change in the
52920 rate of a tax under this part for an annexing area, the enactment, repeal, or change shall take
52921 effect:

- 52922 (A) on the first day of a calendar quarter; and
- 52923 (B) after a 90-day period beginning on the date the commission receives notice meeting
- 52924 the requirements of Subsection (9)(d)(ii) from the county that annexes the annexing area.
- 52925 (ii) The notice described in Subsection (9)(d)(i)(B) shall state:
- 52926 (A) that the annexation described in Subsection (9)(d)(i)(B) will result in an enactment,
- 52927 repeal, or change in the rate of a tax under this part for the annexing area;
- 52928 (B) the statutory authority for the tax described in Subsection (9)(d)(ii)(A);
- 52929 (C) the effective date of the tax described in Subsection (9)(d)(ii)(A); and
- 52930 (D) if the county enacts the tax or changes the rate of the tax described in Subsection
- 52931 (9)(d)(ii)(A), the rate of the tax.
- 52932 (e) (i) For a transaction described in Subsection (9)(e)(iii), if the billing period for the
- 52933 transaction begins before the effective date of the enactment of the tax or a tax rate increase
- 52934 under Subsection (1), the enactment of a tax or a tax rate increase shall take effect on the first
- 52935 day of the first billing period that begins after the effective date of the enactment of the tax or
- 52936 the tax rate increase.
- 52937 (ii) For a transaction described in Subsection (9)(e)(iii), if the billing period for the
- 52938 transaction begins before the effective date of the repeal of the tax or the tax rate decrease
- 52939 imposed under Subsection (1), the repeal of a tax or a tax rate decrease shall take effect on the
- 52940 first day of the last billing period that began before the effective date of the repeal of the tax or
- 52941 the tax rate decrease.
- 52942 (iii) Subsections (9)(e)(i) and (ii) apply to transactions subject to a tax under:
- 52943 (A) Subsection 59-12-103(1)(b);
- 52944 (B) Subsection 59-12-103(1)(c);
- 52945 (C) Subsection 59-12-103(1)(d);
- 52946 (D) Subsection 59-12-103(1)(e);
- 52947 (E) Subsection 59-12-103(1)(f);
- 52948 (F) Subsection 59-12-103(1)(g);
- 52949 (G) Subsection 59-12-103(1)(h);

52950 (H) Subsection 59-12-103(1)(i);

52951 (I) Subsection 59-12-103(1)(j); or

52952 (J) Subsection 59-12-103(1)(k).

52953 (f) (i) If a tax due under this chapter on a catalogue sale is computed on the basis of
52954 sales and use tax rates published in the catalogue, an enactment, repeal, or change in the rate of
52955 a tax described in Subsection (9)(d)(i) takes effect:

52956 (A) on the first day of a calendar quarter; and

52957 (B) beginning 60 days after the effective date of the enactment, repeal, or change in the
52958 rate under Subsection (9)(d)(i).

52959 (ii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
52960 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."
52961 Section 1043. Section **59-12-1803** is amended to read:

52962 **59-12-1803. Enactment or repeal of tax -- Effective date -- Administration,**
52963 **collection, and enforcement of tax.**

52964 (1) Subject to Subsections (2) and (3), a tax rate repeal or a tax rate change for a tax
52965 imposed under this part shall take effect on the first day of a calendar quarter.

52966 (2) (a) For a transaction described in Subsection (2)(c), the enactment of a tax shall
52967 take effect on the first day of the first billing period that begins after the effective date of the
52968 enactment of the tax if the billing period for the transaction begins before the effective date of
52969 the tax under this part.

52970 (b) For a transaction described in Subsection (2)(c), the repeal of a tax shall take effect
52971 on the first day of the last billing period that began before the effective date of the repeal of the
52972 tax if the billing period for the transaction begins before the effective date of the repeal of the
52973 tax imposed under this part.

52974 (c) Subsections (2)(a) and (b) apply to transactions subject to a tax under:

52975 (i) Subsection 59-12-103(1)(b);

52976 (ii) Subsection 59-12-103(1)(c);

52977 (iii) Subsection 59-12-103(1)(d);

52978 (iv) Subsection 59-12-103(1)(e);

52979 (v) Subsection 59-12-103(1)(f);

52980 (vi) Subsection 59-12-103(1)(g);

52981 (vii) Subsection 59-12-103(1)(h);

52982 (viii) Subsection 59-12-103(1)(i);

52983 (ix) Subsection 59-12-103(1)(j); or

52984 (x) Subsection 59-12-103(1)(k).

52985 (3) (a) If a tax due under this part on a catalogue sale is computed on the basis of sales
52986 and use tax rates published in the catalogue, an enactment or repeal of a tax under this part
52987 takes effect:

52988 (i) on the first day of a calendar quarter; and

52989 (ii) beginning 60 days after the effective date of the enactment or repeal of the tax under
52990 this part.

52991 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
52992 Administrative Rulemaking Act, the commission may by rule define the term "catalogue sale."

52993 (4) A tax imposed by this part shall be administered, collected, and enforced in
52994 accordance with:

52995 (a) the same procedures used to administer, collect, and enforce the tax under Part 1,
52996 Tax Collection; and

52997 (b) Chapter 1, General Taxation Policies.

52998 Section 1044. Section **59-13-201** is amended to read:

52999 **59-13-201. Rate -- Tax basis -- Exemptions -- Revenue deposited in the**
53000 **Transportation Fund -- Restricted account for boating uses -- Refunds -- Reduction of**
53001 **tax in limited circumstances.**

53002 (1) (a) Subject to the provisions of this section, a tax is imposed at the rate of 24-1/2
53003 cents per gallon upon all motor fuel that is sold, used, or received for sale or used in this state.

53004 (b) In lieu of the tax imposed under Subsection (1)(a) and subject to the provisions of
53005 this section, a tax is imposed at the rate of 3/19 of the rate imposed under Subsection (1)(a),

53006 rounded up to the nearest penny, upon all motor fuels that meet the definition of clean fuel in
53007 Section 59-13-102 and are sold, used, or received for sale or use in this state.

53008 (2) Any increase or decrease in tax rate applies to motor fuel that is imported to the
53009 state or sold at refineries in the state on or after the effective date of the rate change.

53010 (3) (a) No motor fuel tax is imposed upon:

53011 (i) motor fuel that is brought into and sold in this state in original packages as purely
53012 interstate commerce sales;

53013 (ii) motor fuel that is exported from this state if proof of actual exportation on forms
53014 prescribed by the commission is made within 180 days after exportation;

53015 (iii) motor fuel or components of motor fuel that is sold and used in this state and
53016 distilled from coal, oil shale, rock asphalt, bituminous sand, or solid hydrocarbons located in this
53017 state; or

53018 (iv) motor fuel that is sold to the United States government, this state, or the political
53019 subdivisions of this state.

53020 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53021 Administrative Rulemaking Act, the commission shall make rules governing the procedures for
53022 administering the tax exemption provided under Subsection (3)(a)(iv).

53023 (4) The commission may either collect no tax on motor fuel exported from the state or,
53024 upon application, refund the tax paid.

53025 (5) (a) All revenue received by the commission under this part shall be deposited daily
53026 with the state treasurer and credited to the Transportation Fund.

53027 (b) An appropriation from the Transportation Fund shall be made to the commission to
53028 cover expenses incurred in the administration and enforcement of this part and the collection of
53029 the motor fuel tax.

53030 (6) (a) The commission shall determine what amount of motor fuel tax revenue is
53031 received from the sale or use of motor fuel used in motorboats registered under the provisions
53032 of the State Boating Act, and this amount shall be deposited in a restricted revenue account in
53033 the General Fund of the state.

53034 (b) The funds from this account shall be used for the construction, improvement,
53035 operation, and maintenance of state-owned boating facilities and for the payment of the costs
53036 and expenses of the Division of Parks and Recreation in administering and enforcing the State
53037 Boating Act.

53038 (7) (a) The United States government or any of its instrumentalities, this state, or a
53039 political subdivision of this state that has purchased motor fuel from a licensed distributor or
53040 from a retail dealer of motor fuel and has paid the tax on the motor fuel as provided in this
53041 section is entitled to a refund of the tax and may file with the commission for a quarterly refund.

53042 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53043 Administrative Rulemaking Act, the commission shall make rules governing the application and
53044 refund provided for in Subsection (7)(a).

53045 (8) (a) The commission shall refund annually into the Off-Highway Vehicle Account in
53046 the General Fund an amount equal to the lesser of the following:

53047 (i) .5% of the motor fuel tax revenues collected under this section; or

53048 (ii) \$1,050,000.

53049 (b) This amount shall be used as provided in Section 41-22-19.

53050 (c) This Subsection (8) sunsets on July 1, 2010.

53051 (9) (a) Beginning on April 1, 2001, a tax imposed under this section on motor fuel that
53052 is sold, used, or received for sale or use in this state is reduced to the extent provided in
53053 Subsection (9)(b) if:

53054 (i) a tax imposed on the basis of the sale, use, or receipt for sale or use of the motor fuel
53055 is paid to the Navajo Nation;

53056 (ii) the tax described in Subsection (9)(a)(i) is imposed without regard to whether or
53057 not the person required to pay the tax is an enrolled member of the Navajo Nation; and

53058 (iii) the commission and the Navajo Nation execute and maintain an agreement as
53059 provided in this Subsection (9) for the administration of the reduction of tax.

53060 (b) (i) If but for Subsection (9)(a) the motor fuel is subject to a tax imposed by this
53061 section:

53062 (A) the state shall be paid the difference described in Subsection (9)(b)(ii) if that
53063 difference is greater than \$0; and

53064 (B) a person may not require the state to provide a refund, a credit, or similar tax relief
53065 if the difference described in Subsection (9)(b)(ii) is less than or equal to \$0.

53066 (ii) The difference described in Subsection (9)(b)(i) is equal to the difference between:

53067 (A) the amount of tax imposed on the motor fuel by this section; less

53068 (B) the tax imposed and collected by the Navajo Nation on the motor fuel.

53069 (c) For purposes of Subsections (9)(a) and (b), the tax paid to the Navajo Nation under
53070 a tax imposed by the Navajo Nation on the basis of the sale, use, or receipt for sale or use of
53071 motor fuel does not include any interest or penalties a taxpayer may be required to pay to the
53072 Navajo Nation.

53073 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53074 Administrative Rulemaking Act, the commission shall make rules governing the procedures for
53075 administering the reduction of tax provided under this Subsection (9).

53076 (e) The agreement required under Subsection (9)(a):

53077 (i) may not:

53078 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

53079 (B) provide a reduction of taxes greater than or different from the reduction described
53080 in this Subsection (9); or

53081 (C) affect the power of the state to establish rates of taxation;

53082 (ii) shall:

53083 (A) be in writing;

53084 (B) be signed by:

53085 (I) the chair of the commission or the chair's designee; and

53086 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;

53087 (C) be conditioned on obtaining any approval required by federal law;

53088 (D) state the effective date of the agreement; and

53089 (E) state any accommodation the Navajo Nation makes related to the construction and

53090 maintenance of state highways and other infrastructure within the Utah portion of the Navajo
53091 Nation; and

53092 (iii) may:

53093 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the
53094 Navajo Nation information that is:

53095 (I) contained in a document filed with the commission; and

53096 (II) related to the tax imposed under this section;

53097 (B) provide for maintaining records by the commission or the Navajo Nation; or

53098 (C) provide for inspections or audits of distributors, carriers, or retailers located or
53099 doing business within the Utah portion of the Navajo Nation.

53100 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax
53101 imposed on motor fuel, any change in the reduction of taxes under this Subsection (9) as a
53102 result of the change in the tax rate is not effective until the first day of the calendar quarter after
53103 a 60-day period beginning on the date the commission receives notice:

53104 (A) from the Navajo Nation; and

53105 (B) meeting the requirements of Subsection (9)(f)(ii).

53106 (ii) The notice described in Subsection (9)(f)(i) shall state:

53107 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
53108 motor fuel;

53109 (B) the effective date of the rate change of the tax described in Subsection (9)(f)(ii)(A);
53110 and

53111 (C) the new rate of the tax described in Subsection (9)(f)(ii)(A).

53112 (g) If the agreement required by Subsection (9)(a) terminates, a reduction of tax is not
53113 permitted under this Subsection (9) beginning on the first day of the calendar quarter after a
53114 30-day period beginning on the day the agreement terminates.

53115 (h) If there is a conflict between this Subsection (9) and the agreement required by
53116 Subsection (9)(a), this Subsection (9) governs.

53117 Section 1045. Section **59-13-201.5** is amended to read:

53118 **59-13-201.5. Refund of taxes impacting Ute tribe and Ute tribal members.**

53119 (1) In accordance with this section, the Ute tribe may receive a refund from the state of
53120 amounts paid to a distributor for taxes imposed on the distributor in accordance with Section
53121 59-13-204 if:

- 53122 (a) the motor fuel is purchased from a licensed distributor;
- 53123 (b) the Ute tribe pays the distributor as provided in Section 59-13-204;
- 53124 (c) the motor fuel is purchased for use by:
 - 53125 (i) the Ute tribe; or
 - 53126 (ii) a Ute tribal member from a retail station:
 - 53127 (A) wholly owned by the Ute tribe; and
 - 53128 (B) that is located on Ute trust land; and
- 53129 (d) the governor and the Ute tribe execute and maintain an agreement meeting the
53130 requirements of Subsection (3).

53131 (2) In addition to the agreement required by Subsection (1), the commission shall enter
53132 into an agreement with the Ute tribe that:

- 53133 (a) provides an allocation formula or procedure for determining:
 - 53134 (i) the amount of motor fuel sold by the Ute tribe to a Ute tribal member; and
 - 53135 (ii) the amount of motor fuel sold by the Ute tribe to a person who is not a Ute tribal
53136 member; and
- 53137 (b) provides a process by which:
 - 53138 (i) the Ute tribe obtains a refund permitted by this section; and
 - 53139 (ii) reports and remits motor fuel tax to the state for sales made to persons who are not
53140 Ute tribal members.

53141 (3) The agreement required under Subsection (1):

- 53142 (a) may not:
 - 53143 (i) authorize the state to impose a tax in addition to a tax imposed under this chapter; or
 - 53144 (ii) provide a refund, credit, or similar tax relief that is greater or different than the
53145 refund permitted under this section;

- 53146 (iii) affect the power of the state to establish rates of taxation; and
- 53147 (b) shall:
- 53148 (i) provide that the state agrees to allow the refund described in this section;
- 53149 (ii) be in writing;
- 53150 (iii) be signed by:
- 53151 (A) the governor; and
- 53152 (B) the chair of the Business Committee of the Ute tribe;
- 53153 (iv) be conditioned on obtaining any approval required by federal law; and
- 53154 (v) state the effective date of the agreement.
- 53155 (4) (a) The governor shall report to the commission by no later than February 1 of each
- 53156 year as to whether or not an agreement meeting the requirements of this Subsection (4) is in
- 53157 effect.
- 53158 (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 53159 refund permitted under this section is not allowed beginning the January 1 following the date the
- 53160 agreement terminates.
- 53161 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 53162 Administrative Rulemaking Act, the commission may make rules regarding the procedures for
- 53163 seeking a refund agreed to under the agreement described in Subsection (2).
- 53164 Section 1046. Section **59-13-202.5** is amended to read:
- 53165 **59-13-202.5. Refunds of tax due to fire, flood, storm, accident, crime, or**
- 53166 **discharge in bankruptcy -- Filing claims and affidavits -- Commission approval --**
- 53167 **Rulemaking -- Appeals -- Penalties.**
- 53168 (1) (a) A retailer, wholesaler, or licensed distributor, who without fault, sustains a loss
- 53169 or destruction of 8,000 or more gallons of motor fuel in a single incident due to fire, flood,
- 53170 storm, accident, or the commission of a crime and who has paid or is required to pay the tax on
- 53171 the motor fuel as provided by this part, is entitled to a refund or credit of the tax subject to the
- 53172 conditions and limitations provided under this section.
- 53173 (b) The claimant shall file a claim for a refund or credit with the commission within 90

53174 days of the incident.

53175 (c) Any part of a loss or destruction eligible for indemnification under an insurance
53176 policy for the taxes paid or required on the loss or destruction of motor fuel is not eligible for a
53177 refund or credit under this section.

53178 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
53179 information outlined in this section upon request of the commission.

53180 (e) The burden of proof of loss or destruction is on the claimant who shall provide
53181 evidence of loss or destruction to the satisfaction of the commission.

53182 (f) (i) The claim shall include an affidavit containing the:

53183 (A) name of claimant;

53184 (B) claimant's address;

53185 (C) date, time, and location of the incident;

53186 (D) cause of the incident;

53187 (E) name of the investigating agencies at the scene;

53188 (F) number of gallons actually lost from sale; and

53189 (G) information on any insurance coverages related to the incident.

53190 (ii) The claimant shall support the claim by submitting the original invoices or copy of
53191 the original invoices.

53192 (iii) This original claim and all information contained in it constitutes a permanent file
53193 with the commission in the name of the claimant.

53194 (2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on motor fuel
53195 as provided by this part is entitled to a refund for taxes paid on that portion of an account that:

53196 (i) relates to 4,500 or more gallons of motor fuel purchased in a single transaction for
53197 which no payment has been received; and

53198 (ii) has been discharged in a bankruptcy proceeding.

53199 (b) The claimant shall file a claim for refund with the commission within 90 days from
53200 the date of the discharge.

53201 (c) Any claimant filing a claim for a refund shall furnish any or all of the information

53202 outlined in this section upon request of the commission.

53203 (d) The burden of proof of discharge is on the claimant who shall provide evidence of
53204 discharge to the satisfaction of the commission.

53205 (e) The claim shall include an affidavit containing the following:

53206 (i) the name of the claimant;

53207 (ii) the claimant's address;

53208 (iii) the name of the debtor that received a discharge in bankruptcy; and

53209 (iv) the portion of the account that is subject to an order granting a discharge.

53210 (f) The claimant shall support the claim by submitting:

53211 (i) the original invoices or a copy of the original invoices; and

53212 (ii) a certified copy of the notice of discharge.

53213 (g) This original claim and all information contained in it constitutes a permanent file
53214 with the commission in the name of the claimant.

53215 (h) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53216 Administrative Rulemaking Act, the commission shall promulgate rules for the allocation of the
53217 discharge under this Subsection (2) to maximize the claimant's refund amount.

53218 (3) Upon commission approval of the claim for a refund, the commission shall pay the
53219 amount found due to the claimant. The total amount of claims for refunds shall be paid from
53220 the Transportation Fund.

53221 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53222 Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and
53223 may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied
53224 with the evidence submitted in connection with the claim, it may reject the claim or require
53225 additional evidence.

53226 (5) Any person aggrieved by the decision of the commission with respect to a refund or
53227 credit may file a request for agency action, requesting a hearing before the commission.

53228 (6) Any person who makes any false claim, report, or statement, either as claimant,
53229 agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is

53230 not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the
53231 commission shall initiate the filing of a complaint for alleged violations of this part. In addition
53232 to these penalties, the person may not receive any refund or credit as a claimant or as a creditor
53233 of a claimant for refund or credit for a period of five years.

53234 (7) Any refund or credit made under this section does not affect any deduction allowed
53235 under Section 59-13-207.

53236 Section 1047. Section **59-13-203.1** is amended to read:

53237 **59-13-203.1. Definitions -- License requirements -- Penalty -- Application process**
53238 **and requirements -- Fee not required -- Bonds.**

53239 (1) As used in this section:

53240 (a) "applicant" means a person that:

53241 (i) is required by this section to obtain a license; and

53242 (ii) submits an application:

53243 (A) to the commission; and

53244 (B) for a license under this section;

53245 (b) "application" means an application for a license under this section;

53246 (c) "fiduciary of the applicant" means a person that:

53247 (i) is required to collect, truthfully account for, and pay over a tax under this part for an
53248 applicant; and

53249 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);

53250 (B) is a director of the applicant described in Subsection (1)(c)(i);

53251 (C) is an employee of the applicant described in Subsection (1)(c)(i);

53252 (D) is a partner of the applicant described in Subsection (1)(c)(i);

53253 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or

53254 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to

53255 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the

53256 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

53257 Administrative Rulemaking Act;

53258 (d) "fiduciary of the licensee" means a person that:
53259 (i) is required to collect, truthfully account for, and pay over a tax under this part for a
53260 licensee; and
53261 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
53262 (B) is a director of the licensee described in Subsection (1)(d)(i);
53263 (C) is an employee of the licensee described in Subsection (1)(d)(i);
53264 (D) is a partner of the licensee described in Subsection (1)(d)(i);
53265 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
53266 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a
53267 relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission
53268 by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53269 Administrative Rulemaking Act;
53270 (e) "license" means a license under this section; and
53271 (f) "licensee" means a person that is licensed under this section by the commission.
53272 (2) A person that is required to collect a tax under this part is guilty of a criminal
53273 violation as provided in Section 59-1-401 if before obtaining a license under this section that
53274 person engages in business within the state.
53275 (3) The license described in Subsection (2):
53276 (a) shall be granted and issued:
53277 (i) by the commission in accordance with this section;
53278 (ii) without a license fee; and
53279 (iii) if:
53280 (A) an applicant:
53281 (I) states the applicant's name and address in the application; and
53282 (II) provides other information in the application that the commission may require; and
53283 (B) the person meets the requirements of this section to be granted a license as
53284 determined by the commission;
53285 (b) may not be assigned to another person; and

- 53286 (c) is valid:
- 53287 (i) only for the person named on the license; and
- 53288 (ii) until:
- 53289 (A) the person described in Subsection (3)(c)(i):
- 53290 (I) ceases to do business; or
- 53291 (II) changes that person's business address; or
- 53292 (B) the commission revokes the license.
- 53293 (4) The commission shall review an application and determine whether:
- 53294 (a) the applicant meets the requirements of this section to be issued a license; and
- 53295 (b) a bond is required to be posted with the commission in accordance with Subsection
- 53296 (5) before the applicant may be issued a license.
- 53297 (5) (a) An applicant shall post a bond with the commission before the commission may
- 53298 issue the applicant a license if:
- 53299 (i) a license under this section was revoked for a delinquency under this part for:
- 53300 (A) the applicant;
- 53301 (B) a fiduciary of the applicant; or
- 53302 (C) a person for which the applicant or the fiduciary of the applicant is required to
- 53303 collect, truthfully account for, and pay over a tax under this part; or
- 53304 (ii) there is a delinquency in paying a tax under this part for:
- 53305 (A) the applicant;
- 53306 (B) a fiduciary of the applicant; or
- 53307 (C) a person for which the applicant or the fiduciary of the applicant is required to
- 53308 collect, truthfully account for, and pay over a tax under this part.
- 53309 (b) If the commission determines it is necessary to ensure compliance with this part, the
- 53310 commission may require a licensee to:
- 53311 (i) for a licensee that has not posted a bond under this section with the commission,
- 53312 post a bond with the commission in accordance with Subsections (5)(c) through (g); or
- 53313 (ii) for a licensee that has posted a bond under this section with the commission,

- 53314 increase the amount of the bond posted with the commission.
- 53315 (c) A bond under this Subsection (5) shall be:
- 53316 (i) executed by:
- 53317 (A) for an applicant, the applicant as principal, with a corporate surety; or
- 53318 (B) for a licensee, the licensee as principal, with a corporate surety; and
- 53319 (ii) payable to the commission conditioned upon the faithful performance of all of the
- 53320 requirements of this part including:
- 53321 (A) the payment of all taxes under this part;
- 53322 (B) the payment of any:
- 53323 (I) penalty as provided in Section 59-1-401; or
- 53324 (II) interest as provided in Section 59-1-402; or
- 53325 (C) any other obligation of the:
- 53326 (I) applicant under this part; or
- 53327 (II) licensee under this part.
- 53328 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
- 53329 of a bond under this Subsection (5) on the basis of:
- 53330 (i) commission estimates of:
- 53331 (A) an applicant's tax liability under this part; or
- 53332 (B) a licensee's tax liability under this part; and
- 53333 (ii) the amount of a delinquency described in Subsection (5)(e) if:
- 53334 (A) a license under this section was revoked for a delinquency under this part for:
- 53335 (I) (Aa) an applicant; or
- 53336 (Bb) a licensee;
- 53337 (II) a fiduciary of the:
- 53338 (Aa) applicant; or
- 53339 (Bb) licensee; or
- 53340 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of
- 53341 the licensee is required to collect, truthfully account for, and pay over a tax under this part; or

53342 (B) there is a delinquency in paying a tax under this part for:
53343 (I) (Aa) an applicant; or
53344 (Bb) a licensee;
53345 (II) a fiduciary of the:
53346 (Aa) applicant; or
53347 (Bb) licensee; or
53348 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of
53349 the licensee is required to collect, truthfully account for, and pay over a tax under this part.
53350 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
53351 (i) for an applicant, the amount of the delinquency is the sum of:
53352 (A) the amount of any delinquency that served as a basis for revoking the license under
53353 this section of:
53354 (I) the applicant;
53355 (II) a fiduciary of the applicant; or
53356 (III) a person for which the applicant or the fiduciary of the applicant is required to
53357 collect, truthfully account for, and pay over a tax under this part; or
53358 (B) the amount of tax that any of the following owe under this part:
53359 (I) the applicant;
53360 (II) a fiduciary of the applicant; and
53361 (III) a person for which the applicant or the fiduciary of the applicant is required to
53362 collect, truthfully account for, and pay over a tax under this part; or
53363 (ii) for a licensee, the amount of the delinquency is the sum of:
53364 (A) the amount of any delinquency that served as a basis for revoking the license under
53365 this section of:
53366 (I) the licensee;
53367 (II) a fiduciary of the licensee; or
53368 (III) a person for which the licensee or the fiduciary of the licensee is required to
53369 collect, truthfully account for, and pay over a tax under this part; or

53370 (B) the amount of tax that any of the following owe under this part:

53371 (I) the licensee;

53372 (II) a fiduciary of the licensee; and

53373 (III) a person for which the licensee or the fiduciary of the licensee is required to

53374 collect, truthfully account for, and pay over a tax under this part.

53375 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)

53376 may not:

53377 (i) be less than \$10,000; or

53378 (ii) exceed \$500,000.

53379 (g) (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined

53380 into one bond with any other bond required by this chapter.

53381 (ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined

53382 into one bond with any other bond required by this chapter, the amount of that combined bond

53383 is determined by:

53384 (A) calculating the separate amount of each bond required for each type of fuel included

53385 in the combined bond; and

53386 (B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

53387 (6) (a) The commission shall revoke a license under this section if:

53388 (i) a licensee violates any provision of this part; and

53389 (ii) before the commission revokes the license the commission provides the licensee:

53390 (A) reasonable notice; and

53391 (B) a hearing.

53392 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),

53393 the commission may not issue another license to that licensee until that licensee complies with

53394 the requirements of this part, including:

53395 (i) paying any:

53396 (A) tax due under this part;

53397 (B) penalty as provided in Section 59-1-401; or

53398 (C) interest as provided in Section 59-1-402; and
53399 (ii) posting a bond in accordance with Subsection (5).
53400 Section 1048. Section **59-13-301** is amended to read:
53401 **59-13-301. Tax basis -- Rate -- Exemptions -- Revenue deposited with treasurer**
53402 **and credited to Transportation Fund -- Reduction of tax in limited circumstances.**
53403 (1) (a) Except as provided in Subsections (2), (3), and (11) and Section 59-13-304, a
53404 tax is imposed at the same rate imposed under Subsection 59-13-201(1)(a) on the:
53405 (i) removal of undyed diesel fuel from any refinery;
53406 (ii) removal of undyed diesel fuel from any terminal;
53407 (iii) entry into the state of any undyed diesel fuel for consumption, use, sale, or
53408 warehousing;
53409 (iv) sale of undyed diesel fuel to any person who is not registered as a supplier under
53410 this part unless the tax has been collected under this section;
53411 (v) any untaxed special fuel blended with undyed diesel fuel; or
53412 (vi) use of untaxed special fuel, other than a clean special fuel.
53413 (b) The tax imposed under this section shall only be imposed once upon any special
53414 fuel.
53415 (2) (a) No special fuel tax is imposed or collected upon dyed diesel fuel which:
53416 (i) is sold or used for any purpose other than to operate or propel a motor vehicle upon
53417 the public highways of the state, but this exemption applies only in those cases where the
53418 purchasers or the users of special fuel establish to the satisfaction of the commission that the
53419 special fuel was used for purposes other than to operate a motor vehicle upon the public
53420 highways of the state; or
53421 (ii) is sold to this state or any of its political subdivisions.
53422 (b) No special fuel tax is imposed on undyed diesel fuel which:
53423 (i) is sold to the United States government or any of its instrumentalities or to this state
53424 or any of its political subdivisions;
53425 (ii) is exported from this state if proof of actual exportation on forms prescribed by the

53426 commission is made within 180 days after exportation;
53427 (iii) is used in a vehicle off-highway;
53428 (iv) is used to operate a power take-off unit of a vehicle;
53429 (v) is used for off-highway agricultural uses;
53430 (vi) is used in a separately fueled engine on a vehicle that does not propel the vehicle
53431 upon the highways of the state; or
53432 (vii) is used in machinery and equipment not registered and not required to be registered
53433 for highway use.
53434 (3) No tax is imposed or collected on special fuel if it is:
53435 (a) purchased for business use in machinery and equipment not registered and not
53436 required to be registered for highway use; and
53437 (b) used pursuant to the conditions of a state implementation plan approved under Title
53438 19, Chapter 2, Air Conservation Act.
53439 (4) Upon request of a buyer meeting the requirements under Subsection (3), the
53440 Division of Air Quality shall issue an exemption certificate that may be shown to a seller.
53441 (5) The special fuel tax shall be paid by the supplier.
53442 (6) (a) The special fuel tax shall be paid by every user who is required by Sections
53443 59-13-303 and 59-13-305 to obtain a special fuel user permit and file special fuel tax reports.
53444 (b) The user shall receive a refundable credit for special fuel taxes paid on purchases
53445 which are delivered into vehicles and for which special fuel tax liability is reported.
53446 (7) (a) Except as provided under Subsections (7)(b) and (c), all revenue received by the
53447 commission from taxes and license fees under this part shall be deposited daily with the state
53448 treasurer and credited to the Transportation Fund.
53449 (b) An appropriation from the Transportation Fund shall be made to the commission to
53450 cover expenses incurred in the administration and enforcement of this part and the collection of
53451 the special fuel tax.
53452 (c) Five dollars of each special fuel user trip permit fee paid under Section 59-13-303
53453 may be used by the commission as a dedicated credit to cover the costs of electronic

53454 credentialing as provided in Section 41-1a-303.

53455 (8) The commission may either collect no tax on special fuel exported from the state or,
53456 upon application, refund the tax paid.

53457 (9) (a) The United States government or any of its instrumentalities, this state, or a
53458 political subdivision of this state that has purchased special fuel from a supplier or from a retail
53459 dealer of special fuel and has paid the tax on the special fuel as provided in this section is
53460 entitled to a refund of the tax and may file with the commission for a quarterly refund in a
53461 manner prescribed by the commission.

53462 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53463 Administrative Rulemaking Act, the commission shall make rules governing the application and
53464 refund provided for in Subsection (9)(a).

53465 (10) (a) The purchaser shall pay the tax on diesel fuel purchased for uses under
53466 Subsections (2)(b)(i), (iii), (iv), (v), (vi), and (vii) and apply for a refund for the tax paid as
53467 provided in Subsection (9) and this Subsection (10).

53468 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53469 Administrative Rulemaking Act, the commission shall make rules governing the application and
53470 refund for off-highway and nonhighway uses provided under Subsections (2)(b)(iii), (iv), (vi),
53471 and (vii).

53472 (c) A refund of tax paid under this part on diesel fuel used for nonhighway agricultural
53473 uses shall be made in accordance with the tax return procedures under Section 59-13-202.

53474 (11) (a) Beginning on April 1, 2001, a tax imposed under this section on special fuel is
53475 reduced to the extent provided in Subsection (11)(b) if:

53476 (i) the Navajo Nation imposes a tax on the special fuel;

53477 (ii) the tax described in Subsection (11)(a)(i) is imposed without regard to whether the
53478 person required to pay the tax is an enrolled member of the Navajo Nation; and

53479 (iii) the commission and the Navajo Nation execute and maintain an agreement as
53480 provided in this Subsection (11) for the administration of the reduction of tax.

53481 (b) (i) If but for Subsection (11)(a) the special fuel is subject to a tax imposed by this

53482 section:

53483 (A) the state shall be paid the difference described in Subsection (11)(b)(ii) if that
53484 difference is greater than \$0; and

53485 (B) a person may not require the state to provide a refund, a credit, or similar tax relief
53486 if the difference described in Subsection (11)(b)(ii) is less than or equal to \$0.

53487 (ii) The difference described in Subsection (11)(b)(i) is equal to the difference between:

53488 (A) the amount of tax imposed on the special fuel by this section; less

53489 (B) the tax imposed and collected by the Navajo Nation on the special fuel.

53490 (c) For purposes of Subsections (11)(a) and (b), the tax paid to the Navajo Nation on
53491 the special fuel does not include any interest or penalties a taxpayer may be required to pay to
53492 the Navajo Nation.

53493 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53494 Administrative Rulemaking Act, the commission shall make rules governing the procedures for
53495 administering the reduction of tax provided under this Subsection (11).

53496 (e) The agreement required under Subsection (11)(a):

53497 (i) may not:

53498 (A) authorize the state to impose a tax in addition to a tax imposed under this chapter;

53499 (B) provide a reduction of taxes greater than or different from the reduction described
53500 in this Subsection (11); or

53501 (C) affect the power of the state to establish rates of taxation;

53502 (ii) shall:

53503 (A) be in writing;

53504 (B) be signed by:

53505 (I) the chair of the commission or the chair's designee; and

53506 (II) a person designated by the Navajo Nation that may bind the Navajo Nation;

53507 (C) be conditioned on obtaining any approval required by federal law;

53508 (D) state the effective date of the agreement; and

53509 (E) state any accommodation the Navajo Nation makes related to the construction and

53510 maintenance of state highways and other infrastructure within the Utah portion of the Navajo
53511 Nation; and

53512 (iii) may:

53513 (A) notwithstanding Section 59-1-403, authorize the commission to disclose to the
53514 Navajo Nation information that is:

53515 (I) contained in a document filed with the commission; and

53516 (II) related to the tax imposed under this section;

53517 (B) provide for maintaining records by the commission or the Navajo Nation; or

53518 (C) provide for inspections or audits of suppliers, distributors, carriers, or retailers
53519 located or doing business within the Utah portion of the Navajo Nation.

53520 (f) (i) If, on or after April 1, 2001, the Navajo Nation changes the tax rate of a tax
53521 imposed on special fuel, any change in the amount of the reduction of taxes under this
53522 Subsection (11) as a result of the change in the tax rate is not effective until the first day of the
53523 calendar quarter after a 60-day period beginning on the date the commission receives notice:

53524 (A) from the Navajo Nation; and

53525 (B) meeting the requirements of Subsection (11)(f)(ii).

53526 (ii) The notice described in Subsection (11)(f)(i) shall state:

53527 (A) that the Navajo Nation has changed or will change the tax rate of a tax imposed on
53528 special fuel;

53529 (B) the effective date of the rate change of the tax described in Subsection
53530 (11)(f)(ii)(A); and

53531 (C) the new rate of the tax described in Subsection (11)(f)(ii)(A).

53532 (g) If the agreement required by Subsection (11)(a) terminates, a reduction of tax is not
53533 permitted under this Subsection (11) beginning on the first day of the calendar quarter after a
53534 30-day period beginning on the day the agreement terminates.

53535 (h) If there is a conflict between this Subsection (11) and the agreement required by
53536 Subsection (11)(a), this Subsection (11) governs.

53537 Section 1049. Section **59-13-301.5** is amended to read:

53538 **59-13-301.5. Refund of taxes impacting Ute tribe and Ute tribal members.**

53539 (1) In accordance with this section, the Ute tribe may receive a refund from the state of
53540 amounts paid in accordance with Section 59-13-301 if:

53541 (a) the amounts paid by the Ute tribe when it purchases the special fuel includes the
53542 amount paid in taxes on the special fuel;

53543 (b) the special fuel is purchased for use by:

53544 (i) the Ute tribe; or

53545 (ii) a Ute tribal member from a retail station that is:

53546 (A) wholly owned by the Ute tribe; and

53547 (B) located on Ute trust land; and

53548 (c) the governor and the Ute tribe execute and maintain an agreement meeting the
53549 requirements of Subsection (3).

53550 (2) In addition to the agreement required by Subsection (1), the commission shall enter
53551 into an agreement with the Ute tribe that:

53552 (a) provides an allocation formula or procedure for determining:

53553 (i) the amount of special fuel sold by the Ute tribe to a Ute tribal member; and

53554 (ii) the amount of special fuel sold by the Ute tribe to a person who is not a Ute tribal
53555 member; and

53556 (b) provides a process by which:

53557 (i) the Ute tribe obtains a refund permitted by this section; and

53558 (ii) reports and remits special fuel tax to the state for sales made to persons who are not
53559 Ute tribal members.

53560 (3) The agreement required under Subsection (1):

53561 (a) may not:

53562 (i) authorize the state to impose a tax in addition to a tax imposed under this chapter;

53563 (ii) provide a refund, credit, or similar tax relief that is greater or different than the
53564 refund permitted under this section; or

53565 (iii) affect the power of the state to establish rates of taxation; and

- 53566 (b) shall:
- 53567 (i) provide that the state agrees to allow the refund described in this section;
- 53568 (ii) be in writing;
- 53569 (iii) be signed by:
- 53570 (A) the governor; and
- 53571 (B) the chair of the Business Committee of the Ute tribe;
- 53572 (iv) be conditioned on obtaining any approval required by federal law; and
- 53573 (v) state the effective date of the agreement.
- 53574 (4) (a) The governor shall report to the commission by no later than February 1 of each
- 53575 year as to whether or not an agreement meeting the requirements of this Subsection (4) is in
- 53576 effect.
- 53577 (b) If an agreement meeting the requirements of this Subsection (4) is terminated, the
- 53578 refund permitted under this section is not allowed beginning the January 1 following the date the
- 53579 agreement terminates.
- 53580 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 53581 Administrative Rulemaking Act, the commission may make rules regarding the procedures for
- 53582 seeking a refund agreed to under the agreement described in Subsection (2).
- 53583 Section 1050. Section **59-13-302** is amended to read:
- 53584 **59-13-302. Definitions -- License requirements -- Penalty -- Application process**
- 53585 **and requirements -- Fee not required -- Bonds -- Discontinuance of business -- Liens**
- 53586 **upon property.**
- 53587 (1) As used in this section:
- 53588 (a) "applicant" means a person that:
- 53589 (i) is required by this section to obtain a license; and
- 53590 (ii) submits an application:
- 53591 (A) to the commission; and
- 53592 (B) for a license under this section;
- 53593 (b) "application" means an application for a license under this section;

53594 (c) "fiduciary of the applicant" means a person that:
53595 (i) is required to collect, truthfully account for, and pay over an amount under this part
53596 for an applicant; and
53597 (ii) (A) is a corporate officer of the applicant described in Subsection (1)(c)(i);
53598 (B) is a director of the applicant described in Subsection (1)(c)(i);
53599 (C) is an employee of the applicant described in Subsection (1)(c)(i);
53600 (D) is a partner of the applicant described in Subsection (1)(c)(i);
53601 (E) is a trustee of the applicant described in Subsection (1)(c)(i); or
53602 (F) has a relationship to the applicant described in Subsection (1)(c)(i) that is similar to
53603 a relationship described in Subsections (1)(c)(ii)(A) through (E) as determined by the
53604 commission by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53605 Administrative Rulemaking Act;
53606 (d) "fiduciary of the licensee" means a person that:
53607 (i) is required to collect, truthfully account for, and pay over an amount under this part
53608 for a licensee; and
53609 (ii) (A) is a corporate officer of the licensee described in Subsection (1)(d)(i);
53610 (B) is a director of the licensee described in Subsection (1)(d)(i);
53611 (C) is an employee of the licensee described in Subsection (1)(d)(i);
53612 (D) is a partner of the licensee described in Subsection (1)(d)(i);
53613 (E) is a trustee of the licensee described in Subsection (1)(d)(i); or
53614 (F) has a relationship to the licensee described in Subsection (1)(d)(i) that is similar to a
53615 relationship described in Subsections (1)(d)(ii)(A) through (E) as determined by the commission
53616 by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53617 Administrative Rulemaking Act;
53618 (e) "license" means a license under this section; and
53619 (f) "licensee" means a person that is licensed under this section by the commission.
53620 (2) A person that is required to collect an amount under this part is guilty of a criminal
53621 violation as provided in Section 59-1-401 if before obtaining a license under this section that

- 53622 person engages in business within the state.
- 53623 (3) The license described in Subsection (2):
- 53624 (a) shall be granted and issued:
- 53625 (i) by the commission in accordance with this section;
- 53626 (ii) without a license fee; and
- 53627 (iii) if:
- 53628 (A) an applicant:
- 53629 (I) states the applicant's name and address in the application; and
- 53630 (II) provides other information in the application that the commission may require; and
- 53631 (B) the person meets the requirements of this section to be granted a license as
- 53632 determined by the commission;
- 53633 (b) may not be assigned to another person; and
- 53634 (c) is valid:
- 53635 (i) only for the person named on the license; and
- 53636 (ii) until:
- 53637 (A) the person described in Subsection (3)(c)(i):
- 53638 (I) ceases to do business; or
- 53639 (II) changes that person's business address; or
- 53640 (B) the commission revokes the license.
- 53641 (4) The commission shall review an application and determine whether:
- 53642 (a) the applicant meets the requirements of this section to be issued a license; and
- 53643 (b) a bond is required to be posted with the commission in accordance with Subsection
- 53644 (5) before the applicant may be issued a license.
- 53645 (5) (a) An applicant shall post a bond with the commission before the commission may
- 53646 issue the applicant a license if:
- 53647 (i) a license under this section was revoked for a delinquency under this part for:
- 53648 (A) the applicant;
- 53649 (B) a fiduciary of the applicant; or

53650 (C) a person for which the applicant or the fiduciary of the applicant is required to
53651 collect, truthfully account for, and pay over a tax under this part; or
53652 (ii) there is a delinquency in paying a tax under this part for:
53653 (A) the applicant;
53654 (B) a fiduciary of the applicant; or
53655 (C) a person for which the applicant or the fiduciary of the applicant is required to
53656 collect, truthfully account for, and pay over a tax under this part.
53657 (b) If the commission determines it is necessary to ensure compliance with this part, the
53658 commission may require a licensee to:
53659 (i) for a licensee that has not posted a bond under this section with the commission,
53660 post a bond with the commission in accordance with Subsections (5)(c) through (g); or
53661 (ii) for a licensee that has posted a bond under this section with the commission,
53662 increase the amount of the bond posted with the commission.
53663 (c) A bond under this Subsection (5) shall be:
53664 (i) executed by:
53665 (A) for an applicant, the applicant as principal, with a corporate surety; or
53666 (B) for a licensee, the licensee as principal, with a corporate surety; and
53667 (ii) payable to the commission conditioned upon the faithful performance of all of the
53668 requirements of this part including:
53669 (A) the payment of all amounts under this part;
53670 (B) the payment of any:
53671 (I) penalty as provided in Section 59-1-401; or
53672 (II) interest as provided in Section 59-1-402; or
53673 (C) any other obligation of the:
53674 (I) applicant under this part; or
53675 (II) licensee under this part.
53676 (d) Except as provided in Subsection (5)(f), the commission shall calculate the amount
53677 of a bond under this Subsection (5) on the basis of:

- 53678 (i) commission estimates of:
- 53679 (A) an applicant's liability for any amount under this part; or
- 53680 (B) a licensee's liability for any amount under this part; and
- 53681 (ii) the amount of a delinquency described in Subsection (5)(e) if:
- 53682 (A) a license under this section was revoked for a delinquency under this part for:
- 53683 (I) (Aa) an applicant; or
- 53684 (Bb) a licensee;
- 53685 (II) a fiduciary of the:
- 53686 (Aa) applicant; or
- 53687 (Bb) licensee; or
- 53688 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of
- 53689 the licensee is required to collect, truthfully account for, and pay over an amount under this
- 53690 part; or
- 53691 (B) there is a delinquency in paying an amount under this part for:
- 53692 (I) (Aa) an applicant; or
- 53693 (Bb) a licensee;
- 53694 (II) a fiduciary of the:
- 53695 (Aa) applicant; or
- 53696 (Bb) licensee; or
- 53697 (III) a person for which the applicant, licensee, fiduciary of the applicant, or fiduciary of
- 53698 the licensee is required to collect, truthfully account for, and pay over an amount under this
- 53699 part.
- 53700 (e) Except as provided in Subsection (5)(f), for purposes of Subsection (5)(d)(ii):
- 53701 (i) for an applicant, the amount of the delinquency is the sum of:
- 53702 (A) the amount of any delinquency that served as a basis for revoking the license under
- 53703 this section of:
- 53704 (I) the applicant;
- 53705 (II) a fiduciary of the applicant; or

53706 (III) a person for which the applicant or the fiduciary of the applicant is required to
53707 collect, truthfully account for, and pay over an amount under this part; or
53708 (B) the amount that any of the following owe under this part:
53709 (I) the applicant;
53710 (II) a fiduciary of the applicant; and
53711 (III) a person for which the applicant or the fiduciary of the applicant is required to
53712 collect, truthfully account for, and pay over an amount under this part; or
53713 (ii) for a licensee, the amount of the delinquency is the sum of:
53714 (A) the amount of any delinquency that served as a basis for revoking the license under
53715 this section of:
53716 (I) the licensee;
53717 (II) a fiduciary of the licensee; or
53718 (III) a person for which the licensee or the fiduciary of the licensee is required to
53719 collect, truthfully account for, and pay over an amount under this part; or
53720 (B) the amount that any of the following owe under this part:
53721 (I) the licensee;
53722 (II) a fiduciary of the licensee; and
53723 (III) a person for which the licensee or the fiduciary of the licensee is required to
53724 collect, truthfully account for, and pay over an amount under this part.
53725 (f) Notwithstanding Subsection (5)(d) or (e), a bond required by this Subsection (5)
53726 may not:
53727 (i) be less than \$10,000; or
53728 (ii) exceed \$500,000.
53729 (g) (i) Subject to Subsection (5)(g)(ii), a bond required by this section may be combined
53730 into one bond with any other bond required by this chapter.
53731 (ii) For purposes of Subsection (5)(g)(i), if a bond required by this section is combined
53732 into one bond with any other bond required by this chapter, the amount of that combined bond
53733 is determined by:

53734 (A) calculating the separate amount of each bond required for each type of fuel included
53735 in the combined bond; and

53736 (B) aggregating the separate amounts calculated in Subsection (5)(g)(ii)(A).

53737 (6) (a) The commission shall revoke a license under this section if:

53738 (i) a licensee violates any provision of this part; and

53739 (ii) before the commission revokes the license the commission provides the licensee:

53740 (A) reasonable notice; and

53741 (B) a hearing.

53742 (b) If the commission revokes a licensee's license in accordance with Subsection (6)(a),
53743 the commission may not issue another license to that licensee until that licensee complies with
53744 the requirements of this part, including:

53745 (i) paying any:

53746 (A) amounts due under this part;

53747 (B) penalty as provided in Section 59-1-401; or

53748 (C) interest as provided in Section 59-1-402; and

53749 (ii) posting a bond in accordance with Subsection (5).

53750 (7) (a) If any person ceases to be a supplier within the state by reason of the
53751 discontinuance, sale, or transfer of the person's business, the supplier shall notify the
53752 commission in writing at the time the discontinuance, sale, or transfer takes effect.

53753 (b) The notice shall give the date of discontinuance and, in the event of a sale, the date
53754 of the sale and the name and address of the purchaser or transferee.

53755 (c) Taxes on all special fuel delivery or removal made prior to the discontinuance, sale,
53756 or transfer, shall become due and payable on the date of discontinuance, sale, or transfer.

53757 (d) The supplier shall make a report and pay all taxes, interest, and penalties and
53758 surrender to the commission the license certificate that was issued to the supplier by the
53759 commission.

53760 (8) (a) The tax imposed by this part shall be a lien upon the property of any supplier
53761 liable for an amount of tax that is required to be collected, if the supplier sells the business,

53762 stock of goods, or quits business, and if the supplier fails to make a final return and payment
53763 within 15 days after the date of selling or quitting business.

53764 (b) The successor or assigns, if any, shall be required to withhold a sufficient amount of
53765 the purchase money to cover the amount of the taxes that are required to be collected and
53766 interest or penalties due and paid under Sections 59-1-401 and 59-1-402 until the former owner
53767 produces a receipt from the commission showing that the taxes have been paid or a certificate
53768 stating that no amount of tax is due. If the purchaser of a business or stock of goods fails to
53769 withhold sufficient purchase money, the purchaser shall be personally liable for the payment of
53770 the amount that is due.

53771 Section 1051. Section **59-13-322** is amended to read:

53772 **59-13-322. Refunds of tax due to fire, flood, storm, accident, crime, or discharge**
53773 **in bankruptcy -- Filing claims and affidavits -- Commission approval -- Rulemaking --**
53774 **Appeals -- Penalties.**

53775 (1) (a) A retailer, wholesaler, or licensed supplier, who without fault, sustains a loss or
53776 destruction of 7,000 or more gallons of diesel fuel in a single incident due to fire, flood, storm,
53777 accident, or the commission of a crime and who has paid or is required to pay the tax on the
53778 special fuel as provided by this part, is entitled to a refund or credit of the tax subject to the
53779 conditions and limitations provided under this section.

53780 (b) The claimant shall file a claim for a refund or credit with the commission within 90
53781 days of the incident.

53782 (c) Any part of a loss or destruction eligible for indemnification under an insurance
53783 policy for the taxes paid or required on the loss or destruction of special fuel is not eligible for a
53784 refund or credit under this section.

53785 (d) Any claimant filing a claim for a refund or credit shall furnish any or all of the
53786 information outlined in this section upon request of the commission.

53787 (e) The burden of proof of loss or destruction is on the claimant who shall provide
53788 evidence of loss or destruction to the satisfaction of the commission.

53789 (f) (i) The claim shall include an affidavit containing the:

- 53790 (A) name of claimant;
- 53791 (B) claimant's address;
- 53792 (C) date, time, and location of the incident;
- 53793 (D) cause of the incident;
- 53794 (E) name of the investigating agencies at the scene;
- 53795 (F) number of gallons actually lost from sale; and
- 53796 (G) information on any insurance coverages related to the incident.
- 53797 (ii) The claimant shall support the claim by submitting the original invoices or copy of
- 53798 the original invoices.
- 53799 (iii) This original claim and all information contained in it constitutes a permanent file
- 53800 with the commission in the name of the claimant.
- 53801 (2) (a) A retailer, wholesaler, or licensed distributor who has paid the tax on special fuel
- 53802 as provided by this part is entitled to a refund for taxes paid on that portion of an account that:
- 53803 (i) relates to 4,500 or more gallons of special fuel purchased in a single transaction for
- 53804 which no payment has been received; and
- 53805 (ii) has been discharged in a bankruptcy proceeding.
- 53806 (b) The claimant shall file a claim for refund with the commission within 90 days from
- 53807 the date of the discharge.
- 53808 (c) Any claimant filing a claim for a refund shall furnish any or all of the information
- 53809 outlined in this section upon request of the commission.
- 53810 (d) The burden of proof of discharge is on the claimant who shall provide evidence of
- 53811 discharge to the satisfaction of the commission.
- 53812 (e) The claim shall include an affidavit containing the following:
- 53813 (i) the name of the claimant;
- 53814 (ii) the claimant's address;
- 53815 (iii) the name of the debtor that received a discharge in bankruptcy; and
- 53816 (iv) the portion of the account that is subject to an order granting a discharge.
- 53817 (f) The claimant shall support the claim by submitting:

53818 (i) the original invoices or a copy of the original invoices; and

53819 (ii) a certified copy of the notice of discharge.

53820 (g) This original claim and all information contained in it constitutes a permanent file
53821 with the commission in the name of the claimant.

53822 (h) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53823 Administrative Rulemaking Act, the commission shall promulgate rules for the allocation of the
53824 discharge under this Subsection (2) to maximize the claimant's refund amount.

53825 (3) Upon commission approval of the claim for a refund, the commission shall pay the
53826 amount found due to the claimant. The total amount of claims for refunds shall be paid from
53827 the Transportation Fund.

53828 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53829 Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and
53830 may refuse to accept unsubstantiated evidence for the claim. If the commission is not satisfied
53831 with the evidence submitted in connection with the claim, it may reject the claim or require
53832 additional evidence.

53833 (5) Any person aggrieved by the decision of the commission with respect to a refund or
53834 credit may file a request for agency action, requesting a hearing before the commission.

53835 (6) Any person who makes any false claim, report, or statement, either as claimant,
53836 agent, or creditor, with intent to defraud or secure a refund or credit to which the claimant is
53837 not entitled, is subject to the criminal penalties provided under Section 59-1-401, and the
53838 commission shall initiate the filing of a complaint for alleged violations of this part. In addition
53839 to these penalties, the person may not receive any refund or credit as a claimant or as a creditor
53840 of a claimant for refund or credit for a period of five years.

53841 Section 1052. Section **59-13-404** is amended to read:

53842 **59-13-404. Refunds of aviation fuel tax -- Filing claims -- Commission approval --**
53843 **Rulemaking -- Appeals -- Penalties.**

53844 (1) A federally certificated air carrier is entitled to a \$.015 refund or credit of the
53845 aviation fuel tax paid on gallons of aviation fuel purchased at the Salt Lake International

53846 Airport, subject to the conditions and limitations provided under this section.

53847 (2) (a) A federally certificated air carrier shall file a claim for a refund or credit with the
53848 commission within 90 days of the end of the tax year for which a claim is made.

53849 (b) A federally certificated air carrier filing a claim for a refund or credit shall furnish
53850 any or all of the information outlined in this section upon request of the commission.

53851 (3) (a) The claim shall include an application containing:

53852 (i) the name of the federally certificated air carrier claimant;

53853 (ii) the number of gallons actually purchased;

53854 (iii) the place of purchase; and

53855 (iv) any other information required by the commission to support the claim.

53856 (b) This original claim and all information contained in it, constitutes a permanent file
53857 with the commission in the name of the federally certificated air carrier claimant.

53858 (4) Upon commission approval of the claim for a refund, the commission shall pay the
53859 amount found due to the federally certificated air carrier claimant. The total amount of claims
53860 for refunds shall be paid from the Transportation Fund.

53861 (5) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
53862 Administrative Rulemaking Act, the commission may promulgate rules to enforce this part, and
53863 may refuse to accept unsubstantiated evidence for the claim.

53864 (b) If the commission is not satisfied with the evidence submitted in connection with the
53865 claim, it may reject the claim or require additional evidence.

53866 (6) A federally certificated air carrier aggrieved by the decision of the commission with
53867 respect to a refund or credit may file a request for agency action, requesting a hearing before the
53868 commission.

53869 (7) A federally certificated air carrier who makes any false claim, report, or statement,
53870 with intent to defraud or secure a refund or credit to which the claimant is not entitled, is
53871 subject to the criminal penalties provided under Section 59-1-401, and the commission shall
53872 initiate the filing of a complaint for alleged violations of this part. In addition to these penalties,
53873 the federally certificated air carrier may not receive any refund or credit as a claimant for a

53874 period of five years.

53875 Section 1053. Section **59-13-502** is amended to read:

53876 **59-13-502. Interstate fuel tax agreements -- Compliance procedures.**

53877 (1) After the commission's membership in an agreement provided for under Section
53878 59-13-501 becomes effective, a taxpayer shall, for vehicles powered by special fuel qualifying
53879 under the agreement, be required to pay the special fuel tax at the rate established under Part 3
53880 in accordance with the provisions of the agreement.

53881 (2) Any taxpayer who has vehicles, qualifying under an agreement entered into under
53882 this part, which operate on motor fuel as defined under Section 59-13-102, shall account for
53883 and pay tax on fuel used in those vehicles at the rate established under Part 2 in accordance with
53884 the agreement, and receive credit for taxes paid under Part 2 on purchases as provided for in the
53885 agreement.

53886 (3) The statutory notice procedures of this chapter, penalty provisions of Section
53887 59-1-401, and adjudicative procedures in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
53888 Administrative Procedures Act, are applicable to this part.

53889 Section 1054. Section **59-14-204** is amended to read:

53890 **59-14-204. Tax basis -- Rate -- Future increase -- Restricted account -- Use of**
53891 **revenues.**

53892 (1) Except for cigarettes described under Subsection 59-14-210(3), there is levied a tax
53893 upon the sale, use, storage, or distribution of cigarettes in the state.

53894 (2) The rates of the tax levied under Subsection (1) are:

53895 (a) 3.475 cents on each cigarette, for all cigarettes weighing not more than three
53896 pounds per thousand cigarettes; and

53897 (b) 4.075 cents on each cigarette, for all cigarettes weighing in excess of three pounds
53898 per thousand cigarettes.

53899 (3) Except as otherwise provided under this chapter, the tax levied under Subsection (1)
53900 shall be paid by any person who is the manufacturer, jobber, importer, distributor, wholesaler,
53901 retailer, user, or consumer.

53902 (4) The tax rates specified in this section shall be increased by the commission by the
53903 same amount as any future reduction in the federal excise tax on cigarettes.

53904 (5) (a) There is created within the General Fund a restricted account known as the
53905 "Cigarette Tax Restricted Account."

53906 (b) Beginning on July 1, 1998, \$250,000 of the revenues generated by the increase in
53907 the cigarette tax under this section enacted during the 1997 Annual General Session shall be
53908 annually deposited into the account.

53909 (c) The Department of Health shall expend the funds deposited in the account under
53910 Subsection (5)(b) for a tobacco prevention and control media campaign targeted towards
53911 children.

53912 (d) The following revenue generated from the tax increase imposed under Subsection
53913 (1) during the 2002 General Session shall be deposited in the Cigarette Tax Restricted Account:

53914 (i) 22% of the revenue to be annually appropriated to the Department of Health for
53915 tobacco prevention, reduction, cessation, and control programs;

53916 (ii) 15% of the revenue to be annually appropriated to the University of Utah Health
53917 Sciences Center for the Huntsman Cancer Institute for cancer research; and

53918 (iii) 21% of the revenue to be annually appropriated to the University of Utah Health
53919 Sciences Center for medical education at the University of Utah School of Medicine.

53920 (e) Any balance remaining in the Cigarette Tax Restricted Account at the end of the
53921 fiscal year shall be appropriated during the next fiscal year for the purposes set forth in
53922 Subsections (5)(d)(i) through (5)(d)(iii) in proportion to the amount of revenue deposited into
53923 the account for each purpose.

53924 (f) The Legislature shall give particular consideration to appropriating any revenues
53925 resulting from the change in tax rates under Subsection (2) adopted during the 2002 Annual
53926 General Session and not otherwise appropriated pursuant to Subsection (5)(d) to enhance
53927 Medicaid provider reimbursement rates and medical coverage for the uninsured.

53928 (g) Any program or entity that receives funding under Subsection (5)(d) shall provide
53929 an annual report to the Health and Human Services Interim Committee no later than September

53930 1 of each year. The report shall include:

53931 (i) the amount funded;

53932 (ii) the amount expended;

53933 (iii) a description of the effectiveness of the program; and

53934 (iv) if the program is a tobacco cessation program, the report required in Section

53935 ~~[63-97-401]~~ 51-9-203.

53936 Section 1055. Section **59-14-407** is amended to read:

53937 **59-14-407. Reporting of manufacturer name.**

53938 (1) As used in this section:

53939 (a) "Cigarette" has the same meaning as defined in Section 59-22-202.

53940 (b) "Tobacco product manufacturer" has the same meaning as defined in Section

53941 59-22-202.

53942 (2) Any manufacturer, distributor, wholesaler, or retail dealer who under Section

53943 59-14-205 affixes a stamp to an individual package or container of cigarettes manufactured or

53944 sold by a tobacco product manufacturer required to place funds into escrow under Section

53945 59-22-203 shall report quarterly to the commission:

53946 (a) the quantity of cigarettes in the package or container; and

53947 (b) the name of the manufacturer of the cigarettes.

53948 (3) Any manufacturer, distributor, wholesaler, retail dealer, or other person who is

53949 required to pay the tax levied under Part 3, Tobacco Products, on a tobacco product defined as

53950 a cigarette under Section 59-22-202 and manufactured or sold by a tobacco product

53951 manufacturer required to place funds into escrow under Section 59-22-203 shall report

53952 quarterly to the commission:

53953 (a) the quantity of cigarettes upon which the tax is levied; and

53954 (b) the name of the manufacturer of each cigarette.

53955 (4) (a) The reports under Subsections (2) and (3) shall be made no later than quarterly

53956 on or before the last day of the month following each calendar quarterly period pursuant to rules

53957 established by the commission in accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3,

53958 Utah Administrative Rulemaking Act.

53959 (b) A person required to file a report under this section is subject to the penalties under
53960 Section 59-1-401 for failing to file a report in a timely manner, or for supplying false or
53961 fraudulent information.

53962 Section 1056. Section **59-14-409** is amended to read:

53963 **59-14-409. Definitions -- Credit or refund for tax paid on cigarette or tobacco**
53964 **product that is destroyed or returned to the manufacturer -- Interest -- Rulemaking**
53965 **authority.**

53966 (1) As used in this section, "licensed person" means a person:

53967 (a) licensed by the commission in accordance with Section 59-14-202; and

53968 (b) that is a:

53969 (i) distributor;

53970 (ii) jobber;

53971 (iii) manufacturer;

53972 (iv) retailer;

53973 (v) wholesaler; or

53974 (vi) a person similar to a person described in Subsections (1)(b)(i) through (v) as
53975 determined by the commission by rule.

53976 (2) A licensed person may apply to the commission for a credit or refund as provided in
53977 Subsection (3) if:

53978 (a) on or after July 1, 2005, the following are removed from retail sale or from storage:

53979 (i) a cigarette; or

53980 (ii) a tobacco product;

53981 (b) before a cigarette or tobacco product is removed from retail sale or from storage in
53982 accordance with Subsection (2)(a), the licensed person remits a tax:

53983 (i) to the commission;

53984 (ii) on the:

53985 (A) cigarette; or

53986 (B) tobacco product; and
53987 (iii) in accordance with:
53988 (A) Part 2, Cigarettes; or
53989 (B) Part 3, Tobacco Products; and
53990 (c) the licensed person verifies to the commission that the cigarette or tobacco product
53991 described in Subsection (2)(a) has been:
53992 (i) returned to the manufacturer of the cigarette or tobacco product; or
53993 (ii) destroyed.
53994 (3) The amount of the credit or refund described in Subsection (2) is equal to:
53995 (a) for a cigarette removed from retail sale or from storage, the amount of tax the
53996 licensed person paid on the cigarette in accordance with Part 2, Cigarettes; or
53997 (b) for a tobacco product removed from retail sale or from storage, the amount of tax
53998 the licensed person paid on the tobacco product in accordance with Part 3, Tobacco Products.
53999 (4) (a) The commission shall grant a credit or refund under this section if the
54000 commission determines that a licensed person meets the requirements of Subsection (2).
54001 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
54002 Administrative Rulemaking Act, the commission may make rules establishing procedures and
54003 requirements for a licensed person to verify to the commission that a cigarette or tobacco
54004 product described in Subsection (2)(a) has been:
54005 (i) returned to the manufacturer of the cigarette or tobacco product; or
54006 (ii) destroyed.
54007 (5) (a) If the commission makes a credit or refund under this section within a 90-day
54008 period after the day on which a licensed person submits an application to the commission for the
54009 credit or refund, interest may not be added to the amount of credit or refund.
54010 (b) If the commission makes a credit or refund under this section more than 90 days
54011 after the day on which a licensed person submits an application to the commission for the credit
54012 or refund, interest shall be added to the amount of credit or refund as provided in Section
54013 59-1-402.

- 54014 (6) (a) The commission may create a form for:
- 54015 (i) a licensed person to:
- 54016 (A) submit a claim for a credit or refund; or
- 54017 (B) verify to the commission that a cigarette or tobacco product has been:
- 54018 (I) returned to the manufacturer of the cigarette or tobacco product; or
- 54019 (II) destroyed; or
- 54020 (ii) processing a claim for a credit or refund for payment.
- 54021 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 54022 Administrative Rulemaking Act, the commission may make rules defining a person similar to a
- 54023 person described in Subsections (1)(b)(i) through (v).
- 54024 Section 1057. Section **59-14-603** is amended to read:
- 54025 **59-14-603. Directory of cigarettes approved for stamping and sale.**
- 54026 (1) No later than August 30, 2005, the commission shall develop and publish on its
- 54027 website a directory listing:
- 54028 (a) all tobacco product manufacturers that have provided current and accurate
- 54029 certifications conforming to the requirements of Section 59-14-602; and
- 54030 (b) all brand families that are listed in the certifications required by Section 59-14-602,
- 54031 except the commission shall not include or retain in the directory:
- 54032 (i) the name or brand families of any nonparticipating manufacturer:
- 54033 (A) who failed to provide the certification required by Section 59-14-602; or
- 54034 (B) whose certification is determined by the commission to be out of compliance with
- 54035 Section 59-14-602, unless the commission has determined that the violation has been cured to
- 54036 the satisfaction of the commission; or
- 54037 (ii) a tobacco product manufacturer or brand family of a nonparticipating manufacturer
- 54038 for which the commission determines:
- 54039 (A) any escrow payment required by Section 59-22-203 for any period, for any brand
- 54040 family, whether or not listed by the nonparticipating manufacturer, has not been fully paid into a
- 54041 qualified escrow fund governed by a qualified escrow agreement; or

54042 (B) any outstanding final judgment, including interest thereon, for a violation of the
54043 Model Tobacco Settlement Act has not been fully satisfied for the brand family or the tobacco
54044 product manufacturer.

54045 (2) The commission shall update the directory required by this section as necessary:

54046 (a) to correct mistakes;

54047 (b) to add or remove a tobacco product manufacturer or brand family; and

54048 (c) to keep the directory in conformity with the requirements of this part.

54049 (3) (a) Every stamping agent shall provide to the commission a current and valid
54050 electronic mail address for the purpose of receiving notifications from the commission
54051 concerning information required by this section and this part.

54052 (b) The stamping agent shall update the electronic mail address as necessary.

54053 (4) A determination by the commission to not include or to remove a brand family or
54054 tobacco product manufacturer from the directory required by this section is subject to review in
54055 the manner prescribed by [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
54056 Procedures Act.

54057 Section 1058. Section **59-19-105** is amended to read:

54058 **59-19-105. Stamps to be affixed to marihuana and controlled substance --**
54059 **Anonymity provided when purchasing stamps -- Collection and distribution of tax --**
54060 **Property in kind.**

54061 (1) When a dealer purchases, acquires, transports, or imports into this state marihuana
54062 or controlled substances, [~~he~~] the dealer shall permanently affix the official indicia on the
54063 marihuana or controlled substances evidencing the payment of the tax required under this
54064 chapter. A stamp or other official indicia may not be used more than once.

54065 (2) Taxes imposed upon marihuana or controlled substances by this chapter are due and
54066 payable immediately upon acquisition or possession in this state by a dealer.

54067 (3) Payments required by this chapter shall be made to the commission on forms
54068 provided by the commission.

54069 (4) (a) A dealer is not required to give [~~his~~] the dealer's name, address, Social Security

54070 number, or other identifying information on the form.

54071 (b) The commission or its employees may not reveal any facts contained in any report,
54072 form, or return required by this chapter or any information obtained from a dealer.

54073 (c) None of the information contained in a report, form, or return or otherwise obtained
54074 from a dealer in connection with this section may be used against the dealer in any criminal
54075 proceeding unless it is independently obtained, except in connection with a proceeding involving
54076 taxes due under this chapter from the dealer making the return. This subsection supersedes any
54077 provision to the contrary.

54078 (d) A person who discloses information in violation of this subsection is guilty of a class
54079 A misdemeanor.

54080 (5) This section does not prohibit the commission from publishing statistics that do not
54081 disclose the identity of a dealer or the actual contents of any reports, forms, or returns.

54082 (6) (a) The commission shall collect all taxes imposed under this chapter. Amounts
54083 collected under this chapter, whether characterized as taxes, interest, or penalties, shall be
54084 deposited in the Drug Stamp Tax Fund as a dedicated credit and shall be applied and distributed
54085 under Section [~~63-38-9~~] 63J-1-404 of the Budgetary Procedures Act as follows:

54086 (i) forty percent to the commission for administrative costs of recovery; and

54087 (ii) sixty percent to the law enforcement agency conducting the controlled substance
54088 investigation, to be used and applied by the agency in the continued enforcement of controlled
54089 substance laws.

54090 (b) If there is more than one participating law enforcement agency, the 60% under
54091 Subsection (6)(a)(ii) shall be divided equitably and distributed among the agencies by the
54092 administrative law judge conducting the hearing to determine taxpayer liability. The distribution
54093 shall be based upon the extent of agency participation as appears from evidence submitted by
54094 each agency relative to actual time and expense incurred in the investigation.

54095 (c) If no law enforcement agency is involved in the collection of a specific amount
54096 under this chapter, the entire amount collected shall be applied under Subsection (6)(a)(i) to
54097 administrative costs of recovery.

54098 (7) (a) If property in kind obtained from the taxpayer is of use or benefit to the
54099 commission in the enforcement of this chapter or is of use or benefit to the participating law
54100 enforcement agency in the continued enforcement of controlled substance laws, either the
54101 commission or the law enforcement agency may apply to the administrative law judge for the
54102 award of the property. If the administrative law judge finds the property is of use or benefit
54103 either to the commission or the law enforcement agency, the property shall be awarded
54104 accordingly.

54105 (b) Before an award under this subsection is ordered, the property shall be appraised by
54106 a court-appointed appraiser and the appraised value shall be credited to the taxpayer. If the
54107 taxpayer objects to the results of the court-appointed appraisal, ~~he~~ the taxpayer may obtain
54108 ~~his~~ the taxpayer's own appraisal at ~~his~~ the taxpayer's own expense within ten days of the
54109 court-appointed appraisal. The decision of the administrative law judge as to value is
54110 controlling.

54111 (c) The value of any property in kind awarded to the commission or to the participating
54112 law enforcement agency shall be counted as a portion of its percentage share under Subsection
54113 (6).

54114 (8) Property of the taxpayer otherwise subject to forfeiture under Section 58-37-13 is
54115 not affected by this chapter if there is compliance with Section 58-37-13 regarding the forfeiture
54116 and the proceeds and property seized and forfeited are accordingly divided and distributed.

54117 Section 1059. Section **59-21-2** is amended to read:

54118 **59-21-2. Mineral Bonus Account created -- Contents -- Use of Mineral Bonus**
54119 **Account money -- Mineral Lease Account created -- Contents -- Appropriation of monies**
54120 **from Mineral Lease Account.**

54121 (1) (a) The Mineral Bonus Account is created within the General Fund.

54122 (b) The Mineral Bonus Account consists of federal mineral lease bonus payments
54123 deposited pursuant to Subsection 59-21-1(3).

54124 (c) The Legislature shall make appropriations from the Mineral Bonus Account in
54125 accordance with Section 35 of the Mineral Lands Leasing Act of 1920, 30 U.S.C. Sec. 191.

- 54126 (d) The state treasurer shall:
- 54127 (i) invest the money in the Mineral Bonus Account by following the procedures and
- 54128 requirements of Title 51, Chapter 7, State Money Management Act; and
- 54129 (ii) deposit all interest or other earnings derived from the account into the Mineral
- 54130 Bonus Account.
- 54131 (2) (a) The Mineral Lease Account is created within the General Fund.
- 54132 (b) The Mineral Lease Account consists of federal mineral lease money deposited
- 54133 pursuant to Subsection 59-21-1(1).
- 54134 (c) The Legislature shall make appropriations from the Mineral Lease Account as
- 54135 provided in Subsection 59-21-1(1) and this Subsection (2).
- 54136 (d) The Legislature shall annually appropriate 32.5% of all deposits made to the Mineral
- 54137 Lease Account to the Permanent Community Impact Fund established by Section 9-4-303.
- 54138 (e) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral
- 54139 Lease Account to the State Board of Education, to be used for education research and
- 54140 experimentation in the use of staff and facilities designed to improve the quality of education in
- 54141 Utah.
- 54142 (f) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral
- 54143 Lease Account to the Utah Geological Survey, to be used for activities carried on by the survey
- 54144 having as a purpose the development and exploitation of natural resources in the state.
- 54145 (g) The Legislature shall annually appropriate 2.25% of all deposits made to the Mineral
- 54146 Lease Account to the Water Research Laboratory at Utah State University, to be used for
- 54147 activities carried on by the laboratory having as a purpose the development and exploitation of
- 54148 water resources in the state.
- 54149 (h) (i) The Legislature shall annually appropriate to the Department of Transportation
- 54150 40% of all deposits made to the Mineral Lease Account to be distributed as provided in
- 54151 Subsection (2)(h)(ii) to:
- 54152 (A) counties;
- 54153 (B) special service districts established:

- 54154 (I) by counties;
- 54155 (II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and
- 54156 (III) for the purpose of constructing, repairing, or maintaining roads; or
- 54157 (C) special service districts established:
- 54158 (I) by counties;
- 54159 (II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and
- 54160 (III) for other purposes authorized by statute.
- 54161 (ii) The Department of Transportation shall allocate the funds specified in Subsection
- 54162 (2)(h)(i):
- 54163 (A) in amounts proportionate to the amount of mineral lease money generated by each
- 54164 county; and
- 54165 (B) to a county or special service district established by a county under Title 17A,
- 54166 Chapter 2, Part 13, Utah Special Service District Act, as determined by the county legislative
- 54167 body.
- 54168 (i) (i) The Legislature shall annually appropriate 5% of all deposits made to the Mineral
- 54169 Lease Account to the Department of Community and Culture to be distributed to:
- 54170 (A) special service districts established:
- 54171 (I) by counties;
- 54172 (II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and
- 54173 (III) for the purpose of constructing, repairing, or maintaining roads; or
- 54174 (B) special service districts established:
- 54175 (I) by counties;
- 54176 (II) under Title 17A, Chapter 2, Part 13, Utah Special Service District Act; and
- 54177 (III) for other purposes authorized by statute.
- 54178 (ii) The Department of Community and Culture may distribute the amounts described in
- 54179 Subsection (2)(i)(i) only to special service districts established under Title 17A, Chapter 2, Part
- 54180 13, Utah Special Service District Act, by counties:
- 54181 (A) of the third, fourth, fifth, or sixth class;

54182 (B) in which 4.5% or less of the mineral lease moneys within the state are generated;

54183 and

54184 (C) that are significantly socially or economically impacted as provided in Subsection
54185 (3)(i)(iii) by the development of minerals under the Mineral Lands Leasing Act, 30 U.S.C. Sec.
54186 181 et seq.

54187 (iii) The significant social or economic impact required under Subsection (2)(i)(ii)(C)
54188 shall be as a result of:

54189 (A) the transportation within the county of hydrocarbons, including solid hydrocarbons
54190 as defined in Section 59-5-101;

54191 (B) the employment of persons residing within the county in hydrocarbon extraction,
54192 including the extraction of solid hydrocarbons as defined in Section 59-5-101; or

54193 (C) a combination of Subsections (2)(i)(iii)(A) and (B).

54194 (iv) For purposes of distributing the appropriations under this Subsection (2)(i) to
54195 special service districts established by counties under Title 17A, Chapter 2, Part 13, Utah
54196 Special Service District Act, the Department of Community and Culture shall:

54197 (A) (I) allocate 50% of the appropriations equally among the counties meeting the
54198 requirements of Subsections (2)(i)(ii) and (iii); and

54199 (II) allocate 50% of the appropriations based on the ratio that the population of each
54200 county meeting the requirements of Subsections (2)(i)(ii) and (iii) bears to the total population
54201 of all of the counties meeting the requirements of Subsections (2)(i)(ii) and (iii); and

54202 (B) after making the allocations described in Subsection (2)(i)(iv)(A), distribute the
54203 allocated revenues to special service districts established by the counties under Title 17A,
54204 Chapter 2, Part 13, Utah Special Service District Act, as determined by the executive director of
54205 the Department of Community and Culture after consulting with the county legislative bodies of
54206 the counties meeting the requirements of Subsections (2)(i)(ii) and (iii).

54207 (v) The executive director of the Department of Community and Culture:

54208 (A) shall determine whether a county meets the requirements of Subsections (2)(i)(ii)
54209 and (iii);

54210 (B) shall distribute the appropriations under Subsection (2)(i)(i) to special service
54211 districts established by counties under Title 17A, Chapter 2, Part 13, Utah Special Service
54212 District Act, that meet the requirements of Subsections (2)(i)(ii) and (iii); and

54213 (C) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
54214 Administrative Rulemaking Act, may make rules:

54215 (I) providing a procedure for making the distributions under this Subsection (2)(i) to
54216 special service districts; and

54217 (II) defining the term "population" for purposes of Subsection (2)(i)(iv).

54218 (j) (i) The Legislature shall annually make the following appropriations from the
54219 Mineral Lease Account:

54220 (A) an amount equal to 52 cents multiplied by the number of acres of school or
54221 institutional trust lands, lands owned by the Division of Parks and Recreation, and lands owned
54222 by the Division of Wildlife Resources that are not under an in lieu of taxes contract, to each
54223 county in which those lands are located;

54224 (B) to each county in which school or institutional trust lands are transferred to the
54225 federal government after December 31, 1992, an amount equal to the number of transferred
54226 acres in the county multiplied by a payment per acre equal to the difference between 52 cents
54227 per acre and the per acre payment made to that county in the most recent payment under the
54228 federal payment in lieu of taxes program, 31 U.S.C. Sec. 6901 et seq., unless the federal
54229 payment was equal to or exceeded the 52 cents per acre, in which case a payment under this
54230 Subsection (2)(j)(i)(B) may not be made for the transferred lands;

54231 (C) to each county in which federal lands, which are entitlement lands under the federal
54232 in lieu of taxes program, are transferred to the school or institutional trust, an amount equal to
54233 the number of transferred acres in the county multiplied by a payment per acre equal to the
54234 difference between the most recent per acre payment made under the federal payment in lieu of
54235 taxes program and 52 cents per acre, unless the federal payment was equal to or less than 52
54236 cents per acre, in which case a payment under this Subsection (2)(j)(i)(C) may not be made for
54237 the transferred land; and

54238 (D) to a county of the fifth or sixth class, an amount equal to the product of:
54239 (I) \$1,000; and
54240 (II) the number of residences described in Subsection (2)(j)(iv) that are located within
54241 the county.

54242 (ii) A county receiving money under Subsection (2)(j)(i) may, as determined by the
54243 county legislative body, distribute the money or a portion of the money to:

54244 (A) special service districts established by the county under Title 17A, Chapter 2, Part
54245 13, Utah Special Service District Act;

54246 (B) school districts; or
54247 (C) public institutions of higher education.

54248 (iii) (A) Beginning in fiscal year 1994-95 and in each year after fiscal year 1994-95, the
54249 Division of Finance shall increase or decrease the amounts per acre provided for in Subsections
54250 (2)(j)(i)(A) through (C) by the average annual change in the Consumer Price Index for all urban
54251 consumers published by the Department of Labor.

54252 (B) For fiscal years beginning on or after fiscal year 2001-02, the Division of Finance
54253 shall increase or decrease the amount described in Subsection (2)(j)(i)(D)(I) by the average
54254 annual change in the Consumer Price Index for all urban consumers published by the
54255 Department of Labor.

54256 (iv) Residences for purposes of Subsection (2)(j)(i)(D)(II) are residences that are:

54257 (A) owned by:

54258 (I) the Division of Parks and Recreation; or
54259 (II) the Division of Wildlife Resources;

54260 (B) located on lands that are owned by:

54261 (I) the Division of Parks and Recreation; or
54262 (II) the Division of Wildlife Resources; and
54263 (C) are not subject to taxation under:

54264 (I) Chapter 2, Property Tax Act; or
54265 (II) Chapter 4, Privilege Tax.

54266 (k) The Legislature shall annually appropriate to the Permanent Community Impact
54267 Fund all deposits remaining in the Mineral Lease Account after making the appropriations
54268 provided for in Subsections (2)(d) through (j).

54269 (3) (a) Each agency, board, institution of higher education, and political subdivision
54270 receiving money under this chapter shall provide the Legislature, through the Office of the
54271 Legislative Fiscal Analyst, with a complete accounting of the use of that money on an annual
54272 basis.

54273 (b) The accounting required under Subsection (3)(a) shall:

54274 (i) include actual expenditures for the prior fiscal year, budgeted expenditures for the
54275 current fiscal year, and planned expenditures for the following fiscal year; and

54276 (ii) be reviewed by the Economic Development and Human Resources Appropriation
54277 Subcommittee as part of its normal budgetary process under [~~Title 63, Chapter 38~~] Title 63J,
54278 Chapter 1, Budgetary Procedures Act.

54279 Section 1060. Section **59-24-108** is amended to read:

54280 **59-24-108. Rulemaking authority.**

54281 The commission may make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
54282 Utah Administrative Rulemaking Act, to implement and enforce this chapter.

54283 Section 1061. Section **59-25-108** is amended to read:

54284 **59-25-108. Rulemaking authority.**

54285 The commission may make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
54286 Utah Administrative Rulemaking Act, to implement and enforce this chapter.

54287 Section 1062. Section **59-26-106** is amended to read:

54288 **59-26-106. Records.**

54289 (1) A multi-channel video or audio service provider shall maintain records, statements,
54290 books, or accounts necessary to determine the amount of tax that the multi-channel video or
54291 audio service provider is required to remit to the commission under this chapter.

54292 (2) The commission may require a multi-channel video or audio service provider to
54293 make or keep the records, statements, books, or accounts the commission considers sufficient to

54294 show the amount of tax for which the multi-channel video or audio service provider is required
54295 to remit to the commission under this chapter:

54296 (a) by notice served upon that multi-channel video or audio service provider; or

54297 (b) by administrative rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
54298 Chapter 3, Utah Administrative Rulemaking Act.

54299 (3) After notice by the commission, a multi-channel video or audio service provider
54300 shall open the records, statements, books, or accounts specified in Subsection (2) for
54301 examination by the commission or a duly authorized agent of the commission.

54302 Section 1063. Section **59-26-108** is amended to read:

54303 **59-26-108. Rulemaking authority.**

54304 The commission may make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
54305 Chapter 3, Utah Administrative Rulemaking Act, to implement and enforce this chapter.

54306 Section 1064. Section **59-27-104** is amended to read:

54307 **59-27-104. Payment of tax.**

54308 (1) Subject to Subsection (2), a sexually explicit business or escort service subject to
54309 the tax imposed by this chapter shall file a return with the commission and pay the tax calculated
54310 on the return to the commission:

54311 (a) quarterly on or before the last day of the month immediately following the last day
54312 of the previous calendar quarter if:

54313 (i) the sexually explicit business or escort service is required to file a quarterly sales and
54314 use tax return with the commission under Section 59-12-107; or

54315 (ii) the sexually explicit business or escort service is not required to file a sales and use
54316 tax return with the commission under Chapter 12, Sales and Use Tax Act; or

54317 (b) monthly on or before the last day of the month immediately following the last day of
54318 the previous calendar month if the sexually explicit business is required to file a monthly sales
54319 and use tax return with the commission under Section 59-12-108.

54320 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
54321 Administrative Rulemaking Act, the commission may make rules to:

54322 (a) establish standards for determining whether an operation is a sexually explicit
54323 business or escort service; and

54324 (b) determine, for purposes of Section 59-27-102, amounts that are similar to an
54325 amount paid for:

54326 (i) a salary;

54327 (ii) a fee;

54328 (iii) a commission;

54329 (iv) hire; or

54330 (v) profit.

54331 Section 1065. Section **61-1-4** is amended to read:

54332 **61-1-4. Licensing and notice filing procedure.**

54333 (1) (a) A broker-dealer, agent, investment adviser, or investment adviser representative
54334 must obtain an initial or renewal license by filing with the division or its designee an application
54335 together with a consent to service of process under Section 61-1-26.

54336 (b) (i) The application shall contain the applicant's Social Security number and whatever
54337 information the division by rule requires concerning such matters as:

54338 (A) the applicant's form and place of organization;

54339 (B) the applicant's proposed method of doing business;

54340 (C) the qualifications and business history of the applicant; in the case of a
54341 broker-dealer or investment adviser, the qualifications and business history of any partner,
54342 officer, or director, any person occupying a similar status or performing similar functions, or any
54343 person directly or indirectly controlling the broker-dealer or investment adviser;

54344 (D) any injunction or administrative order or conviction of a misdemeanor involving a
54345 security or any aspect of the securities business and any conviction of a felony; and

54346 (E) the applicant's financial condition and history.

54347 (ii) An applicant's Social Security number is a private record under Subsection
54348 [~~63-2-302~~] 63G-2-302(1)(h).

54349 (c) The division may, by rule or order, require an applicant for an initial license to

54350 publish an announcement of the application in one or more specified newspapers published in
54351 this state.

54352 (d) Licenses or notice filings of broker-dealers, agents, investment advisers, and
54353 investment adviser representatives shall expire on December 31 of each year.

54354 (e) (i) If no denial order is in effect and no proceeding is pending under Section 61-1-6,
54355 a license becomes effective at noon of the 30th day after an application is filed.

54356 (ii) The division may by rule or order specify an earlier effective date and may by order
54357 defer the effective date until noon of the 30th day after the filing of any amendment.

54358 (iii) Licensing of a broker-dealer automatically constitutes licensing of only one partner,
54359 officer, director, or a person occupying a similar status or performing similar functions as a
54360 licensed agent of the broker-dealer.

54361 (iv) Licensing of an investment adviser automatically constitutes licensing of only one
54362 partner, officer, director, or a person occupying a similar status or performing similar functions.

54363 (2) Except with respect to federal covered advisers whose only clients are those
54364 described in Subsection 61-1-3(3)(b) or (c), a federal covered adviser shall file with the division,
54365 prior to acting as a federal covered adviser in this state, a notice filing consisting of such
54366 documents as have been filed with the Securities and Exchange Commission as the division by
54367 rule or order may require.

54368 (3) (a) Any applicant for an initial or renewal license as a broker-dealer or agent shall
54369 pay a reasonable filing fee as determined under Section 61-1-18.4.

54370 (b) Any applicant for an initial or renewal license as an investment adviser or investment
54371 adviser representative who is subject to licensing under this chapter shall pay a reasonable filing
54372 fee as determined under Section 61-1-18.4.

54373 (c) Any person acting as a federal covered adviser in this state shall pay an initial and
54374 renewal notice filing fee as determined under Section 61-1-18.4.

54375 (d) If the license or renewal is not granted or the application is withdrawn, the division
54376 shall retain the fee.

54377 (4) A licensed broker-dealer or investment adviser may file an application for licensing

54378 of a successor for the unexpired portion of the year. There shall be no filing fee.

54379 (5) The division may by rule or order require a minimum capital for licensed
54380 broker-dealers, subject to the limitations of Section 15 of the Securities Exchange Act of 1934,
54381 and establish minimum financial requirements for investment advisers, subject to the limitations
54382 of Section 222 of the Investment Advisers Act of 1940, which may include different
54383 requirements for those investment advisers who maintain custody of or have discretionary
54384 authority over client funds or securities and those investment advisers who do not.

54385 (6) (a) The division may by rule or order require licensed broker-dealers and investment
54386 advisers who have custody of or discretionary authority over client funds or securities to post
54387 bonds in amounts as the division may prescribe, subject to the limitations of Section 15 of the
54388 Securities Exchange Act of 1934 for broker-dealers and Section 222 of the Investment Advisers
54389 Act of 1940 for investment advisers, and may determine their conditions.

54390 (b) Any appropriate deposit of cash or securities may be accepted in lieu of any required
54391 bond.

54392 (c) No bond may be required of any licensee whose net capital, or in the case of an
54393 investment adviser whose minimum financial requirements, which may be defined by rule,
54394 exceeds the amounts required by the division.

54395 (d) Every bond shall provide for suit on the bond by any person who has a cause of
54396 action under Section 61-1-22 and, if the division by rule or order requires, by any person who
54397 has a cause of action not arising under this chapter.

54398 (e) Every bond shall provide that no suit may be maintained to enforce any liability on
54399 the bond unless brought before the expiration of four years after the act or transaction
54400 constituting the violation or the expiration of two years after the discovery by the plaintiff of the
54401 facts constituting the violation, whichever expires first.

54402 Section 1066. Section **61-1-6** is amended to read:

54403 **61-1-6. Denial, suspension, revocation, cancellation, or withdrawal of license --**
54404 **Sanctions.**

54405 (1) Subject to the requirements of Subsections (2) and (3), the director, by means of

54406 adjudicative proceedings conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G,
54407 Chapter 4, Administrative Procedures Act, may issue an order:

54408 (a) denying, suspending, or revoking any license;

54409 (b) barring or censuring any licensee or any officer, director, partner, or person
54410 occupying a similar status or performing similar functions for a licensee from employment with
54411 a licensed broker-dealer or investment adviser;

54412 (c) restricting or limiting a licensee as to any function or activity of the business for
54413 which a license is required in this state;

54414 (d) imposing a fine; or

54415 (e) any combination of Subsections (1)(a) through (d).

54416 (2) The director may impose the sanctions in Subsection (1) if the director finds that it
54417 is in the public interest and finds, with respect to the applicant or licensee or, in the case of a
54418 broker-dealer or investment adviser, any partner, officer, or director, or any person occupying a
54419 similar status or performing similar functions, or any person directly or indirectly controlling the
54420 broker-dealer or investment adviser, that the person:

54421 (a) has filed an application for a license that, as of its effective date or as of any date
54422 after filing in the case of an order denying effectiveness, was incomplete in any material respect
54423 or contained any statement that was, in light of the circumstances under which it was made,
54424 false or misleading with respect to any material fact;

54425 (b) has willfully violated or willfully failed to comply with any provision of this chapter
54426 or a predecessor act or any rule or order under this chapter or a predecessor act;

54427 (c) was convicted, within the past ten years, of any misdemeanor involving a security or
54428 any aspect of the securities business, or any felony;

54429 (d) is permanently or temporarily enjoined by any court of competent jurisdiction from
54430 engaging in or continuing any conduct or practice involving any aspect of the securities
54431 business;

54432 (e) is the subject of an order of the director or any predecessor denying, suspending, or
54433 revoking license as a broker-dealer, agent, investment adviser, or investment adviser

54434 representative;

54435 (f) is the subject of:

54436 (i) an adjudication or determination, within the past five years by a securities or
54437 commodities agency or administrator of another state, Canadian province or territory, or a court
54438 of competent jurisdiction that the person has willfully violated the Securities Act of 1933, the
54439 Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment
54440 Company Act of 1940, the Commodity Exchange Act, or the securities or commodities law of
54441 any other state; or

54442 (ii) an order entered within the past five years by the securities administrator of any
54443 state or Canadian province or territory or by the Securities and Exchange Commission denying
54444 or revoking license as a broker-dealer, agent, investment adviser, or investment adviser
54445 representative or the substantial equivalent of those terms or is the subject of an order of the
54446 Securities and Exchange Commission suspending or expelling the person from a national
54447 securities exchange or national securities association registered under the Securities Exchange
54448 Act of 1934, or is the subject of a United States post office fraud order; except that

54449 (iii) the division may not commence agency action to revoke or suspend any license
54450 under Subsection (2)(f) more than one year from the date of the order relied on, and the
54451 director may not enter an order under Subsection (2)(f) on the basis of an order under another
54452 state's law unless that order was based on facts that would currently constitute a ground for an
54453 agency action under this section;

54454 (g) has engaged in dishonest or unethical practices in the securities business;

54455 (h) is insolvent, either in the sense that liabilities exceed assets or in the sense that
54456 obligations cannot be met as they mature, except that the director may not enter an order
54457 against a broker-dealer or investment adviser under this Subsection (2)(h) without a finding of
54458 insolvency as to the broker-dealer or investment adviser;

54459 (i) is not qualified on the basis of the lack of training, experience, and knowledge of the
54460 securities business, except as otherwise provided in Subsection (6);

54461 (j) has failed reasonably to supervise ~~his~~ the person's agents or employees if the person

54462 is a broker-dealer, or his investment adviser representatives or employees if the person is an
54463 investment adviser; or

54464 (k) has failed to pay the proper filing fee within 30 days after being notified by the
54465 division of a deficiency.

54466 (3) Before the director may issue an order under Subsection (1) that: revokes any
54467 license; bars or censures any licensee or any officer, director, partner, or person occupying a
54468 similar status or performing similar functions for a licensee from employment with a licensed
54469 broker-dealer or investment adviser; or imposes a fine, the Securities Advisory Board shall:

54470 (a) review the order; and

54471 (b) if a majority of the Securities Advisory Board approves the order, authorize the
54472 director to issue it.

54473 (4) The division may enter a denial order under Subsection (2)(j) or (k), but shall
54474 vacate the order when the deficiency has been corrected.

54475 (5) The division may not institute a suspension or revocation proceeding on the basis of
54476 a fact or transaction known to it when the license became effective unless the proceeding is
54477 instituted within the next 120 days.

54478 (6) The following provisions govern the application of Subsection (2)(i):

54479 (a) The director may not enter an order against a broker-dealer on the basis of the lack
54480 of qualification of any person other than:

54481 (i) the broker-dealer [~~himself~~] if [~~he~~] the broker-dealer is an individual; or

54482 (ii) an agent of the broker-dealer.

54483 (b) The director may not enter an order against an investment adviser on the basis of the
54484 lack of qualification of any person other than:

54485 (i) the investment adviser [~~himself~~] if [~~he~~] the investment adviser is an individual; or

54486 (ii) an investment adviser representative.

54487 (c) The director may not enter an order solely on the basis of lack of experience if the
54488 applicant or licensee is qualified by training or knowledge.

54489 (d) The director shall consider that an agent who will work under the supervision of a

54490 licensed broker-dealer need not have the same qualifications as a broker-dealer and that an
54491 investment adviser representative who will work under the supervision of a licensed investment
54492 adviser need not have the same qualifications as an investment adviser.

54493 (e) (i) The director shall consider that an investment adviser is not necessarily qualified
54494 solely on the basis of experience as a broker-dealer or agent.

54495 (ii) When the director finds that an applicant for a license as a broker-dealer is not
54496 qualified as an investment adviser, the director may condition the applicant's license as a
54497 broker-dealer upon the applicant's not transacting business in this state as an investment adviser.

54498 (f) (i) The division may by rule provide for examinations, which may be written or oral
54499 or both, to be taken by any class of or all applicants.

54500 (ii) The division may by rule or order waive the examination requirement as to a person
54501 or class of persons if the division determines that the examination is not necessary for the
54502 protection of investors.

54503 (7) If the director finds that any licensee or applicant for a license is no longer in
54504 existence, has ceased to do business as a broker-dealer, agent, investment adviser, or investment
54505 adviser representative, or is subject to an adjudication of mental incompetence or to the control
54506 of a committee, conservator, or guardian, or cannot be located after reasonable search, the
54507 division may summarily cancel or deny the license or application according to the procedures
54508 and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
54509 Act.

54510 (8) (a) Withdrawal from license as a broker-dealer, agent, investment adviser, or
54511 investment adviser representative becomes effective 30 days after receipt of an application to
54512 withdraw or within a shorter period of time as determined by the director, unless:

54513 (i) a revocation or suspension proceeding is pending when the application is filed;

54514 (ii) a proceeding to revoke or suspend or to impose conditions upon the withdrawal is
54515 instituted within 30 days after the application is filed; or

54516 (iii) additional information is requested by the division regarding the withdrawal
54517 application.

54518 (b) (i) If a proceeding described in Subsection (8)(a) is pending or instituted, the
54519 director shall designate by order when and under what conditions the withdrawal becomes
54520 effective.

54521 (ii) If additional information is requested, withdrawal is effective 30 days after the
54522 additional information is filed.

54523 (c) (i) If no proceeding is pending or instituted, and withdrawal automatically becomes
54524 effective, the director may initiate a revocation or suspension proceeding under this section
54525 within one year after withdrawal became effective.

54526 (ii) The director shall enter any order under Subsection (2)(b) as of the last date on
54527 which the license was effective.

54528 Section 1067. Section **61-1-11.1** is amended to read:

54529 **61-1-11.1. Hearings for certain exchanges of securities.**

54530 (1) An application may be made to the division for approval to issue securities or to
54531 deliver other consideration in exchange for:

54532 (a) one or more bona fide outstanding securities, claims, or property interests; or

54533 (b) partly in exchange for one or more bona fide outstanding securities, claims, or
54534 property interests, and partly for cash.

54535 (2) The director may:

54536 (a) hold a hearing upon the fairness of the terms and conditions of an exchange
54537 described in Subsection (1); and

54538 (b) approve or disapprove the terms and conditions of an exchange described in
54539 Subsection (1).

54540 (3) After conducting a hearing under this section, if the director finds that the terms and
54541 conditions of an exchange described in Subsection (1) are fair to those to whom the securities
54542 will be issued, the director may:

54543 (a) approve the fairness of the terms and conditions of the exchange described in
54544 Subsection (1); and

54545 (b) approve the exchange described in Subsection (1).

54546 (4) In a hearing under this section, all persons to whom it is proposed to issue securities
54547 or to deliver other consideration in an exchange under Subsection (1) may appear.

54548 (5) An application under Subsection (1) shall contain the information and be
54549 accompanied by the documents required by rule or order of the division.

54550 (6) Every person filing an application under Subsection (1) shall pay a filing fee as
54551 determined under Section 61-1-18.4.

54552 (7) An applicant under this section shall provide adequate notice of any hearing under
54553 this section to all persons that have a right to appear, under Subsection (4), at the hearing.

54554 (8) An application may be made under this section regardless of whether the security or
54555 transaction being issued is:

54556 (a) exempt from registration; or

54557 (b) not required to be registered.

54558 (9) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
54559 Administrative Rulemaking Act, the division may establish rules to govern the conduct of a
54560 hearing permitted by this section.

54561 (10) This section is intended to provide for a fairness hearing that satisfies the
54562 requirements of Section 3(a)(10) of the Securities Act of 1933, 15 U.S.C. Section 77c(a)(10),
54563 or any comparable section that may subsequently be enacted.

54564 Section 1068. Section **61-1-12** is amended to read:

54565 **61-1-12. Denial, suspension, and revocation of registration.**

54566 (1) Upon approval by a majority of the Securities Advisory Board, the director, by
54567 means of adjudicative proceedings conducted in accordance with [~~Title 63, Chapter 46b, the~~]
54568 Title 63G, Chapter 4, Administrative Procedures Act, may issue a stop order that denies
54569 effectiveness to, or suspends or revokes the effectiveness of, any securities registration
54570 statement and may impose a fine if [~~he~~] the director finds that the order is in the public interest
54571 and that:

54572 (a) the registration statement, as of its effective date or as of any earlier date in the case
54573 of an order denying effectiveness, or any amendment under Subsection 61-1-11 (10) as of its

54574 effective date, or any report under Subsection 61-1-11 (9), is incomplete in any material respect,
54575 or contains any statement that was, in the light of the circumstances under which it was made,
54576 false or misleading with respect to any material fact;

54577 (b) any provision of this chapter, or any rule, order, or condition lawfully imposed
54578 under this chapter, has been willfully violated, in connection with the offering, by:

54579 (i) the person filing the registration statement;

54580 (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a
54581 similar status or performing similar functions, or any person directly or indirectly controlling or
54582 controlled by the issuer, but only if the person filing the registration statement is directly or
54583 indirectly controlled by or acting for the issuer; or

54584 (iii) any underwriter;

54585 (c) the security registered or sought to be registered is the subject of an administrative
54586 stop order or similar order, or a permanent or temporary injunction of any court of competent
54587 jurisdiction entered under any other federal or state act applicable to the offering; except that
54588 the division may not commence agency action against an effective registration statement under
54589 this subsection more than one year from the date of the order or injunction relied on, and it may
54590 not enter an order under this subsection on the basis of an order or injunction entered under the
54591 securities act of any other state unless that order or injunction was based on facts that would
54592 currently constitute a ground for a stop order under this section;

54593 (d) the issuer's enterprise or method of business includes or would include activities that
54594 are illegal where performed;

54595 (e) the offering has worked or tended to work a fraud upon purchasers or would so
54596 operate;

54597 (f) the offering has been or would be made with unreasonable amounts of underwriters'
54598 and sellers' discounts, commissions, or other compensation, or promoters' profits or
54599 participation, or unreasonable amounts or kinds of options;

54600 (g) when a security is sought to be registered by notification, it is not eligible for such
54601 registration;

54602 (h) when a security is sought to be registered by coordination, there has been a failure
 54603 to comply with the undertaking required by Subsection 61-1-9 (2)(d); or

54604 (i) the applicant or registrant has failed to pay the proper filing fee.

54605 (2) The director may enter an order under this section but may vacate the order if [~~he~~]
 54606 the director finds that the conditions that prompted its entry have changed or that it is otherwise
 54607 in the public interest to do so.

54608 (3) The director may not issue a stop order against an effective registration statement
 54609 on the basis of a fact or transaction known to the division when the registration statement
 54610 became effective unless the proceeding is instituted within the next 120 days.

54611 (4) No person may be considered to have violated Section 61-1-7 or 61-1-15 by reason
 54612 of any order or sale effected after the entry of an order under this section if that person proves
 54613 by a preponderance of the evidence that [~~he~~] the person did not know, and in the exercise of
 54614 reasonable care could not have known, of the order.

54615 Section 1069. Section **61-1-13** is amended to read:

54616 **61-1-13. Definitions.**

54617 (1) As used in this chapter:

54618 (a) "Affiliate" means a person that, directly or indirectly, through one or more
 54619 intermediaries, controls or is controlled by, or is under common control with a person specified.

54620 (b) (i) "Agent" means any individual other than a broker-dealer who represents a
 54621 broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities.

54622 (ii) "Agent" does not include an individual who represents:

54623 (A) an issuer, who receives no commission or other remuneration, directly or indirectly,
 54624 for effecting or attempting to effect purchases or sales of securities in this state, and who
 54625 effects transactions:

54626 (I) in securities exempted by Subsection 61-1-14(1)(a), (b), (c), (i), or (j);

54627 (II) exempted by Subsection 61-1-14(2);

54628 (III) in a covered security as described in Sections 18(b)(3) and 18(b)(4)(D) of the
 54629 Securities Act of 1933; or

- 54630 (IV) with existing employees, partners, officers, or directors of the issuer; or
- 54631 (B) a broker-dealer in effecting transactions in this state limited to those transactions
- 54632 described in Section 15(h)(2) of the Securities Exchange Act of 1934.
- 54633 (iii) A partner, officer, or director of a broker-dealer or issuer, or a person occupying a
- 54634 similar status or performing similar functions, is an agent only if the partner, officer, director, or
- 54635 person otherwise comes within the definition of "agent."
- 54636 (iv) "Agent" does not include a person described in Subsection (3).
- 54637 (c) (i) "Broker-dealer" means any person engaged in the business of effecting
- 54638 transactions in securities for the account of others or for the person's own account.
- 54639 (ii) "Broker-dealer" does not include:
- 54640 (A) an agent;
- 54641 (B) an issuer;
- 54642 (C) a bank, savings institution, or trust company;
- 54643 (D) a person who has no place of business in this state if:
- 54644 (I) the person effects transactions in this state exclusively with or through:
- 54645 (Aa) the issuers of the securities involved in the transactions;
- 54646 (Bb) other broker-dealers; or
- 54647 (Cc) banks, savings institutions, trust companies, insurance companies, investment
- 54648 companies as defined in the Investment Company Act of 1940, pension or profit-sharing trusts,
- 54649 or other financial institutions or institutional buyers, whether acting for themselves or as
- 54650 trustees; or
- 54651 (II) during any period of 12 consecutive months the person does not direct more than
- 54652 15 offers to sell or buy into this state in any manner to persons other than those specified in
- 54653 Subsection (1)(c)(ii)(D)(I), whether or not the offeror or any of the offerees is then present in
- 54654 this state;
- 54655 (E) a general partner who organizes and effects transactions in securities of three or
- 54656 fewer limited partnerships, of which the person is the general partner, in any period of 12
- 54657 consecutive months;

54658 (F) a person whose participation in transactions in securities is confined to those
54659 transactions made by or through a broker-dealer licensed in this state;

54660 (G) a person who is a real estate broker licensed in this state and who effects
54661 transactions in a bond or other evidence of indebtedness secured by a real or chattel mortgage
54662 or deed of trust, or by an agreement for the sale of real estate or chattels, if the entire mortgage,
54663 deed or trust, or agreement, together with all the bonds or other evidences of indebtedness
54664 secured thereby, is offered and sold as a unit;

54665 (H) a person effecting transactions in commodity contracts or commodity options;

54666 (I) a person described in Subsection (3); or

54667 (J) other persons as the division, by rule or order, may designate, consistent with the
54668 public interest and protection of investors, as not within the intent of this Subsection (1)(c).

54669 (d) "Buy" or "purchase" means every contract for purchase of, contract to buy, or
54670 acquisition of a security or interest in a security for value.

54671 (e) "Commodity" means, except as otherwise specified by the division by rule:

54672 (i) any agricultural, grain, or livestock product or byproduct, except real property or
54673 any timber, agricultural, or livestock product grown or raised on real property and offered or
54674 sold by the owner or lessee of the real property;

54675 (ii) any metal or mineral, including a precious metal, except a numismatic coin whose
54676 fair market value is at least 15% greater than the value of the metal it contains;

54677 (iii) any gem or gemstone, whether characterized as precious, semi-precious, or
54678 otherwise;

54679 (iv) any fuel, whether liquid, gaseous, or otherwise;

54680 (v) any foreign currency; and

54681 (vi) all other goods, articles, products, or items of any kind, except any work of art
54682 offered or sold by art dealers, at public auction or offered or sold through a private sale by the
54683 owner of the work.

54684 (f) (i) "Commodity contract" means any account, agreement, or contract for the
54685 purchase or sale, primarily for speculation or investment purposes and not for use or

54686 consumption by the offeree or purchaser, of one or more commodities, whether for immediate
54687 or subsequent delivery or whether delivery is intended by the parties, and whether characterized
54688 as a cash contract, deferred shipment or deferred delivery contract, forward contract, futures
54689 contract, installment or margin contract, leverage contract, or otherwise.

54690 (ii) Any commodity contract offered or sold shall, in the absence of evidence to the
54691 contrary, be presumed to be offered or sold for speculation or investment purposes.

54692 (iii) (A) A commodity contract shall not include any contract or agreement which
54693 requires, and under which the purchaser receives, within 28 calendar days from the payment in
54694 good funds any portion of the purchase price, physical delivery of the total amount of each
54695 commodity to be purchased under the contract or agreement.

54696 (B) The purchaser is not considered to have received physical delivery of the total
54697 amount of each commodity to be purchased under the contract or agreement when the
54698 commodity or commodities are held as collateral for a loan or are subject to a lien of any person
54699 when the loan or lien arises in connection with the purchase of each commodity or commodities.

54700 (g) (i) "Commodity option" means any account, agreement, or contract giving a party
54701 to the option the right but not the obligation to purchase or sell one or more commodities or
54702 one or more commodity contracts, or both whether characterized as an option, privilege,
54703 indemnity, bid, offer, put, call, advance guaranty, decline guaranty, or otherwise.

54704 (ii) "Commodity option" does not include an option traded on a national securities
54705 exchange registered:

54706 (A) with the United States Securities and Exchange Commission; or

54707 (B) on a board of trade designated as a contract market by the Commodity Futures
54708 Trading Commission.

54709 (h) "Director" means the director of the Division of Securities charged with the
54710 administration and enforcement of this chapter.

54711 (i) "Division" means the Division of Securities established by Section 61-1-18.

54712 (j) "Executive director" means the executive director of the Department of Commerce.

54713 (k) "Federal covered adviser" means a person who:

54714 (i) is registered under Section 203 of the Investment Advisers Act of 1940; or
54715 (ii) is excluded from the definition of "investment adviser" under Section 202(a)(11) of
54716 the Investment Advisers Act of 1940.

54717 (l) "Federal covered security" means any security that is a covered security under
54718 Section 18(b) of the Securities Act of 1933 or rules or regulations promulgated under Section
54719 18(b) of the Securities Act of 1933.

54720 (m) "Fraud," "deceit," and "defraud" are not limited to their common-law meanings.

54721 (n) "Guaranteed" means guaranteed as to payment of principal or interest as to debt
54722 securities, or dividends as to equity securities.

54723 (o) (i) "Investment adviser" means any person who:

54724 (A) for compensation, engages in the business of advising others, either directly or
54725 through publications or writings, as to the value of securities or as to the advisability of
54726 investing in, purchasing, or selling securities; or

54727 (B) for compensation and as a part of a regular business, issues or promulgates analyses
54728 or reports concerning securities.

54729 (ii) "Investment adviser" includes financial planners and other persons who:

54730 (A) as an integral component of other financially related services, provide the
54731 investment advisory services described in Subsection (1)(o)(i) to others for compensation and as
54732 part of a business; or

54733 (B) hold themselves out as providing the investment advisory services described in
54734 Subsection (1)(o)(i) to others for compensation.

54735 (iii) "Investment adviser" does not include:

54736 (A) an investment adviser representative;

54737 (B) a bank, savings institution, or trust company;

54738 (C) a lawyer, accountant, engineer, or teacher whose performance of these services is
54739 solely incidental to the practice of ~~his~~ the profession;

54740 (D) a broker-dealer or its agent whose performance of these services is solely incidental
54741 to the conduct of its business as a broker-dealer and who receives no special compensation for

54742 the services;

54743 (E) a publisher of any bona fide newspaper, news column, news letter, news magazine,
54744 or business or financial publication or service, of general, regular, and paid circulation, whether
54745 communicated in hard copy form, or by electronic means, or otherwise, that does not consist of
54746 the rendering of advice on the basis of the specific investment situation of each client;

54747 (F) any person who is a federal covered adviser;

54748 (G) a person described in Subsection (3); or

54749 (H) such other persons not within the intent of this Subsection (1)(o) as the division
54750 may by rule or order designate.

54751 (p) (i) "Investment adviser representative" means any partner, officer, director of, or a
54752 person occupying a similar status or performing similar functions, or other individual, except
54753 clerical or ministerial personnel, who:

54754 (A) (I) is employed by or associated with an investment adviser who is licensed or
54755 required to be licensed under this chapter; or

54756 (II) has a place of business located in this state and is employed by or associated with a
54757 federal covered adviser; and

54758 (B) does any of the following:

54759 (I) makes any recommendations or otherwise renders advice regarding securities;

54760 (II) manages accounts or portfolios of clients;

54761 (III) determines which recommendation or advice regarding securities should be given;

54762 (IV) solicits, offers, or negotiates for the sale of or sells investment advisory services; or

54763 (V) supervises employees who perform any of the acts described in this Subsection

54764 (1)(p)(i)(B).

54765 (ii) "Investment advisor representative" does not include a person described in
54766 Subsection (3).

54767 (q) (i) "Issuer" means any person who issues or proposes to issue any security or has
54768 outstanding a security that it has issued.

54769 (ii) With respect to a preorganization certificate or subscription, "issuer" means the

54770 promoter or the promoters of the person to be organized.

54771 (iii) "Issuer" means the person or persons performing the acts and assuming duties of a
54772 depositor or manager under the provisions of the trust or other agreement or instrument under
54773 which the security is issued with respect to:

54774 (A) interests in trusts, including collateral trust certificates, voting trust certificates, and
54775 certificates of deposit for securities; or

54776 (B) shares in an investment company without a board of directors.

54777 (iv) With respect to an equipment trust certificate, a conditional sales contract, or
54778 similar securities serving the same purpose, "issuer" means the person by whom the equipment
54779 or property is to be used.

54780 (v) With respect to interests in partnerships, general or limited, "issuer" means the
54781 partnership itself and not the general partner or partners.

54782 (vi) With respect to certificates of interest or participation in oil, gas, or mining titles or
54783 leases or in payment out of production under the titles or leases, "issuer" means the owner of
54784 the title or lease or right of production, whether whole or fractional, who creates fractional
54785 interests therein for the purpose of sale.

54786 (r) "Nonissuer" means not directly or indirectly for the benefit of the issuer.

54787 (s) "Person" means:

54788 (i) an individual;

54789 (ii) a corporation;

54790 (iii) a partnership;

54791 (iv) a limited liability company;

54792 (v) an association;

54793 (vi) a joint-stock company;

54794 (vii) a joint venture;

54795 (viii) a trust where the interests of the beneficiaries are evidenced by a security;

54796 (ix) an unincorporated organization;

54797 (x) a government; or

- 54798 (xi) a political subdivision of a government.
- 54799 (t) "Precious metal" means the following, whether in coin, bullion, or other form:
- 54800 (i) silver;
- 54801 (ii) gold;
- 54802 (iii) platinum;
- 54803 (iv) palladium;
- 54804 (v) copper; and
- 54805 (vi) such other substances as the division may specify by rule.
- 54806 (u) "Promoter" means any person who, acting alone or in concert with one or more
- 54807 persons, takes initiative in founding or organizing the business or enterprise of a person.
- 54808 (v) (i) "Sale" or "sell" includes every contract for sale of, contract to sell, or disposition
- 54809 of, a security or interest in a security for value.
- 54810 (ii) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation
- 54811 of an offer to buy, a security or interest in a security for value.
- 54812 (iii) The following are examples of the definitions in Subsection (1)(v)(i) or (ii):
- 54813 (A) any security given or delivered with or as a bonus on account of any purchase of a
- 54814 security or any other thing, is part of the subject of the purchase, and has been offered and sold
- 54815 for value;
- 54816 (B) a purported gift of assessable stock is an offer or sale as is each assessment levied
- 54817 on the stock;
- 54818 (C) an offer or sale of a security that is convertible into, or entitles its holder to acquire
- 54819 or subscribe to another security of the same or another issuer is an offer or sale of that security,
- 54820 and also an offer of the other security, whether the right to convert or acquire is exercisable
- 54821 immediately or in the future;
- 54822 (D) any conversion or exchange of one security for another shall constitute an offer or
- 54823 sale of the security received in a conversion or exchange, and the offer to buy or the purchase of
- 54824 the security converted or exchanged;
- 54825 (E) securities distributed as a dividend wherein the person receiving the dividend

54826 surrenders the right, or the alternative right, to receive a cash or property dividend is an offer or
54827 sale;

54828 (F) a dividend of a security of another issuer is an offer or sale; or

54829 (G) the issuance of a security under a merger, consolidation, reorganization,
54830 recapitalization, reclassification, or acquisition of assets shall constitute the offer or sale of the
54831 security issued as well as the offer to buy or the purchase of any security surrendered in
54832 connection therewith, unless the sole purpose of the transaction is to change the issuer's
54833 domicile.

54834 (iv) The terms defined in Subsections (1)(v)(i) and (ii) do not include:

54835 (A) a good faith gift;

54836 (B) a transfer by death;

54837 (C) a transfer by termination of a trust or of a beneficial interest in a trust;

54838 (D) a security dividend not within Subsection (1)(v)(iii)(E) or (F);

54839 (E) a securities split or reverse split; or

54840 (F) any act incident to a judicially approved reorganization in which a security is issued
54841 in exchange for one or more outstanding securities, claims, or property interests, or partly in
54842 such exchange and partly for cash.

54843 (w) "Securities Act of 1933," "Securities Exchange Act of 1934," "Public Utility
54844 Holding Company Act of 1935," and "Investment Company Act of 1940" mean the federal
54845 statutes of those names as amended before or after the effective date of this chapter.

54846 (x) (i) "Security" means any:

54847 (A) note;

54848 (B) stock;

54849 (C) treasury stock;

54850 (D) bond;

54851 (E) debenture;

54852 (F) evidence of indebtedness;

54853 (G) certificate of interest or participation in any profit-sharing agreement;

- 54854 (H) collateral-trust certificate;
- 54855 (I) preorganization certificate or subscription;
- 54856 (J) transferable share;
- 54857 (K) investment contract;
- 54858 (L) burial certificate or burial contract;
- 54859 (M) voting-trust certificate;
- 54860 (N) certificate of deposit for a security;
- 54861 (O) certificate of interest or participation in an oil, gas, or mining title or lease or in
- 54862 payments out of production under such a title or lease;
- 54863 (P) commodity contract or commodity option;
- 54864 (Q) interest in a limited liability company;
- 54865 (R) viatical settlement interest; or
- 54866 (S) in general, any interest or instrument commonly known as a "security," or any
- 54867 certificate of interest or participation in, temporary or interim certificate for, receipt for,
- 54868 guarantee of, or warrant or right to subscribe to or purchase any of the foregoing.
- 54869 (ii) "Security" does not include any:
- 54870 (A) insurance or endowment policy or annuity contract under which an insurance
- 54871 company promises to pay money in a lump sum or periodically for life or some other specified
- 54872 period;
- 54873 (B) interest in a limited liability company in which the limited liability company is
- 54874 formed as part of an estate plan where all of the members are related by blood or marriage,
- 54875 there are five or fewer members, or the person claiming this exception can prove that all of the
- 54876 members are actively engaged in the management of the limited liability company; or
- 54877 (C) (I) a whole long-term estate in real property;
- 54878 (II) an undivided fractionalized long-term estate in real property that consists of ten or
- 54879 fewer owners; or
- 54880 (III) an undivided fractionalized long-term estate in real property that consists of more
- 54881 than ten owners if, when the real property estate is subject to a management agreement:

54882 (Aa) the management agreement permits a simple majority of owners of the real
54883 property estate to not renew or to terminate the management agreement at the earlier of the end
54884 of the management agreement's current term, or 180 days after the day on which the owners
54885 give notice of termination to the manager;

54886 (Bb) the management agreement prohibits, directly or indirectly, the lending of the
54887 proceeds earned from the real property estate or the use or pledge of its assets to any person or
54888 entity affiliated with or under common control of the manager; and

54889 (Cc) the management agreement complies with any other requirement imposed by rule
54890 by the Real Estate Commission under Section 61-2-26.

54891 (iii) For purposes of Subsection (1)(x)(ii)(B), evidence that members vote or have the
54892 right to vote, or the right to information concerning the business and affairs of the limited
54893 liability company, or the right to participate in management, shall not establish, without more,
54894 that all members are actively engaged in the management of the limited liability company.

54895 (y) "State" means any state, territory, or possession of the United States, the District of
54896 Columbia, and Puerto Rico.

54897 (z) (i) "Undivided fractionalized long-term estate" means an ownership interest in real
54898 property by two or more persons that is a:

54899 (A) tenancy in common; or

54900 (B) any other legal form of undivided estate in real property including:

54901 (I) a fee estate;

54902 (II) a life estate; or

54903 (III) other long-term estate.

54904 (ii) "Undivided fractionalized long-term estate" does not include a joint tenancy.

54905 (aa) (i) "Viatical settlement interest" means the entire interest or any fractional interest
54906 in any of the following that is the subject of a viatical settlement:

54907 (A) a life insurance policy; or

54908 (B) the death benefit under a life insurance policy.

54909 (ii) "Viatical settlement interest" does not include the initial purchase from the viator by

54910 a viatical settlement provider.

54911 (bb) "Whole long-term estate" means a person or persons through joint tenancy owns
54912 real property through:

54913 (i) a fee estate;

54914 (ii) a life estate; or

54915 (iii) other long-term estate.

54916 (cc) "Working days" means 8 a.m. to 5 p.m., Monday through Friday, exclusive of legal
54917 holidays listed in Section [~~63-13-2~~] 63G-1-301.

54918 (2) A term not defined in this section shall have the meaning as established by division
54919 rule. The meaning of a term neither defined in this section nor by rule of the division shall be
54920 the meaning commonly accepted in the business community.

54921 (3) (a) This Subsection (3) applies to:

54922 (i) the offer or sale of a real property estate exempted from the definition of security
54923 under Subsection (1)(x)(ii)(C); or

54924 (ii) the offer or sale of an undivided fractionalized long-term estate that is the offer of a
54925 security.

54926 (b) A person who, directly or indirectly receives compensation in connection with the
54927 offer or sale as provided in this Subsection (3) of a real property estate is not an agent,
54928 broker-dealer, investment adviser, or investor adviser representative under this chapter if that
54929 person is licensed under Chapter 2, Division of Real Estate, as:

54930 (i) a principal real estate broker;

54931 (ii) an associate real estate broker; or

54932 (iii) a real estate sales agent.

54933 (4) The list of real property estates excluded from the definition of securities under
54934 Subsection (1)(x)(ii)(C) is not an exclusive list of real property estates or interests that are not a
54935 security.

54936 Section 1070. Section **61-1-14** is amended to read:

54937 **61-1-14. Exemptions.**

- 54938 (1) The following securities are exempted from Sections 61-1-7 and 61-1-15:
- 54939 (a) any security, including a revenue obligation, issued or guaranteed by the United
- 54940 States, any state, any political subdivision of a state, or any agency or corporate or other
- 54941 instrumentality of one or more of the foregoing, or any certificate of deposit for any of the
- 54942 foregoing;
- 54943 (b) any security issued or guaranteed by Canada, any Canadian province, any political
- 54944 subdivision of any Canadian province, any agency or corporate or other instrumentality of one
- 54945 or more of the foregoing, or any other foreign government with which the United States
- 54946 currently maintains diplomatic relations, if the security is recognized as a valid obligation by the
- 54947 issuer or guarantor;
- 54948 (c) any security issued by and representing an interest in or a debt of, or guaranteed by,
- 54949 any bank organized under the laws of the United States, or any bank, savings institution, or trust
- 54950 company supervised under the laws of any state;
- 54951 (d) any security issued by and representing an interest in or a debt of, or guaranteed by,
- 54952 any federal savings and loan association, or any building and loan or similar association
- 54953 organized under the laws of any state and authorized to do business in this state;
- 54954 (e) any security issued or guaranteed by any federal credit union or any credit union,
- 54955 industrial loan association, or similar association organized and supervised under the laws of this
- 54956 state;
- 54957 (f) any security issued or guaranteed by any public utility or holding company which is a
- 54958 registered holding company under the Public Utility Holding Company Act of 1935 or a
- 54959 subsidiary of such a company within the meaning of that act, or any security regulated in respect
- 54960 of its rates or in its issuance by a governmental authority of the United States, any state,
- 54961 Canada, or any Canadian province;
- 54962 (g) any security listed on the National Association of Securities Dealers Automated
- 54963 Quotation National Market System, the New York Stock Exchange, the American Stock
- 54964 Exchange, or on any other stock exchange or medium approved by the division, except that the
- 54965 director may at any time suspend or revoke this exemption for any particular stock exchange,

54966 medium, security, or securities under Subsection (4); any other security of the same issuer
54967 which is of senior or substantially equal rank to any security so listed and approved by the
54968 director, any security called for by subscription rights or warrants so listed or approved, or any
54969 warrant or right to purchase or subscribe to any of the foregoing;

54970 (h) (i) any security issued by any person organized and operated not for private profit
54971 but exclusively for religious, educational, benevolent, charitable, fraternal, social, athletic, or
54972 reformatory purposes, or as a chamber of commerce or trade or professional association; and

54973 (ii) any security issued by a corporation organized under Title 3, Chapter 1, and any
54974 security issued by a corporation to which the provisions of that chapter are made applicable by
54975 compliance with the requirements of Section 3-1-21;

54976 (i) a promissory note, draft, bill of exchange, or banker's acceptance that evidences an
54977 obligation to pay cash within nine months after the date of issuance, exclusive of days of grace,
54978 or a renewal of such an obligation that is likewise limited, or a guarantee of such an obligation
54979 or of a renewal:

54980 (i) issued in denominations of at least \$50,000; and

54981 (ii) either:

54982 (A) receives a rating in one of the three highest rating categories from a nationally
54983 recognized statistical rating organization; or

54984 (B) the issuer satisfies requirements established by rule or order of the division;

54985 (j) any investment contract issued in connection with an employees' stock purchase,
54986 option, savings, pension, profit-sharing, or similar benefit plan;

54987 (k) a security issued by an issuer registered as an open-end management investment
54988 company or unit investment trust under Section 8 of the Investment Company Act of 1940, if:

54989 (i) (A) the issuer is advised by an investment adviser that is a depository institution
54990 exempt from registration under the Investment Advisers Act of 1940 or that is currently
54991 registered as an investment adviser, and has been registered, or is affiliated with an adviser that
54992 has been registered, as an investment adviser under the Investment Advisers Act of 1940 for at
54993 least three years next preceding an offer or sale of a security claimed to be exempt under this

54994 subsection; and

54995 (B) the adviser has acted, or is affiliated with an investment adviser that has acted as

54996 investment adviser to one or more registered investment companies or unit investment trusts for

54997 at least three years next preceding an offer or sale of a security claimed to be exempt under this

54998 subsection; or

54999 (ii) the issuer has a sponsor that has at all times throughout the three years before an

55000 offer or sale of a security claimed to be exempt under this subsection sponsored one or more

55001 registered investment companies or unit investment trusts the aggregate total assets of which

55002 have exceeded \$100,000,000;

55003 (iii) in addition to Subsection (i) or (ii), the division has received prior to any sale

55004 exempted herein:

55005 (A) a notice of intention to sell which has been executed by the issuer which sets forth

55006 the name and address of the issuer and the title of the securities to be offered in this state; and

55007 (B) a filing fee as determined under Section 61-1-18.4;

55008 (iv) in the event any offer or sale of a security of an open-end management investment

55009 company is to be made more than 12 months after the date on which the notice and fee under

55010 Subsection (iii) is received by the director, another notice and payment of the applicable fee

55011 shall be required;

55012 (v) for the purpose of this subsection, an investment adviser is affiliated with another

55013 investment adviser if it controls, is controlled by, or is under common control with the other

55014 investment adviser; and

55015 (1) any security as to which the director, by rule or order, finds that registration is not

55016 necessary or appropriate for the protection of investors.

55017 (2) The following transactions are exempted from Sections 61-1-7 and 61-1-15:

55018 (a) any isolated transaction, whether effected through a broker-dealer or not;

55019 (b) any nonissuer transaction in an outstanding security, if as provided by rule of the

55020 division:

55021 (i) information about the issuer of the security as required by the division is currently

55022 listed in a securities manual recognized by the division, and the listing is based upon such
55023 information as required by rule of the division; or

55024 (ii) the security has a fixed maturity or a fixed interest or dividend provision and there
55025 has been no default during the current fiscal year or within the three preceding fiscal years, or
55026 during the existence of the issuer and any predecessors if less than three years, in the payment of
55027 principal, interest, or dividends on the security;

55028 (c) any nonissuer transaction effected by or through a registered broker-dealer pursuant
55029 to an unsolicited order or offer to buy;

55030 (d) any transaction between the issuer or other person on whose behalf the offering is
55031 made and an underwriter, or among underwriters;

55032 (e) any transaction in a bond or other evidence of indebtedness secured by a real or
55033 chattel mortgage or deed of trust, or by an agreement for the sale of real estate or chattels, if the
55034 entire mortgage, deed of trust, or agreement, together with all the bonds or other evidences of
55035 indebtedness secured thereby, is offered and sold as a unit;

55036 (f) any transaction by an executor, administrator, sheriff, marshal, receiver, trustee in
55037 bankruptcy, guardian, or conservator;

55038 (g) any transaction executed by a bona fide pledgee without any purpose of evading this
55039 chapter;

55040 (h) any offer or sale to a bank, savings institution, trust company, insurance company,
55041 investment company as defined in the Investment Company Act of 1940, pension or
55042 profit-sharing trust, or other financial institution or institutional investor, or to a broker-dealer,
55043 whether the purchaser is acting for itself or in some fiduciary capacity;

55044 (i) any offer or sale of a preorganization certificate or subscription if:

55045 (i) no commission or other remuneration is paid or given directly or indirectly for
55046 soliciting any prospective subscriber;

55047 (ii) the number of subscribers acquiring any legal or beneficial interest therein does not
55048 exceed ten; and

55049 (iii) there is no general advertising or solicitation in connection with the offer or sale;

55050 (j) any transaction pursuant to an offer by an issuer of its securities to its existing
55051 securities holders, if:

55052 (i) no commission or other remuneration, other than a standby commission is paid or
55053 given directly or indirectly for soliciting any security holders in this state and the transaction
55054 constitutes either:

55055 (A) the conversion of convertible securities;

55056 (B) the exercise of nontransferable rights or warrants;

55057 (C) the exercise of transferable rights or warrants if the rights or warrants are
55058 exercisable not more than 90 days after their issuance; or

55059 (D) the purchase of securities under a preemptive right; and

55060 (ii) the exemption created by Subsection (2)(j) is not available for an offer or sale of
55061 securities to existing securities holders who have acquired their securities from the issuer in a
55062 transaction in violation of Section 61-1-7;

55063 (k) any offer, but not a sale, of a security for which registration statements have been
55064 filed under both this chapter and the Securities Act of 1933 if no stop order or refusal order is in
55065 effect and no public proceeding or examination looking toward such an order is pending;

55066 (l) a distribution of securities as a dividend if the person distributing the dividend is the
55067 issuer of the securities distributed;

55068 (m) any nonissuer transaction effected by or through a registered broker-dealer where
55069 the broker-dealer or issuer files with the division, and the broker-dealer maintains in [~~his~~] the
55070 broker-dealer's records, and makes reasonably available upon request to any person expressing
55071 an interest in a proposed transaction in the security with the broker-dealer information
55072 prescribed by the division under its rules;

55073 (n) any transactions not involving a public offering;

55074 (o) any offer or sale of "condominium units" or "time period units" as those terms are
55075 defined in the Condominium Ownership Act, whether or not to be sold by installment contract,
55076 if the provisions of the Condominium Ownership Act, or if the units are located in another state,
55077 the condominium act of that state, the Utah Uniform Land Sales Practices Act, the Utah

55078 Timeshare and Camp Resort Act, and the Utah Uniform Consumer Credit Code are complied
55079 with;

55080 (p) any transaction or series of transactions involving a merger, consolidation,
55081 reorganization, recapitalization, reclassification, or sale of assets, if the consideration for which,
55082 in whole or in part, is the issuance of securities of a person or persons, and if:

55083 (i) the transaction or series of transactions is incident to a vote of the securities holders
55084 of each person involved or by written consent or resolution of some or all of the securities
55085 holders of each person involved;

55086 (ii) the vote, consent, or resolution is given under a provision in:

55087 (A) the applicable corporate statute or other controlling statute;

55088 (B) the controlling articles of incorporation, trust indenture, deed of trust, or
55089 partnership agreement; or

55090 (C) the controlling agreement among securities holders;

55091 (iii) (A) one person involved in the transaction is required to file proxy or informational
55092 materials under Section 14 (a) or (c) of the Securities Exchange Act of 1934 or Section 20 of
55093 the Investment Company Act of 1940 and has so filed;

55094 (B) one person involved in the transaction is an insurance company which is exempt
55095 from filing under Section 12(g)(2)(G) of the Securities Exchange Act of 1934, and has filed
55096 proxy or informational materials with the appropriate regulatory agency or official of its
55097 domiciliary state; or

55098 (C) all persons involved in the transaction are exempt from filing under Section
55099 12(g)(1) of the Securities Exchange Act of 1934, and file with the division such proxy or
55100 informational material as the division requires by rule;

55101 (iv) the proxy or informational material is filed with the division and distributed to all
55102 securities holders entitled to vote in the transaction or series of transactions at least ten working
55103 days prior to any necessary vote by the securities holders or action on any necessary consent or
55104 resolution; and

55105 (v) the division does not, by order, deny or revoke the exemption within ten working

55106 days after filing of the proxy or informational materials;

55107 (q) any transaction pursuant to an offer to sell securities of an issuer if:

55108 (i) the transaction is part of an issue in which there are not more than 15 purchasers in

55109 this state, other than those designated in Subsection (2)(h), during any 12 consecutive months;

55110 (ii) no general solicitation or general advertising is used in connection with the offer to

55111 sell or sale of the securities;

55112 (iii) no commission or other similar compensation is given, directly or indirectly, to a

55113 person other than a broker-dealer or agent licensed under this chapter, for soliciting a

55114 prospective purchaser in this state;

55115 (iv) the seller reasonably believes that all the purchasers in this state are purchasing for

55116 investment;

55117 (v) the transaction is part of an aggregate offering that does not exceed \$500,000, or a

55118 greater amount as prescribed by a division rule, during any 12 consecutive months; and

55119 (vi) the director, as to a security or transaction, or a type of security or transaction, may

55120 withdraw or further condition this exemption or waive one or more of the conditions in

55121 Subsection (q);

55122 (r) any transaction involving a commodity contract or commodity option; and

55123 (s) any transaction as to which the division finds that registration is not necessary or

55124 appropriate for the protection of investors.

55125 (3) Every person filing an exemption notice or application shall pay a filing fee as

55126 determined under Section 61-1-18.4.

55127 (4) Upon approval by a majority of the Securities Advisory Board, the director, by

55128 means of an adjudicative proceeding conducted in accordance with [~~Title 63, Chapter 46b~~] Title

55129 63G, Chapter 4, Administrative Procedures Act, may deny or revoke any exemption specified in

55130 Subsection (1)(g), (h), or (j) or in Subsection (2) with respect to:

55131 (a) a specific security, transaction, or series of transactions; or

55132 (b) any person or issuer, any affiliate or successor to a person or issuer, or any entity

55133 subsequently organized by or on behalf of a person or issuer generally and may impose a fine if

55134 [~~he~~] the person finds that the order is in the public interest and that:

55135 (i) the application for or notice of exemption filed with the division is incomplete in any
55136 material respect or contains any statement which was, in the light of the circumstances under
55137 which it was made, false or misleading with respect to any material fact;

55138 (ii) any provision of this chapter, or any rule, order, or condition lawfully imposed
55139 under this chapter has been willfully violated in connection with the offering or exemption by:

55140 (A) the person filing any application for or notice of exemption;

55141 (B) the issuer, any partner, officer, or director of the issuer, any person occupying a
55142 similar status or performing similar functions, or any person directly or indirectly controlling or
55143 controlled by the issuer, but only if the person filing the application for or notice of exemption is
55144 directly or indirectly controlled by or acting for the issuer; or

55145 (C) any underwriter;

55146 (iii) the security for which the exemption is sought is the subject of an administrative
55147 stop order or similar order, or a permanent or temporary injunction or any court of competent
55148 jurisdiction entered under any other federal or state act applicable to the offering or exemption;
55149 the division may not institute a proceeding against an effective exemption under this subsection
55150 more than one year from the date of the order or injunction relied on, and it may not enter an
55151 order under this subsection on the basis of an order or injunction entered under any other state
55152 act unless that order or injunction was based on facts that would currently constitute a ground
55153 for a stop order under this section;

55154 (iv) the issuer's enterprise or method of business includes or would include activities
55155 that are illegal where performed;

55156 (v) the offering has worked, has tended to work, or would operate to work a fraud
55157 upon purchasers;

55158 (vi) the offering has been or was made with unreasonable amounts of underwriters' and
55159 sellers' discounts, commissions, or other compensation, or promoters' profits or participation, or
55160 unreasonable amounts or kinds of options;

55161 (vii) an exemption is sought for a security or transaction which is not eligible for the

55162 exemption; or

55163 (viii) the proper filing fee, if required, has not been paid.

55164 (5) (a) No order under Subsection (4) may operate retroactively.

55165 (b) No person may be considered to have violated Section 61-1-7 or 61-1-15 by reason
55166 of any offer or sale effected after the entry of an order under this subsection if ~~he~~ the person
55167 sustains the burden of proof that ~~he~~ the person did not know, and in the exercise of reasonable
55168 care could not have known, of the order.

55169 Section 1071. Section **61-1-15.5** is amended to read:

55170 **61-1-15.5. Federal covered securities.**

55171 (1) The division by rule or order may require the filing of any of the following
55172 documents with respect to a covered security under Section 18(b)(2) of the Securities Act of
55173 1933:

55174 (a) prior to the initial offer of federal covered security in this state, a notice form as
55175 prescribed by the division or all documents that are part of a federal registration statement filed
55176 with the U.S. Securities and Exchange Commission under the Securities Act of 1933, together
55177 with a consent to service of process signed by the issuer and a filing fee as determined under
55178 Section 61-1-18.4;

55179 (b) after the initial offer of such federal covered security in this state, all documents that
55180 are part of an amendment to a federal registration statement filed with the U.S. Securities and
55181 Exchange Commission under the Securities Act of 1933, which shall be filed concurrently with
55182 the division;

55183 (c) a report of the value of federal covered securities offered or sold in this state,
55184 together with a filing fee as determined under Section 61-1-18.4; and

55185 (d) a notice filing under this section shall be effective for one year and shall be renewed
55186 annually in order to continue to offer or sell the federal covered securities for which the notice
55187 was filed.

55188 (2) With respect to any security that is a covered security under Section 18(b)(4)(D) of
55189 the Securities Act of 1933, the division by rule or order may require the issuer to file a notice on

55190 SEC Form D and a consent to service of process signed by the issuer no later than 15 days after
55191 the first sale of such covered security in this state, together with a filing fee as determined under
55192 Section 61-1-18.4.

55193 (3) The division by rule or order may require the filing of any document filed with the
55194 U.S. Securities and Exchange Commission under the Securities Act of 1933, with respect to a
55195 covered security under Section 18(b)(3) or (4) of the Securities Act of 1933, together with a
55196 filing fee as determined under Section 61-1-18.4.

55197 (4) Upon approval by a majority of the Securities Advisory Board, the director, by
55198 means of adjudicative proceedings conducted in accordance with [~~Title 63, Chapter 46b~~] Title
55199 63G, Chapter 4, Administrative Procedures Act, may issue a stop order suspending the offer
55200 and sale of any federal covered security, except a covered security under Section 18(b)(1) of the
55201 Securities Act of 1933, if the director finds that the order is in the public interest and there is a
55202 failure to comply with any condition established under this section.

55203 (5) The division by rule or order may waive any or all of the provisions of this section.
55204 Section 1072. Section **61-1-18.4** is amended to read:

55205 **61-1-18.4. Fees collected by division.**

55206 The Division of Securities shall establish, charge, and collect fees pursuant to Section
55207 [~~63-38-3.2~~] 63J-1-303, except when it can be demonstrated that the fee amount should be based
55208 on factors other than cost, for the following:

55209 (1) the fair and reasonable cost of any examination, audit, or investigation authorized or
55210 required by this chapter or other state law;

55211 (2) certificate of serving and mailing process served upon the division in any action or
55212 proceeding commenced or prosecuted in this state against any person who has appointed the
55213 division its agent as provided in Subsection 61-1-26(7); and

55214 (3) copies and authentication of all papers, publications, data, and other records
55215 available to the public or issued under the division's authority.

55216 Section 1073. Section **61-1-18.6** is amended to read:

55217 **61-1-18.6. Procedures -- Adjudicative proceedings.**

55218 The Division of Securities shall comply with the procedures and requirements of [Title
55219 ~~63, Chapter 46b,~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
55220 proceedings.

55221 Section 1074. Section **61-1-18.7** is amended to read:

55222 **61-1-18.7. Funding of securities investor education and training.**

55223 (1) There is created a restricted special revenue fund known as the "Securities Investor
55224 Education and Training Fund" to provide revenue for educating the public and the securities
55225 industry as provided in this section.

55226 (2) All money received by the state by reason of civil penalties ordered and
55227 administrative fines collected pursuant to this chapter shall be deposited in the Securities
55228 Investor Education and Training Fund, and subject to the requirements of Title 51, Chapter 5,
55229 Funds Consolidation Act.

55230 (3) The special revenue fund may include any fines collected by the division after July 1,
55231 1989, pursuant to voluntary settlements or administrative orders.

55232 (4) (a) The fund shall earn interest.

55233 (b) All interest earned on fund monies shall be deposited into the fund.

55234 (5) Notwithstanding [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures
55235 Act, the director may use special revenue fund monies, upon concurrence of the Securities
55236 Advisory Board and the executive director of the Department of Commerce, in a manner
55237 consistent with the duties of the division under this chapter and only for any or all of the
55238 following and the expense of providing them:

55239 (a) education and training of Utah residents in matters concerning securities laws and
55240 investment decisions, by publications or presentations;

55241 (b) education of registrants and licensees under this chapter, by:

55242 (i) publication of this chapter and rules and policy statements and opinion letters of the
55243 division; and

55244 (ii) sponsorship of seminars or meetings to educate registrants and licensees as to the
55245 requirements of this chapter; and

55246 (c) investigation and litigation.

55247 (6) If the balance in the fund exceeds \$100,000 at the close of any fiscal year, the excess
55248 shall be transferred to the General Fund.

55249 Section 1075. Section **61-1-23** is amended to read:

55250 **61-1-23. Review of orders.**

55251 Any person aggrieved by a final order of the director determining all of the issues of an
55252 adjudicative proceeding may obtain review of the order by the executive director in accordance
55253 with [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act.

55254 Section 1076. Section **61-2-5.1** is amended to read:

55255 **61-2-5.1. Procedures -- Adjudicative proceedings.**

55256 The Division of Real Estate shall comply with the procedures and requirements of [~~Title~~
55257 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
55258 proceedings.

55259 Section 1077. Section **61-2-6** is amended to read:

55260 **61-2-6. Licensing procedures and requirements.**

55261 (1) (a) Except as provided in Subsection (5), the commission shall determine the
55262 qualifications and requirements of applicants for:

- 55263 (i) a principal broker license;
- 55264 (ii) an associate broker license; or
- 55265 (iii) a sales agent license.

55266 (b) The division, with the concurrence of the commission, shall require and pass upon
55267 proof necessary to determine the honesty, integrity, truthfulness, reputation, and competency of
55268 each applicant for an initial license or for renewal of an existing license.

55269 (c) (i) The division, with the concurrence of the commission, shall require an applicant
55270 for:

55271 (A) a sales agent license to complete an approved educational program not to exceed
55272 90 hours; and

55273 (B) an associate broker or principal broker license to complete an approved educational

55274 program not to exceed 120 hours.

55275 (ii) The hours required by this section mean 50 minutes of instruction in each 60
55276 minutes.

55277 (iii) The maximum number of program hours available to an individual is ten hours per
55278 day.

55279 (d) The division, with the concurrence of the commission, shall require the applicant to
55280 pass an examination approved by the commission covering:

55281 (i) the fundamentals of:

55282 (A) the English language;

55283 (B) arithmetic;

55284 (C) bookkeeping; and

55285 (D) real estate principles and practices;

55286 (ii) the provisions of this chapter;

55287 (iii) the rules established by the commission; and

55288 (iv) any other aspect of Utah real estate license law considered appropriate.

55289 (e) (i) Three years' full-time experience as a real estate sales agent or its equivalent is
55290 required before any applicant may apply for, and secure a principal broker or associate broker
55291 license in this state.

55292 (ii) The commission shall establish by rule, made in accordance with [~~Title 63, Chapter~~
55293 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the criteria by which the
55294 commission will accept experience or special education in similar fields of business in lieu of the
55295 three years' experience.

55296 (2) (a) The division, with the concurrence of the commission, may require an applicant
55297 to furnish a sworn statement setting forth evidence satisfactory to the division of the applicant's
55298 reputation and competency as set forth by rule.

55299 (b) The division shall require an applicant to provide the applicant's Social Security
55300 number, which is a private record under Subsection [~~63-2-302~~] 63G-2-302(1)(h).

55301 (3) (a) A nonresident principal broker may be licensed in this state by conforming to all

55302 the provisions of this chapter except that of residency.

55303 (b) A nonresident associate broker or sales agent may become licensed in this state by:

55304 (i) conforming to all the provisions of this chapter except that of residency; and

55305 (ii) being employed or engaged as an independent contractor by or on behalf of a

55306 nonresident or resident principal broker who is licensed in this state.

55307 (4) (a) Except as provided in Subsection 61-2-9(1)(e)(iv), the application to be

55308 relicensed of an applicant who has had a real estate license revoked shall be treated as an

55309 original application.

55310 (b) In the case of an applicant for a new license as a principal broker or associate

55311 broker, the applicant is not entitled to credit for experience gained prior to the revocation of a

55312 real estate license.

55313 (5) (a) Notwithstanding Subsection (1), the commission may delegate to the division

55314 the authority to:

55315 (i) review a class or category of applications for initial or renewed licenses;

55316 (ii) determine whether an applicant meets the licensing criteria in Subsection (1); and

55317 (iii) approve or deny a license application without concurrence by the commission.

55318 (b) (i) If the commission delegates to the division the authority to approve or deny an

55319 application without concurrence by the commission and the division denies an application for

55320 licensure, the applicant who is denied licensure may petition the commission for review of the

55321 denial of licensure.

55322 (ii) An applicant who is denied licensure pursuant to this Subsection (5) may seek

55323 agency review by the executive director only after the commission has reviewed the division's

55324 denial of the applicant's application.

55325 Section 1078. Section **61-2-7.1** is amended to read:

55326 **61-2-7.1. Change of information -- Failure to notify -- Notification to an**

55327 **applicant, licensee, or certificate holder.**

55328 (1) An applicant, licensee, or certificate holder shall send the division a signed statement

55329 in the form required by the division notifying the division within ten business days of any change

55330 of:

- 55331 (a) principal broker;
- 55332 (b) principal business location;
- 55333 (c) mailing address;
- 55334 (d) home street address;
- 55335 (e) an individual's name; or
- 55336 (f) business name.

55337 (2) The division may charge a fee established in accordance with Section [~~63-38-3.2~~
 55338 63J-1-303 for processing any notification of change submitted by an applicant, licensee, or
 55339 certificate holder.

55340 (3) (a) When providing the division a business location or home street address, a
 55341 physical location or street address must be provided.

55342 (b) When providing a mailing address, an applicant, licensee, or certificate holder may
 55343 provide a post office box or other mail drop location.

55344 (4) Failure to notify the division of a change described in Subsection (1) is separate
 55345 grounds for disciplinary action against the applicant, licensee, or certificate holder.

55346 (5) An applicant, licensee, or certificate holder is considered to have received any
 55347 notification that has been sent to the last address furnished to the division by the applicant,
 55348 licensee, or certificate holder.

55349 Section 1079. Section **61-2-9** is amended to read:

55350 **61-2-9. Examination and license fees -- Criminal background check -- Renewal of**
 55351 **licenses -- Education requirements -- Activation of inactive licenses -- Recertification --**
 55352 **Licenses of firm, partnership, or association -- Miscellaneous fees.**

55353 (1) (a) Upon filing an application for a principal broker, associate broker, or sales agent
 55354 license examination, the applicant shall pay a nonrefundable fee as determined by the
 55355 commission with the concurrence of the division under Section [~~63-38-3.2~~] 63J-1-303 for
 55356 admission to the examination.

55357 (b) A principal broker, associate broker, or sales agent applicant shall pay a

55358 nonrefundable fee as determined by the commission with the concurrence of the division under
55359 Section [~~63-38-3.2~~] 63J-1-303 for issuance of an initial license or license renewal.

55360 (c) Each license issued under this Subsection (1) shall be issued for a period of not less
55361 than two years as determined by the division with the concurrence of the commission.

55362 (d) (i) Any of the following applicants shall comply with this Subsection (1)(d):

55363 (A) a new sales agent applicant; or

55364 (B) an out-of-state broker applicant.

55365 (ii) An applicant described in this Subsection (1)(d) shall:

55366 (A) submit fingerprint cards in a form acceptable to the division at the time the license
55367 application is filed; and

55368 (B) consent to a criminal background check by the Utah Bureau of Criminal
55369 Identification and the Federal Bureau of Investigation regarding the application.

55370 (iii) The division shall request the Department of Public Safety to complete a Federal
55371 Bureau of Investigation criminal background check for each applicant described in this
55372 Subsection (1)(d) through the national criminal history system or any successor system.

55373 (iv) The cost of the criminal background check and the fingerprinting shall be borne by
55374 the applicant.

55375 (v) Funds paid to the division by an applicant for the cost of the criminal background
55376 check shall be nonlapsing.

55377 (e) (i) Any license issued under Subsection (1)(d) shall be conditional, pending
55378 completion of the criminal background check. If the criminal background check discloses the
55379 applicant has failed to accurately disclose a criminal history, the license shall be immediately and
55380 automatically revoked.

55381 (ii) Any person whose conditional license has been revoked under Subsection (1)(e)(i)
55382 shall be entitled to a post-revocation hearing to challenge the revocation. The hearing shall be
55383 conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
55384 Procedures Act.

55385 (iii) The division director shall designate one of the following to act as the presiding

55386 officer in a postrevocation hearing described in this Subsection (1)(e):

55387 (A) the division; or

55388 (B) the division with the concurrence of the commission.

55389 (iv) The decision on whether relief from the revocation of a license under this

55390 Subsection (1)(e) will be granted shall be made by the presiding officer.

55391 (v) Relief from a revocation under this Subsection (1)(e) may be granted only if:

55392 (A) the criminal history upon which the division based the revocation:

55393 (I) did not occur; or

55394 (II) is the criminal history of another person;

55395 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

55396 (II) the applicant had a reasonable good faith belief at the time of application that there

55397 was no criminal history to be disclosed; or

55398 (C) the division failed to follow the prescribed procedure for the revocation.

55399 (vi) If a license is revoked or a revocation under this Subsection (1)(e) is upheld after a

55400 post-revocation hearing, the person may not apply for a new license until at least 12 months

55401 after the day on which the license is revoked.

55402 (2) (a) (i) A license expires if it is not renewed on or before its expiration date.

55403 (ii) As a condition of renewal, each active licensee shall demonstrate competence:

55404 (A) by viewing an approved real estate education video program and completing a

55405 supplementary workbook; or

55406 (B) by completing 12 hours of professional education approved by the division and

55407 commission within each two-year renewal period.

55408 (iii) The division with the concurrence of the commission shall certify education which

55409 may include:

55410 (A) state conventions;

55411 (B) home study courses;

55412 (C) video courses; and

55413 (D) closed circuit television courses.

55414 (iv) The commission with concurrence of the division may exempt a licensee from the
55415 education requirement of this Subsection (2)(a) for a period not to exceed four years:

55416 (A) upon a finding of reasonable cause, including military service; and

55417 (B) under conditions established by rule made in accordance with [~~Title 63, Chapter~~
55418 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

55419 (b) For a period of 30 days after the expiration date of a license, the license may be
55420 reinstated upon:

55421 (i) payment of a renewal fee and a late fee determined by the commission with the
55422 concurrence of the division under Section [~~63-38-3.2]~~ 63J-1-303; and

55423 (ii) providing proof acceptable to the division and the commission of the licensee having
55424 completed the hours of education or demonstrated competence as required under Subsection
55425 (2)(a).

55426 (c) After the 30-day period described in Subsection (2)(b), and until six months after
55427 the expiration date, the license may be reinstated by:

55428 (i) paying a renewal fee and a late fee determined by the commission with the
55429 concurrence of the division under Section [~~63-38-3.2]~~ 63J-1-303;

55430 (ii) providing to the division proof of satisfactory completion of 12 hours of continuing
55431 education:

55432 (A) in addition to the requirements for a timely renewal; and

55433 (B) on a subject determined by the commission by rule made in accordance with [~~Title~~
55434 ~~63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

55435 (iii) providing proof acceptable to the division and the commission of the licensee
55436 having:

55437 (A) completed the hours of education; or

55438 (B) demonstrated competence as required under Subsection (2)(a).

55439 (d) A person who does not renew that person's license within six months after the
55440 expiration date shall be relicensed as prescribed for an original application.

55441 (3) (a) As a condition for the activation of an inactive license that was in an inactive

55442 status at the time of the licensee's most recent renewal, the licensee shall supply the division
55443 with proof of:

55444 (i) successful completion of the respective sales agent or broker licensing examination
55445 within six months prior to applying to activate the license; or

55446 (ii) the successful completion of 12 hours of continuing education that the licensee
55447 would have been required to complete under Subsection (2)(a) if the license had been on active
55448 status at the time of the licensee's most recent renewal.

55449 (b) The commission may, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
55450 3, Utah Administrative Rulemaking Act, establish by rule:

55451 (i) the nature or type of continuing education required for reactivation of a license; and
55452 (ii) how long prior to reactivation the continuing education must have been completed.

55453 (4) (a) A principal broker license may be granted to a corporation, partnership, or
55454 association if the corporation, partnership, or association has affiliated with it an individual who:

55455 (i) has qualified as a principal broker under the terms of this chapter; and
55456 (ii) serves in the capacity of a principal broker.

55457 (b) Application for the license described in Subsection (4)(a) shall be made in
55458 accordance with the rules adopted by the division with the concurrence of the commission.

55459 (5) The division may charge and collect reasonable fees determined by the commission
55460 with the concurrence of the division under Section [~~63-38-3.2~~] 63J-1-303 to cover the costs for:

55461 (a) issuance of a new or duplicate license;

55462 (b) license histories or certifications;

55463 (c) certified copies of official documents, orders, and other papers and transcripts;

55464 (d) certifying real estate schools, courses, and instructors, the fees for which shall,
55465 notwithstanding Section 13-1-2, be deposited in the Real Estate Education, Research, and
55466 Recovery Fund; and

55467 (e) other duties required by this chapter.

55468 (6) If a licensee submits or causes to be submitted a check, draft, or other negotiable
55469 instrument to the division for payment of fees, and the check, draft, or other negotiable

55470 instrument is dishonored, the transaction for which the payment was submitted is void and will
55471 be reversed by the division if payment of the applicable fee is not received in full.

55472 (7) (a) The fees under this chapter and the additional license fee for the Real Estate
55473 Education, Research, and Recovery Fund under Section 61-2a-4 are in lieu of all other license
55474 fees or assessments that might otherwise be imposed or charged by the state or any of its
55475 political subdivisions, upon, or as a condition of, the privilege of conducting the business
55476 regulated by this chapter, except that a political subdivision within the state may charge a
55477 business license fee on a principal broker if the principal broker maintains a place of business
55478 within the jurisdiction of the political subdivision.

55479 (b) Unless otherwise exempt, each licensee under this chapter is subject to all taxes
55480 imposed under Title 59, Revenue and Taxation.

55481 Section 1080. Section **61-2-10** is amended to read:

55482 **61-2-10. Restriction on commissions -- Affiliation with more than one broker --**
55483 **Specialized licenses -- Designation of agents or brokers.**

55484 (1) It is unlawful for any associate broker or sales agent to accept valuable
55485 consideration for the performance of any of the acts specified in this chapter from any person
55486 except the principal broker with whom [~~he~~] the associate broker or sales agent is affiliated and
55487 licensed.

55488 (2) An inactive associate broker or sales agent is not authorized to conduct real estate
55489 transactions until the inactive associate broker or sales agent becomes affiliated with a licensed
55490 principal broker and submits the required documentation to the division. An inactive principal
55491 broker is not authorized to conduct real estate transactions until the principal broker's license is
55492 activated with the division.

55493 (3) No sales agent or associate broker may affiliate with more than one principal broker
55494 at the same time.

55495 (4) (a) Except as provided by rule, a principal broker may not be responsible for more
55496 than one real estate brokerage at the same time.

55497 (b) In addition to issuing principal broker, associate broker, and sales agent licenses

55498 authorizing the performance of all of the acts set forth in Subsection 61-2-2(12), the division
55499 may issue specialized sales licenses and specialized property management licenses with the
55500 scope of practice limited to the specialty. An individual may hold a specialized license in
55501 addition to a license to act as a principal broker, an associate broker, or a sales agent. The
55502 commission may adopt rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
55503 Administrative Procedures Act, for the administration of this provision, including prelicensing
55504 and postlicensing education requirements, examination requirements, affiliation with real estate
55505 brokerages or property management companies, and other licensing procedures.

55506 (c) An individual may not be a principal broker of a brokerage and a sales agent or
55507 associate broker for a different brokerage at the same time.

55508 (5) Any owner, purchaser, lessor, or lessee who engages the services of a principal
55509 broker may designate which sales agents or associate brokers affiliated with that principal
55510 broker will also represent that owner, purchaser, lessor, or lessee in the purchase, sale, lease, or
55511 exchange of real estate, or in exercising an option relating to real estate.

55512 Section 1081. Section **61-2-12** is amended to read:

55513 **61-2-12. Disciplinary action -- Judicial review.**

55514 (1) (a) On the basis of a violation of this chapter, the commission with the concurrence
55515 of the director, may issue an order:

55516 (i) imposing an educational requirement;

55517 (ii) imposing a civil penalty not to exceed the greater of:

55518 (A) \$2,500 for each violation; or

55519 (B) the amount of any gain or economic benefit derived from each violation;

55520 (iii) taking any of the following actions related to a license or certificate:

55521 (A) revoking;

55522 (B) suspending;

55523 (C) placing on probation;

55524 (D) denying the renewal, reinstatement, or application for an original license or
55525 certificate; or

55526 (E) in the case of denial or revocation of a license or certificate, setting a waiting period
55527 for an applicant to apply for a license or certificate under this title;

55528 (iv) issuing a cease and desist order; or

55529 (v) doing any combination of Subsections (1)(a)(i) through (iv).

55530 (b) If the licensee is an active sales agent or active associate broker, the division shall
55531 inform the principal broker with whom the licensee is affiliated of the charge and of the time and
55532 place of any hearing.

55533 (2) (a) Any applicant, certificate holder, licensee, or person aggrieved, including the
55534 complainant, may obtain agency review by the executive director and judicial review of any
55535 adverse ruling, order, or decision of the division.

55536 (b) If the applicant, certificate holder, or licensee prevails in the appeal and the court
55537 finds that the state action was undertaken without substantial justification, the court may award
55538 reasonable litigation expenses to the applicant, certificate holder, or licensee as provided under
55539 Title 78, Chapter 27a, Small Business Equal Access to Justice Act.

55540 (c) (i) An order, ruling, or decision of the division shall take effect and become
55541 operative 30 days after the service of the order, ruling, or decision unless otherwise provided in
55542 the order.

55543 (ii) If an appeal is taken by a licensee, the division may stay enforcement of an order,
55544 ruling, or decision in accordance with Section [~~63-46-18~~] 63G-4-405.

55545 (iii) The appeal shall be governed by the Utah Rules of Appellate Procedure.

55546 (3) The commission and the director shall comply with the procedures and requirements
55547 of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in all
55548 adjudicative proceedings.

55549 Section 1082. Section **61-2-21** is amended to read:

55550 **61-2-21. Remedies and action for violations.**

55551 (1) (a) The director shall issue and serve upon a person an order directing that person
55552 to cease and desist from an act if:

55553 (i) the director has reason to believe that the person has been engaging, is about to

55554 engage, or is engaging in the act constituting a violation of this chapter; and

55555 (ii) it appears to the director that it would be in the public interest to stop the act.

55556 (b) Within ten days after receiving the order, the person upon whom the order is served

55557 may request an adjudicative proceeding.

55558 (c) Pending the hearing, any cease and desist order shall remain in effect.

55559 (d) If a request for a hearing is made, the division shall follow the procedures and

55560 requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

55561 (2) (a) After the hearing, if the commission and the director agree that the act of the

55562 person violates this chapter, the director:

55563 (i) shall issue an order making the order issued under Subsection (1) permanent; and

55564 (ii) may impose a civil penalty not to exceed the greater of:

55565 (A) \$2,500 for each violation; or

55566 (B) the amount of any gain or economic benefit derived from each violation.

55567 (b) The director shall file suit in the name of the Department of Commerce and the

55568 Division of Real Estate, in the district court in the county in which an act described in

55569 Subsection (1) occurred or where the person resides or carries on business, to enjoin and

55570 restrain the person from violating this chapter if:

55571 (i) (A) no hearing is requested; and

55572 (B) the person fails to cease the act described in Subsection (1); or

55573 (ii) after discontinuing the act described in Subsection (1), the person again commences

55574 the act.

55575 (c) The district courts of this state shall have jurisdiction of an action brought under this

55576 section.

55577 (d) Upon a proper showing in an action brought under this section related to an

55578 undivided fractionalized long-term estate, the court may:

55579 (i) issue a permanent or temporary, prohibitory or mandatory injunction;

55580 (ii) issue a restraining order or writ of mandamus;

55581 (iii) enter a declaratory judgment;

55582 (iv) appoint a receiver or conservator for the defendant or the defendant's assets;

55583 (v) order disgorgement;

55584 (vi) order rescission;

55585 (vii) impose a civil penalty not to exceed the greater of:

55586 (A) \$2,500 for each violation; or

55587 (B) the amount of any gain or economic benefit derived from each violation; and

55588 (viii) enter any other relief the court considers just.

55589 (e) The court may not require the division to post a bond in an action brought under

55590 this Subsection (2).

55591 (3) The remedies and action provided in this section may not interfere with, or prevent

55592 the prosecution of, any other remedies or actions including criminal proceedings.

55593 Section 1083. Section **61-2-26** is amended to read:

55594 **61-2-26. Rulemaking required for offer or sale of an undivided fractionalized**

55595 **long-term estate -- Disclosures -- Management agreement.**

55596 (1) (a) A licensee or certificate holder under this chapter who sells or offers to sell an

55597 undivided fractionalized long-term estate shall comply with the disclosure requirements imposed

55598 by rules made by the commission under this section.

55599 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

55600 Administrative Rulemaking Act, the commission shall make rules as to the timing, form, and

55601 substance of disclosures required to be made by a licensee or certificate holder under this

55602 section.

55603 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

55604 Administrative Rulemaking Act, the commission shall make rules imposing requirements for a

55605 management agreement related to an undivided fractionalized long-term estate that makes the

55606 offer or sale of the undivided fractionalized long-term estate treated as a real estate transaction

55607 and not treated as an offer or sale of a security under Chapter 1, Utah Uniform Securities Act.

55608 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

55609 Administrative Rulemaking Act, the commission shall make rules establishing:

55610 (a) the disclosures required in the sale or offer of an undivided fractionalized long-term
55611 estate that is subject to a master lease;

55612 (b) requirements for the management of a master lease on an undivided fractionalized
55613 long-term estate; and

55614 (c) the requirements on the structure of a master lease on an undivided fractionalized
55615 long-term estate.

55616 Section 1084. Section **61-2-28** is amended to read:

55617 **61-2-28. Utah Housing Opportunity Restricted Account.**

55618 (1) There is created in the General Fund a restricted account known as the "Utah
55619 Housing Opportunity Restricted Account."

55620 (2) The account shall be funded by:

55621 (a) contributions deposited into the Utah Housing Opportunity Restricted Account in
55622 accordance with Section 41-1a-422;

55623 (b) private contributions;

55624 (c) donations or grants from public or private entities; and

55625 (d) interest and earnings on fund monies.

55626 (3) Funds in the account are nonlapsing.

55627 (4) The Legislature shall appropriate money in the account to the division.

55628 (5) The division shall distribute the funds to one or more charitable organizations that:

55629 (a) qualify as being tax exempt under Section 501(c)(3), Internal Revenue Code; and

55630 (b) have as a primary part of their mission to provide support to organizations that
55631 create affordable housing for those in severe need.

55632 (6) The division may only consider proposals that are:

55633 (a) proposed by an organization under Subsection (5); and

55634 (b) designed to provide support to organizations that create affordable housing for
55635 those in severe need.

55636 (7) (a) An organization described in Subsection (5) may apply to the division to receive
55637 a distribution in accordance with Subsection (5).

55638 (b) An organization that receives a distribution from the division in accordance with
55639 Subsection (5) shall expend the distribution only to provide support to organizations that create
55640 affordable housing for those in severe need.

55641 (8) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
55642 Administrative Rulemaking Act, the division shall make rules providing procedures for an
55643 organization to apply to receive funds under this section.

55644 Section 1085. Section **61-2b-2** is amended to read:

55645 **61-2b-2. Definitions.**

55646 (1) As used in this chapter:

55647 (a) (i) "Appraisal" means an unbiased analysis, opinion, or conclusion relating to the
55648 nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or
55649 identified real property.

55650 (ii) An appraisal shall be classified by the nature of the assignment as a valuation
55651 appraisal, an analysis assignment, or a review assignment in accordance with the following
55652 definitions:

55653 [~~(B)~~] (A) "Analysis assignment" means an unbiased analysis, opinion, or conclusion that
55654 relates to the nature, quality, or utility of identified real estate or identified real property.

55655 [~~(C)~~] (B) "Review assignment" means an unbiased analysis, opinion, or conclusion that
55656 forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis
55657 assignment.

55658 [~~(A)~~] (C) "Valuation appraisal" means an unbiased analysis, opinion, or conclusion that
55659 estimates the value of an identified parcel of real estate or identified real property at a particular
55660 point in time.

55661 (b) "Appraisal Foundation" means the Appraisal Foundation that was incorporated as
55662 an Illinois not-for-profit corporation on November 30, 1987.

55663 (c) (i) "Appraisal report" means any communication, written or oral, of an appraisal.

55664 (ii) An appraisal report shall be classified by the nature of the assignment as a valuation
55665 report, analysis report, or review report in accordance with the definitions provided in

55666 Subsection (1)(a)(ii).

55667 (iii) The testimony of a person relating to the person's analyses, conclusions, or
55668 opinions concerning identified real estate or identified real property is considered to be an oral
55669 appraisal report.

55670 (d) "Board" means the Real Estate Appraiser Licensing and Certification Board that is
55671 established in Section 61-2b-7.

55672 (e) "Certified appraisal report" means a written or oral appraisal report that is certified
55673 by a state-certified general appraiser or state-certified residential appraiser.

55674 (f) (i) (A) "Consultation service" means an engagement to provide a real estate
55675 valuation service analysis, opinion, conclusion, or other service that does not fall within the
55676 definition of appraisal.

55677 (B) "Consultation service" does not mean a valuation appraisal, analysis assignment, or
55678 review assignment.

55679 (ii) Regardless of the intention of the client or employer, if a person prepares an
55680 unbiased analysis, opinion, or conclusion, the analysis, opinion, or conclusion is considered to
55681 be an appraisal and not a consultation service.

55682 (g) "Contingent fee" means a fee or other form of compensation, payment of which is
55683 dependent on or conditioned by:

55684 (i) the reporting of a predetermined analysis, opinion, or conclusion by the person
55685 performing the analysis, opinion, or conclusion; or

55686 (ii) achieving a result specified by the person requesting the analysis, opinion, or
55687 conclusion.

55688 (h) "Division" means the Division of Real Estate of the Department of Commerce.

55689 (i) "Federally related transaction" means any real estate related transaction that is
55690 required by federal law or by federal regulation to be supported by an appraisal prepared by:

55691 (i) a state-licensed appraiser; or

55692 (ii) a state-certified appraiser.

55693 (j) "Real estate" means an identified parcel or tract of land including improvements if

55694 any.

55695 (k) "Real estate appraisal activity" means the act or process of making an appraisal of
55696 real estate or real property and preparing an appraisal report.

55697 (l) "Real estate related transaction" means:

55698 (i) the sale, lease, purchase, investment in, or exchange of real property or an interest in
55699 real property, or the financing of such a transaction;

55700 (ii) the refinancing of real property or an interest in real property; or

55701 (iii) the use of real property or an interest in real property as security for a loan or
55702 investment, including mortgage-backed securities.

55703 (m) "Real property" means one or more defined interests, benefits, or rights inherent in
55704 the ownership of real estate.

55705 (n) "State-certified general appraiser" means a person who holds a current, valid
55706 certification as a state-certified general appraiser issued under this chapter.

55707 (o) "State-certified residential appraiser" means a person who holds a current, valid
55708 certification as a state-certified residential real estate appraiser issued under this chapter.

55709 (p) "State-licensed appraiser" means a person who holds a current, valid license as a
55710 state-licensed appraiser issued under this chapter.

55711 (q) "State-registered appraiser" means a person who before May 3, 1999, was
55712 registered as an appraiser under this chapter.

55713 (r) "Trainee" means an individual who:

55714 (i) does not hold an appraiser license or appraiser certification issued under this chapter;
55715 and

55716 (ii) works under the direct supervision of a state-licensed appraiser or state-certified
55717 appraiser to earn experience for licensure.

55718 (s) "Unbiased analysis, opinion, or conclusion" means an analysis, opinion, or
55719 conclusion relating to the nature, quality, value, or utility of identified real estate or identified
55720 real property that is prepared by a person who is employed or retained to act, or would be
55721 perceived by third parties or the public as acting, as a disinterested third party in rendering the

55722 analysis, opinion, or conclusion.

55723 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
55724 meaning established by the division by rule made in accordance with [~~Title 63, Chapter 46a~~]
55725 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

55726 (b) If a term not defined in this section is not defined by rule, the term shall have the
55727 meaning commonly accepted in the business community.

55728 Section 1086. Section **61-2b-6** is amended to read:

55729 **61-2b-6. Duties and powers of division.**

55730 (1) The division shall have the powers and duties listed in this Subsection (1).

55731 (a) The division shall:

55732 (i) receive applications for licensing and certification;

55733 (ii) establish appropriate administrative procedures for the processing of applications for
55734 licensure or certification;

55735 (iii) issue licenses and certifications to qualified applicants pursuant to this chapter; and

55736 (iv) maintain a registry of the names and addresses of individuals who are currently
55737 licensed or certified as appraisers under this chapter.

55738 (b) (i) The division shall require a trainee to notify the division that the trainee is acting
55739 in the capacity of a trainee earning experience for licensure.

55740 (ii) The board shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
55741 Chapter 3, Utah Administrative Rulemaking Act, for the trainee notification required by this
55742 Subsection (1)(b).

55743 (c) The division shall hold public hearings under the direction of the board.

55744 (d) The division may:

55745 (i) solicit bids and enter into contracts with one or more educational testing services or
55746 organizations for the preparation of a bank of questions and answers approved by the board for
55747 licensing and certification examinations; and

55748 (ii) administer or contract for the administration of licensing and certification
55749 examinations as may be required to carry out the division's responsibilities under this chapter.

55750 (e) The division shall provide administrative assistance to the board by providing to the
55751 board the facilities, equipment, supplies, and personnel that are required to enable the board to
55752 carry out the board's responsibilities under this chapter.

55753 (f) The division shall assist the board in upgrading and improving the quality of the
55754 education and examinations required under this chapter.

55755 (g) The division shall assist the board in improving the quality of the continuing
55756 education available to persons licensed and certified under this chapter.

55757 (h) The division shall assist the board with respect to the proper interpretation or
55758 explanation of the Uniform Standards of Professional Appraisal Practice as required by Section
55759 61-2b-27 when an interpretation or explanation becomes necessary in the enforcement of this
55760 chapter.

55761 (i) The division shall establish fees in accordance with Section [~~63-38-3.2~~] 63J-1-303:

55762 (i) for processing:

55763 (A) trainee notifications;

55764 (B) applications for licensing and certification; and

55765 (C) registration of expert witnesses; and

55766 (ii) for all other functions required or permitted by this chapter.

55767 (j) The division may:

55768 (i) investigate complaints against:

55769 (A) trainees; or

55770 (B) persons licensed or certified under this chapter;

55771 (ii) subpoena witnesses and the production of books, documents, records, and other
55772 papers;

55773 (iii) administer oaths; and

55774 (iv) take testimony and receive evidence concerning all matters within the division's
55775 jurisdiction.

55776 (k) The division may promote research and conduct studies relating to the profession of
55777 real estate appraising and sponsor real estate appraisal educational activities.

55778 (l) The division shall adopt, with the concurrence of the board, rules for the
55779 administration of this chapter pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
55780 Administrative Rulemaking Act, that are not inconsistent with this chapter or the constitution
55781 and laws of this state or of the United States.

55782 (m) The division shall employ an appropriate staff to investigate allegations that persons
55783 licensed or certified under this chapter failed to comply with this chapter.

55784 (n) The division may employ such other professional, clerical, and technical staff as may
55785 be necessary to properly administer the work of the division under this chapter.

55786 (o) The division may make available, at a reasonable cost determined by the division, a
55787 list of the names and addresses of all persons licensed or certified by the division under this
55788 chapter to the extent the information is a public record under [~~Title 63, Chapter 2~~] Title 63G,
55789 Chapter 2, Government Records Access and Management Act.

55790 (2) (a) The division shall register expert witnesses who are not otherwise licensed or
55791 certified under this chapter to appear in all administrative and judicial tax proceedings to
55792 provide evidence related to the valuation of real property that is assessed by the tax
55793 commission, provided that the:

55794 (i) registration is limited to a specific proceeding;

55795 (ii) registration is valid until the proceeding becomes final;

55796 (iii) applicant pays a registration fee to the division;

55797 (iv) applicant provides the applicant's name, address, occupation, and professional
55798 credentials; and

55799 (v) applicant provides a notarized statement that:

55800 (A) the applicant is competent to render an appraisal and to testify as an expert witness
55801 in the proceeding; and

55802 (B) the appraisal and testimony to be offered shall be in accordance with the Uniform
55803 Standards of Professional Appraisal Practice adopted by the board.

55804 (b) Subsection (2)(a) shall be effective for all administrative and judicial property tax
55805 proceedings related to the valuation of real property that is assessed by the tax commission,

55806 including those filed but which are not final as of May 3, 1994.

55807 (3) The division shall be immune from any civil action or criminal prosecution for
55808 initiating or assisting in any lawful investigation of the actions of or participating in any
55809 disciplinary proceeding concerning a trainee or a person licensed, certified, or registered as an
55810 expert witness pursuant to this chapter if the action is taken without malicious intent and in the
55811 reasonable belief that the action was taken pursuant to the powers and duties vested in the
55812 members of the division under this chapter.

55813 Section 1087. Section **61-2b-8** is amended to read:

55814 **61-2b-8. Duties of board.**

55815 The board shall provide technical assistance to the division relating to real estate
55816 appraisal standards and real estate appraiser qualifications and shall have the responsibilities,
55817 powers, and duties listed in this section.

55818 (1) The board shall:

55819 (a) determine the experience, education, and examination requirements appropriate for
55820 persons licensed under this chapter;

55821 (b) determine the experience, education, and examination requirements appropriate for
55822 persons certified under this chapter in compliance with the minimum requirements of Financial
55823 Institutions Reform, Recovery, and Enforcement Act of 1989, and consistent with the intent of
55824 this chapter;

55825 (c) determine the appraisal related acts that may be performed by:

55826 (i) a trainee on the basis of the trainee's education and experience;

55827 (ii) clerical staff; and

55828 (iii) a person who:

55829 (A) does not hold a license or certification; and

55830 (B) assists appraisers licensed or certified under this chapter in providing appraisal
55831 services or consultation services;

55832 (d) determine the procedures for a trainee notifying the division that the trainee will
55833 assist persons licensed or certified under this chapter in providing appraisal services or

55834 consultation services; and

55835 (e) develop programs to upgrade and improve the experience, education, and
55836 examinations as required under this chapter.

55837 (2) (a) The experience, education, and examination requirements established by the
55838 board for persons licensed or certified under this chapter shall be the minimum criteria
55839 established by the Appraiser Qualification Board of the Appraisal Foundation, unless, after
55840 notice and a public hearing held in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter
55841 3, Utah Administrative Rulemaking Act, the board finds that the minimum criteria are not
55842 appropriate for state-licensed appraisers or state-certified appraisers in this state.

55843 (b) If under Subsection (2)(a) the board makes a finding that the minimum criteria are
55844 not appropriate, the board shall recommend appropriate criteria to the Legislature.

55845 (3) The board shall:

55846 (a) determine the continuing education requirements appropriate for the renewal of
55847 licenses and certifications issued under this chapter;

55848 (b) develop programs to upgrade and improve continuing education; and

55849 (c) recommend to the division available continuing education courses that meet the
55850 requirements of this chapter.

55851 (4) (a) The board shall consider the proper interpretation or explanation of the Uniform
55852 Standards of Professional Appraisal Practice as required by Section 61-2b-27 when:

55853 (i) an interpretation or explanation becomes necessary in the enforcement of this
55854 chapter; and

55855 (ii) the Appraisal Standards Board of the Appraisal Foundation has not as yet issued an
55856 interpretation or explanation.

55857 (b) If the conditions of Subsection (4)(a) are met, the board shall recommend to the
55858 division the appropriate interpretation or explanation that the division should adopt as a rule
55859 under this chapter.

55860 (5) The board shall develop and establish or approve the examination specifications and
55861 the minimum score required to pass the examinations for licensure and certification.

55862 (6) The board shall review the:
55863 (a) bank of questions and answers that comprise the examination for persons licensed
55864 and certified under this chapter;
55865 (b) procedure that is established for selecting individual questions from the bank of
55866 questions for use in each scheduled examination; and
55867 (c) questions in the bank of questions and the related answers to determine whether
55868 they meet the examination specifications established by the board.

55869 (7) (a) The board shall conduct administrative hearings, not delegated by the board to
55870 an administrative law judge, in connection with all disciplinary proceedings under Sections
55871 61-2b-30 and 61-2b-31 concerning:

55872 (i) a person licensed or certified under this chapter; and
55873 (ii) the person's failure to comply with this chapter and the Uniform Standards of
55874 Professional Appraisal Practice as adopted under Section 61-2b-27.

55875 (b) The board shall issue in each administrative hearing a decision that contains findings
55876 of fact and conclusions of law.

55877 (c) When a determination is made that a person licensed or certified under this chapter
55878 has violated any provision of this chapter, the division shall implement disciplinary action
55879 determined by the board.

55880 (8) The members of the board shall be immune from any civil action or criminal
55881 prosecution for any disciplinary proceeding concerning a person registered, licensed, or certified
55882 under this chapter if the action is taken without malicious intent and in the reasonable belief that
55883 the action taken was taken pursuant to the powers and duties vested in the members of the
55884 board under this chapter.

55885 (9) The board shall require and pass upon proof necessary to determine the honesty,
55886 competency, integrity, and truthfulness of each applicant for original or renewal licensure or
55887 certification.

55888 Section 1088. Section **61-2b-18** is amended to read:

55889 **61-2b-18. Application for certification or licensure -- Registration as an expert**

55890 witness.

55891 (1) An application for the following shall be sent to the division on forms approved by
55892 the division:

- 55893 (a) original certification or licensure;
- 55894 (b) registration as an expert witness; and
- 55895 (c) renewal of certification or licensure.

55896 (2) The payment of the appropriate fee, as fixed by the division with the concurrence of
55897 the board in accordance with Section [~~63-38-3.2~~] 63J-1-303, must accompany an application
55898 for:

- 55899 (a) registration as an expert witness;
- 55900 (b) original certification or licensure; and
- 55901 (c) renewal of certification or licensure.

55902 (3) At the time of filing an application described in Subsection (1), each applicant shall:

- 55903 (a) sign a pledge to comply with the Uniform Standards of Professional Appraisal
55904 Practice and the ethical rules to be observed by an appraiser that are established under Section
55905 61-2b-27 for certified or licensed appraisers or registered expert witnesses under this chapter;
55906 and

55907 (b) certify that the applicant understands the types of misconduct, as set forth in this
55908 chapter, for which disciplinary proceedings may be initiated against persons certified or licensed
55909 under this chapter.

55910 Section 1089. Section **61-2b-21** is amended to read:

55911 **61-2b-21. Denial of licensure or certification.**

55912 The division may, upon compliance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
55913 Administrative Procedures Act, deny the issuance of a license or certification to an applicant on
55914 any of the grounds enumerated in this chapter.

55915 Section 1090. Section **61-2b-22** is amended to read:

55916 **61-2b-22. Licensing, certification, or expert witness requirements for**
55917 **nonresidents -- Temporary license or certificate -- Revocation.**

55918 (1) Each applicant for registration as an expert witness, licensure, or certification under
55919 this chapter who is not a resident of this state shall submit with the applicant's application an
55920 irrevocable consent that service of process upon the applicant may be made by delivery of the
55921 process to the director of the division if, in an action against the applicant in a court of this state
55922 arising out of the applicant's activities as a real estate appraiser in this state, the plaintiff cannot,
55923 in the exercise of due diligence, obtain personal service upon the applicant.

55924 (2) A nonresident of this state who has complied with the provisions of Subsection (1)
55925 may obtain a registration as an expert witness, a license, or a certification in this state by
55926 complying with all of the provisions of this chapter relating to registration of expert witnesses,
55927 licensure, or certification.

55928 (3) A nonresident of this state who has complied with the provisions of Subsection (1)
55929 may obtain a temporary license or certification to perform a contract relating to the appraisal of
55930 real estate or real property in this state. To qualify for the issuance of a temporary license or
55931 certification, an applicant must:

55932 (a) submit an application on a form approved by the division;

55933 (b) submit evidence that the applicant is licensed or certified in the state in which the
55934 applicant primarily conducts business;

55935 (c) certify that no formal charges alleging violation of state appraisal licensing or
55936 certification laws have been filed against the applicant by the applicant's state of domicile; and

55937 (d) pay an application fee in an amount established by the division with the concurrence
55938 of the board.

55939 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
55940 Administrative Rulemaking Act, the division, with the concurrence of the board, shall make
55941 rules establishing the duration of a temporary permit and procedures for renewal of a temporary
55942 permit.

55943 (5) A temporary permit issued under this section shall be immediately and automatically
55944 revoked if the appraiser's license or certification is suspended or revoked in the appraiser's state
55945 of domicile.

55946 (6) Any person whose license or certification has been revoked under Subsection (5) is
55947 entitled to a postrevocation hearing to challenge the revocation. The hearing shall be conducted
55948 in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures
55949 Act.

55950 Section 1091. Section **61-2b-27** is amended to read:

55951 **61-2b-27. Professional conduct -- Uniform standards.**

55952 (1) (a) Each person licensed, certified, or registered as an expert witness under this
55953 chapter must comply with generally accepted standards of professional appraisal practice and
55954 generally accepted ethical rules to be observed by a real estate appraiser.

55955 (b) Generally accepted standards of professional appraisal practice are evidenced by the
55956 Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal
55957 Foundation.

55958 (c) After a public hearing held in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
55959 Chapter 3, Utah Administrative Rulemaking Act, the board shall adopt and may make
55960 modifications of or additions to the Uniform Standards of Professional Appraisal Practice as the
55961 board considers appropriate to comply with the Financial Institutions Reform, Recovery, and
55962 Enforcement Act of 1989.

55963 (2) If the Appraisal Standards Board of the Appraisal Foundation modifies the Uniform
55964 Standards of Professional Appraisal Practice, issues supplemental appraisal standards which it
55965 considers appropriate for residential real estate appraisers or for general real estate appraisers,
55966 or issues ethical rules to be observed by a real estate appraiser and requests the board to
55967 consider the adoption of the modified or supplemental standards or ethical rules, the board shall
55968 schedule a public hearing pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
55969 Administrative Rulemaking Act, for the purpose of deciding whether or not the board should
55970 require the modified or supplemental standards or the ethical rules to be observed by persons
55971 licensed, certified, or registered as an expert witness under this chapter.

55972 (3) If, after the notice and public hearing, the board finds that the modified or
55973 supplemental standards or the ethical rules issued by the Appraisal Standards Board of the

55974 Appraisal Foundation are appropriate for persons licensed, certified, or registered as an expert
55975 witness under this chapter, the board shall recommend rules requiring all persons licensed,
55976 certified, or registered as an expert witness under this chapter to observe the modified or
55977 supplemental standards or the ethical rules.

55978 Section 1092. Section **61-2b-28** is amended to read:

55979 **61-2b-28. Enforcement -- Investigation -- Orders -- Hearings.**

55980 (1) (a) The division may investigate the actions of:

- 55981 (i) any person licensed or certified under this chapter;
- 55982 (ii) an applicant for licensure or certification;
- 55983 (iii) an applicant for renewal of licensure or certification; or
- 55984 (iv) a person required to be licensed or certified under this chapter.

55985 (b) The division may initiate an agency action against a person described in Subsection
55986 (1)(a) in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
55987 Procedures Act, to:

- 55988 (i) impose disciplinary action;
- 55989 (ii) deny issuance to an applicant of an original or renewal license or certification; or
- 55990 (iii) issue a cease and desist order as provided in Subsection (3).

55991 (2) (a) The division may:

- 55992 (i) administer an oath or affirmation;
- 55993 (ii) subpoena witnesses;
- 55994 (iii) take evidence; and
- 55995 (iv) require the production of books, papers, contracts, records, other documents, or
55996 information relevant to the investigation described in Subsection (1).

55997 (b) The division may serve subpoenas by certified mail.

55998 (c) Each failure to respond to a request by the division in an investigation authorized
55999 under this chapter is considered to be a separate violation of this chapter, including:

- 56000 (i) failing to respond to a subpoena;
- 56001 (ii) withholding evidence; or

56002 (iii) failing to produce documents or records.

56003 (3) (a) The director shall issue and serve upon a person an order directing that person
56004 to cease and desist from an act if:

56005 (i) the director has reason to believe that the person has been engaging, is about to
56006 engage, or is engaging in the act constituting a violation of this chapter; and

56007 (ii) it appears to the director that it would be in the public interest to stop the act.

56008 (b) Within ten days after receiving the order, the person upon whom the order is served
56009 may request an adjudicative proceeding.

56010 (c) Pending the hearing, the cease and desist order shall remain in effect.

56011 (d) If a request for hearing is made, the division shall follow the procedures and
56012 requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

56013 (4) (a) After the hearing, if the board agrees that the acts of the person violate this
56014 chapter, the board:

56015 (i) shall issue an order making the cease and desist order permanent; and

56016 (ii) may impose a civil penalty not to exceed the greater of:

56017 (A) \$2,500 for each violation; or

56018 (B) the amount of any gain or economic benefit derived from each violation.

56019 (b) The director shall commence an action in the name of the Department of Commerce
56020 and Division of Real Estate, in the district court in the county in which an act described in
56021 Subsection (3) occurs or where the person resides or carries on business, to enjoin and restrain
56022 the person from violating this chapter if:

56023 (i) (A) no hearing is requested; and

56024 (B) the person fails to cease the act described in Subsection (3); or

56025 (ii) after discontinuing the act described in Subsection (3), the person again commences
56026 the act.

56027 (5) The remedies and action provided in this section do not limit, interfere with, or
56028 prevent the prosecution of any other remedies or actions including criminal proceedings.

56029 Section 1093. Section **61-2b-30** is amended to read:

56030 **61-2b-30. Compliance with Administrative Procedures Act.**

56031 The division and board shall comply with [~~Title 63, Chapter 46b, the~~] Title 63G,
56032 Chapter 4, Administrative Procedures Act, in conducting any disciplinary proceedings under this
56033 chapter.

56034 Section 1094. Section **61-2b-37** is amended to read:

56035 **61-2b-37. Division service fees -- Federal registry fees.**

56036 (1) The division, with the concurrence of the board, shall establish and collect fees in
56037 accordance with Section [~~63-38-3.2~~] 63J-1-303 for its services under this chapter.

56038 (2) The division shall collect the annual registry fee established by the Federal Financial
56039 Institutions Examinations Council from those certificate holders who seek to perform appraisals
56040 in federally related transactions. The division shall transmit the fees to the federal Appraisal
56041 Subcommittee at least annually.

56042 Section 1095. Section **61-2c-102** is amended to read:

56043 **61-2c-102. Definitions.**

56044 (1) As used in this chapter:

56045 (a) "Affiliate" means an individual or an entity that directly, or indirectly through one or
56046 more intermediaries, controls or is controlled by, or is under common control with, a specified
56047 individual or entity.

56048 (b) "Applicant" means an individual or entity applying for a license under this chapter.

56049 (c) "Associate lending manager" means a person who:

56050 (i) has qualified under this chapter as a principal lending manager; and

56051 (ii) works by or on behalf of another principal lending manager in transacting the
56052 business of residential mortgage loans.

56053 (d) "Branch office" means a licensed entity's office:

56054 (i) for the transaction of the business of residential mortgage loans regulated under this
56055 chapter; and

56056 (ii) other than the main office of the licensed entity.

56057 (e) (i) "Business of residential mortgage loans" means for compensation to:

- 56058 (A) make or originate a residential mortgage loan;
- 56059 (B) directly or indirectly solicit, place, or negotiate a residential mortgage loan for
- 56060 another; or
- 56061 (C) render services related to the origination of a residential mortgage loan including:
- 56062 (I) taking applications; and
- 56063 (II) communicating with the borrower and lender.
- 56064 (ii) "Business of residential mortgage loans" does not include:
- 56065 (A) the performance of clerical functions such as:
- 56066 (I) gathering information related to a residential mortgage loan on behalf of the
- 56067 prospective borrower or a person licensed under this chapter; or
- 56068 (II) requesting or gathering information, word processing, sending correspondence, or
- 56069 assembling files by an individual who works under the instruction of a person licensed under this
- 56070 chapter;
- 56071 (B) ownership of an entity that engages in the business of residential mortgage loans if
- 56072 the owner does not personally perform the acts listed in Subsection (1)(e)(i);
- 56073 (C) acting as a loan wholesaler;
- 56074 (D) acting as an account executive for a loan wholesaler;
- 56075 (E) acting as a loan underwriter;
- 56076 (F) acting as a loan closer; or
- 56077 (G) funding a loan.
- 56078 (f) "Closed-end" means a loan with a fixed amount borrowed and which does not
- 56079 permit additional borrowing secured by the same collateral.
- 56080 (g) "Commission" means the Residential Mortgage Regulatory Commission created in
- 56081 Section 61-2c-104.
- 56082 (h) "Compensation" means anything of economic value that is paid, loaned, granted,
- 56083 given, donated, or transferred to an individual or entity for or in consideration of:
- 56084 (i) services;
- 56085 (ii) personal or real property; or

- 56086 (iii) other thing of value.
- 56087 (i) "Control," as used in Subsection (1)(a), means the power to directly or indirectly:
- 56088 (i) direct or exercise a controlling interest over:
- 56089 (A) the management or policies of an entity; or
- 56090 (B) the election of a majority of the directors, officers, managers, or managing partners
- 56091 of an entity;
- 56092 (ii) vote 20% or more of any class of voting securities of an entity by an individual; or
- 56093 (iii) vote more than 5% of any class of voting securities of any entity by another entity.
- 56094 (j) "Depository institution" is as defined in Section 7-1-103.
- 56095 (k) "Director" means the director of the division.
- 56096 (l) "Division" means the Division of Real Estate.
- 56097 (m) "Dwelling" means a residential structure attached to real property that contains one
- 56098 to four units including any of the following if used as a residence:
- 56099 (i) a condominium unit;
- 56100 (ii) a cooperative unit;
- 56101 (iii) a manufactured home; or
- 56102 (iv) a house.
- 56103 (n) "Entity" means any corporation, limited liability company, partnership, company,
- 56104 association, joint venture, business trust, trust, or other organization.
- 56105 (o) "Executive director" means the executive director of the Department of Commerce.
- 56106 (p) "Inactive status" means a dormant status into which an unexpired license is placed
- 56107 when the holder of the license is not currently engaging in the business of residential mortgage
- 56108 loans.
- 56109 (q) "Lending manager" or "principal lending manager" means a person licensed as a
- 56110 principal lending manager under Section 61-2c-206.
- 56111 (r) "Licensee" means an individual or entity licensed with the division under this
- 56112 chapter.
- 56113 (s) (i) Except as provided in Subsection (1)(s)(ii), "mortgage officer" means an

56114 individual who is licensed with the division to transact the business of residential mortgage loans
56115 through a principal lending manager.

56116 (ii) "Mortgage officer" does not include a principal lending manager.

56117 (t) "Record" means information that is:

56118 (i) prepared, owned, received, or retained by an individual or entity; and

56119 (ii) (A) inscribed on a tangible medium; or

56120 (B) (I) stored in an electronic or other medium; and

56121 (II) retrievable in perceivable form.

56122 (u) "Residential mortgage loan" means a closed-end, first mortgage loan or extension of
56123 credit, if:

56124 (i) the loan or extension of credit is secured by a:

56125 (A) mortgage;

56126 (B) deed of trust; or

56127 (C) lien interest; and

56128 (ii) the mortgage, deed of trust, or lien interest described in Subsection (1)(u)(i):

56129 (A) is on a dwelling located in the state; and

56130 (B) created with the consent of the owner of the residential real property.

56131 (v) "State" means:

56132 (i) a state, territory, or possession of the United States;

56133 (ii) the District of Columbia; or

56134 (iii) the Commonwealth of Puerto Rico.

56135 (2) (a) If a term not defined in this section is defined by rule, the term shall have the
56136 meaning established by the division by rule made in accordance with [~~Title 63, Chapter 46a~~]
56137 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

56138 (b) If a term not defined in this section is not defined by rule, the term shall have the
56139 meaning commonly accepted in the business community.

56140 Section 1096. Section **61-2c-103** is amended to read:

56141 **61-2c-103. Powers and duties of the division.**

56142 (1) The division shall administer this chapter.

56143 (2) In addition to any power or duty expressly provided in this chapter, the division
56144 may:

56145 (a) receive and act on complaints including:

56146 (i) taking action designed to obtain voluntary compliance with this chapter; or

56147 (ii) commencing administrative or judicial proceedings on the division's own initiative;

56148 (b) establish programs for the education of consumers with respect to residential
56149 mortgage loans;

56150 (c) (i) make studies appropriate to effectuate the purposes and policies of this chapter;
56151 and

56152 (ii) make the results of the studies described in Subsection (2)(c)(i) available to the
56153 public;

56154 (d) visit and investigate an entity licensed under this chapter, regardless of whether the
56155 entity is located in Utah; and

56156 (e) employ any necessary hearing examiners, investigators, clerks, and other employees
56157 and agents.

56158 (3) The division shall make rules for the administration of this chapter in accordance
56159 with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act,
56160 including:

56161 (a) licensure procedures for:

56162 (i) individuals and entities required by this chapter to obtain a license with the division;
56163 and

56164 (ii) the establishment of a branch office by an entity;

56165 (b) proper handling of funds received by licensees;

56166 (c) record-keeping requirements by licensees; and

56167 (d) standards of conduct for licensees.

56168 (4) The division may make available to the public a list of the names and mailing
56169 addresses of all licensees:

- 56170 (a) either directly or through a third party; and
- 56171 (b) at a reasonable cost.
- 56172 (5) The division shall:
- 56173 (a) certify education providers who offer:
- 56174 (i) prelicensing education to candidates for licensure under this chapter; or
- 56175 (ii) continuing education to individuals licensed under this chapter; and
- 56176 (b) make available to the public, licensees, and candidates for licensure a list of the
- 56177 names and addresses of all education providers certified under this Subsection (5).
- 56178 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 56179 Administrative Rulemaking Act, the division shall make rules establishing:
- 56180 (a) certification criteria and procedures for providers of prelicensing education and
- 56181 continuing education; and
- 56182 (b) standards of conduct for certified education providers.
- 56183 (7) The division may charge a fee established in accordance with Section [~~63-38-3.2~~]
- 56184 63J-1-303 for processing any of the changes that a licensee is required by Section 61-2c-205 to
- 56185 report to the division.
- 56186 Section 1097. Section **61-2c-104** is amended to read:
- 56187 **61-2c-104. Residential Mortgage Regulatory Commission.**
- 56188 (1) (a) There is created within the division the Residential Mortgage Regulatory
- 56189 Commission consisting of the following members appointed by the executive director with the
- 56190 approval of the governor:
- 56191 (i) four members having at least three years of experience in transacting the business of
- 56192 residential mortgage loans and who are currently licensed under this chapter; and
- 56193 (ii) one member from the general public.
- 56194 (b) (i) The executive director with the approval of the governor may appoint an
- 56195 alternate member to the board.
- 56196 (ii) The alternate member shall:
- 56197 (A) at the time of the appointment, have at least three years of experience in transacting

56198 the business of residential mortgage loans; and

56199 (B) be licensed under this chapter at the time of and during appointment.

56200 (2) (a) Except as required by Subsection (2)(b), the executive director shall appoint

56201 each new member or reappointed member subject to appointment by the executive director to a

56202 four-year term ending June 30.

56203 (b) Notwithstanding the requirements of Subsection (2)(a), the executive director shall,

56204 at the time of appointment or reappointment, adjust the length of terms to ensure that the terms

56205 of commission members are staggered so that approximately half of the commission is

56206 appointed every two years.

56207 (c) If a vacancy occurs in the membership of the commission for any reason, the

56208 replacement shall be appointed for the unexpired term.

56209 (3) Members of the commission shall annually select one member to serve as chair.

56210 (4) (a) The commission shall meet at least quarterly.

56211 (b) The director may call a meeting in addition to the meetings required by Subsection

56212 (4)(a):

56213 (i) at the discretion of the director;

56214 (ii) at the request of the chair of the commission; or

56215 (iii) at the written request of three or more commission members.

56216 (5) (a) Three members of the commission constitute a quorum for the transaction of

56217 business.

56218 (b) If a quorum of members is unavailable for any meeting and an alternate member has

56219 been appointed to the commission by the executive director with the approval of the governor,

56220 the alternate member shall serve as a regular member of the commission for that meeting if with

56221 the presence of the alternate member there is a quorum present at the meeting.

56222 (c) The action of a majority of a quorum present is an action of the commission.

56223 (6) (a) (i) A member who is not a government employee shall receive no compensation

56224 or benefits for the member's services, but may receive per diem and expenses incurred in the

56225 performance of the member's official duties at the rates established by the Division of Finance

56226 under Sections 63A-3-106 and 63A-3-107.

56227 (ii) A member who is not a government employee may decline to receive per diem and
56228 expenses for the member's service.

56229 (b) (i) A state government officer and employee member who does not receive salary,
56230 per diem, or expenses from the member's agency for the member's service may receive per diem
56231 and expenses incurred in the performance of the member's official duties from the commission at
56232 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

56233 (ii) A state government officer and employee member may decline to receive per diem
56234 and expenses for the member's service.

56235 (7) The commission shall:

56236 (a) except as provided in Subsection 61-2c-202(2), concur in the licensure or denial of
56237 licensure of individuals and entities under this chapter in accordance with Part 2, Licensure;

56238 (b) take disciplinary action with the concurrence of the director in accordance with Part
56239 4, Enforcement;

56240 (c) advise the division concerning matters related to the administration and enforcement
56241 of this chapter; and

56242 (d) with the concurrence of the division, determine the requirements for:

56243 (i) the examination required under Section 61-2c-202, covering at least:

56244 (A) the fundamentals of the English language;

56245 (B) arithmetic;

56246 (C) the provisions of this chapter;

56247 (D) rules adopted by the division;

56248 (E) basic residential mortgage principles and practices; and

56249 (F) any other aspect of Utah law the commission determines is appropriate;

56250 (ii) with the concurrence of the division, the continuing education requirements under
56251 Section 61-2c-205, including:

56252 (A) except as provided in Subsection 61-2c-202(4)(a)(iii) and Subsection

56253 61-2c-206(1)(c), the appropriate number of hours of prelicensing education and required

56254 continuing education; and

56255 (B) the subject matter of courses the division may accept for continuing education
56256 purposes;

56257 (iii) with the concurrence of the division, the prelicensing education required under
56258 Sections 61-2c-202 and 61-2c-206, including online education or distance learning options; and

56259 (iv) the examination required under Section 61-2c-206 covering:

56260 (A) advanced residential mortgage principles and practices; and

56261 (B) other aspects of Utah law the commission, with the concurrence of the division,
56262 determines appropriate.

56263 (8) The commission may appoint a committee to make recommendations to the
56264 commission concerning approval of prelicensing education and continuing education courses.

56265 (9) The commission and the division shall make the examination and prelicensing
56266 education and continuing education requirements described in this section available through the
56267 Internet or other distance education methods approved by the commission and division when
56268 reasonably practicable.

56269 (10) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56270 Administrative Rulemaking Act, the commission, with the concurrence of the division, shall
56271 make rules establishing procedures under which a licensee may be exempted from continuing
56272 education requirements:

56273 (a) for a period not to exceed four years; and

56274 (b) upon a finding of reasonable cause.

56275 Section 1098. Section **61-2c-105** is amended to read:

56276 **61-2c-105. Scope of chapter.**

56277 (1) (a) This chapter applies to a closed-end residential mortgage loan secured by a first
56278 lien or equivalent security interest on a one to four unit dwelling.

56279 (b) This chapter does not apply to a transaction covered by Title 70C, Utah Consumer
56280 Credit Code.

56281 (2) The following are exempt from this chapter:

- 56282 (a) the federal government;
- 56283 (b) a state;
- 56284 (c) a political subdivision of a state;
- 56285 (d) an agency of or entity created by a governmental entity described in Subsections
- 56286 (2)(a) through (c) including:
- 56287 (i) the Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing
- 56288 Corporation Act;
- 56289 (ii) the Federal National Mortgage Corporation;
- 56290 (iii) the Federal Home Loan Mortgage Corporation;
- 56291 (iv) the Federal Deposit Insurance Corporation;
- 56292 (v) the Resolution Trust Corporation;
- 56293 (vi) the Government National Mortgage Association;
- 56294 (vii) the Federal Housing Administration;
- 56295 (viii) the National Credit Union Administration;
- 56296 (ix) the Farmers Home Administration; and
- 56297 (x) the United States Department of Veterans Affairs;
- 56298 (e) a depository institution;
- 56299 (f) an affiliate of a depository institution;
- 56300 (g) an employee or agent of an entity described in Subsections (2)(a) through (f) when
- 56301 that person acts on behalf of the entity described in Subsections (2)(a) through (f);
- 56302 (h) an individual or entity:
- 56303 (i) that makes a loan:
- 56304 (A) secured by an interest in real property;
- 56305 (B) with the individual's or the entity's own money; and
- 56306 (C) for the individual's or entity's own investment; and
- 56307 (ii) that does not engage in the business of making loans secured by an interest in real
- 56308 property;
- 56309 (i) an individual or entity who receives a mortgage, deed of trust, or lien interest on real

56310 property if the individual or entity:

56311 (i) is the seller of real property; and

56312 (ii) receives the mortgage, deed of trust, or lien interest on real property as security for

56313 a separate money obligation;

56314 (j) an individual or entity who receives a mortgage, deed of trust, or lien interest on real

56315 property if:

56316 (i) the individual or entity receives the mortgage, deed of trust, or lien interest as

56317 security for an obligation payable on an installment or deferred payment basis;

56318 (ii) the obligation described in Subsection (2)(j)(i) arises from an individual or entity

56319 providing materials or services used in the improvement of the real property that is the subject

56320 of the mortgage, deed of trust, or lien interest; and

56321 (iii) the mortgage, deed of trust, or lien interest was created without the consent of the

56322 owner of the real property that is the subject of the mortgage, deed of trust, or lien interest;

56323 (k) a nonprofit corporation that:

56324 (i) is exempt from paying federal income taxes;

56325 (ii) is certified by the United States Small Business Administration as a small business

56326 investment company;

56327 (iii) is organized to promote economic development in this state; and

56328 (iv) has as its primary activity providing financing for business expansion;

56329 (l) a court appointed fiduciary; or

56330 (m) an attorney admitted to practice law in this state:

56331 (i) if the attorney is not principally engaged in the business of negotiating residential

56332 mortgage loans; and

56333 (ii) when the attorney renders services in the course of the attorney's practice as an

56334 attorney.

56335 (3) (a) Notwithstanding Subsection (2)(m), an attorney exempt from this chapter may

56336 not engage in conduct described in Section 61-2c-301 when transacting business of residential

56337 mortgage loans.

56338 (b) If an attorney exempt from this chapter violates Subsection (3)(a), the attorney:
56339 (i) is not subject to enforcement by the division under Part 4, Enforcement; and
56340 (ii) is subject to disciplinary action generally applicable to an attorney admitted to
56341 practice law in this state.

56342 (c) If the division receives a complaint alleging an attorney exempt from this chapter is
56343 in violation of Subsection (3)(a), the division shall forward the complaint to the Utah State Bar
56344 for disciplinary action.

56345 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56346 Administrative Rulemaking Act, the division shall, by rule, determine a date, on or after
56347 December 31, 2004, after which an individual who is exempt under Subsection (2) may
56348 voluntarily obtain a license pursuant to Subsection (4)(b).

56349 (b) (i) After the date described in Subsection (4)(a), an individual who is exempt under
56350 Subsection (2) may voluntarily obtain a license under this chapter by complying with Part 2,
56351 Licensure.

56352 (ii) An individual who voluntarily obtains a license pursuant to this Subsection (4)(b)
56353 shall comply with all the provisions of this chapter.

56354 Section 1099. Section **61-2c-201** is amended to read:

56355 **61-2c-201. Licensure required of individuals and entities engaged in the business**
56356 **of residential mortgage loans -- Mortgage officer -- Principal lending manager.**

56357 (1) Unless exempt from this chapter under Section 61-2c-105, an individual or entity
56358 may not transact the business of residential mortgage loans, as defined in Section 61-2c-102,
56359 without obtaining a license under this chapter.

56360 (2) For purposes of this chapter, an individual or entity transacts business in this state if:

56361 (a) (i) the individual or entity engages in an act that constitutes the business of
56362 residential mortgage loans; and

56363 (ii) (A) the act described in Subsection (2)(a)(i) is directed to or received in this state;
56364 and

56365 (B) the real property that is the subject of the act described in Subsection (2)(a)(i) is

56366 located in this state; or

56367 (b) a representation is made by the individual or entity that the individual or entity
56368 transacts the business of residential mortgage loans in this state.

56369 (3) An individual who has an ownership interest in an entity required to be licensed
56370 under this chapter is not required to obtain an individual license under this chapter unless the
56371 individual transacts the business of residential mortgage loans.

56372 (4) Unless otherwise exempted under this chapter, licensure under this chapter is
56373 required of both:

56374 (a) the individual who directly transacts the business of residential mortgage loans; and

56375 (b) if the individual transacts business as an employee or agent of an entity or individual,
56376 the entity or individual for whom the employee or agent transacts the business of residential
56377 mortgage loans.

56378 (5) (a) An individual licensed under this chapter may not engage in the business of
56379 residential mortgage loans on behalf of more than one entity at the same time.

56380 (b) This Subsection (5) does not restrict the number of:

56381 (i) different lenders an individual or entity may use as a funding source for residential
56382 mortgage loans; or

56383 (ii) entities in which an individual may have an ownership interest, regardless of whether
56384 the entities are:

56385 (A) licensed under this chapter; or

56386 (B) exempt under Section 61-2c-105.

56387 (6) An individual licensed under this chapter may not transact the business of residential
56388 mortgage loans for the following at the same time:

56389 (a) an entity licensed under this chapter; and

56390 (b) an entity that is exempt from licensure under Section 61-2c-105.

56391 (7) A mortgage officer may not receive consideration for transacting the business of
56392 residential mortgage loans from any person or entity except the principal lending manager with
56393 whom the mortgage officer is licensed.

56394 (8) A mortgage officer shall conduct all business of residential mortgage loans:
56395 (a) through the principal lending manager with which the individual is licensed; and
56396 (b) in the business name under which the principal lending manager is authorized by the
56397 division to do business.

56398 (9) (a) (i) This Subsection (9)(a) does not apply to an individual who transacts the
56399 business of residential mortgage loans as an employee or agent of another individual or entity.

56400 (ii) If an entity that is authorized by this chapter to transact the business of residential
56401 mortgage loans transacts the business of residential mortgage loans under an assumed business
56402 name, the entity shall:

56403 (A) register the assumed name with the division; and

56404 (B) furnish the division proof that the assumed business name has been filed with the
56405 Division of Corporations and Commercial Code pursuant to Title 42, Chapter 2, Conducting
56406 Business Under Assumed Name.

56407 (b) The division may charge a fee established in accordance with Section [~~63-38-3.2~~]
56408 63J-1-303 for registering an assumed name pursuant to this Subsection (9).

56409 (10) A licensee whose license is in inactive status may not transact the business of
56410 residential mortgage loans.

56411 Section 1100. Section **61-2c-202** is amended to read:

56412 **61-2c-202. Licensure procedures.**

56413 (1) To apply for licensure under this chapter an applicant shall:

56414 (a) submit to the division a licensure statement that:

56415 (i) lists any name under which the individual or entity will transact business in this state;

56416 (ii) lists the address of the principal business location of the applicant;

56417 (iii) if the applicant is an entity:

56418 (A) lists the principal lending manager of the entity; and

56419 (B) contains the signature of the principal lending manager;

56420 (iv) demonstrates that the applicant meets the qualifications listed in Section 61-2c-203;

56421 (v) if the applicant is an entity, lists:

56422 (A) all jurisdictions in which the entity is registered, licensed, or otherwise regulated in
56423 the business of residential mortgage loans; and

56424 (B) the history of any disciplinary action or adverse administrative action taken against
56425 the entity by any regulatory agency within the ten years preceding the application; and

56426 (vi) includes any information required by the division by rule;

56427 (b) pay to the division:

56428 (i) an application fee established by the division in accordance with Section [~~63-38-3.2~~]
56429 63J-1-303; and

56430 (ii) the reasonable expenses incurred in processing the application for licensure
56431 including the costs incurred by the division under Subsection (4); and

56432 (c) comply with Subsection (4).

56433 (2) (a) The division shall issue a license to an applicant if the division, with the
56434 concurrence of the commission, finds that the applicant:

56435 (i) meets the qualifications of Section 61-2c-203; and

56436 (ii) complies with this section.

56437 (b) The commission may delegate to the division the authority to:

56438 (i) review any class or category of application for initial or renewed licenses;

56439 (ii) determine whether an applicant meets the licensing criteria in Section 61-2c-203;

56440 (iii) conduct any necessary hearing on an application; and

56441 (iv) approve or deny a license application without concurrence by the commission.

56442 (c) If the commission delegates to the division the authority to approve or deny an
56443 application without concurrence by the commission and the division denies an application for
56444 licensure, the applicant who is denied licensure may petition the commission for review of the
56445 denial.

56446 (d) An applicant who is denied licensure under this Subsection (2)(b) may seek agency
56447 review by the executive director only after the commission has reviewed the division's denial of
56448 the applicant's application.

56449 (3) Subject to Subsection (2)(d) and in accordance with [~~Title 63, Chapter 46b~~] Title

56450 63G, Chapter 4, Administrative Procedures Act, an applicant who is denied licensure under this
56451 chapter may submit a request for agency review to the executive director within 30 days
56452 following the issuance of the commission order denying the licensure.

56453 (4) (a) An individual applying for a license under this chapter shall:

56454 (i) submit a fingerprint card in a form acceptable to the division at the time the licensure
56455 statement is filed;

56456 (ii) consent to a criminal background check by:

56457 (A) the Utah Bureau of Criminal Identification; and

56458 (B) the Federal Bureau of Investigation;

56459 (iii) provide proof using methods approved by the division of having successfully
56460 completed 20 hours of approved prelicensing education required by the commission under
56461 Section 61-2c-104 before taking the examination required by Subsection (4)(a)(iv); and

56462 (iv) provide proof using methods approved by the division of having successfully passed
56463 an examination approved by the commission under Section 61-2c-104.

56464 (b) The division shall request the Department of Public Safety to complete a Federal
56465 Bureau of Investigation criminal background check for each applicant and each control person
56466 of an applicant through a national criminal history system.

56467 (c) The applicant shall pay the cost of:

56468 (i) the fingerprinting required by this section; and

56469 (ii) the criminal background check required by this section.

56470 (d) (i) A license under this chapter is conditional pending completion of the criminal
56471 background check required by this Subsection (4).

56472 (ii) If a criminal background check discloses that an applicant failed to accurately
56473 disclose a criminal history, the license shall be immediately and automatically revoked.

56474 (iii) An individual or entity whose conditional license is revoked under Subsection
56475 (4)(d)(ii) may appeal the revocation in a hearing conducted by the commission:

56476 (A) after the revocation; and

56477 (B) in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative

56478 Procedures Act.

56479 (iv) The commission may delegate to the division or an administrative law judge the
56480 authority to conduct a hearing described in Subsection (4)(d)(iii).

56481 (v) Relief from a revocation may be granted only if:

56482 (A) the criminal history upon which the division based the revocation:

56483 (I) did not occur; or

56484 (II) is the criminal history of another person;

56485 (B) (I) the revocation is based on a failure to accurately disclose a criminal history; and

56486 (II) the applicant had a reasonable good faith belief at the time of application that there
56487 was no criminal history to be disclosed; or

56488 (C) the division failed to follow the prescribed procedure for the revocation.

56489 (e) If a license is revoked or a revocation is upheld after a hearing described in
56490 Subsection (4)(d)(iii), the person may not apply for a new license for a period of 12 months
56491 after the day on which the license is revoked.

56492 (f) The funds paid by an applicant for the cost of the criminal background check shall be
56493 nonlapsing.

56494 (g) The commission may delegate to the division the authority to make a decision on
56495 whether relief from a revocation should be granted.

56496 Section 1101. Section **61-2c-205** is amended to read:

56497 **61-2c-205. Term of licensure -- Renewal -- Reporting of changes.**

56498 (1) (a) A license under this chapter is valid for a two-year period.

56499 (b) Notwithstanding Subsection (1)(a), the time period of a license may be extended or
56500 shortened by as much as one year to maintain or change a renewal cycle established by rule by
56501 the division.

56502 (2) To renew a license, no later than the date the license expires, a licensee shall:

56503 (a) (i) file the renewal form required by the division; and

56504 (ii) furnish the information required by Subsection 61-2c-202(1);

56505 (b) pay a fee to the division established by the division in accordance with Section

56506 [~~63-38-3.2~~] 63J-1-303; and

56507 (c) if the licensee is an individual and the individual's license is in active status at the
56508 time of application for renewal, submit proof using forms approved by the division of having
56509 completed during the two years prior to application the continuing education required by the
56510 commission under Section 61-2c-104.

56511 (3) (a) A licensee under this chapter shall notify the division using the form required by
56512 the division within ten days of the date on which there is a change in:

56513 (i) a name under which the licensee transacts the business of residential mortgage loans
56514 in this state;

56515 (ii) (A) if the licensee is an entity, the business location of the licensee; or

56516 (B) if the licensee is an individual, the home and business addresses of the individual;

56517 (iii) the principal lending manager of the entity;

56518 (iv) the entity with which an individual licensee is licensed to conduct the business of
56519 residential mortgage loans; or

56520 (v) any other information that is defined as material by rule made by the division.

56521 (b) Failure to notify the division of a change described in Subsection (3)(a) is separate
56522 grounds for disciplinary action against a licensee.

56523 (4) A licensee shall notify the division by sending the division a signed statement within
56524 ten business days of:

56525 (a) (i) a conviction of any criminal offense;

56526 (ii) the entry of a plea in abeyance to any criminal offense; or

56527 (iii) the potential resolution of any criminal case by:

56528 (A) a diversion agreement; or

56529 (B) any other agreement under which criminal charges are held in suspense for a period
56530 of time;

56531 (b) filing a personal bankruptcy or bankruptcy of a business that transacts the business
56532 of residential mortgage loans;

56533 (c) the suspension, revocation, surrender, cancellation, or denial of a professional

56534 license or professional registration of the licensee, whether the license or registration is issued
56535 by this state or another jurisdiction; or

56536 (d) the entry of a cease and desist order or a temporary or permanent injunction:

56537 (i) against the licensee by a court or licensing agency; and

56538 (ii) based on:

56539 (A) conduct or a practice involving the business of residential mortgage loans; or

56540 (B) conduct involving fraud, misrepresentation, or deceit.

56541 (5) (a) A license under this chapter expires if the licensee does not apply to renew the
56542 license on or before the expiration date of the license.

56543 (b) Within 30 calendar days after the expiration date, a licensee whose license has
56544 expired may apply to reinstate the expired license upon:

56545 (i) payment of a renewal fee and a late fee determined by the division under Section
56546 [~~63-38-3.2~~] 63J-1-303; and

56547 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
56548 providing proof using forms approved by the division of having completed, during the two years
56549 prior to application, the continuing education required by the commission under Section
56550 61-2c-104.

56551 (c) After the 30 calendar days described in Subsection (5)(b) and within six months
56552 after the expiration date, a licensee whose license has expired may apply to reinstate an expired
56553 license upon:

56554 (i) payment of a renewal fee and a late fee determined by the division under Section
56555 [~~63-38-3.2~~] 63J-1-303;

56556 (ii) if the licensee is an individual and is applying to reinstate a license to active status,
56557 providing proof using forms approved by the division of having completed, during the two years
56558 prior to application, the continuing education required by the commission under Section
56559 61-2c-104; and

56560 (iii) in addition to the continuing education required for a timely renewal, completing an
56561 additional 12 hours of continuing education approved by the commission under Section

56562 61-2c-104.

56563 (d) A licensee whose license has been expired for more than six months shall be
56564 relicensed as prescribed for an original application under Section 61-2c-202.

56565 Section 1102. Section **61-2c-206** is amended to read:

56566 **61-2c-206. Principal lending manager licenses.**

56567 (1) Except as provided in Subsection (2), to qualify as a principal lending manager
56568 under this chapter, an individual shall, in addition to meeting the standards in Section
56569 61-2c-203:

56570 (a) submit an application on a form approved by the division;

56571 (b) pay fees determined by the division under Section [~~63-38-3.2~~] 63J-1-303;

56572 (c) submit proof of having successfully completed 40 hours of prelicensing education
56573 approved by the commission under Section 61-2c-104;

56574 (d) submit proof of having successfully completed the principal lending manager
56575 examination approved by the commission under Section 61-2c-104;

56576 (e) submit proof on forms approved by the division of three years of full-time active
56577 experience as a mortgage officer in the five years preceding the day on which the application is
56578 submitted, or its equivalent as approved by the commission; and

56579 (f) if the individual is not licensed under this chapter at the time of application, submit
56580 to the criminal background check required by Subsection 61-2c-202(4).

56581 (2) (a) Notwithstanding Subsection (1), an individual described in Subsection (2)(b)
56582 may qualify as a principal lending manager without:

56583 (i) meeting the requirements of Subsection (1)(c); and

56584 (ii) completing the portions of the principal lending manager examination described in
56585 Subsection (1)(d) that:

56586 (A) relate to federal law; and

56587 (B) do not relate to Utah law.

56588 (b) An individual may qualify as a principal lending manager pursuant to Subsection
56589 (2)(a) if the individual:

56590 (i) submits to the division an affidavit that the individual has five years of experience in
56591 the business of residential mortgage loans;

56592 (ii) establishes that the individual's experience described in this Subsection (2)(b) was
56593 acquired:

56594 (A) under requirements substantially equivalent to the requirements of this chapter; and

56595 (B) in compliance with the requirements of this chapter; and

56596 (iii) provides any other information required by the division by rule under Subsection
56597 (2)(c).

56598 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56599 Administrative Rulemaking Act, the division shall define the information an individual shall
56600 provide to the division pursuant to Subsection (2)(b).

56601 (3) A principal lending manager may not engage in the business of residential mortgage
56602 loans on behalf of more than one entity at the same time.

56603 Section 1103. Section **61-2c-207** is amended to read:

56604 **61-2c-207. Reciprocal licensure.**

56605 (1) The division may enter into a reciprocity agreement with another state and issue a
56606 reciprocal license to a licensee of that state if the division determines that the:

56607 (a) state has substantially equivalent licensing laws;

56608 (b) state requires a licensing examination that is substantially equivalent to the
56609 examination required by this chapter; and

56610 (c) licensee has not had:

56611 (i) formal charges alleging a violation of state mortgage laws filed against the licensee;

56612 or

56613 (ii) disciplinary action or license restriction taken by the licensee's state of domicile.

56614 (2) The division may issue a reciprocal license to a licensee of a state with which the
56615 division does not have a reciprocity agreement if the individual:

56616 (a) submits to the division an affidavit that the individual has five years of experience in
56617 the business of residential mortgage loans;

56618 (b) establishes that the individual's experience described in Subsection (2)(a) was under
56619 requirements substantially equivalent to the licensing requirements of this chapter; and

56620 (c) provides any other information required by the division by rule under Subsection
56621 (3).

56622 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56623 Administrative Rulemaking Act, the division shall define the information an individual shall
56624 provide to the division pursuant to Subsection (2).

56625 Section 1104. Section **61-2c-208** is amended to read:

56626 **61-2c-208. Activation and inactivation of license.**

56627 (1) (a) A licensee may request that the division place the license on inactive status by
56628 submitting an inactivation form approved by the division.

56629 (b) The license of a mortgage officer or mortgage entity not affiliated with an active
56630 license of a principal lending manager automatically converts to inactive status on the day on
56631 which the mortgage officer or mortgage entity is not affiliated with the active license of the
56632 principal lending manager.

56633 (c) A licensee whose license is in inactive status may not transact the business of
56634 residential mortgage loans.

56635 (2) To activate a license that has been placed on inactive status, a licensee shall:

56636 (a) submit an activation form:

56637 (i) approved by the division; and

56638 (ii) signed by the principal lending manager with whom the licensee is affiliating;

56639 (b) pay an activation fee established by the division under Section [~~63-38-3.2~~]

56640 63J-1-303; and

56641 (c) if the licensee is an individual whose license was in inactive status at the time of the
56642 previous renewal, the licensee shall supply the division with proof of the successful completion
56643 of the number of hours of continuing education that the licensee would have been required to
56644 complete under Subsection 61-2c-205(2)(c) if the licensee's license had been on active status,
56645 up to a maximum of the number of hours required for two licensing periods.

56646 Section 1105. Section **61-2c-402.1** is amended to read:

56647 **61-2c-402.1. Adjudicative proceedings -- Review.**

56648 (1) (a) Before the actions described in Section 61-2c-402 may be taken, the division
56649 shall:

56650 (i) give notice to the individual or entity; and

56651 (ii) commence an adjudicative proceeding.

56652 (b) If after the adjudicative proceeding is commenced under Subsection (1)(a) the
56653 presiding officer determines that an individual or entity required to be licensed under this
56654 chapter has violated this chapter, the division may take an action described in Section 61-2c-402
56655 by written order.

56656 (2) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
56657 Procedures Act, an individual or entity against whom action is taken under this section may seek
56658 review by the executive director of the action.

56659 (3) If an individual or entity prevails in a judicial appeal and the court finds that the state
56660 action was undertaken without substantial justification, the court may award reasonable
56661 litigation expenses to that individual or entity as provided under Title 78, Chapter 27a, Small
56662 Business Equal Access to Justice Act.

56663 (4) (a) An order issued under this section takes effect 30 days after the service of the
56664 order unless otherwise provided in the order.

56665 (b) If an appeal of an order issued under this section is taken by an individual or entity,
56666 the division may stay enforcement of the order in accordance with Section [~~63-46b-18~~]
56667 63G-4-405.

56668 (5) If ordered by the court of competent jurisdiction, the division shall promptly take an
56669 action described in Section 61-2c-402 against a license granted under this chapter.

56670 Section 1106. Section **61-2c-403** is amended to read:

56671 **61-2c-403. Cease and desist orders.**

56672 (1) (a) The director may issue and serve by certified mail, or by personal service, on an
56673 individual or entity an order to cease and desist if:

56674 (i) the director has reason to believe that the individual or entity has been engaged, is
56675 engaging in, or is about to engage in acts constituting a violation of this chapter; and

56676 (ii) it appears to the director that it would be in the public interest to stop the acts.

56677 (b) Within ten days after service of the order, the party named in the order may request
56678 an adjudicative proceeding to be held in accordance with [~~Title 63, Chapter 46b~~] Title 63G,
56679 Chapter 4, Administrative Procedures Act.

56680 (c) Pending the hearing, the cease and desist order shall remain in effect.

56681 (2) (a) After the hearing described in Subsection (1), if the director finds that the acts of
56682 the individual or entity violate this chapter, the director:

56683 (i) shall issue an order making the cease and desist order permanent; and

56684 (ii) may impose a civil penalty not to exceed the greater of:

56685 (A) \$2,500 for each violation; or

56686 (B) the amount of any gain or economic benefit derived from each violation.

56687 (b) (i) The director may file suit in the name of the division to enjoin and restrain an
56688 individual or entity on whom an order is served under this section from violating this chapter if:

56689 (A) (I) the individual or entity did not request a hearing under Subsection (1); or

56690 (II) a permanent cease and desist order is issued against the individual or entity

56691 following a hearing or stipulation; and

56692 (B) (I) the individual or entity fails to cease the acts; or

56693 (II) after discontinuing the acts, the individual or entity again commences the acts.

56694 (ii) The suit described in Subsection (2)(b)(i) shall be filed in the district court in the
56695 county:

56696 (A) in which the acts occurred;

56697 (B) where the individual resides; or

56698 (C) where the individual or entity carries on business.

56699 (3) The cease and desist order issued under this section may not interfere with or
56700 prevent the prosecution of a remedy or action enforcement under this chapter.

56701 (4) An individual who violates a cease and desist order issued under this section is

56702 guilty of a class A misdemeanor.

56703 Section 1107. Section **62A-1-106** is amended to read:

56704 **62A-1-106. Adjudicative proceedings.**

56705 The department and its boards, divisions, and offices described in Section 62A-1-105
56706 shall comply with the procedures and requirements of [~~Title 63, Chapter 46b,~~] Title 63G,
56707 Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

56708 Section 1108. Section **62A-1-108.5** is amended to read:

56709 **62A-1-108.5. Mental illness and mental retardation examinations --**

56710 **Responsibilities of the department.**

56711 (1) In accomplishing its duties to conduct mental illness and mental retardation
56712 examinations under Title 77, Utah Code of Criminal Procedure, the department shall proceed as
56713 outlined in this section and within appropriations authorized by the Legislature. The executive
56714 director may delegate [~~his~~] the executive director's responsibilities under this section to one or
56715 more divisions within the department.

56716 (2) When the department is ordered by the court to conduct a mental illness or mental
56717 retardation examination, the executive director shall:

56718 (a) direct that the examination be performed at the Utah State Hospital; or

56719 (b) designate at least one examiner, selected under Subsection (3), to examine the
56720 defendant in [~~his~~] the defendant's current custody or status.

56721 (3) The department shall establish criteria, in consultation with the Commission on
56722 Criminal and Juvenile Justice, and shall contract with persons or organizations to conduct
56723 mental illness and mental retardation examinations under Subsection (2)(b). In making this
56724 selection, the department shall follow the provisions of [~~Title 63, Chapter 56~~] Title 63G,
56725 Chapter 6, Utah Procurement Code.

56726 (4) Nothing in this section prohibits the executive director, at the request of defense
56727 counsel or a prosecuting attorney in a criminal proceeding under Title 77, Utah Code of
56728 Criminal Procedure, and for good cause shown, from proposing a person who has not been
56729 previously selected under Subsection (3) to contract with the department to conduct the

56730 examination. In selecting that person, the criteria of the department established under
56731 Subsection (3) and the provisions of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah
56732 Procurement Code, shall be met.

56733 Section 1109. Section **62A-1-111** is amended to read:

56734 **62A-1-111. Department authority.**

56735 The department may, in addition to all other authority and responsibility granted to it by
56736 law:

56737 (1) adopt rules, not inconsistent with law, as the department may consider necessary or
56738 desirable for providing social services to the people of this state;

56739 (2) establish and manage client trust accounts in the department's institutions and
56740 community programs, at the request of the client or [~~his~~] the client's legal guardian or
56741 representative, or in accordance with federal law;

56742 (3) purchase, as authorized or required by law, services that the department is
56743 responsible to provide for legally eligible persons;

56744 (4) conduct adjudicative proceedings for clients and providers in accordance with the
56745 procedures of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;

56746 (5) establish eligibility standards for its programs, not inconsistent with state or federal
56747 law or regulations;

56748 (6) take necessary steps, including legal action, to recover money or the monetary value
56749 of services provided to a recipient who was not eligible;

56750 (7) set and collect fees for its services;

56751 (8) license agencies, facilities, and programs, except as otherwise allowed, prohibited,
56752 or limited by law;

56753 (9) acquire, manage, and dispose of any real or personal property needed or owned by
56754 the department, not inconsistent with state law;

56755 (10) receive gifts, grants, devises, and donations; gifts, grants, devises, donations, or the
56756 proceeds thereof, may be credited to the program designated by the donor, and may be used for
56757 the purposes requested by the donor, as long as the request conforms to state and federal

56758 policy; all donated funds shall be considered private, nonlapsing funds and may be invested
56759 under guidelines established by the state treasurer;

56760 (11) accept and employ volunteer labor or services; the department is authorized to
56761 reimburse volunteers for necessary expenses, when the department considers that
56762 reimbursement to be appropriate;

56763 (12) carry out the responsibility assigned in the Workforce Services Plan by the State
56764 Council on Workforce Services;

56765 (13) carry out the responsibility assigned by Section 9-4-802 with respect to
56766 coordination of services for the homeless;

56767 (14) carry out the responsibility assigned by Section 62A-5a-105 with respect to
56768 coordination of services for students with a disability;

56769 (15) provide training and educational opportunities for its staff;

56770 (16) collect child support payments and any other monies due to the department;

56771 (17) apply the provisions of Title 78, Chapter 45, Uniform Civil Liability for Support
56772 Act, to parents whose child lives out of the home in a department licensed or certified setting;

56773 (18) establish policy and procedures in cases where the department is given custody of
56774 a minor by the juvenile court pursuant to Section 78-3a-118; any policy and procedures shall
56775 include:

56776 (a) designation of interagency teams for each juvenile court district in the state;

56777 (b) delineation of assessment criteria and procedures;

56778 (c) minimum requirements, and timeframes, for the development and implementation of
56779 a collaborative service plan for each minor placed in department custody; and

56780 (d) provisions for submittal of the plan and periodic progress reports to the court;

56781 (19) carry out the responsibilities assigned to it by statute;

56782 (20) examine and audit the expenditures of any public funds provided to local substance
56783 abuse authorities, local mental health authorities, local area agencies on aging, and any person,
56784 agency, or organization that contracts with or receives funds from those authorities or agencies.

56785 Those local authorities, area agencies, and any person or entity that contracts with or receives

56786 funds from those authorities or area agencies, shall provide the department with any information
56787 the department considers necessary. The department is further authorized to issue directives
56788 resulting from any examination or audit to local authorities, area agencies, and persons or
56789 entities that contract with or receive funds from those authorities with regard to any public
56790 funds. If the department determines that it is necessary to withhold funds from a local mental
56791 health authority or local substance abuse authority based on failure to comply with state or
56792 federal law, policy, or contract provisions, it may take steps necessary to ensure continuity of
56793 services. For purposes of this Subsection (20) "public funds" means the same as that term is
56794 defined in Section 62A-15-102; and

56795 (21) pursuant to Subsection 62A-2-106(1)(d), accredit one or more agencies and
56796 persons to provide intercountry adoption services.

56797 Section 1110. Section **62A-1-112** is amended to read:

56798 **62A-1-112. Participation in federal programs -- Federal grants -- Authority of**
56799 **executive director.**

56800 (1) The executive director may, by following the procedures and requirements of [~~Title~~
56801 ~~63, Chapter 38e~~] Title 63J, Chapter 5, Federal Funds Procedures, seek federal grants, loans, or
56802 participation in federal programs.

56803 (2) Wherever state law authorizes a board, director, division, or office of the
56804 department to accept any grant, fund, or service which is to be advanced or contributed in
56805 whole or in part by the federal government, that acceptance shall be subject to the approval or
56806 disapproval of the executive director. All applications for federal grants or other federal
56807 financial assistance for the support of any department program is subject to the approval of the
56808 executive director.

56809 (3) If any executive or legislative provision of the federal government so requires, as a
56810 condition to participation by this state in any fund, property, or service, the executive director,
56811 with the governor's approval, shall expend whatever funds are necessary out of the moneys
56812 provided by the Legislature for use and disbursement by that department.

56813 Section 1111. Section **62A-1-118** is amended to read:

56814 **62A-1-118. Access to abuse and neglect information to screen employees and**
56815 **volunteers.**

56816 (1) With respect to department employees and volunteers, the department may only
56817 access information in the Division of Child and Family Service's Management Information
56818 System created by Section 62A-4a-1003 and the Division of Aging and Adult Services database
56819 created by Section 62A-3-311.1 for the purpose of determining at the time of hire and each year
56820 thereafter whether a department employee or volunteer has an adjudication of abuse or neglect
56821 or since January 1, 1994, a substantiated finding of abuse or neglect after notice and an
56822 opportunity for a hearing consistent with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
56823 Administrative Procedures Act, but only if identification as a possible perpetrator of abuse or
56824 neglect is directly relevant to the employment or volunteer activities of that person.

56825 (2) A department employee or volunteer to whom Subsection (1) applies shall submit to
56826 the department [~~his~~] the employee or volunteer's name and other identifying information upon
56827 request.

56828 (3) The department shall process the information to determine whether the employee or
56829 volunteer has a substantiated finding of child abuse or neglect.

56830 (4) The department shall adopt rules defining permissible and impermissible
56831 work-related activities for a department employee or volunteer with one or more substantiated
56832 findings of abuse or neglect.

56833 Section 1112. Section **62A-2-105** is amended to read:

56834 **62A-2-105. Licensing board responsibilities.**

56835 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56836 Administrative Rulemaking Act, the licensing board shall review and approve rules regarding:

56837 (a) approving, denying, suspending, and revoking licenses;

56838 (b) conditional licenses, variances from department rule, and exclusions;

56839 (c) the protection of the basic health and safety of clients;

56840 (d) licensing of all persons and human services programs that are required to be
56841 licensed under this chapter; and

56842 (e) notification to providers and subproviders of rights and responsibilities including
56843 who to contact within the department when filing a complaint against a licensee or human
56844 services program, and the responsibility of the department to follow up once contacted.

56845 (2) The licensing board shall:

56846 (a) define information that shall be submitted to the department with an application for
56847 a license;

56848 (b) review and approve fees, in accordance with Section [~~63-38-3.2~~] 63J-1-303, for
56849 licenses issued under this chapter;

56850 (c) represent the community and licensees; and

56851 (d) advise the department as requested, concerning enforcement of rules established
56852 under this chapter.

56853 Section 1113. Section **62A-2-106** is amended to read:

56854 **62A-2-106. Office responsibilities.**

56855 (1) Subject to the requirements of federal and state law, the office shall:

56856 (a) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56857 Administrative Rulemaking Act, to establish:

56858 (i) except as provided in Subsection (1)(a)(ii), basic health and safety standards for
56859 licensees, that shall be limited to:

56860 (A) fire safety;

56861 (B) food safety;

56862 (C) sanitation;

56863 (D) infectious disease control;

56864 (E) safety of the:

56865 (I) physical facility and grounds; and

56866 (II) area and community surrounding the physical facility;

56867 (F) transportation safety;

56868 (G) emergency preparedness and response;

56869 (H) the administration of medical standards and procedures, consistent with the related

- 56870 provisions of this title;
- 56871 (I) staff and client safety and protection;
- 56872 (J) the administration and maintenance of client and service records;
- 56873 (K) staff qualifications and training, including standards for permitting experience to be
56874 substituted for education, unless prohibited by law;
- 56875 (L) staff to client ratios; and
- 56876 (M) access to firearms;
- 56877 (ii) basic health and safety standards for therapeutic schools, that shall be limited to:
- 56878 (A) fire safety, except that the standards are limited to those required by law or rule
56879 under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks Act;
- 56880 (B) food safety;
- 56881 (C) sanitation;
- 56882 (D) infectious disease control, except that the standards are limited to:
- 56883 (I) those required by law or rule under Title 26, Utah Health Code or Title 26A, Local
56884 Health Authorities; and
- 56885 (II) requiring a separate room for clients who are sick;
- 56886 (E) safety of the physical facility and grounds, except that the standards are limited to
56887 those required by law or rule under Title 53, Chapter 7, Part 2, Fire Prevention and Fireworks
56888 Act;
- 56889 (F) transportation safety;
- 56890 (G) emergency preparedness and response;
- 56891 (H) access to appropriate medical care, including:
- 56892 (I) subject to the requirements of law, designation of a person who is authorized to
56893 dispense medication; and
- 56894 (II) storing, tracking, and securing medication;
- 56895 (I) staff and client safety and protection that permits the school to provide for the direct
56896 supervision of clients at all times;
- 56897 (J) the administration and maintenance of client and service records;

56898 (K) staff qualifications and training, including standards for permitting experience to be
56899 substituted for education, unless prohibited by law;

56900 (L) staff to client ratios; and

56901 (M) access to firearms;

56902 (iii) procedures and standards for permitting a licensee to:

56903 (A) provide in the same facility and under the same conditions as children, residential
56904 treatment services to a person 18 years old or older who:

56905 (I) begins to reside at the licensee's residential treatment facility before the person's 18th
56906 birthday;

56907 (II) has resided at the licensee's residential treatment facility continuously since the time
56908 described in Subsection (1)(a)(iii)(A)(I);

56909 (III) has not completed the course of treatment for which the person began residing at
56910 the licensee's residential treatment facility; and

56911 (IV) voluntarily consents to complete the course of treatment described in Subsection
56912 (1)(a)(iii)(A)(III); or

56913 (B) (I) provide residential treatment services to a child who is:

56914 (Aa) 12 years old or older; and

56915 (Bb) under the custody of the Division of Juvenile Justice Services; and

56916 (II) provide, in the same facility as a child described in Subsection (1)(a)(iii)(B)(I),
56917 residential treatment services to a person who is:

56918 (Aa) at least 18 years old, but younger than 21 years old; and

56919 (Bb) under the custody of the Division of Juvenile Justice Services;

56920 (iv) minimum administration and financial requirements for licensees; and

56921 (v) guidelines for variances from rules established under this Subsection (1);

56922 (b) enforce rules approved by the licensing board;

56923 (c) issue licenses in accordance with this chapter;

56924 (d) if the United States Department of State executes an agreement with the office that
56925 designates the office to act as an accrediting entity in accordance with the Intercountry

56926 Adoption Act of 2000, Pub. L. No. 106-279, accredit one or more agencies and persons to
56927 provide intercountry adoption services pursuant to:

56928 (i) the Intercountry Adoption Act of 2000, Pub. L. No. 106-279; and

56929 (ii) the implementing regulations for the Intercountry Adoption Act of 2000, Pub. L.
56930 No. 106-279;

56931 (e) make rules to implement the provisions of Subsection (1)(d);

56932 (f) conduct surveys and inspections of licensees and facilities in accordance with
56933 Section 62A-2-118;

56934 (g) collect licensure fees;

56935 (h) provide necessary administrative support to the licensing board;

56936 (i) notify licensees of the name of a person within the department to contact when filing
56937 a complaint;

56938 (j) investigate complaints regarding any licensee or human services program;

56939 (k) have access to all records, correspondence, and financial data required to be
56940 maintained by a licensee;

56941 (l) have authority to interview any client, family member of a client, employee, or
56942 officer of a licensee; and

56943 (m) have authority to deny, condition, revoke, suspend, or extend any license issued by
56944 the department under this chapter by following the procedures and requirements of [~~Title 63,~~
56945 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

56946 (2) In establishing rules under Subsection (1)(a)(ii)(G), the office shall require a licensee
56947 to establish and comply with an emergency response plan that requires clients and staff to:

56948 (a) immediately report to law enforcement any significant criminal activity, as defined
56949 by rule, committed:

56950 (i) on the premises where the licensee operates its human services program;

56951 (ii) by or against its clients; or

56952 (iii) by or against a staff member while the staff member is on duty;

56953 (b) immediately report to emergency medical services any medical emergency, as

56954 defined by rule:

- 56955 (i) on the premises where the licensee operates its human services program;
- 56956 (ii) involving its clients; or
- 56957 (iii) involving a staff member while the staff member is on duty; and
- 56958 (c) immediately report other emergencies that occur on the premises where the licensee
- 56959 operates its human services program to the appropriate emergency services agency.

56960 Section 1114. Section **62A-2-108.2** is amended to read:

56961 **62A-2-108.2. Licensing residential treatment programs -- Notification of local**
56962 **government.**

56963 (1) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
56964 Administrative Rulemaking Act, the office shall make rules that establish categories of
56965 residential treatment licenses based on differences in the types of residential treatment programs.

56966 (b) The categories referred to in Subsection (1)(a) may be based on differences in:

- 56967 (i) services offered;
- 56968 (ii) types of clients served;
- 56969 (iii) risks posed to the community; or
- 56970 (iv) other factors that make regulatory differences advisable.

56971 (2) Subject to the requirements of federal and state law, and pursuant to the authority
56972 granted by Section 62A-2-106, the office shall establish and enforce rules that:

- 56973 (a) relate generally to all categories of residential treatment program licenses; and
- 56974 (b) relate to specific categories of residential treatment program licenses on the basis of
56975 the regulatory needs, as determined by the office, of residential treatment programs within those
56976 specific categories.

56977 (3) Before submitting an application for a license to operate a residential treatment
56978 program, the applicant shall serve notice of its intent to operate a residential treatment program
56979 on the governing body of:

- 56980 (a) the city in which the residential treatment program will be located; or
- 56981 (b) if the residential treatment program will be located in the unincorporated area of a

56982 county, the county in which the residential treatment program will be located.

56983 (4) The notice described in Subsection (3) shall include the following information
56984 relating to the residential treatment program:

- 56985 (a) an accurate description of the residential treatment program;
- 56986 (b) the location where the residential treatment program will be operated;
- 56987 (c) the services that will be provided by the residential treatment program;
- 56988 (d) the type of clients that the residential treatment program will serve;
- 56989 (e) the category of license for which the residential treatment program is applying to the
56990 office;
- 56991 (f) the name, telephone number, and address of a person that may be contacted to make
56992 inquiries about the residential treatment program; and
- 56993 (g) any other information that the office may require by rule.

56994 (5) When submitting an application for a license to operate a residential treatment
56995 program, the applicant shall include with the application:

- 56996 (a) a copy of the notice described in Subsection (3); and
- 56997 (b) proof that the applicant served the notice described in Subsection (3) on the
56998 governing body described in Subsection (3).

56999 Section 1115. Section **62A-2-108.3** is amended to read:

57000 **62A-2-108.3. Local government -- Certified local inspector -- Local inspection of**
57001 **a residential treatment facility -- Reporting violations.**

57002 (1) (a) Subject to this Subsection (1) and Subsection (3), the office shall designate, or
57003 renew the designation of, a local government employee as a certified local inspector if:

57004 (i) the governing body of a local government gives the office written notice:

57005 (A) of the name of an employee of the local government; and

57006 (B) requesting that the office designate the employee described in Subsection

57007 (1)(a)(i)(A) as a certified local inspector; and

57008 (ii) the employee described in Subsection (1)(a)(i) successfully completes the training
57009 described in Subsection (1)(b).

57010 (b) Before designating a local government employee as a certified local inspector, the
57011 office shall:

57012 (i) provide training to the local government employee on:

57013 (A) this chapter;

57014 (B) the rules established under:

57015 (I) Subsection (2); and

57016 (II) Subsection 62A-2-106(1)(a);

57017 (C) the Fourth Amendment to the Constitution of the United States; and

57018 (D) other issues relating to conducting the inspections described in Subsection (4); and

57019 (ii) conduct a criminal background check of the local government employee pursuant to
57020 the same procedures established for a criminal background check of an applicant for an initial
57021 license under Section 62A-2-120.

57022 (c) Subject to Subsection (6), the office may not designate a person as a certified local
57023 inspector:

57024 (i) unless the office approves the person to have direct access to children or vulnerable
57025 adults pursuant to Section 62A-2-120; or

57026 (ii) if the office determines that, based on the conduct of the person, it is not in the
57027 public's best interest to designate the person as a certified local inspector.

57028 (d) The office shall provide to a certified local inspector identification that:

57029 (i) identifies the person as a certified local inspector;

57030 (ii) contains a photograph of the certified local inspector;

57031 (iii) states the date on which the certification of the certified local inspector expires; and

57032 (iv) identifies the geographic location where the certified local inspector is authorized to
57033 conduct an inspection.

57034 (e) Nothing in this section shall be construed to require a local government to employ a
57035 certified local inspector.

57036 (2) The office shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
57037 Chapter 3, Utah Administrative Rulemaking Act, to establish procedures for:

- 57038 (a) complying with this section; and
- 57039 (b) the conduct of inspections by a certified local inspector.
- 57040 (3) For purposes of Subsection (1):
- 57041 (a) the designation of a person as a certified local inspector shall expire one calendar
- 57042 year from the day on which the designation is made;
- 57043 (b) the designation of a person as a certified local inspector may not be renewed unless
- 57044 Subsection (1) is complied with, including:
- 57045 (i) providing a refresher course on the training described in Subsection (1)(b)(i); and
- 57046 (ii) conducting a new criminal background check pursuant to Subsection (1)(b)(ii); and
- 57047 (c) the office:
- 57048 (i) shall revoke a person's designation as a certified local inspector if:
- 57049 (A) subject to Subsection (6), the person commits an act that is grounds for refusing to
- 57050 designate a person as a certified local inspector;
- 57051 (B) the person's local government employer requests that the designation described in
- 57052 this Subsection (3)(c)(i) be revoked; or
- 57053 (C) the person is no longer employed by a local government, unless:
- 57054 (I) the person is employed by another local government; and
- 57055 (II) the governing body of the local government described in Subsection (3)(c)(i)(C)(I),
- 57056 requests, in writing, that the person's designation as a certified local inspector continue; and
- 57057 (ii) subject to Subsection (6), may revoke a person's designation as a certified local
- 57058 inspector if the person violates:
- 57059 (A) this section; or
- 57060 (B) a rule made by the department that relates to this section.
- 57061 (4) (a) Subject to Subsection (4)(b), a certified local inspector may inspect a residential
- 57062 treatment facility of a licensee:
- 57063 (i) if the certified local inspector is an employee of a local government that is a:
- 57064 (A) (I) city; and
- 57065 (II) the residential treatment facility is located within the city; or

57066 (B) (I) county; and
57067 (II) the residential treatment facility is located within the unincorporated area of the
57068 county;
57069 (ii) only during regular business hours;
57070 (iii) pursuant to:
57071 (A) this section; and
57072 (B) the rules made by the office under this section; and
57073 (iv) to determine whether the residential treatment facility is in compliance with the
57074 requirements of:
57075 (A) this chapter; and
57076 (B) the rules made pursuant to this chapter.
57077 (b) Notwithstanding Subsection (4)(a), a certified local inspector, may not:
57078 (i) inspect a residential treatment facility of a licensee:
57079 (A) if the office instructs the certified local inspector to not conduct an inspection; or
57080 (B) except in an emergency, without giving the office prior notice of the inspection; and
57081 (ii) unless otherwise authorized by law, examine or obtain any record of a residential
57082 treatment facility, including a record relating to:
57083 (A) a client of the residential treatment facility;
57084 (B) an employee of the residential treatment facility; or
57085 (C) an incident that occurs at the residential treatment facility.
57086 (c) Within 24 hours, excluding weekends and holidays, of conducting an inspection
57087 under this Subsection (4), the inspector shall provide the office with a written report informing
57088 the office of the details of the inspection, including any violation by the licensee of:
57089 (i) this chapter; or
57090 (ii) the rules made pursuant to this chapter.
57091 (5) (a) A local government employee who is a certified local inspector:
57092 (i) may not take any action pursuant to this section without approval from the certified
57093 local inspector's local government employer;

57094 (ii) when taking any action pursuant to this section, shall at all times be considered an
57095 employee of the certified local inspector's local government employer; and

57096 (iii) is not an employee of the:

57097 (A) office; or

57098 (B) department.

57099 (b) If a certified local inspector acts or fails to act in a way that would otherwise incur
57100 any liability to the office or the department, the certified local inspector's local government
57101 employer shall indemnify, defend, and hold harmless the office and the department for that
57102 liability.

57103 (c) (i) A local government employer of a certified local inspector is primarily
57104 responsible for the training of the local government employer's certified local inspector.

57105 (ii) The training described in Subsection (1)(b)(i) that is provided by the office is
57106 supplemental to the primary training responsibility of the certified local inspector's local
57107 government employer.

57108 (d) The local government employer of a certified local inspector shall be responsible to
57109 pay the certified local inspector for all action taken by the certified local inspector under this
57110 section, including:

57111 (i) conducting an inspection;

57112 (ii) preparing an inspection report for the office; and

57113 (iii) participating in training.

57114 (6) (a) For purposes of Subsection (1), and Subsections (3)(c)(i)(A) and (3)(c)(ii), if the
57115 office determines to not designate or renew the designation of a person as a certified local
57116 inspector, the office shall notify the person and the governing body of the local government that
57117 employs the person:

57118 (i) of the determination described in this Subsection (6)(a);

57119 (ii) of the reasons for the determination described in this Subsection (6)(a); and

57120 (iii) that the person or the local government, or both, may request a hearing in the
57121 department's Office of Administrative Hearings, to challenge the office's decision.

57122 (b) A person for whom a hearing is requested under Subsection (6)(a)(iii) is not a
57123 certified local inspector until:

57124 (i) a final decision is made that the office should designate the person as a certified local
57125 inspector; and

57126 (ii) (A) all appeals of the determination described in Subsection (6)(a) are exhausted; or

57127 (B) the time for an appeal described in Subsection (6)(b)(ii)(A) has expired.

57128 (7) (a) If the office determines that a residential treatment facility has violated this
57129 chapter or the rules made pursuant to this chapter, the office shall provide written notice of the
57130 violation to the governing body of:

57131 (i) the city that the residential treatment facility is located in; or

57132 (ii) the county that the residential treatment facility is located in, if the residential
57133 treatment facility is located in the unincorporated area of the county.

57134 (b) The written notice described in Subsection (7)(a):

57135 (i) subject to Subsection (7)(b)(ii), shall include:

57136 (A) the name of the residential treatment facility;

57137 (B) the location of the residential treatment facility;

57138 (C) the date and time that the violation occurred; and

57139 (D) the provision of the statute or rule that is violated; and

57140 (ii) may not include:

57141 (A) the name of any person connected with the violation; or

57142 (B) any information prohibited from disclosure by [~~Title 63, Chapter 2~~] Title 63G,
57143 Chapter 2, Government Records Access and Management Act.

57144 (c) A local government may seek additional information relating to a violation described
57145 in this Subsection (7) to the extent permitted by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
57146 Government Records Access and Management Act.

57147 Section 1116. Section **62A-2-109** is amended to read:

57148 **62A-2-109. License application -- Classification of information.**

57149 (1) An application for a license under this chapter shall be made to the office and shall

57150 contain information that the board determines is necessary in accordance with approved rules.

57151 (2) Information received by the office through reports and inspections shall be classified
57152 in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
57153 Management Act.

57154 Section 1117. Section **62A-2-111** is amended to read:

57155 **62A-2-111. Adjudicative proceedings.**

57156 (1) Whenever the office has reason to believe that a licensee is in violation of this
57157 chapter or rules made under this chapter, the office may commence adjudicative proceedings to
57158 determine the legal rights of the licensee by serving notice of agency action in accordance with
57159 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

57160 (2) A licensee, human services program, or individual may commence adjudicative
57161 proceedings, in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
57162 Procedures Act, regarding all office actions that determine the legal rights, duties, privileges,
57163 immunities, or other legal interests of the licensee, human services program, or persons
57164 associated with the licensee, including all office actions to grant, deny, place conditions on,
57165 revoke, suspend, withdraw, or amend an authority, right, or license under this chapter.

57166 Section 1118. Section **62A-2-120** is amended to read:

57167 **62A-2-120. Criminal background checks -- Direct access to children or**
57168 **vulnerable adults.**

57169 (1) (a) Except as provided in Subsection (7), an applicant for an initial license or a
57170 license renewal under this chapter shall submit to the office the names and other identifying
57171 information, which may include fingerprints, of all persons associated with the licensee, as
57172 defined in Section 62A-2-101, with direct access to children or vulnerable adults.

57173 (b) The Criminal Investigations and Technical Services Division of the Department of
57174 Public Safety, or the office as authorized under Section 53-10-108, shall process the information
57175 described in Subsection (1)(a) to determine whether the individual has been convicted of any
57176 crime.

57177 (c) Except as provided in Subsection (1)(d), if an individual has not continuously lived

57178 in Utah for the five years immediately preceding the day on which the information referred to in
57179 Subsection (1)(a) is submitted to the office, the individual shall submit fingerprints for a FBI
57180 national criminal history record check. The fingerprints shall be submitted to the FBI through
57181 the Criminal Investigations and Technical Services Division.

57182 (d) An individual is not required to comply with Subsection (1)(c) if:

57183 (i) the individual continuously lived in Utah for the five years immediately preceding the
57184 day on which the information described in Subsection (1)(a) is submitted to the office, except
57185 for time spent outside of the United States and its territories; and

57186 (ii) the background check of the individual is being conducted for a purpose other than
57187 a purpose described in Subsection (1)(f).

57188 (e) If an applicant described in Subsection (1)(a) spent time outside of the United States
57189 and its territories during the five years immediately preceding the day on which the information
57190 described in Subsection (1)(a) is submitted to the office, the office shall require the applicant to
57191 submit documentation establishing whether the applicant was convicted of a crime during the
57192 time that the applicant spent outside of the United States and its territories.

57193 (f) Notwithstanding any other provision of this Subsection (1), an applicant described in
57194 Subsection (1)(a) shall submit fingerprints for an FBI national criminal history records check,
57195 through the Criminal Investigations and Technical Services Division, if the background check of
57196 the applicant is being conducted for the purpose of:

57197 (i) licensing a prospective foster home; or

57198 (ii) approving a prospective adoptive placement of a child in state custody.

57199 (g) In addition to the other requirements of this section, if the background check of an
57200 applicant described in Subsection (1)(a) is being conducted for the purpose of licensing a
57201 prospective foster home or approving a prospective adoptive placement of a child in state
57202 custody, the office shall:

57203 (i) check the child abuse and neglect registry in each state where each prospective foster
57204 parent or prospective adoptive parent resided in the five years immediately preceding the day on
57205 which the prospective foster parent or prospective adoptive parent applied to be a foster parent

57206 or adoptive parent, to determine whether the prospective foster parent or prospective adoptive
57207 parent is listed in the registry as having a substantiated or supported finding of child abuse or
57208 neglect; and

57209 (ii) check the child abuse and neglect registry in each state where each adult living in the
57210 home of the prospective foster parent or prospective adoptive parent described in Subsection
57211 (1)(g)(i) resided in the five years immediately preceding the day on which the prospective foster
57212 parent or prospective adoptive parent applied to be a foster parent or adoptive parent, to
57213 determine whether the adult is listed in the registry as having a substantiated or supported
57214 finding of child abuse or neglect.

57215 (h) The office shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
57216 Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this Subsection
57217 (1).

57218 (2) The office shall approve a person for whom identifying information is submitted
57219 under Subsection (1) to have direct access to children or vulnerable adults in the licensee
57220 program if:

57221 (a) (i) the person is found to have no criminal history record; or

57222 (ii) (A) the only convictions in the person's criminal history record are misdemeanors or
57223 infractions not involving any of the offenses described in Subsection (3); and

57224 (B) the date of the last conviction under Subsection (2)(a)(ii)(A) is more than five years
57225 before the date of the search;

57226 (b) the person is not listed in the statewide database of the Division of Aging and Adult
57227 Services created by Section 62A-3-311.1;

57228 (c) juvenile court records do not show that a court made a substantiated finding, under
57229 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;

57230 (d) the person is not listed in the Licensing Information System of the Division of Child
57231 and Family Services created by Section 62A-4a-1006;

57232 (e) the person has not pled guilty or no contest to a pending charge for any:

57233 (i) felony;

57234 (ii) misdemeanor listed in Subsection (3); or
57235 (iii) infraction listed in Subsection (3); and
57236 (f) for a person described in Subsection (1)(g), the registry check described in
57237 Subsection (1)(g) does not indicate that the person is listed in a child abuse and neglect registry
57238 of another state as having a substantiated or supported finding of child abuse or neglect.

57239 (3) Except as provided in Subsection (8), unless at least ten years have passed since the
57240 date of conviction, the office may not approve a person to have direct access to children or
57241 vulnerable adults in the licensee's human services program if that person has been convicted of
57242 an offense, whether a felony, misdemeanor, or infraction, that is:

- 57243 (a) identified as a sexual offense, domestic violence, lewdness, assault, or battery;
- 57244 (b) a violation of any pornography law, including sexual exploitation of a minor;
- 57245 (c) prostitution;
- 57246 (d) included in:

- 57247 (i) Title 76, Chapter 5, Offenses Against the Person;
- 57248 (ii) Title 76, Chapter 5a, Sexual Exploitation of Children; or
- 57249 (iii) Title 76, Chapter 7, Offenses Against the Family;
- 57250 (e) a violation of Section 76-6-103, aggravated arson;
- 57251 (f) a violation of Section 76-6-203, aggravated burglary;
- 57252 (g) a violation of Section 76-6-302, aggravated robbery; or
- 57253 (h) a conviction for an offense committed outside of the state that, if committed in the
57254 state, would constitute a violation of an offense described in Subsections (3)(d) through (g).

57255 (4) (a) Except as provided in Subsection (8), if a person for whom identifying
57256 information is submitted under Subsection (1) is not approved by the office under Subsection
57257 (2) or (3) to have direct access to children or vulnerable adults in the licensee program, the
57258 office shall conduct a comprehensive review of criminal and court records and related
57259 circumstances if the reason the approval is not granted is due solely to one or more of the
57260 following:

- 57261 (i) a conviction for:

- 57262 (A) any felony not listed in Subsection (3);
- 57263 (B) any misdemeanor or infraction, not listed in Subsection (3), within five years of the
- 57264 date of the search;
- 57265 (C) a protective order or ex parte protective order violation under Section 76-5-108 or
- 57266 a similar statute in another state; or
- 57267 (D) any felony, misdemeanor, or infraction listed in Subsection (3) if at least ten years
- 57268 have passed since the date of conviction;
- 57269 (ii) a plea of guilty or no contest to a pending:
- 57270 (A) felony;
- 57271 (B) misdemeanor listed in Subsection (3); or
- 57272 (C) infraction listed in Subsection (3);
- 57273 (iii) the person is listed in the statewide database of the Division of Aging and Adult
- 57274 Services created by Section 62A-3-311.1;
- 57275 (iv) juvenile court records show that a court made a substantiated finding, under
- 57276 Section 78-3a-320, that the person committed a severe type of child abuse or neglect;
- 57277 (v) the person is listed in the Licensing Information System of the Division of Child and
- 57278 Family Services created by Section 62A-4a-1006; or
- 57279 (vi) the person is listed in a child abuse or neglect registry of another state as having a
- 57280 substantiated or supported finding of child abuse or neglect.
- 57281 (b) The comprehensive review under Subsection (4)(a) shall include an examination of:
- 57282 (i) the date of the offense or incident;
- 57283 (ii) the nature and seriousness of the offense or incident;
- 57284 (iii) the circumstances under which the offense or incident occurred;
- 57285 (iv) the age of the perpetrator when the offense or incident occurred;
- 57286 (v) whether the offense or incident was an isolated or repeated incident;
- 57287 (vi) whether the offense or incident directly relates to abuse of a child or vulnerable
- 57288 adult, including:
- 57289 (A) actual or threatened, nonaccidental physical or mental harm;

57290 (B) sexual abuse;

57291 (C) sexual exploitation; and

57292 (D) negligent treatment;

57293 (vii) any evidence provided by the person of rehabilitation, counseling, or psychiatric

57294 treatment received, or additional academic or vocational schooling completed, by the person;

57295 and

57296 (viii) any other pertinent information.

57297 (c) At the conclusion of the comprehensive review under Subsection (4)(a), the office

57298 shall approve the person who is the subject of the review to have direct access to children or

57299 vulnerable adults, unless it finds that approval will likely create a risk of harm to a child or

57300 vulnerable adult.

57301 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

57302 Administrative Rulemaking Act, the office may make rules, consistent with this chapter,

57303 defining procedures for the comprehensive review described in this Subsection (4).

57304 (5) (a) For purposes of this Subsection (5), "directly supervised" means that the person

57305 being supervised is under the uninterrupted visual and auditory surveillance of the person doing

57306 the supervising.

57307 (b) A licensee may not permit any person to have direct access to a child or a vulnerable

57308 adult unless, subject to Subsection (5)(c), that person is:

57309 (i) associated with the licensee and:

57310 (A) approved by the office to have direct access to children or vulnerable adults under

57311 this section; or

57312 (B) (I) the office has not determined whether to approve that person to have direct

57313 access to children or vulnerable adults;

57314 (II) the information described in Subsection (1)(a), relating to that person, is submitted

57315 to the department; and

57316 (III) that person is directly supervised by a person associated with the licensee who is

57317 approved by the office to have direct access to children or vulnerable adults under this section;

57318 (ii) (A) not associated with the licensee; and
57319 (B) directly supervised by a person associated with the licensee who is approved by the
57320 office to have direct access to children or vulnerable adults under this section;
57321 (iii) the parent or guardian of the child or vulnerable adult; or
57322 (iv) a person approved by the parent or guardian of the child or vulnerable adult to have
57323 direct access to the child or vulnerable adult.

57324 (c) Notwithstanding Subsection (5)(b), a person may not have direct access to a child
57325 or a vulnerable adult if that person is prohibited by court order from having that access.

57326 (6) (a) Within 30 days after receiving the identifying information for a person under
57327 Subsection (1), the office shall give written notice to the person and to the licensee or applicant
57328 with whom the person is associated of:

57329 (i) the office's decision regarding its background screening clearance and findings; and
57330 (ii) a list of any convictions found in the search.

57331 (b) With the notice described in Subsection (6)(a), the office shall also give to the
57332 person the details of any comprehensive review conducted under Subsection (4).

57333 (c) If the notice under Subsection (6)(a) states that the person is not approved to have
57334 direct access to children or vulnerable adults, the notice shall further advise the persons to
57335 whom the notice is given that either the person or the licensee or applicant with whom the
57336 person is associated, or both, may, under Subsection 62A-2-111(2), request a hearing in the
57337 department's Office of Administrative Hearings, to challenge the office's decision.

57338 (d) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
57339 Administrative Rulemaking Act, the office shall make rules, consistent with this chapter:

57340 (i) defining procedures for the challenge of its background screening decision described
57341 in this Subsection (6); and
57342 (ii) expediting the process for renewal of a license under the requirements of this section
57343 and other applicable sections.

57344 (7) Notwithstanding Subsection (1)(a), this section does not apply to an applicant for an
57345 initial license, or license renewal, to operate a substance abuse program that provides services to

57346 adults only.

57347 (8) (a) Notwithstanding Subsections (2) through (4), the office may not approve or
57348 license a person as a prospective foster parent or a prospective adoptive parent if the person has
57349 been convicted of:

57350 (i) a felony involving conduct that constitutes any of the following:

57351 (A) child abuse, as described in Section 76-5-109;

57352 (B) commission of domestic violence in the presence of a child, as described in Section
57353 76-5-109.1;

57354 (C) abuse or neglect of a disabled child, as described in Section 76-5-110;

57355 (D) endangerment of a child, as described in Section 76-5-112.5;

57356 (E) aggravated murder, as described in Section 76-5-202;

57357 (F) murder, as described in Section 76-5-203;

57358 (G) manslaughter, as described in Section 76-5-205;

57359 (H) child abuse homicide, as described in Section 76-5-208;

57360 (I) homicide by assault, as described in Section 76-5-209;

57361 (J) kidnapping, as described in Section 76-5-301;

57362 (K) child kidnapping, as described in Section 76-5-301.1;

57363 (L) aggravated kidnapping, as described in Section 76-5-302;

57364 (M) an offense described in Title 76, Chapter 5, Part 4, Sexual Offenses;

57365 (N) an offense described in Title 76, Chapter 5a, Sexual Exploitation of Children;

57366 (O) aggravated arson, as described in Section 76-6-103;

57367 (P) aggravated burglary, as described in Section 76-6-203;

57368 (Q) aggravated robbery, as described in Section 76-6-302; or

57369 (R) domestic violence, as described in Section 77-36-1; or

57370 (ii) an offense committed outside the state that, if committed in the state, would
57371 constitute a violation of an offense described in Subsection (8)(a)(i).

57372 (b) Notwithstanding Subsections (2) through (4), the office may not approve or license
57373 a person as a prospective foster parent or a prospective adoptive parent if, within the five years

57374 immediately preceding the day on which the person would otherwise be approved or licensed,
57375 the person has been convicted of a felony involving conduct that constitutes any of the
57376 following:

- 57377 (i) aggravated assault, as described in Section 76-5-103;
- 57378 (ii) aggravated assault by a prisoner, as described in Section 76-5-103.5;
- 57379 (iii) mayhem, as described in Section 76-5-105;
- 57380 (iv) an offense described in Title 58, Chapter 37, Utah Controlled Substances Act;
- 57381 (v) an offense described in Title 58, Chapter 37a, Utah Drug Paraphernalia Act;
- 57382 (vi) an offense described in Title 58, Chapter 37b, Imitation Controlled Substances Act;
- 57383 (vii) an offense described in Title 58, Chapter 37c, Utah Controlled Substance
57384 Precursor Act; or
- 57385 (viii) an offense described in Title 58, Chapter 37d, Clandestine Drug Lab Act.

57386 Section 1119. Section **62A-2-121** is amended to read:

57387 **62A-2-121. Access to abuse and neglect information.**

57388 (1) For purposes of this section:

57389 (a) "Direct service worker" is as defined in Section 62A-5-101.

57390 (b) "Personal care attendant" is as defined in Section 62A-3-101.

57391 (2) With respect to a licensee, a certified local inspector applicant, a direct service
57392 worker, or a personal care attendant, the department may access only the Licensing Information
57393 System of the Division of Child and Family Services created by Section 62A-4a-1006 and
57394 juvenile court records under Subsection 78-3a-320(6), for the purpose of:

57395 (a) (i) determining whether a person associated with a licensee, with direct access to
57396 children:

57397 (A) is listed in the Licensing Information System; or

57398 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57399 neglect under Subsections 78-3a-320(1) and (2); and

57400 (ii) informing a licensee that a person associated with the licensee:

57401 (A) is listed in the Licensing Information System; or

57402 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57403 neglect under Subsections 78-3a-320(1) and (2);
57404 (b) (i) determining whether a certified local inspector applicant:
57405 (A) is listed in the Licensing Information System; or
57406 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57407 neglect under Subsections 78-3a-320(1) and (2); and
57408 (ii) informing a local government that a certified local inspector applicant:
57409 (A) is listed in the Licensing Information System; or
57410 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57411 neglect under Subsections 78-3a-320(1) and (2);
57412 (c) (i) determining whether a direct service worker:
57413 (A) is listed in the Licensing Information System; or
57414 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57415 neglect under Subsections 78-3a-320(1) and (2); and
57416 (ii) informing a direct service worker or the direct service worker's employer that the
57417 direct service worker:
57418 (A) is listed in the Licensing Information System; or
57419 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57420 neglect under Subsections 78-3a-320(1) and (2); or
57421 (d) (i) determining whether a personal care attendant:
57422 (A) is listed in the Licensing Information System; or
57423 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57424 neglect under Subsections 78-3a-320(1) and (2); and
57425 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
57426 personal care attendant:
57427 (A) is listed in the Licensing Information System; or
57428 (B) has a substantiated finding by a juvenile court of a severe type of child abuse or
57429 neglect under Subsections 78-3a-320(1) and (2).

57430 (3) Notwithstanding Subsection (2), the department may access the Division of Child
57431 and Family Service's Management Information System under Section 62A-4a-1003:

57432 (a) for the purpose of licensing and monitoring foster parents; and

57433 (b) for the purposes described in Subsection 62A-4a-1003(1)(d).

57434 (4) After receiving identifying information for a person under Subsection 62A-2-120(1),
57435 the department shall process the information for the purposes described in Subsection (2).

57436 (5) The department shall adopt rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter
57437 3, Utah Administrative Rulemaking Act, consistent with this chapter, defining the circumstances
57438 under which a person may have direct access or provide services to children when:

57439 (a) the person is listed in the Licensing Information System of the Division of Child and
57440 Family Services created by Section 62A-4a-1006; or

57441 (b) juvenile court records show that a court made a substantiated finding under Section
57442 78-3a-320, that the person committed a severe type of child abuse or neglect.

57443 Section 1120. Section **62A-2-122** is amended to read:

57444 **62A-2-122. Access to vulnerable adult abuse and neglect information.**

57445 (1) For purposes of this section:

57446 (a) "direct service worker" is as defined in Section 62A-5-101; and

57447 (b) "personal care attendant" is as defined in Section 62A-3-101.

57448 (2) With respect to a licensee, a certified local inspector applicant, a direct service
57449 worker, or a personal care attendant, the department may access the data base created by
57450 Section 62A-3-311.1 for the purpose of:

57451 (a) (i) determining whether a person associated with a licensee, with direct access to
57452 vulnerable adults, has a substantiated finding of:

57453 (A) abuse;

57454 (B) neglect; or

57455 (C) exploitation; and

57456 (ii) informing a licensee that a person associated with the licensee has a substantiated
57457 finding of:

- 57458 (A) abuse;
- 57459 (B) neglect; or
- 57460 (C) exploitation;
- 57461 (b) (i) determining whether a certified local inspector applicant has a substantiated
- 57462 finding of:
 - 57463 (A) abuse;
 - 57464 (B) neglect; or
 - 57465 (C) exploitation; and
- 57466 (ii) informing a local government that a certified local inspector applicant has a
- 57467 substantiated finding of:
 - 57468 (A) abuse;
 - 57469 (B) neglect; or
 - 57470 (C) exploitation; or
- 57471 (c) (i) determining whether a direct service worker has a substantiated finding of:
 - 57472 (A) abuse;
 - 57473 (B) neglect; or
 - 57474 (C) exploitation; and
- 57475 (ii) informing a direct service worker or the direct service worker's employer that the
- 57476 direct service worker has a substantiated finding of:
 - 57477 (A) abuse;
 - 57478 (B) neglect; or
 - 57479 (C) exploitation; or
- 57480 (d) (i) determining whether a personal care attendant has a substantiated finding of:
 - 57481 (A) abuse;
 - 57482 (B) neglect; or
 - 57483 (C) exploitation; and
- 57484 (ii) informing a person described in Subsections 62A-3-101(9)(a)(i) through (iv) that a
- 57485 personal care attendant has a substantiated finding of:

57486 (A) abuse;
57487 (B) neglect; or
57488 (C) exploitation;
57489 (3) After receiving identifying information for a person under Subsection 62A-2-120(1),
57490 the department shall process the information for the purposes described in Subsection (2).

57491 (4) The department shall adopt rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter
57492 3, Utah Administrative Rulemaking Act, consistent with this chapter and consistent with Section
57493 62A-3-311.1, defining the circumstances under which a person may have direct access or
57494 provide services to vulnerable adults when the person is listed in the statewide database of the
57495 Division of Aging and Adult Services created by Section 62A-3-311.1 as having a substantiated
57496 finding of abuse, neglect, or exploitation.

57497 Section 1121. Section **62A-3-104** is amended to read:

57498 **62A-3-104. Authority of division.**

57499 (1) The division is the sole state agency, as defined by the Older Americans Act of
57500 1965, 42 U.S.C. 3001 et seq., to:

57501 (a) serve as an effective and visible advocate for the aging and adult population of this
57502 state;

57503 (b) develop and administer a state plan under the policy direction of the board; and

57504 (c) take primary responsibility for state activities relating to provisions of the Older
57505 Americans Act of 1965, as amended.

57506 (2) (a) The division has authority to designate:

57507 (i) planning and service areas for the state; and

57508 (ii) an area agency on aging within each planning and service area to design and
57509 implement a comprehensive and coordinated system of services and programs for the aged
57510 within appropriations from the Legislature.

57511 (b) Designation as an area agency on aging may be withdrawn:

57512 (i) upon request of the area agency on aging; or

57513 (ii) upon noncompliance with the provisions of the:

- 57514 (A) Older Americans Act of 1965, 42 U.S.C. 3001 et seq.;
- 57515 (B) federal regulations enacted under the Older Americans Act of 1965, 42 U.S.C.
- 57516 3001 et seq.;
- 57517 (C) provisions of this chapter; or
- 57518 (D) rules, policies, or procedures established by the division.
- 57519 (3) (a) The division has the authority to designate:
- 57520 (i) planning and service areas for the state; and
- 57521 (ii) subject to Subsection (3)(b), an area agency on high risk adults within each planning
- 57522 and service area to design and implement a comprehensive and coordinated system of case
- 57523 management and programs for high risk adults within appropriations from the Legislature.
- 57524 (b) For purposes of Subsection (3)(a)(ii), before October 1, 1998, the division shall
- 57525 designate as the area agency on high risk adults in a planning and service area:
- 57526 (i) the area agency on aging that operates within the same geographic area if that
- 57527 agency requests, before July 1, 1998, to expand that agency's current contract with the division
- 57528 to include the responsibility of:
- 57529 (A) being the area agency on high risk adults; or
- 57530 (B) operating the area agency on high risk adults:
- 57531 (I) through joint cooperation with one or more existing area agencies on aging; and
- 57532 (II) without reducing geographical coverage in any service area; or
- 57533 (ii) a public or private nonprofit agency or office if the area agency on aging that
- 57534 operates within the same geographic area has not made a request in accordance with Subsection
- 57535 (3)(b)(i).
- 57536 (c) (i) Area agencies on high risk adults shall be in operation before July 1, 1999.
- 57537 (ii) The division's efforts to establish area agencies on high risk adults shall start with
- 57538 counties with a population of more than 150,000 people.
- 57539 (d) Designation as an area agency on high risk adults may be withdrawn:
- 57540 (i) upon request by the area agency; or
- 57541 (ii) upon noncompliance with:

- 57542 (A) state law;
- 57543 (B) federal law; or
- 57544 (C) rules, policies, or procedures established by the division.
- 57545 (4) (a) The division may, by following the procedures and requirements of [~~Title 63,~~
- 57546 ~~Chapter 38e]~~ Title 63J, Chapter 5, Federal Funds Procedures:
- 57547 (i) seek federal grants, loans, or participation in federal programs; and
- 57548 (ii) receive and distribute state and federal funds for the division's programs and services
- 57549 to the aging and adult populations of the state.
- 57550 (b) The division may not disburse public funds to a personal care attendant as payment
- 57551 for personal services rendered to an aged person or high risk adult, except as provided in
- 57552 Section 62A-3-104.3.
- 57553 (5) The division has authority to establish, either directly or by contract, programs of
- 57554 advocacy, monitoring, evaluation, technical assistance, and public education to enhance the
- 57555 quality of life for aging and adult citizens of the state.
- 57556 (6) In accordance with the rules of the division and [~~Title 63, Chapter 56]~~ Title 63G,
- 57557 Chapter 6, Utah Procurement Code, the division may contract with:
- 57558 (a) the governing body of an area agency to provide a comprehensive program of
- 57559 services; or
- 57560 (b) public and private entities for special services.
- 57561 (7) The division has authority to provide for collection, compilation, and dissemination
- 57562 of information, statistics, and reports relating to issues facing aging and adult citizens.
- 57563 (8) The division has authority to prepare and submit reports regarding the operation and
- 57564 administration of the division to the department, the Legislature, and the governor, as
- 57565 requested.
- 57566 (9) The division shall:
- 57567 (a) implement and enforce policies established by the board governing all aspects of the
- 57568 division's programs for aging and adult persons in the state;
- 57569 (b) in order to ensure compliance with all applicable state and federal statutes, policies,

57570 and procedures, monitor and evaluate programs provided by or under contract with:

57571 (i) the division;

57572 (ii) area agencies; and

57573 (iii) an entity that receives funds from an area agency;

57574 (c) examine expenditures of public funds;

57575 (d) withhold funds from programs based on contract noncompliance;

57576 (e) review and approve plans of area agencies in order to ensure:

57577 (i) compliance with division policies; and

57578 (ii) a statewide comprehensive program;

57579 (f) in order to further programs for aging and adult persons and prevent duplication of

57580 services, promote and establish cooperative relationships with:

57581 (i) state and federal agencies;

57582 (ii) social and health agencies;

57583 (iii) education and research organizations; and

57584 (iv) other related groups;

57585 (g) advocate for the aging and adult populations;

57586 (h) promote and conduct research on the problems and needs of aging and adult

57587 persons;

57588 (i) submit recommendations for changes in policies, programs, and funding to the:

57589 (i) governor; and

57590 (ii) Legislature; and

57591 (j) (i) accept contributions to and administer the funds contained in the "Out and

57592 About" Homebound Transportation Assistance Fund created in Section 62A-3-110; and

57593 (ii) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

57594 Administrative Rulemaking Act, to facilitate the administration of the "Out and About"

57595 Homebound Transportation Assistance Fund in accordance with Section 62A-3-110.

57596 Section 1122. Section **62A-3-104.1** is amended to read:

57597 **62A-3-104.1. Powers and duties of area agencies.**

- 57598 (1) An area agency that provides services to an aged person, or a high risk adult shall
57599 within the area agency's respective jurisdiction:
- 57600 (a) advocate by monitoring, evaluating, and providing input on all policies, programs,
57601 hearings, and levies that affect a person described in this Subsection (1);
- 57602 (b) design and implement a comprehensive and coordinated system of services within a
57603 designated planning and service area;
- 57604 (c) conduct periodic reviews and evaluations of needs and services;
- 57605 (d) prepare and submit to the division plans for funding and service delivery for services
57606 within the designated planning and service area;
- 57607 (e) establish, either directly or by contract, programs licensed under Chapter 2,
57608 Licensure of Programs and Facilities;
- 57609 (f) (i) appoint an area director;
- 57610 (ii) prescribe the area director's duties; and
- 57611 (iii) provide adequate and qualified staff to carry out the area plan described in
57612 Subsection (1)(d);
- 57613 (g) establish rules not contrary to policies of the board and rules of the division,
57614 regulating local services and facilities;
- 57615 (h) operate other services and programs funded by sources other than those
57616 administered by the division;
- 57617 (i) establish mechanisms to provide direct citizen input, including an area agency
57618 advisory council with a majority of members who are eligible for services from the area agency;
- 57619 (j) establish fee schedules; and
- 57620 (k) comply with the requirements and procedures of:
- 57621 (i) Title 11, Chapter 13, Interlocal Cooperation Act; and
- 57622 (ii) Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
57623 Organizations, and Other Local Entities Act.
- 57624 (2) Before disbursing any public funds, an area agency shall require that all entities
57625 receiving any public funds agree in writing that:

57626 (a) the division may examine the entity's program and financial records; and
57627 (b) the auditor of the local area agency may examine and audit the entity's program and
57628 financial records, if requested by the local area agency.

57629 (3) An area agency on aging may not disburse public funds to a personal care attendant
57630 as payment for personal services rendered to an aged person or high risk adult, except as
57631 provided in Section 62A-3-104.3.

57632 (4) (a) For the purpose of providing services pursuant to this part, a local area agency
57633 may receive:

57634 (i) property;
57635 (ii) grants;
57636 (iii) gifts;
57637 (iv) supplies;
57638 (v) materials;
57639 (vi) any benefit derived from the items described in Subsections (4)(a)(i) through (v);
57640 and
57641 (vii) contributions.

57642 (b) If a gift is conditioned upon the gift's use for a specified service or program, the gift
57643 shall be used for the specific service or program.

57644 (5) (a) Area agencies shall award all public funds in compliance with:

57645 (i) the requirements of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
57646 Code; or
57647 (ii) a county procurement ordinance that requires procurement procedures similar to
57648 those described in Subsection (5)(a)(i).

57649 (b) (i) If all initial bids on a project are rejected, the area agency shall publish a new
57650 invitation to bid.
57651 (ii) If no satisfactory bid is received by the area agency described in Subsection
57652 (5)(b)(i), when the bids received from the second invitation are opened the area agency may
57653 execute a contract without requiring competitive bidding.

57654 (c) (i) An area agency need not comply with the procurement provisions of this section
57655 when it disburses public funds to another governmental entity.

57656 (ii) For purposes of this Subsection (5)(c), "governmental entity" means any political
57657 subdivision or institution of higher education of the state.

57658 (d) (i) Contracts awarded by an area agency shall be for a:

57659 (A) fixed amount; and

57660 (B) limited period.

57661 (ii) The contracts described in Subsection (5)(d)(i) may be modified due to changes in
57662 available funding for the same contract purpose without competition.

57663 (6) Local area agencies shall comply with:

57664 (a) applicable state and federal:

57665 (i) statutes;

57666 (ii) policies; and

57667 (iii) audit requirements; and

57668 (b) directives resulting from an audit described in Subsection (6)(a)(iii).

57669 Section 1123. Section **62A-3-106.5** is amended to read:

57670 **62A-3-106.5. Agency responsible to investigate and provide services.**

57671 (1) For purposes of this section, "responsible agency" means the agency responsible to
57672 investigate or provide services in a particular case under the rules established under Subsection
57673 (2)(a).

57674 (2) In order to avoid duplication in responding to a report of alleged abuse, neglect, or
57675 exploitation of a vulnerable adult who resides in a long-term care facility, the division shall make
57676 rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
57677 Rulemaking Act, that establish procedures to:

57678 (a) determine whether Adult Protective Services or the Long-Term Care Ombudsman
57679 Program will be responsible to investigate or provide services in a particular case; and

57680 (b) determine whether, and under what circumstances, the agency described in
57681 Subsection (2)(a) that is not the responsible agency will provide assistance to the responsible

57682 agency in a particular case.

57683 (3) Notwithstanding Subsection (2), or the rules made pursuant to Subsection (2),
57684 Adult Protective Services shall be the agency within the division that is responsible for receiving
57685 all reports of alleged abuse, neglect, or exploitation of a vulnerable adult as provided in Section
57686 62A-3-305.

57687 Section 1124. Section **62A-3-109** is amended to read:

57688 **62A-3-109. Adjudicative proceedings.**

57689 The board shall comply with the procedures and requirements of [~~Title 63, Chapter~~
57690 ~~46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

57691 Section 1125. Section **62A-3-205** is amended to read:

57692 **62A-3-205. Procedures -- Adjudicative proceedings.**

57693 The long-term care ombudsman shall comply with the procedures and requirements of
57694 [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
57695 proceedings.

57696 Section 1126. Section **62A-3-311** is amended to read:

57697 **62A-3-311. Requests for information.**

57698 Requests for information contained in an adult protection case file shall be made in
57699 writing to Adult Protective Services. Requests should indicate the specific information
57700 requested and the reason for the request. Notwithstanding the provisions of [~~Title 63, Chapter~~
57701 ~~2~~] Title 63G, Chapter 2, Government Records Access and Management Act, nothing may be
57702 released in response to a request except as provided in Section 62A-3-312.

57703 Section 1127. Section **62A-3-311.1** is amended to read:

57704 **62A-3-311.1. Statewide data base -- Restricted use and access.**

57705 (1) The division shall maintain a data base for reports of vulnerable adult abuse, neglect,
57706 or exploitation made pursuant to this part.

57707 (2) The data base shall include:

57708 (a) the names and identifying data of the abused, neglected, or exploited adult and the
57709 reported abuser;

57710 (b) information regarding whether or not the abuse, neglect, or exploitation was
57711 substantiated or unsubstantiated; and

57712 (c) any other information that may be helpful in furthering the purposes of this part, as
57713 determined by the division, subject to the restrictions of Section 62A-3-306.

57714 (3) Information obtained from the data base may be used only for:

57715 (a) compiling statistical summaries that do not include names or other identifying data;

57716 (b) granting or denying licenses or other grants of privilege by the department where
57717 identification as a possible adult abuser may be relevant to the privilege in question, in
57718 accordance with Subsection (4); and

57719 (c) licensing purposes by the Bureau of Licensing within the Department of Health, as
57720 provided for in Section 26-21-9.5, in determining whether a person associated with a covered
57721 health care facility who provides direct care to vulnerable adults has a substantiated finding of
57722 vulnerable adult abuse, neglect, or exploitation if identification as a possible perpetrator is
57723 relevant to the employment activities of that person.

57724 (4) (a) A license or privilege may not be denied under Subsection (3) solely on the basis
57725 of information in the data base.

57726 (b) Before a license or privilege may be denied under Subsection (3), the department
57727 taking the action shall conduct a review and provide the person making application for the
57728 license or privilege with notice and an opportunity to be heard in accordance with [~~Title 63,~~
57729 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

57730 Section 1128. Section **62A-3-312** is amended to read:

57731 **62A-3-312. Access to information in data base.**

57732 The records and information contained in the data base and the adult protection case file
57733 are protected records under [~~Title 63, Chapter 2]~~ Title 63G, Chapter 2, Government Records
57734 Access and Management Act. However, notwithstanding the provisions of [~~Title 63, Chapter~~
57735 ~~2]~~ Title 63G, Chapter 2, Government Records Access and Management Act, information and
57736 records contained in the data base and in the adult protection case file are not open to public
57737 inspection. Pertinent parts of the data base and the adult protection case file shall be made

57738 available to law enforcement agencies, the attorney general's office, and county or district
57739 attorney's offices and may be made available, at the discretion of the division, to:

57740 (1) subjects of a report as follows:

57741 (a) a vulnerable adult named in a report as a victim of abuse, neglect, or exploitation, or
57742 that adult's attorney or legal guardian; and

57743 (b) a person identified in a report as having abused, neglected, or exploited a vulnerable
57744 adult, or that person's attorney; and

57745 (2) persons involved in an evaluation or assessment of the vulnerable adult as follows:

57746 (a) an employee of the department who is responsible for the evaluation or assessment
57747 of an adult protection case file;

57748 (b) a multidisciplinary team approved by the division to assist Adult Protective Services
57749 in the evaluation, assessment, and disposition of a vulnerable adult case;

57750 (c) an authorized person or agency providing services to or responsible for the care,
57751 treatment, assessment, or supervision of a vulnerable adult named in the report as a victim,
57752 when in the opinion of the division that information will assist in the protection of or provide
57753 other benefits to the victim;

57754 (d) a licensing authority for a facility, program, or person providing care to a victim
57755 named in a report;

57756 (e) the person or entity that reported the abuse, neglect, or exploitation, as considered
57757 necessary on an individual case basis by the division; and

57758 (f) legally authorized protection and advocacy agencies when they represent a victim or
57759 have been requested by the division to assist on a case.

57760 Section 1129. Section **62A-4a-102** is amended to read:

57761 **62A-4a-102. Board of Child and Family Services.**

57762 (1) (a) The Board of Child and Family Services, created in accordance with this section
57763 and with Sections 62A-1-105 and 62A-1-107, is responsible for establishing by rule, under
57764 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the policy
57765 of the division in accordance with the requirements of this chapter and Title 78, Chapter 3a,

57766 Juvenile Court Act of 1996, regarding abuse, neglect, and dependency proceedings, and
57767 domestic violence services. The board is responsible to see that the legislative purposes for the
57768 division are carried out.

57769 (b) (i) The governor shall appoint, with the consent of the Senate, 12 members to the
57770 Board of Child and Family Services.

57771 (ii) Except as required by Subsection (1)(b)(iii), as terms of current board members
57772 expire, the governor shall appoint each new member or reappointed member to a four-year
57773 term.

57774 (iii) Notwithstanding the requirements of Subsection (1)(b)(ii), the governor shall, at
57775 the time of appointment or reappointment, adjust the length of terms to ensure that the terms of
57776 board members are staggered so that approximately half of the board is appointed every two
57777 years.

57778 (c) The board shall include:

57779 (i) two members who are or have been consumers;

57780 (ii) two members who are actively involved in children's issues specifically related to
57781 abuse and neglect;

57782 (iii) a licensed foster parent;

57783 (iv) a recognized expert in the social, developmental, and mental health needs of
57784 children;

57785 (v) a physician licensed to practice medicine in this state who is:

57786 (A) a board certified pediatrician; and

57787 (B) an expert in child abuse and neglect;

57788 (vi) a representative of private residential treatment facilities; and

57789 (vii) an adult relative of a child who is or has been in the foster care system.

57790 (d) Seven members of the board are necessary to constitute a quorum at any meeting.

57791 (e) When a vacancy occurs in the membership for any reason, the replacement shall be
57792 appointed for the unexpired term.

57793 (2) (a) A member shall receive no compensation or benefits for the member's services,

57794 but may receive per diem and expenses incurred in the performance of the member’s official
 57795 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
 57796 63A-3-107.

57797 (b) A member may decline to receive per diem and expenses for the member's service.

57798 (3) The board shall:

57799 (a) approve fee schedules for programs within the division;

57800 (b) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

57801 Administrative Rulemaking Act, establish, by rule, policies to ensure that private citizens,
 57802 consumers, foster parents, private contract providers, allied state and local agencies, and others
 57803 are provided with an opportunity to comment and provide input regarding any new policy or
 57804 proposed revision of an existing policy; and

57805 (c) provide a mechanism for:

57806 (i) systematic and regular review of existing policy; and

57807 (ii) consideration of policy changes proposed by the persons and agencies described in
 57808 Subsection (3)(b).

57809 (4) (a) The board shall establish policies for the determination of eligibility for services
 57810 offered by the division in accordance with this chapter.

57811 (b) The division may, by rule, establish eligibility standards for consumers.

57812 (5) The board shall adopt and maintain rules and policies regarding placement for
 57813 adoption or foster care that are consistent with, and no more restrictive than, applicable
 57814 statutory provisions.

57815 Section 1130. Section **62A-4a-112** is amended to read:

57816 **62A-4a-112. Request to examine family services payment.**

57817 (1) An individual who is a taxpayer and resident of this state and who desires to
 57818 examine a payment for services offered by the division in accordance with this chapter, shall
 57819 sign a statement using a form prescribed by the division. That statement shall include the
 57820 assertion that the individual is a taxpayer and a resident, and shall include a commitment that
 57821 any information obtained will not be used for commercial or political purposes. No partial or

57822 complete list of names, addresses, or amounts of payment may be made by any individual under
57823 this subsection, and none of that information may be removed from the offices of the division.

57824 (2) The board shall, after due consideration of the public interest, define the nature of
57825 confidential information to be safeguarded by the division and shall establish policies and rules
57826 to govern the custody and disclosure of confidential information, as well as to provide access to
57827 information regarding payments for services offered by the division.

57828 (3) This section does not prohibit the division or its agents, or individuals, commissions,
57829 or agencies duly authorized for the purpose, from making special studies or from issuing or
57830 publishing statistical material and reports of a general character. This section does not prohibit
57831 the division or its representatives or employees from conveying or providing to local, state, or
57832 federal governmental agencies written information that would affect an individual's eligibility or
57833 ineligibility for financial service, or other beneficial programs offered by that governmental
57834 agency. Access to the division's program plans, policies, and records, as well as consumer
57835 records and data, is governed by [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
57836 Records Access and Management Act.

57837 (4) This section does not apply to a board member while acting in [~~his~~] the board
57838 member's official capacity as a board member.

57839 (5) Violation of this section is a class B misdemeanor.

57840 Section 1131. Section **62A-4a-115** is amended to read:

57841 **62A-4a-115. Administrative proceedings.**

57842 The department, board, and division shall comply with the procedures and requirements
57843 of [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in their
57844 adjudicative proceedings.

57845 Section 1132. Section **62A-4a-119** is amended to read:

57846 **62A-4a-119. Division required to produce "family impact statement" with regard**
57847 **to policies and rules.**

57848 Beginning May 1, 2000, whenever the division establishes a rule, in accordance with
57849 [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, or the

57850 board establishes any policy in accordance with its statutory authority, those processes shall
57851 include an assessment of the impact of that rule or policy on families. Those assessments shall
57852 determine the impact of the rule or policy on the authority of parents to oversee the care,
57853 supervision, upbringing, and education of children in the parents' custody. The division shall
57854 publish a family impact statement describing those assessments and determinations, within 90
57855 days of the establishment of each rule or policy.

57856 Section 1133. Section **62A-4a-120** is amended to read:

57857 **62A-4a-120. Accommodation of moral and religious beliefs and culture.**

57858 (1) The division shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
57859 Chapter 3, Utah Administrative Rulemaking Act, and establish procedures to accommodate the
57860 moral and religious beliefs, and culture, of the minors and families it serves, including:

57861 (a) the immediate family and other relatives of a minor in any type of custody or
57862 otherwise under the jurisdiction of the court;

57863 (b) foster and other out-of-home placement families; and

57864 (c) adoptive families.

57865 (2) The accommodation under Subsection (1) applies to placements, treatment plans,
57866 services, and other activities of the division.

57867 Section 1134. Section **62A-4a-206** is amended to read:

57868 **62A-4a-206. Process for removal of a child from foster family -- Procedural due**
57869 **process.**

57870 (1) (a) The Legislature finds that, except with regard to a child's natural parent or legal
57871 guardian, a foster family has a very limited but recognized interest in its familial relationship
57872 with a foster child who has been in the care and custody of that family. In making
57873 determinations regarding removal of a child from a foster home, the division may not dismiss
57874 the foster family as a mere collection of unrelated individuals.

57875 (b) The Legislature finds that children in the temporary custody and custody of the
57876 division are experiencing multiple changes in foster care placements with little or no
57877 documentation, and that numerous studies of child growth and development emphasize the

57878 importance of stability in foster care living arrangements.

57879 (c) For the reasons described in Subsections (1)(a) and (b), the division shall provide
57880 procedural due process for a foster family prior to removal of a foster child from their home,
57881 regardless of the length of time the child has been in that home, unless removal is for the
57882 purpose of:

57883 (i) returning the child to the child's natural parent or legal guardian;

57884 (ii) immediately placing the child in an approved adoptive home;

57885 (iii) placing the child with a relative, as defined in Subsection 78-3a-307(5)(d), who
57886 obtained custody or asserted an interest in the child within the preference period described in
57887 Subsection 78-3a-307(8); or

57888 (iv) placing an Indian child in accordance with preplacement preferences and other
57889 requirements described in the Indian Child Welfare Act, 25 U.S.C. Sec. 1915.

57890 (2) (a) The division shall maintain and utilize due process procedures for removal of a
57891 foster child from a foster home, in accordance with the procedures and requirements of [~~Title~~
57892 ~~63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

57893 (b) Those procedures shall include requirements for:

57894 (i) personal communication with and explanation to foster parents prior to removal of
57895 the child; and

57896 (ii) an opportunity for foster parents to present their information and concerns to the
57897 division and to request a review by a third party neutral fact finder prior to removal of the child.

57898 (c) If the division determines that there is a reasonable basis to believe that the child is
57899 in danger or that there is a substantial threat of danger to the health or welfare of the child, it
57900 shall place the child in emergency foster care during the pendency of the procedures described
57901 in this subsection, instead of making another foster care placement.

57902 (3) If the division removes a child from a foster home based upon the child's statement
57903 alone, the division shall initiate and expedite the processes described in Subsection (2). The
57904 division may take no formal action with regard to that foster parent's license until after those
57905 processes, in addition to any other procedure or hearing required by law, have been completed.

57906 (4) When a complaint is made to the division by a foster child against a foster parent,
57907 the division shall, within 30 business days, provide the foster parent with information regarding
57908 the specific nature of the complaint, the time and place of the alleged incident, and who was
57909 alleged to have been involved.

57910 (5) Whenever the division places a child in a foster home, it shall provide the foster
57911 parents with:

57912 (a) notification of the requirements of this section;

57913 (b) a written description of the procedures enacted by the division pursuant to
57914 Subsection (2) and how to access those processes; and

57915 (c) written notification of the foster parents' ability to petition the juvenile court directly
57916 for review of a decision to remove a foster child who has been in their custody for 12 months or
57917 longer, in accordance with the limitations and requirements of Section 78-3a-315.

57918 (6) The requirements of this section do not apply to the removal of a child based on a
57919 foster parent's request for that removal.

57920 Section 1135. Section **62A-4a-207** is amended to read:

57921 **62A-4a-207. Child Welfare Legislative Oversight Panel -- Responsibilities.**

57922 (1) (a) There is created the Child Welfare Legislative Oversight Panel composed of the
57923 following members:

57924 (i) two members of the Senate, one from the majority party and one from the minority
57925 party, appointed by the president of the Senate; and

57926 (ii) three members of the House of Representatives, two from the majority party and
57927 one from the minority party, appointed by the speaker of the House of Representatives.

57928 (b) Members of the panel shall serve for two-year terms, or until their successors are
57929 appointed.

57930 (c) A vacancy exists whenever a member ceases to be a member of the Legislature, or
57931 when a member resigns from the panel. Vacancies shall be filled by the appointing authority,
57932 and the replacement shall fill the unexpired term.

57933 (2) The president of the Senate shall designate one of the senators appointed to the

57934 panel under Subsection (1) as the Senate chair of the panel. The speaker of the House of
57935 Representatives shall designate one of the representatives appointed to the panel under
57936 Subsection (1) as the House chair of the panel.

57937 (3) The panel shall follow the interim committee rules established by the Legislature.

57938 (4) The panel shall:

57939 (a) examine and observe the process and execution of laws governing the child welfare
57940 system by the executive branch and the judicial branch;

57941 (b) upon request, receive testimony from the public, the juvenile court, and from all
57942 state agencies involved with the child welfare system including, but not limited to, the division,
57943 other offices and agencies within the department, the attorney general's office, the Office of the
57944 Guardian Ad Litem Director, and school districts;

57945 (c) before October 1, 2002, and before October 1 of each year thereafter receive
57946 reports from the division, the attorney general, and the judicial branch identifying the cases not
57947 in compliance with the time limits established in Section 78-3a-308, regarding pretrial and
57948 adjudication hearings, Section 78-3a-311, regarding dispositional hearings and reunification
57949 services, and Section 78-3a-312, regarding permanency hearings and petitions for termination,
57950 and the reasons for the noncompliance;

57951 (d) receive recommendations from, and make recommendations to the governor, the
57952 Legislature, the attorney general, the division, the Office of the Guardian Ad Litem Director, the
57953 juvenile court, and the public;

57954 (e) (i) receive reports from the executive branch and the judicial branch on budgetary
57955 issues impacting the child welfare system; and

57956 (ii) recommend, as it considers advisable, budgetary proposals to the Health and Human
57957 Services Joint Appropriations Subcommittee, the Executive Offices and Criminal Justice
57958 Appropriations Subcommittee, and the Executive Appropriations Committee, which
57959 recommendation should be made before December 1 of each year;

57960 (f) study and recommend proposed changes to laws governing the child welfare system;

57961 (g) study actions the state can take to preserve, unify, and strengthen the child's family

57962 ties whenever possible in the child's best interest, including recognizing the constitutional rights
57963 and claims of parents whenever those family ties are severed or infringed;

57964 (h) perform such other duties related to the oversight of the child welfare system as the
57965 panel considers appropriate; and

57966 (i) annually report its findings and recommendations to the president of the Senate, the
57967 speaker of the House of Representatives, the Health and Human Services Interim Committee,
57968 and the Judiciary Interim Committee.

57969 (5) (a) The panel has authority to review and discuss individual cases.

57970 (b) When an individual case is discussed, the panel's meeting may be closed pursuant to
57971 Title 52, Chapter 4, Open and Public Meetings Act.

57972 (c) When discussing an individual case, the panel shall make reasonable efforts to
57973 identify and consider the concerns of all parties to the case.

57974 (6) (a) The panel has authority to make recommendations to the Legislature, the
57975 governor, the Board of Juvenile Court Judges, the division, and any other statutorily created
57976 entity related to the policies and procedures of the child welfare system. The panel does not
57977 have authority to make recommendations to the court, the division, or any other public or
57978 private entity regarding the disposition of any individual case.

57979 (b) The panel may hold public hearings, as it considers advisable, in various locations
57980 within the state in order to afford all interested persons an opportunity to appear and present
57981 their views regarding the child welfare system in this state.

57982 (7) (a) All records of the panel regarding individual cases shall be classified private, and
57983 may be disclosed only in accordance with federal law and the provisions of [~~Title 63, Chapter 2~~]
57984 Title 63G, Chapter 2, Government Records Access and Management Act.

57985 (b) The panel shall have access to all of the division's records, including those regarding
57986 individual cases. In accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
57987 Records Access Management Act, all documents and information received by the panel shall
57988 maintain the same classification that was designated by the division.

57989 (8) In order to accomplish its oversight functions, the panel has:

- 57990 (a) all powers granted to legislative interim committees in Section 36-12-11; and
57991 (b) legislative subpoena powers under Title 36, Chapter 14, Legislative Subpoena
57992 Powers.
- 57993 (9) Members of the panel shall receive salary and expenses in accordance with Section
57994 36-2-2.
- 57995 (10) (a) The Office of Legislative Research and General Counsel shall provide staff
57996 support to the panel.
- 57997 (b) The panel is authorized to employ additional professional assistance and other staff
57998 members as it considers necessary and appropriate.
- 57999 Section 1136. Section **62A-4a-208** is amended to read:
58000 **62A-4a-208. Child protection ombudsman -- Responsibility -- Authority.**
- 58001 (1) As used in this section:
58002 (a) "Complainant" means a person who initiates a complaint with the ombudsman.
58003 (b) "Ombudsman" means the child protection ombudsman appointed pursuant to this
58004 section.
- 58005 (2) (a) There is created within the department the position of child protection
58006 ombudsman. The ombudsman shall be appointed by and serve at the pleasure of the executive
58007 director.
- 58008 (b) The ombudsman shall be:
58009 (i) an individual of recognized executive and administrative capacity;
58010 (ii) selected solely with regard to qualifications and fitness to discharge the duties of
58011 ombudsman; and
58012 (iii) have experience in child welfare, and in state laws and policies governing abused,
58013 neglected, and dependent children.
- 58014 (c) The ombudsman shall devote full time to the duties of office.
- 58015 (3) (a) Except as provided in Subsection (b), the ombudsman shall, upon receipt of a
58016 complaint from any person, investigate whether an act or omission of the division with respect
58017 to a particular child:

- 58018 (i) is contrary to statute, rule, or policy;
- 58019 (ii) places a child's health or safety at risk;
- 58020 (iii) is made without an adequate statement of reason; or
- 58021 (iv) is based on irrelevant, immaterial, or erroneous grounds.
- 58022 (b) The ombudsman may decline to investigate any complaint. If the ombudsman
- 58023 declines to investigate a complaint or continue an investigation, the ombudsman shall notify the
- 58024 complainant and the division of the decision and of the reasons for that decision.
- 58025 (c) The ombudsman may conduct an investigation on [~~his~~] the ombudsman's own
- 58026 initiative.
- 58027 (4) The ombudsman shall:
- 58028 (a) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 58029 Administrative Rulemaking Act, make rules that govern the following:
- 58030 (i) receiving and processing complaints;
- 58031 (ii) notifying complainants and the division regarding a decision to investigate or to
- 58032 decline to investigate a complaint;
- 58033 (iii) prioritizing workload;
- 58034 (iv) maximum time within which investigations shall be completed;
- 58035 (v) conducting investigations;
- 58036 (vi) notifying complainants and the division regarding the results of investigations; and
- 58037 (vii) making recommendations based on the findings and results of recommendations;
- 58038 (b) report findings and recommendations in writing to the complainant and the division,
- 58039 in accordance with the provisions of this section;
- 58040 (c) within appropriations from the Legislature, employ staff as may be necessary to
- 58041 carry out the ombudsman's duties under this part;
- 58042 (d) provide information regarding the role, duties, and functions of the ombudsman to
- 58043 public agencies, private entities, and individuals;
- 58044 (e) annually report to the:
- 58045 (i) Child Welfare Legislative Oversight Panel;

58046 (ii) governor;
58047 (iii) Board of Child and Family Services;
58048 (iv) executive director of the department; and
58049 (v) director of the division; and
58050 (f) as appropriate, make recommendations to the division regarding individual cases,
58051 and the rules, policies, and operations of the division.

58052 (5) (a) Upon rendering a decision to investigate a complaint, the ombudsman shall
58053 notify the complainant and the division of that decision.

58054 (b) The ombudsman may advise a complainant to pursue all administrative remedies or
58055 channels of complaint before pursuing a complaint with the ombudsman. Subsequent to
58056 processing a complaint, the ombudsman may conduct further investigations upon the request of
58057 the complainant or upon the ombudsman's own initiative. Nothing in this subsection precludes a
58058 complainant from making a complaint directly to the ombudsman before pursuing an
58059 administrative remedy.

58060 (c) If the ombudsman finds that an individual's act or omission violates state or federal
58061 criminal law, the ombudsman shall immediately report that finding to the appropriate county or
58062 district attorney or to the attorney general.

58063 (d) The ombudsman shall immediately notify the division if the ombudsman finds that a
58064 child needs protective custody, as that term is defined in Section 78-3a-103.

58065 (e) The ombudsman shall immediately comply with Part 4, Child Abuse or Neglect
58066 Reporting Requirements.

58067 (6) (a) All records of the ombudsman regarding individual cases shall be classified in
58068 accordance with federal law and the provisions of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
58069 Government Records Access and Management Act. The ombudsman may make public a report
58070 prepared pursuant to this section in accordance with the provisions of [~~Title 63, Chapter 2~~] Title
58071 63G, Chapter 2, Government Records Access and Management Act.

58072 (b) The ombudsman shall have access to all of the department's written and electronic
58073 records and databases, including those regarding individual cases. In accordance with [~~Title 63,~~

58074 ~~Chapter 2]~~ Title 63G, Chapter 2, Government Records Access and Management Act, all
58075 documents and information received by the ombudsman shall maintain the same classification
58076 that was designated by the department.

58077 (7) (a) The ombudsman shall prepare a written report of the findings and
58078 recommendations, if any, of each investigation.

58079 (b) The ombudsman shall make recommendations to the division if the ombudsman
58080 finds that:

- 58081 (i) a matter should be further considered by the division;
- 58082 (ii) an administrative act should be addressed, modified, or canceled;
- 58083 (iii) action should be taken by the division with regard to one of its employees; or
- 58084 (iv) any other action should be taken by the division.

58085 Section 1137. Section **62A-4a-303** is amended to read:

58086 **62A-4a-303. Director's responsibility.**

58087 The director, under the direction of the board, shall:

58088 (1) contract with public or private nonprofit organizations, agencies, schools, or with
58089 qualified individuals to establish voluntary community-based educational and service programs
58090 designed to reduce the occurrence or recurrence of child abuse and neglect;

58091 (2) facilitate the exchange of information between and among groups concerned with
58092 families and children;

58093 (3) consult with appropriate state agencies, commissions, and boards to help determine
58094 the probable effectiveness, fiscal soundness, and need for proposed education and service
58095 programs for the prevention and treatment of child abuse and neglect;

58096 (4) develop policies to determine whether programs will be discontinued or will receive
58097 continuous funding;

58098 (5) establish flexible fees and fee schedules based on the recipient's ability to pay for
58099 part or all of the costs of service received; and

58100 (6) adopt rules under [~~Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative
58101 Rulemaking Act, as necessary to carry out the purposes of this part.

58102 Section 1138. Section **62A-4a-304** is amended to read:

58103 **62A-4a-304. Contracts for services.**

58104 (1) (a) Contracts for services to prevent child abuse and neglect shall be awarded on the
58105 basis of probability of success, based in part on sound research data.

58106 (b) Each contract entered into by the director under Section 62A-4a-303 shall contain a
58107 provision for the evaluation of services provided under the contract.

58108 (2) Contract funds awarded for the treatment of victims of physical or sexual abuse are
58109 not a collateral source as described in Section [~~63-25a-402~~] 63M-7-502.

58110 Section 1139. Section **62A-4a-410** is amended to read:

58111 **62A-4a-410. Immunity from liability.**

58112 (1) Any person, official, or institution participating in good faith in making a report,
58113 taking photographs or X-rays, assisting an investigator from the division, serving as a member
58114 of a child protection team, or taking a child into protective custody pursuant to this part, is
58115 immune from any liability, civil or criminal, that otherwise might result by reason of those
58116 actions.

58117 (2) This section does not provide immunity with respect to acts or omissions of a
58118 governmental employee except as provided in [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7,
58119 Governmental Immunity Act of Utah.

58120 Section 1140. Section **62A-4a-412** is amended to read:

58121 **62A-4a-412. Reports and information confidential.**

58122 (1) Except as otherwise provided in this chapter, reports made pursuant to this part, as
58123 well as any other information in the possession of the division obtained as the result of a report
58124 are private, protected, or controlled records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
58125 Government Records Access and Management Act, and may only be made available to:

58126 (a) a police or law enforcement agency investigating a report of known or suspected
58127 child abuse or neglect;

58128 (b) a physician who reasonably believes that a child may be the subject of abuse or
58129 neglect;

- 58130 (c) an agency that has responsibility or authority to care for, treat, or supervise a minor
- 58131 who is the subject of a report;
- 58132 (d) a contract provider that has a written contract with the division to render services to
- 58133 a minor who is the subject of a report;
- 58134 (e) any subject of the report, the natural parents of the child, and the guardian ad litem;
- 58135 (f) a court, upon a finding that access to the records may be necessary for the
- 58136 determination of an issue before the court, provided that in a divorce, custody, or related
- 58137 proceeding between private parties, the record alone is:
- 58138 (i) limited to objective or undisputed facts that were verified at the time of the
- 58139 investigation; and
- 58140 (ii) devoid of conclusions drawn by the division or any of the division's workers on the
- 58141 ultimate issue of whether or not a person's acts or omissions constituted any level of abuse or
- 58142 neglect of another person;
- 58143 (g) an office of the public prosecutor or its deputies in performing an official duty;
- 58144 (h) a person authorized by a Children's Justice Center, for the purposes described in
- 58145 Section 67-5b-102;
- 58146 (i) a person engaged in bona fide research, when approved by the director of the
- 58147 division, if the information does not include names and addresses;
- 58148 (j) the State Office of Education, acting on behalf of itself or on behalf of a school
- 58149 district, for the purpose of evaluating whether an individual should be permitted to obtain or
- 58150 retain a license as an educator or serve as an employee or volunteer in a school, limited to
- 58151 information with substantiated findings involving an alleged sexual offense, an alleged felony or
- 58152 class A misdemeanor drug offense, or any alleged offense against the person under Title 76,
- 58153 Chapter 5, Offenses Against the Person, and with the understanding that the office must provide
- 58154 the subject of a report received under Subsection (1)(k) with an opportunity to respond to the
- 58155 report before making a decision concerning licensure or employment;
- 58156 (k) any person identified in the report as a perpetrator or possible perpetrator of child
- 58157 abuse or neglect, after being advised of the screening prohibition in Subsection (2);

58158 (l) a person filing a petition for a child protective order on behalf of a child who is the
58159 subject of the report; and

58160 (m) a licensed child-placing agency or person who is performing a preplacement
58161 adoptive evaluation in accordance with the requirements of Section 78-30-3.5.

58162 (2) (a) A person, unless listed in Subsection (1), may not request another person to
58163 obtain or release a report or any other information in the possession of the division obtained as a
58164 result of the report that is available under Subsection (1)(k) to screen for potential perpetrators
58165 of child abuse or neglect.

58166 (b) A person who requests information knowing that it is a violation of Subsection
58167 (2)(a) to do so is subject to the criminal penalty in Subsection (4).

58168 (3) (a) Except as provided in Section 62A-4a-1007 and Subsection (3)(b), the division
58169 and law enforcement officials shall ensure the anonymity of the person or persons making the
58170 initial report and any others involved in its subsequent investigation.

58171 (b) Notwithstanding any other provision of law, excluding Section 78-3a-314, but
58172 including this chapter and [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
58173 Access and Management Act, when the division makes a report or other information in its
58174 possession available under Subsection (1)(e) to a subject of the report or a parent of a child, the
58175 division shall remove from the report or other information only the names, addresses, and
58176 telephone numbers of individuals or specific information that could:

- 58177 (i) identify the referent;
- 58178 (ii) impede a criminal investigation; or
- 58179 (iii) endanger a person's safety.

58180 (4) Any person who wilfully permits, or aides and abets the release of data or
58181 information obtained as a result of this part, in the possession of the division or contained on
58182 any part of the Management Information System, in violation of this part or Sections
58183 62A-4a-1003 through 62A-4a-1007, is guilty of a class C misdemeanor.

58184 (5) The physician-patient privilege is not a ground for excluding evidence regarding a
58185 child's injuries or the cause of those injuries, in any proceeding resulting from a report made in

58186 good faith pursuant to this part.

58187 (6) A child-placing agency or person who receives a report in connection with a
58188 preplacement adoptive evaluation pursuant to Section 78-30-3.5:

58189 (a) may provide this report to the person who is the subject of the report; and

58190 (b) may provide this report to a person who is performing a preplacement adoptive
58191 evaluation in accordance with the requirement of Section 78-30-3.5, or to a licensed
58192 child-placing agency or to an attorney seeking to facilitate an adoption.

58193 Section 1141. Section **62A-4a-906** is amended to read:

58194 **62A-4a-906. Termination or modification of adoption assistance.**

58195 (1) Adoption assistance may not be terminated or modified unless the division has given
58196 adoptive parents notice and opportunity for a hearing as required in [~~Title 63, Chapter 46b~~]
58197 Title 63G, Chapter 4, Administrative Procedures Act.

58198 (2) Adoption assistance shall be terminated if any of the following occur:

58199 (a) the adoptive parents request termination;

58200 (b) the child reaches 18 years of age, unless approval has been given by the division to
58201 continue beyond the age of 18 due to mental or physical disability, but in no case shall
58202 assistance continue after a child reaches 21 years of age;

58203 (c) the child dies;

58204 (d) the adoptive parents die;

58205 (e) the adoptive parent's legal responsibility for the child ceases;

58206 (f) the state determines that the child is no longer receiving support from the adoptive
58207 parents;

58208 (g) the child marries; or

58209 (h) the child enters military service.

58210 Section 1142. Section **62A-4a-1003** is amended to read:

58211 **62A-4a-1003. Management Information System -- Requirements -- Contents --**
58212 **Purpose -- Access.**

58213 (1) (a) The division shall develop and implement a Management Information System

58214 that meets the requirements of this section and the requirements of federal law and regulation.

58215 (b) The information and records contained in the Management Information System:

58216 (i) are protected records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
58217 Records Access and Management Act; and

58218 (ii) except as provided in Subsections (1)(c) and (d), are available only to a person with
58219 statutory authorization under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
58220 Access and Management Act, to review the information and records described in this
58221 Subsection (1)(b).

58222 (c) Notwithstanding Subsection (1)(b)(ii), the information and records described in
58223 Subsection (1)(b) are available to a person:

58224 (i) as provided under Subsection (6) or Section 62A-4a-1006; or

58225 (ii) who has specific statutory authorization to access the information or records for the
58226 purpose of assisting the state with state and federal requirements to maintain information solely
58227 for the purpose of protecting minors and providing services to families in need.

58228 (d) Notwithstanding Subsection (1)(b)(ii), the information and records described in
58229 Subsection (1)(b) may, to the extent required by Title IV-B or IV-E of the Social Security Act,
58230 be provided by the division:

58231 (i) to comply with child abuse and neglect registry checks requested by other states; and

58232 (ii) to the United States Department of Health and Human Services for purposes of
58233 maintaining an electronic national registry of substantiated cases of child abuse and neglect.

58234 (2) With regard to all child welfare cases, the Management Information System shall
58235 provide each caseworker and the department's office of licensing, exclusively for the purposes
58236 of foster parent licensure and monitoring, with a complete history of each child in that worker's
58237 caseload, including:

58238 (a) a record of all past action taken by the division with regard to that child and the
58239 child's siblings;

58240 (b) the complete case history and all reports and information in the control or keeping
58241 of the division regarding that child and the child's siblings;

- 58242 (c) the number of times the child has been in the custody of the division;
- 58243 (d) the cumulative period of time the child has been in the custody of the division;
- 58244 (e) a record of all reports of abuse or neglect received by the division with regard to
- 58245 that child's parent, parents, or guardian including:
 - 58246 (i) for each report, documentation of the:
 - 58247 (A) latest status; or
 - 58248 (B) final outcome or determination; and
 - 58249 (ii) information that indicates whether each report was found to be:
 - 58250 (A) supported;
 - 58251 (B) unsupported;
 - 58252 (C) substantiated by a juvenile court;
 - 58253 (D) unsubstantiated by a juvenile court; or
 - 58254 (E) without merit;
 - 58255 (f) the number of times the child's parent or parents failed any child and family plan; and
 - 58256 (g) the number of different caseworkers who have been assigned to that child in the
 - 58257 past.
 - 58258 (3) The division's Management Information System shall:
 - 58259 (a) contain all key elements of each family's current child and family plan, including:
 - 58260 (i) the dates and number of times the plan has been administratively or judicially
 - 58261 reviewed;
 - 58262 (ii) the number of times the parent or parents have failed that child and family plan; and
 - 58263 (iii) the exact length of time the child and family plan has been in effect; and
 - 58264 (b) alert caseworkers regarding deadlines for completion of and compliance with policy,
 - 58265 including child and family plans.
 - 58266 (4) With regard to all child protective services cases, the Management Information
 - 58267 System shall:
 - 58268 (a) monitor the compliance of each case with:
 - 58269 (i) division rule and policy;

58270 (ii) state law; and
58271 (iii) federal law and regulation; and
58272 (b) include the age and date of birth of the alleged perpetrator at the time the abuse or
58273 neglect is alleged to have occurred, in order to ensure accuracy regarding the identification of
58274 the alleged perpetrator.

58275 (5) Except as provided in Subsection (6) regarding contract providers and Section
58276 62A-4a-1006 regarding limited access to the Licensing Information System, all information
58277 contained in the division's Management Information System is available to the department, upon
58278 the approval of the executive director, on a need-to-know basis.

58279 (6) (a) Subject to this Subsection (6), the division may allow its contract providers,
58280 court clerks designated by the Administrative Office of the Courts, and the Office of the
58281 Guardian Ad Litem to have limited access to the Management Information System.

58282 (b) A division contract provider has access only to information about a person who is
58283 currently receiving services from that specific contract provider.

58284 (c) (i) Designated court clerks may only have access to information necessary to comply
58285 with Subsection 78-3h-102(2).

58286 (ii) The Office of the Guardian Ad Litem may access only the information that:

58287 (A) relates to children and families where the Office of the Guardian Ad Litem is
58288 appointed by a court to represent the interests of the children; and

58289 (B) except as provided in Subsection (6)(d), is entered into the Management
58290 Information System on or after July 1, 2004.

58291 (d) Notwithstanding Subsection (6)(c)(ii)(B), the Office of the Guardian Ad Litem shall
58292 have access to all child abuse and neglect referrals about children and families where the office
58293 has been appointed by a court to represent the interests of the children, regardless of the date
58294 that the information is entered into the Management Information System.

58295 (e) Each contract provider and designated representative of the Office of the Guardian
58296 Ad Litem who requests access to information contained in the Management Information System
58297 shall:

58298 (i) take all necessary precautions to safeguard the security of the information contained
58299 in the Management Information System;

58300 (ii) train its employees regarding:

58301 (A) requirements for protecting the information contained in the Management
58302 Information System as required by this chapter and under [~~Title 63, Chapter 2~~] Title 63G,
58303 Chapter 2, Government Records Access and Management Act; and

58304 (B) the criminal penalties under Sections 62A-4a-412 and [~~63-2-801~~] 63G-2-801 for
58305 improper release of information; and

58306 (iii) monitor its employees to ensure that they protect the information contained in the
58307 Management Information System as required by law.

58308 (f) The division shall take reasonable precautions to ensure that its contract providers
58309 comply with the requirements of this Subsection (6).

58310 (7) The division shall take all necessary precautions, including password protection and
58311 other appropriate and available technological techniques, to prevent unauthorized access to or
58312 release of information contained in the Management Information System.

58313 Section 1143. Section **62A-4a-1006** is amended to read:

58314 **62A-4a-1006. Licensing Information System -- Contents -- Juvenile court finding**
58315 **-- Protected record -- Access -- Criminal penalty.**

58316 (1) (a) The division shall maintain a sub-part of the Management Information System
58317 established pursuant to Section 62A-4a-1003, to be known as the Licensing Information
58318 System, to be used:

58319 (i) for licensing purposes; or

58320 (ii) as otherwise specifically provided for by law.

58321 (b) The Licensing Information System shall include only the following information:

58322 (i) the information described in Subsections 62A-4a-1005(1)(b) and (3)(b);

58323 (ii) consented-to supported findings by alleged perpetrators under Subsection
58324 62A-4a-1005(3)(a)(iii); and

58325 (iii) the information in the licensing part of the division's Management Information

58326 System as of May 6, 2002.

58327 (2) Notwithstanding Subsection (1), the department's access to information in the
58328 Management Information System for the licensure and monitoring of foster parents is governed
58329 by Sections 62A-4a-1003 and 62A-2-121.

58330 (3) Subject to Subsection 62A-4a-1005(3)(e), upon receipt of a finding from the
58331 juvenile court under Section 78-3a-320, the division shall:

58332 (a) promptly amend the Licensing Information System; and

58333 (b) enter the information in the Management Information System.

58334 (4) (a) Information contained in the Licensing Information System is classified as a
58335 protected record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access
58336 and Management Act.

58337 (b) Notwithstanding the disclosure provisions of [~~Title 63, Chapter 2~~] Title 63G,
58338 Chapter 2, Government Records Access and Management Act, the information contained in the
58339 Licensing Information System may only be used or disclosed as specifically provided in this
58340 chapter and Section 62A-2-121.

58341 (c) The information described in Subsection (4)(b) is accessible only to:

58342 (i) the Office of Licensing within the department:

58343 (A) for licensing purposes; or

58344 (B) as otherwise specifically provided for by law;

58345 (ii) the division to:

58346 (A) screen a person at the request of the Office of the Guardian Ad Litem Director:

58347 (I) at the time that person seeks a paid or voluntary position with the Office of the
58348 Guardian Ad Litem Director; and

58349 (II) on an annual basis, throughout the time that the person remains with the Office of
58350 Guardian Ad Litem Director; and

58351 (B) respond to a request for information from a person whose name is listed in the
58352 Licensing Information System;

58353 (iii) two persons designated by and within the Department of Health, only for the

58354 following purposes:

58355 (A) licensing a child care program or provider; or

58356 (B) determining whether a person associated with a covered health care facility, as
58357 defined by the Department of Health by rule, who provides direct care to a child, has a
58358 supported finding of a severe type of child abuse or neglect; and

58359 (iv) the department, as specifically provided in this chapter.

58360 (5) The two persons designated by the Department of Health under Subsection
58361 (4)(c)(iii) shall adopt measures to:

58362 (a) protect the security of the Licensing Information System; and

58363 (b) strictly limit access to the Licensing Information System to those persons designated
58364 by statute.

58365 (6) All persons designated by statute as having access to information contained in the
58366 Licensing Information System shall receive training from the department with respect to:

58367 (a) accessing the Licensing Information System;

58368 (b) maintaining strict security; and

58369 (c) the criminal provisions of Sections 62A-4a-412 and [~~63-2-801~~] 63G-2-801
58370 pertaining to the improper release of information.

58371 (7) (a) A person, except those authorized by this chapter, may not request another
58372 person to obtain or release any other information in the Licensing Information System to screen
58373 for potential perpetrators of child abuse or neglect.

58374 (b) A person who requests information knowing that it is a violation of this Subsection
58375 (7) to do so is subject to the criminal penalty described in Sections 62A-4a-412 and [~~63-2-801~~]
58376 63G-2-801.

58377 Section 1144. Section **62A-4a-1009** is amended to read:

58378 **62A-4a-1009. Notice and opportunity to challenge supported finding in**
58379 **Management Information System -- Right of judicial review.**

58380 (1) (a) Except as provided in Subsection (2), the division shall send a notice of agency
58381 action to a person with respect to whom the division makes a supported finding. In addition, if

58382 the alleged perpetrator is under the age of 18, the division shall:

58383 (i) make reasonable efforts to identify the alleged perpetrator's parent or guardian; and

58384 (ii) send a notice to each parent or guardian identified under Subsection (1)(a)(i) that

58385 lives at a different address, unless there is good cause, as defined by rule, for not sending a

58386 notice to a parent or guardian.

58387 (b) Nothing in this section may be construed as affecting:

58388 (i) the manner in which the division conducts an investigation; or

58389 (ii) the use or effect, in any other setting, of a supported finding by the division at the

58390 completion of an investigation for any purpose other than for notification under Subsection (1)

58391 (a).

58392 (2) Subsection (1) does not apply to a person who has been served with notice under

58393 Subsection 62A-4a-1005(1)(a).

58394 (3) The notice described in Subsection (1) shall state:

58395 (a) that the division has conducted an investigation regarding alleged child abuse,

58396 neglect, or dependency;

58397 (b) that the division has made a supported finding of abuse, neglect, or dependency;

58398 (c) that facts gathered by the division support the supported finding;

58399 (d) that the person has the right to request:

58400 (i) a copy of the report; and

58401 (ii) an opportunity to challenge the supported finding by the division; and

58402 (e) that failure to request an opportunity to challenge the supported finding within 30

58403 days of receiving the notice will result in an unappealable supported finding of child abuse,

58404 neglect, or dependency unless the person can show good cause for why compliance within the

58405 30-day requirement was virtually impossible or unreasonably burdensome.

58406 (4) (a) A person may make a request to challenge a supported finding within 30 days of

58407 a notice being received under this section.

58408 (b) Upon receipt of a request under Subsection (4)(a), the Office of Administrative

58409 Hearings shall hold an adjudicative proceeding pursuant to [~~Title 63, Chapter 46b~~] Title 63G,

58410 Chapter 4, Administrative Procedures Act.

58411 (5) (a) In an adjudicative proceeding held pursuant to this section, the division shall
58412 have the burden of proving, by a preponderance of the evidence, that child abuse, neglect, or
58413 dependency occurred and that the alleged perpetrator was substantially responsible for the abuse
58414 or neglect that occurred.

58415 (b) Any party shall have the right of judicial review of final agency action, in accordance
58416 with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

58417 (6) Except as otherwise provided in this chapter, an alleged perpetrator who, after
58418 receiving notice, fails to challenge a supported finding in accordance with this section:

58419 (a) may not further challenge the finding; and

58420 (b) shall have no right to:

58421 (i) agency review of the finding;

58422 (ii) an adjudicative hearing on the finding; or

58423 (iii) judicial review of the finding.

58424 (7) (a) Except as provided in Subsection (7)(b), an alleged perpetrator may not make a
58425 request under Subsection (4) to challenge a supported finding if a court of competent
58426 jurisdiction entered a finding, in a proceeding in which the alleged perpetrator was a party, that
58427 the alleged perpetrator is substantially responsible for the abuse, neglect, or dependency which
58428 was also the subject of the supported finding.

58429 (b) Subsection (7)(a) does not apply to pleas in abeyance or diversion agreements.

58430 (c) An adjudicative proceeding under Subsection (5) may be stayed during the time a
58431 judicial action on the same matter is pending.

58432 (8) Pursuant to Section 78-3a 320, an adjudicative proceeding on a supported finding of
58433 a type of abuse or neglect that does not constitute a severe type of child abuse or neglect may
58434 be joined in the juvenile court with an adjudicative proceeding on a supported finding of a
58435 severe type of child abuse or neglect.

58436 Section 1145. Section **62A-5-103** is amended to read:

58437 **62A-5-103. Responsibility and authority of division.**

- 58438 (1) For purposes of this section "administer" means to:
- 58439 (a) plan;
- 58440 (b) develop;
- 58441 (c) manage;
- 58442 (d) monitor; and
- 58443 (e) conduct certification reviews.
- 58444 (2) The division has the authority and responsibility to:
- 58445 (a) administer an array of services and supports for persons with disabilities and their
- 58446 families throughout the state;
- 58447 (b) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 58448 Administrative Rulemaking Act, that establish eligibility criteria for the services and supports
- 58449 described in Subsection (2)(a);
- 58450 (c) consistent with Section 62A-5-206, supervise the programs and facilities of the
- 58451 Developmental Center;
- 58452 (d) in order to enhance the quality of life for a person with a disability, establish either
- 58453 directly, or by contract with private, nonprofit organizations, programs of:
- 58454 (i) outreach;
- 58455 (ii) information and referral;
- 58456 (iii) prevention;
- 58457 (iv) technical assistance; and
- 58458 (v) public awareness;
- 58459 (e) supervise the programs and facilities operated by, or under contract with, the
- 58460 division;
- 58461 (f) cooperate with other state, governmental, and private agencies that provide services
- 58462 to a person with a disability;
- 58463 (g) subject to Subsection (3), ensure that a person with a disability is not deprived of
- 58464 that person's constitutionally protected rights without due process procedures designed to
- 58465 minimize the risk of error when a person with a disability is admitted to any structured

- 58466 residential mental retardation facility, including:
- 58467 (i) the developmental center; and
- 58468 (ii) facilities within the community;
- 58469 (h) determine whether to approve providers;
- 58470 (i) monitor and sanction approved providers, as specified in the providers' contract;
- 58471 (j) subject to Section 62A-5-103.5, receive and disburse public funds;
- 58472 (k) review financial actions of a provider who is a representative payee appointed by the
- 58473 Social Security Administration;
- 58474 (l) establish standards and rules for the administration and operation of programs
- 58475 conducted by, or under contract with, the division;
- 58476 (m) approve and monitor division programs to insure compliance with the board's rules
- 58477 and standards;
- 58478 (n) establish standards and rules necessary to fulfill the division's responsibilities under
- 58479 Parts 2 and 3 of this chapter with regard to mental retardation facilities;
- 58480 (o) assess and collect equitable fees for a person who receives services provided under
- 58481 this chapter;
- 58482 (p) maintain records of, and account for, the funds described in Subsection (2)(o);
- 58483 (q) establish and apply rules to determine whether to approve, deny, or defer the
- 58484 division's services to a person who is:
- 58485 (i) applying to receive the services; or
- 58486 (ii) currently receiving the services;
- 58487 (r) in accordance with state law, establish rules:
- 58488 (i) relating to a mental retardation facility that is an endorsed program; and
- 58489 (ii) governing the admission, transfer, and discharge of a person with a disability;
- 58490 (s) manage funds for a person residing in a facility operated by the division:
- 58491 (i) upon request of a parent or guardian of the person; or
- 58492 (ii) under administrative or court order; and
- 58493 (t) fulfill the responsibilities described in Chapter 5a, Coordinating Council for Persons

58494 with Disabilities.

58495 (3) The due process procedures described in Subsection (2)(g):

58496 (a) shall include initial and periodic reviews to determine the constitutional
58497 appropriateness of the placement; and

58498 (b) with regard to facilities in the community, do not require commitment to the
58499 division.

58500 Section 1146. Section **62A-5-103.1** is amended to read:

58501 **62A-5-103.1. Pilot program for provision of supported employment services.**

58502 (1) There is established a pilot program for the provision of supported employment
58503 services to be administered by the division, beginning on July 1, 2006, and ending on July 1,
58504 2008.

58505 (2) The division shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
58506 Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and
58507 administration of this section.

58508 (3) In accordance with Subsection (4), within funds appropriated by the Legislature for
58509 the pilot program described in this section, the division shall provide supported employment
58510 services to a person with a disability who:

58511 (a) is eligible to receive services from the division;

58512 (b) has applied for, and is waiting to, receive services from the division;

58513 (c) is not receiving other ongoing services from the division;

58514 (d) is not able to receive sufficient supported employment services from other sources;

58515 (e) the division determines would substantially benefit from the provision of supported
58516 employment services; and

58517 (f) does not require the provision of other ongoing services from the division in order to
58518 substantially benefit from the provision of supported employment services.

58519 (4) (a) The division shall provide supported employment services under this section
58520 outside of the prioritization criteria established by the division for the receipt of other services
58521 from the division.

58522 (b) The division shall establish criteria to determine the priority, between persons
58523 eligible for services under this section, for receiving services under this section.

58524 (5) It is the intent of the Legislature that the services provided under the pilot program
58525 described in this section:

58526 (a) shall be provided separately from the Medicaid program described in Title XIX of
58527 the Social Security Act;

58528 (b) may not be supported with Medicaid funds;

58529 (c) may not be provided as part of a Medicaid waiver;

58530 (d) do not constitute an entitlement of any kind; and

58531 (e) may be withdrawn from a person at any time.

58532 (6) The director of the division shall report to the Health and Human Services Interim
58533 Committee during the 2007 interim regarding:

58534 (a) the operation and accomplishments of the pilot program described in this section;

58535 (b) whether the Legislature should convert the pilot program to an ongoing program
58536 within the division; and

58537 (c) recommendations for changes, if any, relating to the pilot program.

58538 (7) During the 2007 interim, the Health and Human Services Interim Committee shall:

58539 (a) hear or review the report described in Subsection (6); and

58540 (b) determine whether the pilot program described in this section should be converted
58541 to an ongoing program within the division.

58542 Section 1147. Section **62A-5-103.2** is amended to read:

58543 **62A-5-103.2. Pilot program for family preservation services.**

58544 (1) There is established a pilot program for the provision of family preservation services
58545 to a person with a disability and that person's family, beginning on July 1, 2007, and ending on
58546 July 1, 2009.

58547 (2) The family preservation services described in Subsection (1) may include:

58548 (a) family skill building classes;

58549 (b) respite hours for class attendance; or

58550 (c) professional intervention.

58551 (3) The division shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
58552 Chapter 3, Utah Administrative Rulemaking Act, as necessary for the implementation and
58553 administration of this section.

58554 (4) In accordance with Subsection (5), within funds appropriated by the Legislature for
58555 the pilot program described in this section, the division shall provide family preservation
58556 services to a person with a disability, and that person's family, if that person:

58557 (a) is eligible to receive services from the division;

58558 (b) has applied for, and is willing to receive, services from the division;

58559 (c) is not receiving other ongoing services from the division;

58560 (d) is not able to receive sufficient family preservation services from other sources;

58561 (e) is determined by the division to be a person who would substantially benefit from
58562 the provision of family preservation services; and

58563 (f) does not require the provision of other ongoing services from the division in order to
58564 substantially benefit from the provision of family preservation services.

58565 (5) (a) The division shall provide family preservation services under this section outside
58566 of the prioritization criteria established by the division for the receipt of other services from the
58567 division.

58568 (b) The division shall establish criteria to determine the priority, between persons
58569 eligible for services under this section, for receiving services under this section.

58570 (6) It is the intent of the Legislature that the services provided under the pilot program
58571 described in this section:

58572 (a) shall be provided separately from the Medicaid program described in Title XIX of
58573 the Social Security Act;

58574 (b) may not be supported with Medicaid funds;

58575 (c) may not be provided as part of a Medicaid waiver;

58576 (d) do not constitute an entitlement of any kind; and

58577 (e) may be withdrawn from a person at any time.

58578 (7) The director of the division shall report to the Health and Human Services Interim
58579 Committee during the 2008 interim regarding:

58580 (a) the operation and accomplishments of the pilot program described in this section;

58581 (b) whether the Legislature should convert the pilot program to an ongoing program
58582 within the division; and

58583 (c) recommendations for changes, if any, related to the pilot program.

58584 (8) During the 2008 interim, the Health and Human Services Interim Committee shall:

58585 (a) hear or review the report described in Subsection (7); and

58586 (b) determine whether the pilot program described in this section should be converted
58587 into an ongoing program within the division.

58588 Section 1148. Section **62A-5-105** is amended to read:

58589 **62A-5-105. Board -- Membership -- Responsibilities -- Policy mediation.**

58590 (1) The board is the policymaking body for the division and shall establish by rule the
58591 policy of the division in accordance with:

58592 (a) the policy of the Legislature as set forth by this chapter; and

58593 (b) [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

58594 (2) The board shall:

58595 (a) establish program policy for the division, the developmental center, and programs
58596 and facilities operated by or under contract with the division;

58597 (b) establish policies for the assessment and collection of fees for programs within the
58598 division;

58599 (c) no later than July 1, 2003, establish a graduated fee schedule based on ability to pay
58600 and implement the schedule with respect to service recipients and their families where not
58601 otherwise prohibited by federal law or regulation or not otherwise provided for in Section
58602 62A-5-109;

58603 (d) establish procedures to ensure that private citizens, consumers, private contract
58604 providers, allied state and local agencies, and others are provided with an opportunity to
58605 comment and provide input regarding any new policy or proposed revision to an existing policy;

58606 (e) provide a mechanism for systematic and regular review of existing policy and for
58607 consideration of policy changes proposed by the persons and agencies described under
58608 Subsection (2)(d);

58609 (f) (i) establish and periodically review the criteria used to determine who may receive
58610 services from the division and how the delivery of those services is prioritized within available
58611 funding; and

58612 (ii) make periodic recommendations based on the review conducted under Subsection
58613 (2)(f)(i) to the Health and Human Services Interim Committee beginning at or before the
58614 September 2002 meeting of the committee;

58615 (g) review implementation and compliance by the division with policies established by
58616 the board to ensure that the policies established by the Legislature in this chapter are carried
58617 out; and

58618 (h) annually report to the executive director.

58619 (3) At least one member of the board shall be a person whose life or family is directly
58620 affected by a disability, and at least one other board member shall be a person with a physical
58621 disability.

58622 (4) The executive director shall mediate any differences which arise between the
58623 policies of the board and those of any other policy board in the department.

58624 Section 1149. Section **62A-5-313** is amended to read:

58625 **62A-5-313. Transfer -- Procedures.**

58626 (1) The director of the division, or [~~his~~] the director's designee, may place an
58627 involuntarily committed resident in appropriate care or treatment outside the mental retardation
58628 facility. During that placement, the order of commitment shall remain in effect, until the
58629 resident is discharged or the order is terminated.

58630 (2) If the resident, or [~~his~~] the resident's parent or guardian, objects to a proposed
58631 placement under this section, [~~he~~] the resident may appeal the decision to the executive director
58632 or [~~his~~] the executive director's designee. Those appeals shall be conducted in accordance with
58633 the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,

58634 Administrative Procedures Act. If an objection is made, the proposed placement may not take
58635 effect until the committee holds that hearing and the executive director makes a final decision on
58636 the placement.

58637 Section 1150. Section **62A-5a-104** is amended to read:

58638 **62A-5a-104. Powers of council.**

58639 (1) The council has authority, after local or individual efforts have failed, including,
58640 with regard to persons under 22 years of age, actions by local interagency councils established
58641 under Section [~~63-75-5.7~~] 63M-9-301, to:

58642 (a) coordinate the appropriate transition of persons with disabilities who receive
58643 services and support from one state agency to receive services and support from another state
58644 agency;

58645 (b) coordinate policies governing the provision of services and support for persons with
58646 disabilities by state agencies; and

58647 (c) consider issues regarding eligibility for services and support and, where possible,
58648 develop uniform eligibility standards for state agencies.

58649 (2) The council may receive appropriations from the Legislature to purchase services
58650 and supports for persons with disabilities as the council deems appropriate.

58651 Section 1151. Section **62A-7-202** is amended to read:

58652 **62A-7-202. Location of detention facilities and services.**

58653 (1) The division shall provide detention facilities and services in each county, or group
58654 of counties, as the population demands, in accordance with the provisions of this chapter.

58655 (2) The division, through its detention centers, is responsible for development,
58656 implementation, and administration of home detention services, and shall establish criteria for
58657 placement on home detention.

58658 (3) The division shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
58659 Chapter 3, Utah Administrative Rulemaking Act, establishing standards for admission to secure
58660 detention and home detention programs.

58661 (4) The division shall provide training regarding implementation of the rules to law

58662 enforcement agencies, division employees, juvenile court employees, and other affected
58663 agencies and individuals upon their request.

58664 Section 1152. Section **62A-11-104.1** is amended to read:

58665 **62A-11-104.1. Disclosure of information regarding employees.**

58666 (1) Upon request by the office, for purposes of an official investigation made in
58667 connection with its duties under Section 62A-11-104, the following disclosures shall be made to
58668 the office:

58669 (a) a public or private employer shall disclose an employee's name, address, date of
58670 birth, income, social security number, and health insurance information pertaining to the
58671 employee and ~~[his]~~ the employee's dependents;

58672 (b) an insurance organization subject to Title 31A, Insurance Code, or the insurance
58673 administrators of a self-insured employer shall disclose health insurance information pertaining
58674 to an insured or an insured's dependents, if known; and

58675 (c) a financial institution subject to Title 7, Financial Institutions, shall disclose financial
58676 record information of a customer named in the request.

58677 (2) The office shall specify by rule the type of health insurance and financial record
58678 information required to be disclosed under this section.

58679 (3) All information received under this section is subject to ~~[Title 63, Chapter 2]~~ Title
58680 63G, Chapter 2, Government Records Access and Management Act.

58681 (4) An employer, financial institution, or insurance organization, or its agent or
58682 employee, is not civilly or criminally liable for providing information to the office in accordance
58683 with this section, whether the information is provided pursuant to oral or written request.

58684 Section 1153. Section **62A-11-105** is amended to read:

58685 **62A-11-105. Adjudicative proceedings.**

58686 The office and the department shall comply with the procedures and requirements of
58687 ~~[Title 63, Chapter 46b,]~~ Title 63G, Chapter 4, Administrative Procedures Act, in their
58688 adjudicative proceedings.

58689 Section 1154. Section **62A-11-303** is amended to read:

58690 **62A-11-303. Definitions.**

58691 As used in this part:

58692 (1) "Adjudicative proceeding" means an action or proceeding of the office conducted in
58693 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

58694 (2) "Administrative order" means an order that has been issued by the office, the
58695 department, or an administrative agency of another state or other comparable jurisdiction with
58696 similar authority to that of the office.

58697 (3) "Assistance" or "public assistance" is defined in Section 62A-11-103.

58698 (4) "Business day" means a day on which state offices are open for regular business.

58699 (5) "Child" means:

58700 (a) a son or daughter under the age of 18 years who is not otherwise emancipated,
58701 self-supporting, married, or a member of the armed forces of the United States;

58702 (b) a son or daughter over the age of 18 years, while enrolled in high school during the
58703 normal and expected year of graduation and not otherwise emancipated, self-supporting,
58704 married, or a member of the armed forces of the United States; or

58705 (c) a son or daughter of any age who is incapacitated from earning a living and is
58706 without sufficient means.

58707 (6) "Child support" is defined in Section 62A-11-401.

58708 (7) "Child support guidelines" or "guidelines" is defined in Section 78-45-2.

58709 (8) "Child support order" or "support order" is defined in Section 62A-11-401.

58710 (9) "Child support services" or "IV-D child support services" is defined in Section
58711 62A-11-103.

58712 (10) "Court order" means a judgment or order of a tribunal of appropriate jurisdiction
58713 of this state, another state, Native American tribe, the federal government, or any other
58714 comparable jurisdiction.

58715 (11) "Director" means the director of the Office of Recovery Services.

58716 (12) "Disposable earnings" is defined in Section 62A-11-103.

58717 (13) "High-volume automated administrative enforcement" in interstate cases means, on

58718 the request of another state, the identification by the office, through automatic data matches
58719 with financial institutions and other entities where assets may be found, of assets owned by
58720 persons who owe child support in the requesting state, and the seizure of the assets by the
58721 office, through levy or other appropriate processes.

58722 (14) "Income" is defined in Section 62A-11-103.

58723 (15) "Notice of agency action" means the notice required to commence an adjudicative
58724 proceeding in accordance with Section [~~63-46b-3~~] 63G-4-201.

58725 (16) "Obligee" means an individual, this state, another state, or other comparable
58726 jurisdiction to whom a duty of child support is owed, or who is entitled to reimbursement of
58727 child support or public assistance.

58728 (17) "Obligor" means a person, firm, corporation, or the estate of a decedent owing a
58729 duty of support to this state, to an individual, to another state, or other corporate jurisdiction in
58730 whose behalf this state is acting.

58731 (18) "Office" is defined in Section 62A-11-103.

58732 (19) "Parent" means a natural parent or an adoptive parent of a dependent child.

58733 (20) "Person" includes an individual, firm, corporation, association, political
58734 subdivision, department, or office.

58735 (21) "Presiding officer" means a presiding officer described in Section [~~63-46b-2~~]
58736 63G-4-103.

58737 (22) "Support" includes past-due, present, and future obligations established by:

58738 (a) a tribunal or imposed by law for the financial support, maintenance, medical, or
58739 dental care of a dependent child; and

58740 (b) a tribunal for the financial support of a spouse or former spouse with whom the
58741 obligor's dependent child resides if the obligor also owes a child support obligation that is being
58742 enforced by the state.

58743 (23) "Support debt," "past-due support," or "arrear" means the debt created by
58744 nonpayment of support.

58745 (24) "Tribunal" means the district court, the Department of Human Services, the Office

58746 of Recovery Services, or court or administrative agency of any state, territory, possession of the
58747 United States, the District of Columbia, the Commonwealth of Puerto Rico, Native American
58748 Tribe, or other comparable domestic or foreign jurisdiction.

58749 Section 1155. Section **62A-11-304.1** is amended to read:

58750 **62A-11-304.1. Expedited procedures for establishing paternity or establishing,**
58751 **modifying, or enforcing a support order.**

58752 (1) The office may, without the necessity of initiating an adjudicative proceeding or
58753 obtaining an order from any other judicial or administrative tribunal, take the following actions
58754 related to the establishment of paternity or the establishment, modification, or enforcement of a
58755 support order, and to recognize and enforce the authority of state agencies of other states to
58756 take the following actions:

58757 (a) require a child, mother, and alleged father to submit to genetic testing;

58758 (b) subpoena financial or other information needed to establish, modify, or enforce a
58759 support order, including:

58760 (i) the name, address, and employer of a person who owes or is owed support that
58761 appears on the customer records of public utilities and cable television companies; and

58762 (ii) information held by financial institutions on such things as the assets and liabilities of
58763 a person who owes or is owed support;

58764 (c) require a public or private employer to promptly disclose information to the office
58765 on the name, address, date of birth, social security number, employment status, compensation,
58766 and benefits, including health insurance, of any person employed as an employee or contractor
58767 by the employer;

58768 (d) require an insurance organization subject to Title 31A, Insurance Code, or an
58769 insurance administrator of a self-insured employer to promptly disclose to the office health
58770 insurance information pertaining to an insured or an insured's dependents, if known;

58771 (e) obtain access to information in the records and automated databases of other state
58772 and local government agencies, including:

58773 (i) marriage, birth, and divorce records;

- 58774 (ii) state and local tax and revenue records providing information on such things as
58775 residential and mailing addresses, employers, income, and assets;
- 58776 (iii) real and titled personal property records;
- 58777 (iv) records concerning occupational and professional licenses and the ownership and
58778 control of corporations, partnerships, and other business entities;
- 58779 (v) employment security records;
- 58780 (vi) records of agencies administering public assistance programs;
- 58781 (vii) motor vehicle department records; and
- 58782 (viii) corrections records;
- 58783 (f) upon providing notice to the obligor and obligee, direct an obligor or other payor to
58784 change the payee to the office if support has been assigned to the office under Section
58785 35A-7-108 or if support is paid through the office pursuant to the Social Security Act, 42
58786 U.S.C. Sec. 654B;
- 58787 (g) order income withholding in accordance with Part 4 of this chapter;
- 58788 (h) secure assets to satisfy past-due support by:
- 58789 (i) intercepting or seizing periodic or lump-sum payments from:
- 58790 (A) a state or local government agency, including unemployment compensation,
58791 workers' compensation, and other benefits; and
- 58792 (B) judgments, settlements, and lotteries;
- 58793 (ii) attaching and seizing assets of an obligor held in financial institutions;
- 58794 (iii) attaching public and private retirement funds, if the obligor presently:
- 58795 (A) receives periodic payments; or
- 58796 (B) has the authority to withdraw some or all of the funds; and
- 58797 (iv) imposing liens against real and personal property in accordance with this section
58798 and Section 62A-11-312.5; and
- 58799 (i) increase monthly payments in accordance with Section 62A-11-320.
- 58800 (2) (a) When taking action under Subsection (1), the office shall send notice under this
58801 Subsection (2)(a) to the person or entity who is required to comply with the action if not a party

58802 to a case receiving IV-D services. The notice shall include:

58803 (i) the authority of the office to take the action;

58804 (ii) the response required by the recipient;

58805 (iii) the opportunity to provide clarifying information to the office under Subsection

58806 (2)(b);

58807 (iv) the name and telephone number of a person in the office who can respond to

58808 inquiries; and

58809 (v) the protection from criminal and civil liability extended under Subsection (7).

58810 (b) The recipient of a notice sent under Subsection (2)(a) shall promptly comply with

58811 the terms of the notice and may, if the recipient believes the office's request is in error, send

58812 clarifying information to the office setting forth the basis for the recipient's belief.

58813 (3) The office shall in any case in which it requires genetic testing under Subsection

58814 (1)(a):

58815 (a) consider clarifying information if submitted by the obligee and alleged father;

58816 (b) proceed with testing as the office considers appropriate;

58817 (c) pay the cost of the tests, subject to recoupment from the alleged father if paternity is

58818 established;

58819 (d) order a second test if the original test result is challenged, and the challenger pays

58820 the cost of the second test in advance; and

58821 (e) require that the genetic test is:

58822 (i) of a type generally acknowledged as reliable by accreditation bodies designated by

58823 the federal Secretary of Health and Human Services; and

58824 (ii) performed by a laboratory approved by such an accreditation body.

58825 (4) The office may impose a penalty against an entity for failing to provide information

58826 requested in a subpoena issued under Subsection (1) as follows:

58827 (a) \$25 for each failure to provide requested information; or

58828 (b) \$500 if the failure to provide requested information is the result of a conspiracy

58829 between the entity and the obligor to not supply the requested information or to supply false or

58830 incomplete information.

58831 (5) (a) Unless a court or administrative agency has reduced past-due support to a sum
58832 certain judgment, the office shall provide concurrent notice to an obligor in accordance with
58833 Section 62A-11-304.4 of:

58834 (i) any action taken pursuant to Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or
58835 Subsection 62A-11-304.5(1)(b) if Subsection (5)(b)(iii) does not apply; and

58836 (ii) the opportunity of the obligor to contest the action and the amount claimed to be
58837 past-due by filing a written request for an adjudicative proceeding with the office within 15 days
58838 of notice being sent.

58839 (b) (i) Upon receipt of a notice of levy from the office for an action taken pursuant to
58840 Subsections (1)(h)(i)(B), (1)(h)(ii), (1)(h)(iii), or Subsection 62A-11-304.5(1)(b), a person in
58841 possession of personal property of the obligor shall:

58842 (A) secure the property from unauthorized transfer or disposition as required by Section
58843 62A-11-313; and

58844 (B) surrender the property to the office after 21 days of receiving the notice unless the
58845 office has notified the person to release all or part of the property to the obligor.

58846 (ii) Unless released by the office, a notice of levy upon personal property shall be:

58847 (A) valid for 60 days; and

58848 (B) effective against any additional property which the obligor may deposit or transfer
58849 into the possession of the person up to the amount of the levy.

58850 (iii) If the property upon which the office imposes a levy is insufficient to satisfy the
58851 specified amount of past-due support and the obligor fails to contest that amount under
58852 Subsection (5)(a)(ii), the office may proceed under Subsections (1)(h)(i)(B), (1)(h)(ii),
58853 (1)(h)(iii), or Subsection 62A-11-304.5(1)(b) against additional property of the obligor until the
58854 amount specified and the reasonable costs of collection are fully paid.

58855 (c) Except as provided in Subsection (5)(b)(iii), the office may not disburse funds
58856 resulting from action requiring notice under Subsection (5)(a)(i) until:

58857 (i) 21 days after notice was sent to the obligor; and

58858 (ii) the obligor, if ~~he~~ the obligor contests the action under Subsection (5)(a)(ii), has
 58859 exhausted ~~his~~ the obligor's administrative remedies and, if appealed to a district court, the
 58860 district court has rendered a final decision.

58861 (d) Before intercepting or seizing any periodic or lump-sum payment under Subsection
 58862 (1)(h)(i)(A), the office shall:

58863 (i) comply with Subsection 59-10-529(2)(a); and

58864 (ii) include in the notice required by Subsection 59-10-529(2)(a) reference to
 58865 Subsection (1)(h)(i)(A).

58866 (e) If Subsection (5)(a) or (5)(d) does not apply, an action against the real or personal
 58867 property of the obligor shall be in accordance with Section 62A-11-312.5.

58868 (6) All information received under this section is subject to ~~[Title 63, Chapter 2]~~ Title
 58869 63G, Chapter 2, Government Records Access and Management Act.

58870 (7) No employer, financial institution, public utility, cable company, insurance
 58871 organization, its agent or employee, or related entity may be civilly or criminally liable for
 58872 providing information to the office or taking any other action requested by the office pursuant
 58873 to this section.

58874 (8) The actions the office may take under Subsection (1) are in addition to the actions
 58875 the office may take pursuant to Part 4, Income Withholding in IV-D Cases.

58876 Section 1156. Section **62A-11-304.2** is amended to read:

58877 **62A-11-304.2. Issuance or modification of administrative order -- Compliance**
 58878 **with court order -- Authority of office -- Stipulated agreements -- Notification**
 58879 **requirements.**

58880 (1) Through an adjudicative proceeding the office may issue or modify an administrative
 58881 order that:

58882 (a) determines paternity;

58883 (b) determines whether an obligor owes support;

58884 (c) determines temporary orders of child support upon clear and convincing evidence of
 58885 paternity in the form of genetic test results or other evidence;

58886 (d) requires an obligor to pay a specific or determinable amount of present and future
58887 support;

58888 (e) determines the amount of past-due support;

58889 (f) orders an obligor who owes past-due support and is obligated to support a child
58890 receiving public assistance to participate in appropriate work activities if the obligor is
58891 unemployed and is not otherwise incapacitated;

58892 (g) imposes a penalty authorized under this chapter;

58893 (h) determines an issue that may be specifically contested under this chapter by a party
58894 who timely files a written request for an adjudicative proceeding with the office; and

58895 (i) renews an administrative judgment.

58896 (2) (a) An abstract of a final administrative order issued under this section or a notice of
58897 judgment-lien under Section 62A-11-312.5 may be filed with the clerk of any district court.

58898 (b) Upon a filing under Subsection (2)(a), the clerk of the court shall:

58899 (i) docket the abstract or notice in the judgment docket of the court and note the time
58900 of receipt on the abstract or notice and in the judgment docket; and

58901 (ii) at the request of the office, place a copy of the abstract or notice in the file of a child
58902 support action involving the same parties.

58903 (3) If a judicial order has been issued, the office may not issue an order under
58904 Subsection (1) that is not based on the judicial order, except:

58905 (a) the office may establish a new obligation in those cases in which the juvenile court
58906 has ordered the parties to meet with the office to determine the support pursuant to Section
58907 78-3a-906; or

58908 (b) the office may issue an order of current support in accordance with the child support
58909 guidelines if the conditions of Subsection 78-45f-207(2)(c) are met.

58910 (4) The office may proceed under this section in the name of this state, another state
58911 under Section 62A-11-305, any department of this state, the office, or the obligee.

58912 (5) The office may accept voluntary acknowledgment of a support obligation and enter
58913 into stipulated agreements providing for the issuance of an administrative order under this part.

58914 (6) The office may act in the name of the obligee in endorsing and cashing any drafts,
58915 checks, money orders, or other negotiable instruments received by the office for support.

58916 (7) The obligor shall, after a notice of agency action has been served on ~~[him]~~ the
58917 obligor in accordance with Section ~~[63-46b-3]~~ 63G-4-201, keep the office informed of:

- 58918 (a) ~~[his]~~ the obligor's current address;
- 58919 (b) the name and address of current payors of income;
- 58920 (c) availability of or access to health insurance coverage; and
- 58921 (d) applicable health insurance policy information.

58922 Section 1157. Section **62A-11-304.4** is amended to read:

58923 **62A-11-304.4. Filing of location information -- Service of process.**

58924 (1) (a) Upon the entry of an order in a proceeding to establish paternity or to establish,
58925 modify, or enforce a support order, each party shall file identifying information and shall update
58926 that information as changes occur:

- 58927 (i) with the court or administrative agency that conducted the proceeding; and
- 58928 (ii) after October 1, 1998, with the state case registry.

58929 (b) The identifying information required under Subsection (1)(a) shall include the
58930 person's Social Security number, driver's license number, residential and mailing addresses,
58931 telephone numbers, the name, address, and telephone number of employers, and any other data
58932 required by the United States Secretary of Health and Human Services.

58933 (c) In any subsequent child support action involving the office or between the parties,
58934 state due process requirements for notice and service of process shall be satisfied as to a party
58935 upon:

- 58936 (i) a sufficient showing that diligent effort has been made to ascertain the location of the
58937 party; and
- 58938 (ii) delivery of notice to the most recent residential or employer address filed with the
58939 court, administrative agency, or state case registry under Subsection (1)(a).

58940 (2) (a) The office shall provide individuals who are applying for or receiving services
58941 under this chapter or who are parties to cases in which services are being provided under this

58942 chapter:

58943 (i) with notice of all proceedings in which support obligations might be established or
58944 modified; and

58945 (ii) with a copy of any order establishing or modifying a child support obligation, or in
58946 the case of a petition for modification, a notice of determination that there should be no change
58947 in the amount of the child support award, within 14 days after issuance of such order or
58948 determination.

58949 (b) Notwithstanding Subsection (2)(a)(ii), notice in the case of an interstate order shall
58950 be provided in accordance with Section 78-45f-614.

58951 (3) Service of all notices and orders under this part shall be made in accordance with
58952 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, the Utah Rules of
58953 Civil Procedure, or this section.

58954 (4) Consistent with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
58955 Access and Management Act, the office shall adopt procedures to classify records to prohibit
58956 the unauthorized use or disclosure of information relating to a proceeding to:

58957 (a) establish paternity; or

58958 (b) establish or enforce support.

58959 (5) (a) The office shall, upon written request, provide location information available in
58960 its files on a custodial or noncustodial parent to the other party or the other party's legal counsel
58961 provided that:

58962 (i) the party seeking the information produces a copy of the parent-time order signed by
58963 the court;

58964 (ii) the information has not been safeguarded in accordance with Section 454 of the
58965 Social Security Act;

58966 (iii) the party whose location is being sought has been afforded notice in accordance
58967 with this section of the opportunity to contest release of the information;

58968 (iv) the party whose location is being sought has not provided the office with a copy of
58969 a protective order, a current court order prohibiting disclosure, a current court order limiting or

58970 prohibiting the requesting person's contact with the party or child whose location is being
 58971 sought, a criminal order, an administrative order pursuant to Section 62A-4a-1009, or
 58972 documentation of a pending proceeding for any of the above; and

58973 (v) there is no other state or federal law that would prohibit disclosure.

58974 (b) "Location information" shall consist of the current residential address of the
 58975 custodial or noncustodial parent and, if different and known to the office, the current residence
 58976 of any children who are the subject of the parent-time order. If there is no current residential
 58977 address available, the person's place of employment and any other location information shall be
 58978 disclosed.

58979 (c) For the purposes of this section, "reason to believe" under Section 454 of the Social
 58980 Security Act means that the person seeking to safeguard information has provided to the office
 58981 a copy of a protective order, current court order prohibiting disclosure, current court order
 58982 prohibiting or limiting the requesting person's contact with the party or child whose location is
 58983 being sought, criminal order signed by a court of competent jurisdiction, an administrative order
 58984 pursuant to Section 62A-4a-1009, or documentation of a pending proceeding for any of the
 58985 above.

58986 (d) Neither the state, the department, the office nor its employees shall be liable for any
 58987 information released in accordance with this section.

58988 (6) Custodial or noncustodial parents or their legal representatives who are denied
 58989 location information in accordance with Subsection (5) may serve the Office of Recovery
 58990 Services to initiate an action to obtain the information.

58991 Section 1158. Section **62A-11-326.3** is amended to read:

58992 **62A-11-326.3. Determination of parental liability.**

58993 (1) In accordance with [~~Title 63, Chapter 46b, Utah~~] Title 63G, Chapter 4,
 58994 Administrative Procedures Act, the office may determine by order the amount of a parent's
 58995 liability for uninsured medical, hospital, and dental expenses of a dependent child, when the
 58996 parent:

58997 (a) is required by a prior court or administrative order to:

58998 (i) share those expenses with the other parent of the dependent child; or
58999 (ii) obtain medical, hospital, or dental care insurance but fails to do so; or
59000 (b) receives direct payment from an insurer under insurance coverage obtained after the
59001 prior court or administrative order was issued.

59002 (2) If the prior court or administrative order does not specify what proportions of the
59003 expenses are to be shared, the office may determine the amount of liability in accordance with
59004 established rules.

59005 (3) This section applies to an order without regard to when it was issued.

59006 Section 1159. Section **62A-11-333** is amended to read:

59007 **62A-11-333. Right to judicial review.**

59008 (1) (a) Within 30 days of notice of any administrative action on the part of the office to
59009 establish paternity or establish, modify or enforce a child support order, the obligor may file a
59010 petition for de novo review with the district court.

59011 (b) For purposes of Subsection (1)(a), notice includes:

59012 (i) notice actually received by the obligor in accordance with Section 62A-11-304.4;

59013 (ii) participation by the obligor in the proceedings related to the establishment of the
59014 paternity or the modification or enforcement of child support; or

59015 (iii) receiving a paycheck in which a reduction has been made for child support.

59016 (2) The petition shall name the office and all other appropriate parties as respondents
59017 and meet the form requirements specified in Section [~~63-46-15~~] 63G-4-402.

59018 (3) A copy of the petition shall be served upon the Child and Family Support Division
59019 of the Office of Attorney General.

59020 (4) (a) If the petition is regarding the amount of the child support obligation established
59021 in accordance with Title 78, Chapter 45, Uniform Civil Liability for Support Act, the court may
59022 issue a temporary order for child support until a final order is issued.

59023 (b) The petitioner may file an affidavit stating the amount of child support reasonably
59024 believed to be due and the court may issue a temporary order for that amount. The temporary
59025 order shall be valid for 60 days, unless extended by the court while the action is being pursued.

59026 (c) If the court upholds the amount of support established in Subsection (4)(a), the
59027 petitioner shall be ordered to make up the difference between the amount originally ordered in
59028 Subsection (4)(a) and the amount temporarily ordered under Subsection (4)(b).

59029 (d) This Subsection (4) does not apply to an action for the court-ordered modification
59030 of a judicial child support order.

59031 (5) The court may, on its own initiative and based on the evidence before it, determine
59032 whether the petitioner violated U.R. Civ. P. Rule 11 by filing the action. If the court determines
59033 that U.R.Civ.P. Rule 11 was violated, it shall, at a minimum, award to the office attorneys' fees
59034 and costs for the action.

59035 (6) Nothing in this section precludes the obligor from seeking administrative remedies
59036 as provided in this chapter.

59037 Section 1160. Section **62A-11-407** is amended to read:

59038 **62A-11-407. Payor's procedures for income withholding.**

59039 (1) (a) A payor is subject to the requirements, penalties, and effects of a notice served
59040 on the payor under Section 62A-11-406.

59041 (b) A payment of withheld income mailed to the office in an envelope postmarked
59042 within seven business days of the date the amount would have been paid or credited to the
59043 obligor but for this section satisfies Subsection 62A-11-406(3).

59044 (2) (a) If a payor fails to comply with a notice served upon him under Section
59045 62A-11-406, the office, the obligee, if an assignment has not been made under Section
59046 35A-7-108, or the obligor may proceed with a civil action against the payor to enforce a
59047 provision of the notice.

59048 (b) In addition to a civil action under Subsection (2)(a), the office may bring an
59049 administrative action pursuant to ~~[Title 63, Chapter 46]~~ Title 63G, Chapter 4, Administrative
59050 Procedures Act, to enforce a provision of the notice.

59051 (c) If an obligee or obligor brings a civil action under Subsection (2)(a) to enforce a
59052 provision of the notice, the obligee or obligor may recover any penalty related to that provision
59053 under Section 62A-11-406 in place of the office.

59054 (3) If the obligor's child support is owed monthly and the payor's pay periods are at
59055 more frequent intervals, the payor, with the consent of the office may withhold an equal amount
59056 at each pay period cumulatively sufficient to pay the monthly child support obligation.

59057 (4) A payor may combine amounts which ~~he~~ the payor has withheld from the incomes
59058 of multiple obligors into a single payment to the office. If such a combined payment is made,
59059 the payor shall specify the amount attributable to each individual obligor by name and Social
59060 Security number.

59061 (5) In addition to any other remedy provided in this section, a payor is liable to the
59062 office, obligee, or obligor for costs and reasonable attorneys' fees incurred in enforcing a
59063 provision in the notice mailed or delivered under Section 62A-11-406.

59064 (6) Notwithstanding this section or Section 62A-11-406, if a payor receives an income
59065 withholding order or notice issued by another state, the payor shall apply the income
59066 withholding law of the state of the obligor's principal place of employment in determining:

- 59067 (a) the payor's fee for processing income withholding;
- 59068 (b) the maximum amount permitted to be withheld from the obligor's income;
- 59069 (c) the time periods within which the payor must implement income withholding and
59070 forward child support payments;
- 59071 (d) the priorities for withholding and allocating withheld income for multiple child
59072 support obligees; and
- 59073 (e) any term or condition for withholding not specified in the notice.

59074 Section 1161. Section **62A-11-603 (Effective 07/01/08)** is amended to read:

59075 **62A-11-603 (Effective 07/01/08). Suspension of driver license for child support**
59076 **delinquency -- Reinstatement.**

59077 (1) Subject to the provisions of this section, the office may order the suspension of a
59078 person's driver license if the person is delinquent on a child support obligation.

59079 (2) Before ordering a suspension of a person's driver license, the office shall serve the
59080 person with a "notice of intent to suspend driver license."

59081 (3) The notice described in Subsection (2) shall:

- 59082 (a) be personally served or served by certified mail;
- 59083 (b) except as otherwise provided in this section, comply with [~~Title 63, Chapter 46b~~
- 59084 Title 63G, Chapter 4, Administrative Procedures Act;
- 59085 (c) state the amount that the person is in arrears on the person's child support
- 59086 obligation; and
- 59087 (d) state that, if the person desires to contest the suspension of the person's driver
- 59088 license, the person must request an informal adjudicative proceeding with the office within 30
- 59089 days after the day on which the notice is mailed or personally served.
- 59090 (4) (a) The office shall hold an informal adjudicative proceeding to determine whether a
- 59091 person's driver license should be suspended if the person requests a hearing within 30 days after
- 59092 the day on which the notice described in Subsection (2) is mailed or personally served on the
- 59093 person.
- 59094 (b) The informal adjudicative proceeding described in Subsection (4)(a), and any appeal
- 59095 of the decision rendered in that proceeding, shall comply with [~~Title 63, Chapter 46b~~] Title 63G,
- 59096 Chapter 4, Administrative Procedures Act.
- 59097 (5) Except as provided in Subsection (6), the office may order that a person's driver
- 59098 license be suspended:
- 59099 (a) if, after the notice described in Subsection (2) is mailed or personally served, the
- 59100 person fails to request an informal adjudicative proceeding within the time period described in
- 59101 Subsection (4)(a); or
- 59102 (b) following the informal adjudicative proceeding described in Subsection (4)(a), if:
- 59103 (i) the presiding officer finds that the person is delinquent on a child support obligation;
- 59104 and
- 59105 (ii) the finding described in Subsection (5)(b)(i):
- 59106 (A) is not timely appealed; or
- 59107 (B) is upheld after a timely appeal becomes final.
- 59108 (6) The office may not order the suspension of a person's driver license if the person:
- 59109 (a) pays the full amount that the person is in arrears on the person's child support

59110 obligation;

59111 (b) subject to Subsection (8):

59112 (i) enters into a payment agreement with the office for the payment of the person's

59113 current child support obligation and all arrears; and

59114 (ii) complies with the agreement described in Subsection (6)(b)(i) for any initial

59115 compliance period required by the agreement;

59116 (c) obtains a judicial order staying enforcement of the person's child support obligation

59117 or the amount in arrears; or

59118 (d) is not currently delinquent on a child support obligation.

59119 (7) The office shall rescind an order made by the office to suspend a driver license if the

59120 person:

59121 (a) pays the full amount that the person is in arrears on the person's child support

59122 obligation;

59123 (b) subject to Subsection (8):

59124 (i) enters into a payment agreement with the office for the payment of the person's

59125 current child support obligation and all arrears; and

59126 (ii) complies with the agreement described in Subsection (7)(b)(i) for any initial

59127 compliance period required by the agreement;

59128 (c) obtains a judicial order staying enforcement of the person's child support obligation

59129 or the amount in arrears; or

59130 (d) is not currently delinquent on a child support obligation.

59131 (8) For purposes of Subsections (6)(b) and (7)(b), the office shall diligently strive to

59132 enter into a fair and reasonable payment agreement that takes into account the person's

59133 employment and financial ability to make payments, provided that there is a reasonable basis to

59134 believe that the person will comply with the agreement.

59135 (9) (a) If, after the office seeks to suspend a person's driver license under this section, it

59136 is determined that the person is not delinquent, the office shall refund to the person any

59137 noncustodial parent income withholding fee that was collected from the person during the

59138 erroneously alleged delinquency.

59139 (b) Subsection (9)(a) does not apply if the person described in Subsection (9)(a) is
59140 otherwise in arrears on a child support obligation.

59141 (10) (a) A person whose driver license is ordered suspended pursuant to this section
59142 may file a request with the office, on a form provided by the office, to have the office rescind
59143 the order of suspension if:

59144 (i) the person claims that, since the time of the suspension, circumstances have changed
59145 such that the person is entitled to have the order of suspension rescinded under Subsection (7);
59146 and

59147 (ii) the office has not rescinded the order of suspension.

59148 (b) The office shall respond, in writing, to a person described in Subsection (10), within
59149 10 days after the day on which the request is filed with the office, stating whether the person is
59150 entitled to have the order of suspension rescinded.

59151 (c) If the office determines, under Subsection (10)(b), that an order to suspend a
59152 person's license should be rescinded, the office shall immediately rescind the order.

59153 (d) If the office determines, under Subsection (10)(b), that an order to suspend a
59154 person's license should not be rescinded:

59155 (i) the office shall, as part of the response described in Subsection (10)(b), notify the
59156 person, in writing, of the reasons for that determination; and

59157 (ii) the person described in this Subsection (10)(d) may, within 15 days after the day on
59158 which the office sends the response described in Subsection (10)(b), appeal the determination of
59159 the office to district court.

59160 (e) The office may not require that a person file the request described in Subsection
59161 (10)(a) before the office orders that an order of suspension is rescinded, if the office has already
59162 determined that the order of suspension should be rescinded under Subsection (7).

59163 (11) The office may make rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
59164 Chapter 3, Utah Administrative Rulemaking Act, to:

59165 (a) implement the provisions of this part; and

59166 (b) determine when the arrears described in Subsections (6) and (7) are considered paid.

59167 Section 1162. Section **62A-13-105** is amended to read:

59168 **62A-13-105. Department duties and powers.**

59169 (1) The department shall administer this chapter within the Division of Substance Abuse
59170 and Mental Health, created in Section 62A-15-103 and under the policy direction of the Board
59171 of Substance Abuse and Mental Health created in Section 62A-1-105.

59172 (2) The Division of Substance Abuse and Mental Health shall establish rules in
59173 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
59174 Act to:

59175 (a) establish application procedures for grants and scholarships;

59176 (b) establish eligibility and selection criteria for grant and scholarship recipients;

59177 (c) determine grant and scholarship awards and conditions for each recipient;

59178 (d) designate eligible underserved rural areas regarding available mental health therapy
59179 services in which recipients may fulfill their service obligations; and

59180 (e) establish educational requirements necessary for the grant or scholarship recipient to
59181 be qualified to meet service obligations.

59182 (3) The Division of Substance Abuse and Mental Health may:

59183 (a) approve the specific site at which a recipient may fulfill [~~his~~] the recipient's service
59184 obligations under this chapter;

59185 (b) set limitations on the amount an individual may receive and on the number of years
59186 for which an individual may receive funds under this chapter;

59187 (c) cancel grants or scholarships for cause and, for compelling reasons, accept a lesser
59188 measure of damages for breach of a grant or scholarship contract or release a recipient from the
59189 service obligation without penalty for extreme hardship or other good cause;

59190 (d) cancel a grant or scholarship for cause without penalty to the state; and

59191 (e) cancel a grant or a scholarship if the recipient fails to meet the conditions of the
59192 award or if it reasonably appears the recipient will not meet the grant or scholarship conditions.

59193 (4) The department may accept gifts, grants, loans, and other aid or funds from any

59194 person, association, foundation, trust, corporation, governmental agency, or other entity for the
59195 purposes set forth in this chapter.

59196 Section 1163. Section **62A-14-105** is amended to read:

59197 **62A-14-105. Powers and duties of the office.**

59198 (1) The office shall:

59199 (a) before January 1, 2000, develop and operate a statewide program to:

59200 (i) educate the public about the role and function of guardians and conservators; and

59201 (ii) serve as a guardian, conservator, or both for a ward upon appointment by a court
59202 when no other person is able and willing to do so and the office petitioned for or agreed in
59203 advance to the appointment;

59204 (b) possess and exercise all the powers and duties specifically given to the office by
59205 virtue of being appointed as guardian or conservator of a ward, including the power to access a
59206 ward's records;

59207 (c) review and monitor the personal and, if appropriate, financial status of each ward for
59208 whom the office has been appointed to serve as guardian or conservator;

59209 (d) train and monitor each employee and volunteer, and monitor each contract provider
59210 to whom the office has delegated a responsibility for a ward;

59211 (e) retain all court-delegated powers and duties for a ward;

59212 (f) report on the personal and financial status of a ward as required by a court in
59213 accordance with Title 75, Chapter 5, Protection of Persons under Disability and their Property;

59214 (g) handle a ward's funds in accordance with the department's trust account system;

59215 (h) request that the department's audit plan, established pursuant to Section
59216 [~~63-91-401~~] 63I-5-401, include the requirement of an annual audit of all funds and property
59217 held by the office on behalf of wards;

59218 (i) maintain accurate records concerning each ward, [~~his~~] the ward's property, and
59219 office services provided to [~~him~~] the ward;

59220 (j) make reasonable and continuous efforts to find a family member, friend, or other
59221 person to serve as a ward's guardian or conservator;

59222 (k) after termination as guardian or conservator, distribute a ward's property in
59223 accordance with Title 75, Chapter 5, Protection of Persons under Disability and their Property;

59224 (l) submit recommendations for changes in state law and funding to the governor and
59225 the Legislature and report to the governor and Legislature, upon request; and

59226 (m) implement and enforce policies established by the board.

59227 (2) The office may:

59228 (a) petition a court pursuant to Title 75, Chapter 5, Protection of Persons under
59229 Disability and their Property, to be appointed an incapacitated person's guardian, conservator,
59230 or both after conducting a prepetition assessment under Section 62A-14-107;

59231 (b) develop and operate a statewide program to recruit, train, supervise, and monitor
59232 volunteers to assist the office in providing guardian and conservator services;

59233 (c) delegate one or more responsibilities for a ward to an employee, volunteer, or
59234 contract provider, except as provided in Subsection 62A-14-107(1);

59235 (d) solicit and receive private donations to provide guardian and conservator services
59236 under this chapter; and

59237 (e) adopt rules, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
59238 Administrative Rulemaking Act, to:

59239 (i) effectuate board policy; and

59240 (ii) carry out the office's role as guardian and conservator of wards as provided in this
59241 chapter.

59242 Section 1164. Section **62A-14-106** is amended to read:

59243 **62A-14-106. Board of Public Guardian Services.**

59244 (1) The Board of Public Guardian Services, created in accordance with this section and
59245 Section 62A-1-105, is responsible for establishing the policy of the office in accordance with
59246 this chapter and seeing that the legislative purposes for the office are carried out.

59247 (2) The executive director shall appoint nine members to the Board of Public Guardian
59248 Services, as follows:

59249 (a) a member of the Board of Aging and Adult Services or designee;

59250 (b) a member of the Board of Services for Persons with Disabilities or designee;

59251 (c) a member of the Board of Substance Abuse and Mental Health or designee;

59252 (d) a representative of the long-term care industry;

59253 (e) a representative of the hospital industry;

59254 (f) a representative of persons with disabilities;

59255 (g) a representative of senior citizens;

59256 (h) a physician; and

59257 (i) an attorney with experience in guardianship and conservatorship law.

59258 (3) (a) Except as provided in Subsection (3)(b), each member shall be appointed for a
59259 four-year term and eligible for one reappointment.

59260 (b) Notwithstanding Subsection (3)(a), the executive director shall, at the time of
59261 appointment or reappointment, adjust the length of terms to ensure that the terms of board
59262 members are staggered so that approximately half of the board is appointed every two years,
59263 taking into account the remaining term of board members who serve on other department
59264 boards.

59265 (c) A board member shall continue in office until the expiration of the member's term
59266 and until a successor is appointed, which may not exceed 90 days after the formal expiration of
59267 the term.

59268 (d) When a vacancy occurs in membership for any reason, the replacement shall be
59269 appointed for the unexpired term.

59270 (e) The make up of the board should reflect political and geographic diversity.

59271 (4) The board shall annually elect a chairperson from its membership. The board shall
59272 hold meetings at least once every three months. Meetings shall be held from time to time on the
59273 call of the chairperson or a majority of the board members. Five board members are necessary
59274 to constitute a quorum at any meeting and, if a quorum exists, the action of a majority of
59275 members present shall be the action of the board.

59276 (5) (a) Board members who are not government employees may not receive
59277 compensation or benefits for their services, but may receive per diem and expenses incurred in

59278 the performance of their official duties at rates established by the Division of Finance under
59279 Sections 63A-3-106 and 63A-3-107.

59280 (b) Members of the board may decline to receive per diem expenses for their services.

59281 (6) The board shall:

59282 (a) establish program policy for the office;

59283 (b) establish a mechanism for systematic and regular review of existing policy and for
59284 consideration of policy changes; and

59285 (c) set fees for the office, excluding attorneys fees, in accordance with Section

59286 [~~63-38-3.2~~] 63J-1-303.

59287 Section 1165. Section **62A-14-108** is amended to read:

59288 **62A-14-108. Office volunteers.**

59289 (1) A person who desires to be an office volunteer shall:

59290 (a) possess demonstrated personal characteristics of honesty, integrity, compassion, and
59291 concern for incapacitated persons; and

59292 (b) upon request, submit information for a background check pursuant to Section
59293 62A-1-118.

59294 (2) An office volunteer may not receive compensation or benefits, but may be
59295 reimbursed by the office for expenses actually and reasonably incurred, consistent with Title 67,
59296 Chapter 20, Volunteer Government Workers Act.

59297 (3) An office volunteer is immune from civil liability pursuant to [~~Title 63, Chapter 30b~~]
59298 Title 63G, Chapter 8, Immunity for Persons Performing Voluntary Services.

59299 Section 1166. Section **62A-14-109** is amended to read:

59300 **62A-14-109. Contract for services.**

59301 (1) In accordance with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
59302 Code, the office may contract with one or more providers to perform guardian and conservator
59303 duties.

59304 (2) The office shall review and monitor the services provided by a contract provider to
59305 a ward for whom the office has been appointed guardian or conservator.

59306 Section 1167. Section **62A-15-103** is amended to read:

59307 **62A-15-103. Division -- Creation -- Responsibilities.**

59308 (1) There is created the Division of Substance Abuse and Mental Health within the
59309 department, under the administration and general supervision of the executive director, and,
59310 with regard to its programs, under the policy direction of the board. The division is the
59311 substance abuse authority and the mental health authority for this state.

59312 (2) The division shall:

59313 (a) (i) educate the general public regarding the nature and consequences of substance
59314 abuse by promoting school and community-based prevention programs;

59315 (ii) render support and assistance to public schools through approved school-based
59316 substance abuse education programs aimed at prevention of substance abuse;

59317 (iii) promote or establish programs for the prevention of substance abuse within the
59318 community setting through community-based prevention programs;

59319 (iv) cooperate and assist other organizations and private treatment centers for substance
59320 abusers, by providing them with essential materials for furthering programs of prevention and
59321 rehabilitation of actual and potential substance abusers; and

59322 (v) promote or establish programs for education and certification of instructors to
59323 educate persons convicted of driving under the influence of alcohol or drugs or driving with any
59324 measurable controlled substance in the body;

59325 (b) (i) collect and disseminate information pertaining to mental health; and

59326 (ii) provide direction over the state hospital including approval of its budget,
59327 administrative policy, and coordination of services with local service plans;

59328 (iii) promulgate rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
59329 Utah Administrative Rulemaking Act, to educate families concerning mental illness and promote
59330 family involvement, when appropriate, and with patient consent, in the treatment program of a
59331 family member; and

59332 (iv) promulgate rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
59333 Utah Administrative Rulemaking Act, to direct that all individuals receiving services through

59334 local mental health authorities or the Utah State Hospital be informed about and, if desired,
59335 provided assistance in completion of a declaration for mental health treatment in accordance
59336 with Section 62A-15-1002;

59337 (c) (i) consult and coordinate with local substance abuse authorities and local mental
59338 health authorities regarding programs and services;

59339 (ii) provide consultation and other assistance to public and private agencies and groups
59340 working on substance abuse and mental health issues;

59341 (iii) promote and establish cooperative relationships with courts, hospitals, clinics,
59342 medical and social agencies, public health authorities, law enforcement agencies, education and
59343 research organizations, and other related groups;

59344 (iv) promote or conduct research on substance abuse and mental health issues, and
59345 submit to the governor and the Legislature recommendations for changes in policy and
59346 legislation;

59347 (v) receive, distribute, and provide direction over public funds for substance abuse and
59348 mental health services;

59349 (vi) monitor and evaluate programs provided by local substance abuse authorities and
59350 local mental health authorities;

59351 (vii) examine expenditures of any local, state, and federal funds;

59352 (viii) monitor the expenditure of public funds by:

59353 (A) local substance abuse authorities;

59354 (B) local mental health authorities; and

59355 (C) in counties where they exist, the private contract provider that has an annual or
59356 otherwise ongoing contract to provide comprehensive substance abuse or mental health
59357 programs or services for the local substance abuse authority or local mental health authorities;

59358 (ix) contract with local substance abuse authorities and local mental health authorities
59359 to provide a comprehensive continuum of services in accordance with board and division policy,
59360 contract provisions, and the local plan;

59361 (x) contract with private and public entities for special statewide or nonclinical services

59362 according to board and division policy;

59363 (xi) review and approve each local substance abuse authority's plan and each local

59364 mental health authority's plan in order to ensure:

59365 (A) a statewide comprehensive continuum of substance abuse services;

59366 (B) a statewide comprehensive continuum of mental health services; and

59367 (C) appropriate expenditure of public funds;

59368 (xii) review and make recommendations regarding each local substance abuse

59369 authority's contract with its provider of substance abuse programs and services and each local

59370 mental health authority's contract with its provider of mental health programs and services to

59371 ensure compliance with state and federal law and policy;

59372 (xiii) monitor and ensure compliance with board and division policy and contract

59373 requirements; and

59374 (xiv) withhold funds from local substance abuse authorities, local mental health

59375 authorities, and public and private providers for contract noncompliance, failure to comply with

59376 division directives regarding the use of public funds, or for misuse of public funds or monies;

59377 (d) assure that the requirements of this part are met and applied uniformly by local

59378 substance abuse authorities and local mental health authorities across the state;

59379 (e) require each local substance abuse authority and each local mental health authority

59380 to submit its plan to the division by May 1 of each year;

59381 (f) conduct an annual program audit and review of each local substance abuse authority

59382 in the state and its contract provider and each local mental health authority in the state and its

59383 contract provider, including:

59384 (i) a review and determination regarding whether:

59385 (A) public funds allocated to local substance abuse authorities and local mental health

59386 authorities are consistent with services rendered and outcomes reported by them or their

59387 contract providers; and

59388 (B) each local substance abuse authority and each local mental health authority is

59389 exercising sufficient oversight and control over public funds allocated for substance abuse and

59390 mental health programs and services; and

59391 (ii) items determined by the division to be necessary and appropriate;

59392 (g) by July 1 of each year, provide to the Health and Human Services Interim

59393 Committee and the Health and Human Services Appropriations Subcommittee a written report

59394 that includes:

59395 (i) the annual audit and review;

59396 (ii) the financial expenditures of each local substance abuse authority and its contract

59397 provider and each local mental health authority and its contract provider;

59398 (iii) the status of the compliance of each local authority and its contract provider with

59399 its plan, state statutes, and the provisions of the contract awarded; and

59400 (iv) whether audit guidelines established under Section 62A-15-110 and Subsection

59401 67-3-1(10) provide the division with sufficient criteria and assurances of appropriate

59402 expenditures of public funds; and

59403 (h) if requested by the Health and Human Services Interim Committee or the Health and

59404 Human Services Appropriations Subcommittee, provide an oral report as requested.

59405 (3) (a) The division may refuse to contract with and may pursue its legal remedies

59406 against any local substance abuse authority or local mental health authority that fails, or has

59407 failed, to expend public funds in accordance with state law, division policy, contract provisions,

59408 or directives issued in accordance with state law.

59409 (b) The division may withhold funds from a local substance abuse authority or local

59410 mental health authority if the authority's contract with its provider of substance abuse or mental

59411 health programs or services fails to comply with state and federal law or policy.

59412 (4) Before reissuing or renewing a contract with any local substance abuse authority or

59413 local mental health authority, the division shall review and determine whether the local

59414 substance abuse authority or local mental health authority is complying with its oversight and

59415 management responsibilities described in Sections 17-43-201, 17-43-203, 17-43-303, and

59416 17-43-309. Nothing in this Subsection (4) may be used as a defense to the responsibility and

59417 liability described in Section 17-43-303 and to the responsibility and liability described in

59418 Section 17-43-203.

59419 (5) In carrying out its duties and responsibilities, the division may not duplicate
59420 treatment or educational facilities that exist in other divisions or departments of the state, but
59421 shall work in conjunction with those divisions and departments in rendering the treatment or
59422 educational services that those divisions and departments are competent and able to provide.

59423 (6) (a) The division may accept in the name of and on behalf of the state donations,
59424 gifts, devises, or bequests of real or personal property or services to be used as specified by the
59425 donor.

59426 (b) Those donations, gifts, devises, or bequests shall be used by the division in
59427 performing its powers and duties. Any money so obtained shall be considered private
59428 nonlapsing funds and shall be deposited into an interest-bearing restricted special revenue fund
59429 to be used by the division for substance abuse or mental health services. The state treasurer
59430 may invest the fund and all interest shall remain with the fund.

59431 (7) The division shall annually review with each local substance abuse authority and
59432 each local mental health authority the authority's statutory and contract responsibilities
59433 regarding:

- 59434 (a) the use of public funds;
- 59435 (b) oversight responsibilities regarding public funds; and
- 59436 (c) governance of substance abuse and mental health programs and services.

59437 (8) The Legislature may refuse to appropriate funds to the division upon the division's
59438 failure to comply with the provisions of this part.

59439 Section 1168. Section **62A-15-105** is amended to read:

59440 **62A-15-105. Authority and responsibilities of board.**

59441 The board is the policymaking body for the division and for programs funded with state
59442 and federal moneys under Sections 17-43-201, 17-43-301, 17-43-304, and 62A-15-110. The
59443 board shall:

59444 (1) in establishing policy, seek input from local substance abuse authorities, local mental
59445 health authorities, consumers, providers, advocates, division staff, and other interested parties

59446 as determined by the board;

59447 (2) establish, by rule, minimum standards for local substance abuse authorities and local
59448 mental health authorities;

59449 (3) establish, by rule, procedures for developing its policies which ensure that local
59450 substance abuse authorities and local mental health authorities are given opportunity to
59451 comment and provide input on any new policy of the board or proposed changes in existing
59452 policy of the board;

59453 (4) provide a mechanism for review of its existing policy, and for consideration of
59454 policy changes that are proposed by local substance abuse authorities or local mental health
59455 authorities;

59456 (5) develop program policies, standards, rules, and fee schedules for the division; and

59457 (6) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
59458 Administrative Rulemaking Act, make rules approving the form and content of substance abuse
59459 treatment, educational series, screening, and assessment that are described in Section
59460 41-6a-501.

59461 Section 1169. Section **62A-15-401** is amended to read:

59462 **62A-15-401. Alcohol training and education seminar.**

59463 (1) As used in this part:

59464 (a) "Instructor" means a person that directly provides the instruction during an alcohol
59465 training and education seminar for a seminar provider.

59466 (b) "Licensee" means a person who is:

59467 (i) (A) a new or renewing licensee under Title 32A, Alcoholic Beverage Control Act;

59468 and

59469 (B) engaged in the retail sale of alcoholic beverages for consumption on the premises of
59470 the licensee; or

59471 (ii) a business that is:

59472 (A) a new or renewing licensee licensed by a city, town, or county; and

59473 (B) engaged in the retail sale of beer for consumption off the premises of the licensee.

59474 (c) "Off-premise beer retailer" is as defined in Section 32A-1-105.

59475 (d) "Seminar provider" means a person other than the division who provides an alcohol
59476 training and education seminar meeting the requirements of this section.

59477 (2) (a) This section applies to an individual who, as defined by the board by rule:

59478 (i) manages operations at the premises of a licensee engaged in the retail sale of
59479 alcoholic beverages for consumption on the premises of the licensee;

59480 (ii) supervises the serving of alcoholic beverages to a customer for consumption on the
59481 premises of a licensee;

59482 (iii) serves alcoholic beverages to a customer for consumption on the premises of a
59483 licensee;

59484 (iv) directly supervises the sale of beer to a customer for consumption off the premises
59485 of an off-premise beer retailer licensee; or

59486 (v) sells beer to a customer for consumption off the premises of an off-premise beer
59487 retailer licensee.

59488 (b) If the individual does not have a valid certificate that the individual has completed an
59489 alcohol training and education seminar, an individual described in Subsection (2)(a) shall:

59490 (i) (A) complete an alcohol training and education seminar within 30 days of the
59491 following if the individual is described in Subsections (2)(a)(i) through (iii):

59492 (I) if the individual is an employee, the day the individual begins employment;

59493 (II) if the individual is an independent contractor, the day the individual is first hired; or

59494 (III) if the individual holds an ownership interest in the licensee, the day that the
59495 individual first engages in an activity that would result in that individual being required to
59496 complete an alcohol training and education seminar; or

59497 (B) complete an alcohol training and education seminar within the time periods
59498 specified in Subsection 32A-10-103(1) if the individual is described in Subsections (2)(a)(iv)
59499 and (v); and

59500 (ii) pay a fee:

59501 (A) to the seminar provider; and

- 59502 (B) that is equal to or greater than the amount established under Subsection (4)(h).
- 59503 (c) An individual shall have a valid certificate that the individual completed an alcohol
59504 training and education seminar within the time period provided in this Subsection (2) to engage
59505 in an activity described in Subsection (2)(a).
- 59506 (d) A certificate that an individual has completed an alcohol training and education
59507 seminar is valid for:
- 59508 (i) three years from the day on which the certificate is issued for an individual described
59509 in Subsection (2)(a)(i), (ii), or (iii); and
- 59510 (ii) five years from the day on which the certificate is issued for an individual described
59511 in Subsection (2)(a)(iv) or (v).
- 59512 (3) (a) A licensee may not permit an individual who is not in compliance with
59513 Subsection (2) to:
- 59514 (i) serve or supervise the serving of alcoholic beverages to a customer for consumption
59515 on the premises of the licensee;
- 59516 (ii) engage in any activity that would constitute managing operations at the premises of
59517 a licensee that engages in the retail sale of alcoholic beverages for consumption on the premises
59518 of the licensee;
- 59519 (iii) directly supervise the sale of beer to a customer for consumption off the premises
59520 of an off-premise beer retailer licensee; or
- 59521 (iv) sell beer to a customer for consumption off the premises of an off-premise beer
59522 retailer licensee.
- 59523 (b) A licensee that violates Subsection (3)(a) is subject to Section 32A-1-401.
- 59524 (4) The division shall:
- 59525 (a) (i) provide alcohol training and education seminars; or
- 59526 (ii) certify one or more seminar providers;
- 59527 (b) establish the curriculum for an alcohol training and education seminar that includes
59528 the following subjects:
- 59529 (i) (A) alcohol as a drug; and

- 59530 (B) alcohol's effect on the body and behavior;
- 59531 (ii) recognizing the problem drinker or signs of intoxication;
- 59532 (iii) an overview of state alcohol laws related to responsible beverage sale or service, as
- 59533 determined in consultation with the Department of Alcoholic Beverage Control;
- 59534 (iv) dealing with the problem customer, including ways to terminate sale or service; and
- 59535 (v) for those supervising or engaging in the retail sale of alcoholic beverages for
- 59536 consumption on the premises of a licensee, alternative means of transportation to get the
- 59537 customer safely home;
- 59538 (c) recertify each seminar provider every three years;
- 59539 (d) monitor compliance with the curriculum described in Subsection (4)(b);
- 59540 (e) maintain for at least five years a record of every person who has completed an
- 59541 alcohol training and education seminar;
- 59542 (f) provide the information described in Subsection (4)(e) on request to:
- 59543 (i) the Department of Alcoholic Beverage Control;
- 59544 (ii) law enforcement; or
- 59545 (iii) a person licensed by the state or a local government to sell alcoholic beverages;
- 59546 (g) provide the Department of Alcoholic Beverage Control on request a list of any
- 59547 seminar provider certified by the division; and
- 59548 (h) establish a fee amount for each person attending an alcohol training and education
- 59549 seminar that is sufficient to offset the division's cost of administering this section.
- 59550 (5) The board shall by rule made in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
- 59551 Chapter 3, Utah Administrative Rulemaking Act:
- 59552 (a) define what constitutes under this section an individual who:
- 59553 (i) manages operations at the premises of a licensee engaged in the retail sale of
- 59554 alcoholic beverages for consumption on the premises of the licensee;
- 59555 (ii) supervises the serving of alcoholic beverages to a customer for consumption on the
- 59556 premises of a licensee;
- 59557 (iii) serves alcoholic beverages to a customer for consumption on the premises of a

59558 licensee;

59559 (iv) directly supervises the sale of beer to a customer for consumption off the premises

59560 of an off-premise retailer beer licensee; or

59561 (v) sells beer to a customer for consumption off the premises of an off-premise beer

59562 retailer licensee;

59563 (b) establish criteria for certifying and recertifying a seminar provider; and

59564 (c) establish guidelines for the manner in which an instructor provides an alcohol

59565 education and training seminar.

59566 (6) A seminar provider shall:

59567 (a) obtain recertification by the division every three years;

59568 (b) ensure that an instructor used by the seminar provider:

59569 (i) follows the curriculum established under this section; and

59570 (ii) conducts an alcohol training and education seminar in accordance with the

59571 guidelines established by rule;

59572 (c) ensure that any information provided by the seminar provider or instructor of a

59573 seminar provider is consistent with:

59574 (i) the curriculum established under this section; and

59575 (ii) this section;

59576 (d) provide the division with the names of all persons who complete an alcohol training

59577 and education seminar provided by the seminar provider;

59578 (e) (i) collect a fee for each person attending an alcohol training and education seminar

59579 in accordance with Subsection (2); and

59580 (ii) forward to the division the portion of the fee that is equal to the amount described in

59581 Subsection (4)(h); and

59582 (f) issue a certificate to an individual that completes an alcohol training and education

59583 seminar provided by the seminar provider.

59584 (7) (a) If after a hearing conducted in accordance with ~~[Title 63, Chapter 46b]~~ Title

59585 63G, Chapter 4, Administrative Procedures Act, the division finds that a seminar provider

59586 violates this section or that an instructor of the seminar provider violates this section, the
 59587 division may:

- 59588 (i) suspend the certification of the seminar provider for a period not to exceed 90 days;
- 59589 (ii) revoke the certification of the seminar provider;
- 59590 (iii) require the seminar provider to take corrective action regarding an instructor; or
- 59591 (iv) prohibit the seminar provider from using an instructor until such time that the
 59592 seminar provider establishes to the satisfaction of the division that the instructor is in
 59593 compliance with Subsection (6)(b).

- 59594 (b) The division may certify a seminar provider whose certification is revoked:
 - 59595 (i) no sooner than 90 days from the date the certification is revoked; and
 - 59596 (ii) if the seminar provider establishes to the satisfaction of the division that the seminar
 59597 provider will comply with this section.

59598 Section 1170. Section **62A-15-704** is amended to read:

59599 **62A-15-704. Invasive treatment -- Due process proceedings.**

59600 (1) For purposes of this section, "invasive treatment" means treatment in which a
 59601 constitutionally protected liberty or privacy interest may be affected, including antipsychotic
 59602 medication, electroshock therapy, and psychosurgery.

59603 (2) The requirements of this section apply to all children receiving services or treatment
 59604 from a local mental health authority, its designee, or its provider regardless of whether a local
 59605 mental health authority has physical custody of the child or the child is receiving outpatient
 59606 treatment from the local authority, its designee, or provider.

59607 (3) (a) The division shall promulgate rules, in accordance with [~~Title 63, Chapter 46a]~~
 59608 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing due process
 59609 procedures for children prior to any invasive treatment as follows:

- 59610 (i) with regard to antipsychotic medications, if either the parent or child disagrees with
 59611 that treatment, a due process proceeding shall be held in compliance with the procedures
 59612 established under this Subsection (3);
- 59613 (ii) with regard to psychosurgery and electroshock therapy, a due process proceeding

59614 shall be conducted pursuant to the procedures established under this Subsection (3), regardless
59615 of whether the parent or child agree or disagree with the treatment; and

59616 (iii) other possible invasive treatments may be conducted unless either the parent or
59617 child disagrees with the treatment, in which case a due process proceeding shall be conducted
59618 pursuant to the procedures established under this Subsection (3).

59619 (b) In promulgating the rules required by Subsection (3)(a), the division shall consider
59620 the advisability of utilizing an administrative law judge, court proceedings, a neutral and
59621 detached fact finder, and other methods of providing due process for the purposes of this
59622 section. The division shall also establish the criteria and basis for determining when invasive
59623 treatment should be administered.

59624 Section 1171. Section **62A-15-707** is amended to read:

59625 **62A-15-707. Confidentiality of information and records -- Exceptions -- Penalty.**

59626 (1) Notwithstanding the provisions of [~~Sections 63-2-101 through 63-2-909~~] Title 63G,
59627 Chapter 2, Government Records Access Management Act, all certificates, applications, records,
59628 and reports made for the purpose of this part that directly or indirectly identify a patient or
59629 former patient or an individual whose commitment has been sought under this part, shall be kept
59630 confidential and may not be disclosed by any person except as follows:

- 59631 (a) the individual identified consents after reaching 18 years of age;
- 59632 (b) the child's parent or legal guardian consents;
- 59633 (c) disclosure is necessary to carry out any of the provisions of this part; or
- 59634 (d) a court may direct, upon its determination that disclosure is necessary for the
59635 conduct of proceedings before it, and that failure to make the disclosure would be contrary to
59636 the public interest.

59637 (2) A person who violates any provision of this section is guilty of a class B
59638 misdemeanor.

59639 Section 1172. Section **62A-15-902** is amended to read:

59640 **62A-15-902. Design and operation -- Security.**

59641 (1) The forensic mental health facility is a secure treatment facility.

- 59642 (2) (a) The forensic mental health facility accommodates the following populations:
- 59643 (i) prison inmates displaying mental illness, as defined in Section 62A-15-602,
- 59644 necessitating treatment in a secure mental health facility;
- 59645 (ii) criminally adjudicated persons found guilty and mentally ill or guilty and mentally ill
- 59646 at the time of the offense undergoing evaluation for mental illness under Title 77, Chapter 16a,
- 59647 Commitment and Treatment of Mentally Ill Persons;
- 59648 (iii) criminally adjudicated persons undergoing evaluation for competency or found
- 59649 guilty and mentally ill or guilty and mentally ill at the time of the offense under Title 77, Chapter
- 59650 16a, Commitment and Treatment of Mentally Ill Persons, also have mental retardation;
- 59651 (iv) persons undergoing evaluation for competency or found by a court to be
- 59652 incompetent to proceed in accordance with Title 77, Chapter 15, Inquiry Into Sanity of
- 59653 Defendant, or not guilty by reason of insanity under Title 77, Chapter 14, Defenses;
- 59654 (v) persons who are civilly committed to the custody of a local mental health authority
- 59655 in accordance with Title 62A, Chapter 15, Part 6, Utah State Hospital and Other Mental Health
- 59656 Facilities, and who may not be properly supervised by the Utah State Hospital because of a lack
- 59657 of necessary security, as determined by the superintendent or ~~his~~ the superintendent's designee;
- 59658 and
- 59659 (vi) persons ordered to commit themselves to the custody of the Division of Substance
- 59660 Abuse and Mental Health for treatment at the Utah State Hospital as a condition of probation or
- 59661 stay of sentence pursuant to Title 77, Chapter 18, The Judgment.
- 59662 (b) Placement of an offender in the forensic mental health facility under any category
- 59663 described in Subsection (2)(a)(ii), (iii), (iv), or (vi) shall be made on the basis of the offender's
- 59664 status as established by the court at the time of adjudication.
- 59665 (c) In accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
- 59666 Administrative Rulemaking Act, the department shall make rules providing for the allocation of
- 59667 beds to the categories described in Subsection (2)(a).
- 59668 (3) The department shall:
- 59669 (a) own and operate the forensic mental health facility;

- 59670 (b) provide and supervise administrative and clinical staff; and
- 59671 (c) provide security staff who are trained as psychiatric technicians.
- 59672 (4) Pursuant to Subsection 62A-15-603(3) the executive director shall designate
- 59673 individuals to perform security functions for the state hospital.

59674 Section 1173. Section **63-11-12** is amended to read:

59675 **63-11-12. Board of Parks and Recreation -- Creation -- Functions.**

59676 There is created within the Department of Natural Resources a Board of Parks and
59677 Recreation which, except as otherwise provided in this act, shall assume all of the policy-making
59678 functions, powers, duties, rights and responsibilities of the Utah State Park and Recreation
59679 Commission, together with all functions, powers, duties, rights and responsibilities granted to
59680 the Board of Parks and Recreation by this act. The Board of Parks and Recreation shall be the
59681 policy-making body of the Division of Parks and Recreation. Except as otherwise provided in
59682 this act, whenever reference is made in Title 63, or any other provision of law, to the Utah State
59683 Park and Recreation Commission, it shall be construed as referring to the Board of Parks and
59684 Recreation where such reference pertains to policy-making functions, powers, duties, rights and
59685 responsibilities; but in all other instances such reference shall be construed as referring to the
59686 Division of Parks and Recreation.

59687 Section 1174. Section **63-11-17** is amended to read:

59688 **63-11-17. Powers and duties of Board and Division of Parks and Recreation.**

- 59689 (1) (a) The board may make rules:
- 59690 (i) governing the use of the state park system;
 - 59691 (ii) to protect state parks and their natural and cultural resources from misuse or
 - 59692 damage, including watersheds, plants, wildlife, and park amenities; and
 - 59693 (iii) to provide for public safety and preserve the peace within state parks.
- 59694 (b) To accomplish the purposes stated in Subsection (1)(a), the board may enact rules
- 59695 that:
- 59696 (i) close or partially close state parks; or
 - 59697 (ii) establish use or access restrictions within state parks.

59698 (c) Rules made under Subsection (1) may not have the effect of preventing the transfer
59699 of livestock along a livestock highway established in accordance with Section 72-3-112.

59700 (2) The Division of Wildlife Resources shall retain the power and jurisdiction conferred
59701 upon it by law within state parks and on property controlled by the Division of Parks and
59702 Recreation with reference to fish and game.

59703 (3) The Division of Parks and Recreation shall permit multiple use of state parks and
59704 property controlled by it for purposes such as grazing, fishing and hunting, mining, and the
59705 development and utilization of water and other natural resources.

59706 (4) (a) The division may acquire real and personal property in the name of the state by
59707 all legal and proper means, including purchase, gift, devise, eminent domain, lease, exchange, or
59708 otherwise, subject to the approval of the executive director and the governor.

59709 (b) As used in this section, "real property" includes land under water, upland, and all
59710 other property commonly or legally defined as real property.

59711 (c) In acquiring any real or personal property, the credit of the state may not be pledged
59712 without the consent of the legislature.

59713 (5) (a) Before acquiring any real property, the division shall notify the county legislative
59714 body of the county where the property is situated of its intention to acquire the property.

59715 (b) If the county legislative body requests a hearing within ten days of receipt of the
59716 notice, the board shall hold a public hearing in the county concerning the matter.

59717 (6) Acceptance of gifts or devises of land or other property shall be at the discretion of
59718 the division, subject to the approval of the executive director of the Department of Natural
59719 Resources and the governor.

59720 (7) Acquisition of property by eminent domain shall be in the manner authorized by
59721 Title 78, Chapter 34, Eminent Domain.

59722 (8) (a) The Division of Parks and Recreation may make charges for special services and
59723 use of facilities, the income from which shall be available for park and recreation purposes.

59724 (b) The division may conduct and operate those services necessary for the comfort and
59725 convenience of the public.

59726 (c) The board shall adopt appropriate rules governing the collection of charges under
59727 this Subsection (8).

59728 (9) (a) The division may lease or rent concessions of all lawful kinds and nature in state
59729 parks and property to persons, partnerships, and corporations for a valuable consideration upon
59730 the recommendation of the board.

59731 (b) The division shall comply with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah
59732 Procurement Code, in selecting concessionaires.

59733 (10) The division shall proceed without delay to negotiate with the federal government
59734 concerning the Weber Basin and other recreation and reclamation projects.

59735 Section 1175. Section **63-11a-503** is amended to read:

59736 **63-11a-503. Centennial Nonmotorized Paths and Trail Crossings Program --**
59737 **Eligibility and distribution -- Rulemaking.**

59738 (1) There is created the Centennial Nonmotorized Paths and Trail Crossings Program.

59739 (2) The program shall be funded from the following sources:

59740 (a) appropriations made to the program by the Legislature; and

59741 (b) contributions from other public and private sources for deposit into the program.

59742 (3) All monies appropriated to the Centennial Nonmotorized Paths and Trail Crossings
59743 Program are nonlapsing.

59744 (4) Subject to Subsection (5), the division, upon the recommendation of the council,
59745 shall authorize the use of program monies for state, county, and municipal projects that:

59746 (a) provide continuous and safe routes, paths, or trails for equestrian riders, pedestrians,
59747 bicyclists, and other human powered vehicle operators; and

59748 (b) provide access past major highways and other physical impediments that limit safe
59749 equestrian riders, pedestrian, bicyclist, and other human powered vehicles.

59750 (5) The program monies authorized under Subsection (4) are subject to:

59751 (a) monies available in the program;

59752 (b) the provisions of this section; and

59753 (c) rules made under Subsection (8).

59754 (6) (a) The state, a county, or a municipality may apply to the division under this
59755 section for monies from the program for a specified project.

59756 (b) (i) Program monies may not exceed 50% of the total costs for any project. The
59757 remaining project costs must be provided by the state, the county, or the municipality that
59758 applies for program monies as matching funds.

59759 (ii) Matching funds may be provided from any available source, including grants and
59760 other private or public sources.

59761 (7) A single project may not receive more than 50% of the total program monies
59762 available in a fiscal year except upon the unanimous recommendation of the council.

59763 (8) (a) The division shall administer the program.

59764 (b) The Board of Parks and Recreation shall make rules in accordance with [~~Title 63;~~
59765 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing the:

59766 (i) prioritizing and awarding of program monies by the division; and

59767 (ii) procedures for the state, a county, or a municipality to apply for program monies for
59768 projects.

59769 Section 1176. Section **63-34-3.1** is amended to read:

59770 **63-34-3.1. Procedures -- Adjudicative proceedings.**

59771 The Department of Natural Resources and the divisions, boards, and councils referred to
59772 in Section 63-34-3 shall comply with the procedures and requirements of [~~Title 63, Chapter~~
59773 ~~46b,]~~ Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative proceedings.

59774 Section 1177. Section **63-34-5 (Contingently Effective)** is amended to read:

59775 **63-34-5 (Contingently Effective). Executive director of Department of Natural**
59776 **Resources -- Appointment -- Removal -- Compensation -- Responsibilities -- Department**
59777 **fee schedule.**

59778 (1) (a) The chief administrative officer of the Department of Natural Resources shall be
59779 an executive director appointed by the governor with the consent of the Senate.

59780 (b) The executive director may be removed at the will of the governor.

59781 (c) The executive director shall receive a salary established by the governor within the

59782 salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

59783 (2) The executive director shall:

59784 (a) administer and supervise the Department of Natural Resources and provide for
59785 coordination and cooperation among the boards, divisions, and offices of the department;

59786 (b) approve the budget of each board and division;

59787 (c) participate in regulatory proceedings as appropriate to the functions and duties of
59788 the department;

59789 (d) ensure that funds appropriated to the Department of Natural Resources from the
59790 Wetlands Protection Account created by Section 63-34-3.2 are expended in accordance with
59791 Subsection 63-34-3.2(3);

59792 (e) ensure that funds appropriated to the Department of Natural Resources from the
59793 Recreational Trails and Streams Enhancement and Protection Account created by Section
59794 63-34-3.3 are expended in accordance with Subsection 63-34-3.3(3);

59795 (f) report at the end of each fiscal year to the governor on department activities, and
59796 activities of the boards and divisions; and

59797 (g) perform other duties as provided by the Legislature by statute.

59798 (3) (a) Unless otherwise provided by statute, the department may adopt a schedule of
59799 fees assessed for services provided by the department.

59800 (b) A fee described in Subsection (3)(a) shall:

59801 (i) be reasonable and fair; and

59802 (ii) reflect the cost of services provided.

59803 (c) Each fee established under this Subsection (3) shall be submitted to and approved by
59804 the Legislature as part of the department's annual appropriations request.

59805 (d) The department may not charge or collect any fee established under this Subsection
59806 (3) without approval of the Legislature.

59807 Section 1178. Section **63-34-15** is amended to read:

59808 **63-34-15. Outdoor recreation facilities -- Participation in federal programs.**

59809 (1) The Legislature finds that the state of Utah and its political subdivisions should

59810 enjoy the benefits of federal assistance programs for the planning and development of the
59811 outdoor recreation resources of the state, including the acquisition of lands and waters and
59812 interests in land and water.

59813 (2) To accomplish those purposes, the executive director of the Department of Natural
59814 Resources may, by following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title
59815 63J, Chapter 5, Federal Funds Procedures, seek federal grants, loans, or participation in federal
59816 programs.

59817 Section 1179. Section **63-34-17** is amended to read:

59818 **63-34-17. Outdoor recreation facilities -- Powers of executive director to obtain**
59819 **federal aid.**

59820 The executive director of natural resources may, by following the procedures and
59821 requirements of [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5, Federal Funds Procedures, apply
59822 to any appropriate agency or officer of the United States for participation in or the receipt of aid
59823 from any federal program respecting outdoor recreation. [~~He~~] The executive director may, in
59824 cooperation with other state agencies and after obtaining the approvals required by [~~Title 63,~~
59825 ~~Chapter 38e~~] Title 63J, Chapter 5, Federal Funds Procedures, enter into contracts and
59826 agreements with the United States or any appropriate agency thereof, keep financial and other
59827 records relating thereto, and furnish to appropriate officials and agencies of the United States
59828 such reports and information as may be reasonably necessary to enable such officials and
59829 agencies to perform their duties under such programs. In connection with obtaining the benefits
59830 of any such program, the executive director of natural resources shall coordinate the
59831 department's activities with and represent the interests of all agencies and subdivisions of the
59832 state having interests in the planning, development, and maintenance of outdoor recreation
59833 resources and facilities.

59834 Section 1180. Section **63-63c-101** is amended to read:

59835 **63-63c-101. Security surcharge -- Application and exemptions -- Deposit in**
59836 **restricted account.**

59837 (1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge

59838 of \$25 shall be assessed in all courts of record on all criminal convictions and juvenile
59839 delinquency judgments.

59840 (2) The security surcharge may not be imposed upon:

59841 (a) nonmoving traffic violations;

59842 (b) community service; and

59843 (c) penalties assessed by the juvenile court as part of the nonjudicial adjustment of a
59844 case under Section 78-3a-502.

59845 (3) The security surcharge shall be collected after the surcharge under Section
59846 [~~63-63a-1~~] 51-9-401, but before any fine, and deposited with the state treasurer. A fine that
59847 would otherwise have been charged may not be reduced due to the imposition of the security
59848 surcharge.

59849 (4) The state treasurer shall deposit the collected security surcharge in the restricted
59850 account, Court Security Account, as provided in Section 63-63c-102.

59851 Section 1181. Section ~~63-73-4~~ is amended to read:

59852 **63-73-4. Responsibilities of board.**

59853 The board has the following responsibilities:

59854 (1) establish and review policies, programs, and priorities;

59855 (2) review and recommend budgets;

59856 (3) assess the needs of the community with regard to development and use of geologic
59857 resources;

59858 (4) keep the director advised concerning survey policies; and

59859 (5) enact rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, the
59860 Utah Administrative Rulemaking Act, that are necessary to carry out the purposes of this
59861 chapter.

59862 Section 1182. Section ~~63-73-6~~ is amended to read:

59863 **63-73-6. Powers and duties of survey.**

59864 (1) The survey shall:

59865 (a) assist and advise state and local governmental agencies and state educational

59866 institutions on geologic, paleontologic, and mineralogic subjects;

59867 (b) collect and distribute reliable information regarding the mineral industry and mineral
59868 resources, topography, paleontology, and geology of the state;

59869 (c) survey the geology of the state, including mineral occurrences and the ores of
59870 metals, energy resources, industrial minerals and rocks, mineral-bearing waters, and surface and
59871 ground water resources, with special reference to their economic contents, values, uses, kind,
59872 and availability in order to facilitate their economic use;

59873 (d) investigate the kind, amount, and availability of mineral substances contained in
59874 lands owned and controlled by the state, to contribute to the most effective and beneficial
59875 administration of these lands for the state;

59876 (e) determine and investigate areas of geologic and topographic hazards that could
59877 affect the safety of, or cause economic loss to, the citizens of the state;

59878 (f) assist local and state government agencies in their planning, zoning, and building
59879 regulation functions by publishing maps, delineating appropriately wide special earthquake risk
59880 areas, and, at the request of state agencies or other governmental agencies, review the siting of
59881 critical facilities;

59882 (g) cooperate with state agencies, political subdivisions of the state, quasi-governmental
59883 agencies, federal agencies, schools of higher education, and others in fields of mutual concern,
59884 which may include field investigations and preparation, publication, and distribution of reports
59885 and maps;

59886 (h) collect and preserve data pertaining to mineral resource exploration and
59887 development programs and construction activities, such as claim maps, location of drill holes,
59888 location of surface and underground workings, geologic plans and sections, drill logs, and assay
59889 and sample maps, including the maintenance of a sample library of cores and cuttings;

59890 (i) study and analyze other scientific, economic, or aesthetic problems as, in the
59891 judgment of the board, should be undertaken by the survey to serve the needs of the state and to
59892 support the development of natural resources and utilization of lands within the state;

59893 (j) prepare, publish, distribute, and sell maps, reports, and bulletins, embodying the

59894 work accomplished by the survey, directly or in collaboration with others, and collect and
59895 prepare exhibits of the geological and mineral resources of this state and interpret their
59896 significance;

59897 (k) collect, maintain, and preserve data and information in order to accomplish the
59898 purposes of this section and act as a repository for information concerning the geology of this
59899 state;

59900 (l) stimulate research, study, and activities in the field of paleontology;

59901 (m) mark, protect, and preserve critical paleontological sites;

59902 (n) collect, preserve, and administer critical paleontological specimens until they are
59903 placed in a repository or curation facility;

59904 (o) administer critical paleontological site excavation records;

59905 (p) edit and publish critical paleontological records and reports; and

59906 (q) by following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,
59907 Chapter 5, Federal Funds Procedures, seek federal grants, loans, or participation in federal
59908 programs, and, in accordance with applicable federal program guidelines, administer federally
59909 funded state programs regarding:

59910 (i) renewable energy;

59911 (ii) energy efficiency; and

59912 (iii) energy conservation.

59913 (2) (a) The survey may maintain as confidential, and not as a public record, information
59914 provided to the survey by any source.

59915 (b) The board shall adopt rules in order to determine whether to accept such
59916 information and to maintain the confidentiality of the accepted information.

59917 (c) The survey shall maintain information received from any source at the level of
59918 confidentiality assigned to it by the source.

59919 (3) Upon approval of the board, the survey shall undertake other activities consistent
59920 with Subsection (1).

59921 (4) (a) Subject to the authority granted to the department, the survey may enter into

59922 cooperative agreements with the entities specified in Subsection (1)(g), if approved by the
59923 board, and may accept or commit allocated or budgeted funds in connection with those
59924 agreements.

59925 (b) The survey may undertake joint projects with private entities if:

59926 (i) the action is approved by the board;

59927 (ii) the projects are not inconsistent with the state's objectives; and

59928 (iii) the results of the projects are available to the public.

59929 Section 1183. Section **63A-1-105.5** is amended to read:

59930 **63A-1-105.5. Rulemaking authority of executive director.**

59931 The executive director shall, upon the recommendation of the appropriate division
59932 directors, make rules consistent with state and federal law, and in accordance with [~~Title 63,~~
59933 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing:

59934 (1) administrative services; and

59935 (2) the provision and use of administrative services furnished to state agencies and
59936 institutions.

59937 Section 1184. Section **63A-1-112** is amended to read:

59938 **63A-1-112. Certificates of participation -- Legislative approval required --**

59939 **Definition -- Exception.**

59940 (1) (a) Certificates of participation for either capital facilities or capital improvements
59941 may not be issued by the department, its subdivisions, or any other state agency after July 1,
59942 1985, without prior legislative approval.

59943 (b) Nothing in this section affects the rights and obligations surrounding certificates of
59944 participation that were issued prior to July 1, 1985.

59945 (2) (a) As used in this section, "certificate of participation" means an instrument that
59946 acts as evidence of the certificate holder's undivided interest in property being lease-purchased,
59947 the payment on which is subject to appropriation by the Legislature.

59948 (b) (i) For purposes of this Subsection (2)(b), "energy savings agreement" has the
59949 meaning as defined in Section [~~63-9-67]~~ 63A-5-701.

59950 (ii) "Certificate of participation" does not include an energy savings agreement.

59951 Section 1185. Section **63A-1-114** is amended to read:

59952 **63A-1-114. Rate Committee -- Membership -- Duties.**

59953 (1) (a) There is created a Rate Committee which shall consist of:

59954 (i) the director of the Governor's Office of Planning and Budget, or a designee;

59955 (ii) the executive directors of three state agencies that use services and pay rates to one

59956 of the department internal service funds, or their designee, appointed by the governor for a

59957 two-year term;

59958 (iii) the executive director of the Department of Administrative Services, or a designee;

59959 (iv) the director of the Division of Finance, or a designee; and

59960 (v) the chief information officer.

59961 (b) (i) The committee shall elect a chair from its members.

59962 (ii) Members of the committee who are state government employees and who do not

59963 receive salary, per diem, or expenses from their agency for their service on the committee shall

59964 receive no compensation, benefits, per diem, or expenses for the members' service on the

59965 committee.

59966 (c) The Department of Administrative Services shall provide staff services to the

59967 committee.

59968 (2) (a) The internal service funds managed by the following divisions shall submit to the

59969 committee a proposed rate and fee schedule for services rendered by the divisions to an

59970 executive branch entity or an entity that subscribes to services rendered by the division, the:

59971 (i) Division of Facilities Construction and Management;

59972 (ii) Division of Fleet Operations;

59973 (iii) Division of Purchasing and General Services; and

59974 (iv) Division of Risk Management.

59975 (b) The committee shall:

59976 (i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings

59977 Act;

59978 (ii) review the proposed rate and fee schedules and may approve, increase, or decrease
 59979 the rate and fee;

59980 (iii) recommend a proposed rate and fee schedule for each internal service fund to:

59981 (A) the Governor's Office of Planning and Budget; and

59982 (B) the legislative appropriations subcommittees that, in accordance with Section

59983 [~~63-38-3.5~~] 63J-1-306, approve the internal service fund agency's rates, fees, and budget; and

59984 (iv) review and approve, increase or decrease an interim rate, fee, or amount when an
 59985 internal service fund agency begins a new service or introduces a new product between annual
 59986 general sessions of the Legislature.

59987 (c) The committee may in accordance with Subsection [~~63-38-3.5~~] 63J-1-306(4)
 59988 decrease a rate, fee, or amount that has been approved by the Legislature.

59989 Section 1186. Section **63A-2-103** is amended to read:

59990 **63A-2-103. General services provided -- Subscription by state departments, state**
 59991 **agencies, and certain local governmental entities -- Fee schedule.**

59992 (1) (a) The director of the Division of Purchasing and General Services shall operate,
 59993 manage, and maintain:

59994 (i) a central mailing service; and

59995 (ii) an electronic central store system for procuring goods and services.

59996 (b) The director may establish microfilming, duplicating, printing, addressograph, and
 59997 other central services.

59998 (2) (a) Each state department and agency shall subscribe to all of the services described
 59999 in Subsection (1), unless the director delegates the director's authority to a department or
 60000 agency under Section 63A-2-104.

60001 (b) An institution of higher education, school district, or political subdivision of the
 60002 state may subscribe to one or more of the services described in Subsection (1).

60003 (3) The director shall:

60004 (a) prescribe a schedule of fees to be charged for all services provided by the division to
 60005 any department or agency after the director:

60006 (i) submits the proposed rate, fees, or other amounts for services provided by the
60007 division's internal service fund to the Rate Committee established in Section 63A-1-114; and

60008 (ii) obtains the approval of the Legislature, as required by Sections [~~63-38-3.2~~
60009 63J-1-303 and [~~63-38-3.5~~] 63J-1-306;

60010 (b) when practicable, ensure that the fees are approximately equal to the cost of
60011 providing the services; and

60012 (c) conduct a market analysis by July 1, 2005, and periodically thereafter of fees, which
60013 analysis shall include comparison of the division's rates with the fees of other public or private
60014 sector providers where comparable services and rates are reasonably available.

60015 Section 1187. Section **63A-3-306** is amended to read:

60016 **63A-3-306. Hearing examiner -- Procedures -- Adjudicative proceedings.**

60017 (1) (a) The hearing shall be held before a hearing examiner designated by the state.

60018 (b) The hearing examiner may not be an officer or employee of the entity in state
60019 government responsible for collecting or administering the account.

60020 (2) The state shall comply with the procedures and requirements of [~~Title 63, Chapter~~
60021 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

60022 Section 1188. Section **63A-4-102** is amended to read:

60023 **63A-4-102. Risk manager -- Powers.**

60024 (1) The risk manager may:

60025 (a) enter into contracts;

60026 (b) purchase insurance;

60027 (c) adjust, settle, and pay claims;

60028 (d) pay expenses and costs;

60029 (e) study the risks of all state agencies and properties;

60030 (f) issue certificates of coverage to state agencies for any risks covered by Risk
60031 Management Fund;

60032 (g) make recommendations about risk management and risk reduction strategies to state
60033 agencies;

60034 (h) in consultation with the attorney general, prescribe insurance and liability provisions
60035 to be included in all state contracts;

60036 (i) review agency building construction, major remodeling plans, agency program plans,
60037 and make recommendations to the agency about needed changes to address risk considerations;

60038 (j) attend agency planning and management meetings when necessary;

60039 (k) review any proposed legislation and communicate with legislators and legislative
60040 committees about the liability or risk management issues connected with any legislation; and

60041 (l) solicit any needed information about agency plans, agency programs, or agency risks
60042 necessary to perform ~~his~~ the risk manager's responsibilities under this part.

60043 (2) (a) The risk manager may expend monies from the Risk Management Fund to
60044 procure and provide coverage to all state agencies and their indemnified employees, except
60045 those agencies or employees specifically exempted by statute.

60046 (b) The risk manager shall apportion the costs of that coverage according to the
60047 requirements of this part.

60048 (3) Before charging a rate, fee, or other amount to an executive branch agency, or to a
60049 subscriber of services other than an executive branch agency, the director shall:

60050 (a) submit the proposed rates, fees, or other amount and cost analysis to the Rate
60051 Committee established in Section 63A-1-114; and

60052 (b) obtain the approval of the Legislature as required by Section ~~[63-38-3.5]~~ 63J-1-306.

60053 (4) The director shall conduct a market analysis by July 1, 2005, and periodically
60054 thereafter, of proposed rates and fees, which analysis shall include a comparison of the division's
60055 rates and fees with the fees of other public or private sector providers where comparable
60056 services and rates are reasonably available.

60057 Section 1189. Section **63A-4-204** is amended to read:

60058 **63A-4-204. School district participation in Risk Management Fund.**

60059 (1) (a) For the purpose of this section, action by a public school district shall be taken
60060 upon resolution by a majority of the members of the school district's board of education.

60061 (b) (i) Upon approval by the state risk manager and the board of education of the

60062 school district, a public school district may participate in the Risk Management Fund and may
60063 permit a foundation established under Section 53A-4-205 to participate in the Risk Management
60064 Fund.

60065 (ii) Upon approval by the state risk manager and the State Board of Education, a state
60066 public education foundation may participate in the Risk Management Fund.

60067 (c) Subject to any cancellation or other applicable coverage provisions, either the state
60068 risk manager or the public school district may terminate participation in the fund.

60069 (2) The state risk manager shall contract for all insurance, legal, loss adjustment,
60070 consulting, loss control, safety, and other related services necessary to support the insurance
60071 program provided to a participating public school district, except that all supporting legal
60072 services are subject to the prior approval of the state attorney general.

60073 (3) (a) The state risk manager shall treat each participating public school district as a
60074 state agency when participating in the Risk Management Fund.

60075 (b) Each public school district participating in the fund shall comply with the provisions
60076 of this part that affect state agencies.

60077 (4) (a) By no later than March 31 of each year, the risk manager shall prepare, in
60078 writing, the information required by Subsection (4)(b) regarding the coverage against legal
60079 liability provided a school district employee of this state:

60080 (i) by the Risk Management Fund;

60081 (ii) under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of
60082 Utah; and

60083 (iii) under [~~Title 63, Chapter 30a~~] Title 52, Chapter 6, Reimbursement of Legal Fees
60084 and Costs to Officers and Employees.

60085 (b) (i) The information described in Subsection (4)(a) shall include:

60086 (A) the eligibility requirements, if any, to receive the coverage;

60087 (B) the basic nature of the coverage for a school district employee, including what is
60088 not covered; and

60089 (C) whether the coverage is primary or in excess of any other coverage the risk

60090 manager knows is commonly available to a school district employee in this state.

60091 (ii) The information described in Subsection (4)(a) may include:

60092 (A) comparisons the risk manager considers beneficial to a school district employee
60093 between:

60094 (I) the coverage described in Subsection (4)(a); and

60095 (II) other coverage the risk manager knows is commonly available to a school district
60096 employee in this state; and

60097 (B) any other information the risk manager considers appropriate.

60098 (c) The risk manager shall provide the information prepared under this Subsection (4)
60099 to each school district that participates in the Risk Management Fund.

60100 (d) A school district that participates in the Risk Management Fund shall provide a copy
60101 of the information described in Subsection (4)(c) to each school district employee within the
60102 school district:

60103 (i) at the time an employee enters into an employment contract and signs a separate
60104 acknowledgment of legal liability protection in accordance with Section 53A-3-411; or

60105 (ii) if the school district does not provide the information to the employee pursuant to
60106 Subsection (4)(d)(i):

60107 (A) within 30 days of the day the school district employee is hired by the school district;

60108 and

60109 (B) by no later than April 15 of each calendar year.

60110 Section 1190. Section **63A-4-204.5** is amended to read:

60111 **63A-4-204.5. Charter school participation in Risk Management Fund.**

60112 (1) A charter school established under the authority of Title 53A, Chapter 1a, Part 5,
60113 The Utah Charter Schools Act, may participate in the Risk Management Fund upon the
60114 approval of the state risk manager and the governing body of the charter school.

60115 (2) (a) For purposes of administration, the state risk manager shall treat each charter
60116 school participating in the fund as a state agency.

60117 (b) Each charter school participating in the fund shall comply with the provisions of this

60118 part that affect state agencies.

60119 (3) (a) By no later than March 31 of each year, the risk manager shall prepare, in
60120 writing, the information required by Subsection (3)(b) regarding the coverage against legal
60121 liability provided a charter school employee of this state:

60122 (i) by the Risk Management Fund;

60123 (ii) under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Utah Governmental Immunity
60124 Act of Utah; and

60125 (iii) under [~~Title 63, Chapter 30a~~] Title 52, Chapter 6, Reimbursement of Legal Fees
60126 and Costs to Officers and Employees.

60127 (b) (i) The information described in Subsection (3)(a) shall include:

60128 (A) the eligibility requirements, if any, to receive the coverage;

60129 (B) the basic nature of the coverage for a charter school employee, including what is
60130 not covered; and

60131 (C) whether the coverage is primary or in excess of any other coverage the risk
60132 manager knows is commonly available to a charter school employee in this state.

60133 (ii) The information described in Subsection (3)(a) may include:

60134 (A) comparisons the risk manager considers beneficial to a charter school employee
60135 between:

60136 (I) the coverage described in Subsection (3)(a); and

60137 (II) other coverage the risk manager knows is commonly available to a charter school
60138 employee in this state; and

60139 (B) any other information the risk manager considers appropriate.

60140 (c) The risk manager shall provide the information prepared under this Subsection (3)
60141 to each charter school that participates in the Risk Management Fund.

60142 (d) A charter school that participates in the Risk Management Fund shall provide a
60143 copy of the information described in Subsection (3)(c) to each charter school employee within
60144 the charter school:

60145 (i) within 30 days of the day the charter school employee is hired by the charter school;

60146 and

60147 (ii) by no later than April 15 of each calendar year.

60148 Section 1191. Section **63A-4-207** is amended to read:

60149 **63A-4-207. Records of risk management.**

60150 (1) A record provided to the Division of Risk Management by any governmental entity
60151 or political subdivision covered by the Risk Management Fund for the purpose of risk control or
60152 claims activities of the division shall be considered a record of the originating governmental
60153 entity or political subdivision for purposes of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
60154 Government Records Access and Management Act, if the originating governmental entity or
60155 political subdivision retains a copy of the record.

60156 (2) Notwithstanding Subsection [~~63-2-201~~] 63G-2-201(5), records may be exchanged
60157 between the Division of Risk Management and any governmental entity or political subdivision
60158 covered by the Risk Management Fund without meeting the requirements of Section [~~63-2-206~~]
60159 63G-2-206, provided that they are used only for purposes of risk control or claims activities.

60160 Section 1192. Section **63A-5-103** is amended to read:

60161 **63A-5-103. Board -- Powers.**

60162 (1) The State Building Board shall:

60163 (a) in cooperation with state institutions, departments, commissions, and agencies,
60164 prepare a master plan of structures built or contemplated;

60165 (b) submit to the governor and the Legislature a comprehensive five-year building plan
60166 for the state containing the information required by Subsection (2);

60167 (c) amend and keep current the five-year building program for submission to the
60168 governor and subsequent legislatures;

60169 (d) as a part of the long-range plan, recommend to the governor and Legislature any
60170 changes in the law that are necessary to insure an effective, well-coordinated building program
60171 for all state institutions;

60172 (e) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
60173 Administrative Rulemaking Act, make rules:

60174 (i) that are necessary to discharge its duties and the duties of the Division of Facilities
60175 Construction and Management; and

60176 (ii) to establish standards and requirements for life cycle cost-effectiveness of state
60177 facility projects;

60178 (f) with support from the Division of Facilities Construction and Management, establish
60179 design criteria, standards, and procedures for planning, design, and construction of new state
60180 facilities and for improvements to existing state facilities, including life-cycle costing,
60181 cost-effectiveness studies, and other methods and procedures that address:

60182 (i) the need for the building or facility;

60183 (ii) the effectiveness of its design;

60184 (iii) the efficiency of energy use; and

60185 (iv) the usefulness of the building or facility over its lifetime;

60186 (g) prepare and submit a yearly request to the governor and the Legislature for a
60187 designated amount of square footage by type of space to be leased by the Division of Facilities
60188 Construction and Management in that fiscal year; and

60189 (h) assure the efficient use of all building space.

60190 (2) In order to provide adequate information upon which the State Building Board may
60191 make its recommendation under Subsection (1), any state agency requesting new full-time
60192 employees for the next fiscal year shall report those anticipated requests to the building board at
60193 least 90 days before the annual general session in which the request is made.

60194 (3) (a) The State Building Board shall ensure that the five-year building plan required
60195 by Subsection (1)(c) includes:

60196 (i) a list that prioritizes construction of new buildings for all structures built or
60197 contemplated based upon each agency's, department's, commission's, and institution's present
60198 and future needs;

60199 (ii) information, and space use data for all state-owned and leased facilities;

60200 (iii) substantiating data to support the adequacy of any projected plans;

60201 (iv) a summary of all statewide contingency reserve and project reserve balances as of

60202 the end of the most recent fiscal year;

60203 (v) a list of buildings that have completed a comprehensive facility evaluation by an
60204 architect/engineer or are scheduled to have an evaluation;

60205 (vi) for those buildings that have completed the evaluation, the estimated costs of
60206 needed improvements; and

60207 (vii) for projects recommended in the first two years of the five-year building plan:

60208 (A) detailed estimates of the cost of each project;

60209 (B) the estimated cost to operate and maintain the building or facility on an annual
60210 basis;

60211 (C) the estimated number of new agency full-time employees expected to be housed in
60212 the building or facility;

60213 (D) the estimated cost of new or expanded programs and personnel expected to be
60214 housed in the building or facility;

60215 (E) the estimated lifespan of the building with associated costs for major component
60216 replacement over the life of the building; and

60217 (F) the estimated cost of any required support facilities.

60218 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
60219 Administrative Rulemaking Act, the State Building Board may make rules prescribing the
60220 format for submitting the information required by this Subsection (3).

60221 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
60222 Administrative Rulemaking Act, the State Building Board may make rules establishing
60223 circumstances under which bids may be modified when all bids for a construction project exceed
60224 available funds as certified by the director.

60225 (b) In making those rules, the State Building Board shall provide for the fair and
60226 equitable treatment of bidders.

60227 (5) (a) A person who violates a rule adopted by the board under Subsection (1)(e) is
60228 subject to a civil penalty not to exceed \$2,500 for each violation plus the amount of any actual
60229 damages, expenses, and costs related to the violation of the rule that are incurred by the state.

- 60230 (b) The board may take any other action allowed by law.
- 60231 (c) If any violation of a rule adopted by the board is also an offense under Title 76,
60232 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
60233 allowed under Subsection (1)(e) in addition to any criminal prosecution.
- 60234 Section 1193. Section **63A-5-104** is amended to read:
- 60235 **63A-5-104. Capital development and capital improvement process -- Approval**
60236 **requirements -- Limitations on new projects -- Emergencies.**
- 60237 (1) As used in this section:
- 60238 (a) "Capital developments" means any:
- 60239 (i) remodeling, site, or utility projects with a total cost of \$2,500,000 or more;
- 60240 (ii) new facility with a construction cost of \$500,000 or more; or
- 60241 (iii) purchase of real property where an appropriation is requested to fund the purchase.
- 60242 (b) "Capital improvements" means any:
- 60243 (i) remodeling, alteration, replacement, or repair project with a total cost of less than
60244 \$2,500,000;
- 60245 (ii) site and utility improvement with a total cost of less than \$2,500,000; or
- 60246 (iii) new facility with a total construction cost of less than \$500,000.
- 60247 (c) (i) "New facility" means the construction of any new building on state property
60248 regardless of funding source.
- 60249 (ii) "New facility" includes:
- 60250 (A) an addition to an existing building; and
- 60251 (B) the enclosure of space that was not previously fully enclosed.
- 60252 (iii) "New facility" does not mean:
- 60253 (A) the replacement of state-owned space that is demolished or that is otherwise
60254 removed from state use, if the total construction cost of the replacement space is less than
60255 \$2,500,000; or
- 60256 (B) the construction of facilities that do not fully enclose a space.
- 60257 (d) "Replacement cost of existing state facilities" means the replacement cost, as

60258 determined by the Division of Risk Management, of state facilities, excluding auxiliary facilities
60259 as defined by the State Building Board.

60260 (e) "State funds" means public monies appropriated by the Legislature.

60261 (2) The State Building Board, on behalf of all state agencies, commissions,
60262 departments, and institutions shall submit its capital development recommendations and
60263 priorities to the Legislature for approval and prioritization.

60264 (3) (a) Except as provided in Subsections (3)(b), (d), and (e), a capital development
60265 project may not be constructed on state property without legislative approval.

60266 (b) Legislative approval is not required for a capital development project if the State
60267 Building Board determines that:

60268 (i) the requesting higher education institution has provided adequate assurance that:

60269 (A) state funds will not be used for the design or construction of the facility; and

60270 (B) the higher education institution has a plan for funding in place that will not require
60271 increased state funding to cover the cost of operations and maintenance to, or state funding for,
60272 immediate or future capital improvements to the resulting facility; and

60273 (ii) the use of the state property is:

60274 (A) appropriate and consistent with the master plan for the property; and

60275 (B) will not create an adverse impact on the state.

60276 (c) (i) The Division of Facilities Construction and Management shall maintain a record
60277 of facilities constructed under the exemption provided in Subsection (3)(b).

60278 (ii) For facilities constructed under the exemption provided in Subsection (3)(b), a
60279 higher education institution may not request:

60280 (A) increased state funds for operations and maintenance; or

60281 (B) state capital improvement funding.

60282 (d) Legislative approval is not required for:

60283 (i) the renovation, remodeling, or retrofitting of an existing facility with nonstate funds;

60284 (ii) facilities to be built with nonstate funds and owned by nonstate entities within
60285 research park areas at the University of Utah and Utah State University;

60286 (iii) facilities to be built at This is the Place State Park by This is the Place Foundation
60287 with funds of the foundation, including grant monies from the state, or with donated services or
60288 materials;

60289 (iv) capital projects that are funded by the Navajo Trust Fund Board from Navajo Trust
60290 Fund monies and the Uintah Basin Revitalization Fund that do not provide a new facility for a
60291 state agency or higher education institution; or

60292 (v) capital projects on school and institutional trust lands that are funded by the School
60293 and Institutional Trust Lands Administration from the Land Grant Management Fund and that
60294 do not fund construction of a new facility for a state agency or higher education institution.

60295 (e) (i) Legislative approval is not required for capital development projects to be built
60296 for the Department of Transportation as a result of an exchange of real property under Section
60297 72-5-111.

60298 (ii) When the Department of Transportation approves those exchanges, it shall notify
60299 the president of the Senate, the speaker of the House, and the cochairs of the Capital Facilities
60300 and Administrative Services Subcommittee of the Legislature's Joint Appropriation Committee
60301 about any new facilities to be built under this exemption.

60302 (4) (a) The State Building Board, on behalf of all state agencies, commissions,
60303 departments, and institutions shall by January 15 of each year, submit a list of anticipated capital
60304 improvement requirements to the Legislature for review and approval.

60305 (b) Unless otherwise directed by the Legislature, the building board shall prioritize
60306 capital improvements from the list submitted to the Legislature up to the level of appropriation
60307 made by the Legislature.

60308 (c) In prioritizing capital improvements, the building board shall consider the results of
60309 facility evaluations completed by an architect/engineer as stipulated by the building board's
60310 facilities maintenance standards.

60311 (d) The building board may require an entity that benefits from a capital improvement
60312 project to repay the capital improvement funds from savings that result from the project.

60313 (5) The Legislature may authorize:

60314 (a) the total square feet to be occupied by each state agency; and
60315 (b) the total square feet and total cost of lease space for each agency.

60316 (6) (a) Except as provided in Subsection (6)(b), the Legislature may not fund the design
60317 or construction of any new capital development projects, except to complete the funding of
60318 projects for which partial funding has been previously provided, until the Legislature has
60319 appropriated 1.1% of the replacement cost of existing state facilities to capital improvements.

60320 (b) (i) As used in this Subsection (6)(b), "operating deficit" means that estimated
60321 General Fund or Uniform School Fund revenues are less than budgeted for the current or next
60322 fiscal year.

60323 (ii) If the Legislature determines that an operating deficit exists, the Legislature may, in
60324 eliminating the deficit, reduce the amount appropriated to capital improvements to 0.9% of the
60325 replacement cost of state buildings.

60326 (7) (a) If, after approval of capital development and capital improvement priorities by
60327 the Legislature under this section, emergencies arise that create unforeseen critical capital
60328 improvement projects, the State Building Board may, notwithstanding the requirements of [~~Title~~
60329 ~~63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act, reallocate capital
60330 improvement funds to address those projects.

60331 (b) The building board shall report any changes it makes in capital improvement
60332 allocations approved by the Legislature to:

60333 (i) the Office of Legislative Fiscal Analyst within 30 days of the reallocation; and
60334 (ii) the Legislature at its next annual general session.

60335 (8) (a) The State Building Board may adopt a rule allocating to institutions and
60336 agencies their proportionate share of capital improvement funding.

60337 (b) The building board shall ensure that the rule:

60338 (i) reserves funds for the Division of Facilities Construction and Management for
60339 emergency projects; and
60340 (ii) allows the delegation of projects to some institutions and agencies with the
60341 requirement that a report of expenditures will be filed annually with the Division of Facilities

60342 Construction and Management and appropriate governing bodies.

60343 (9) It is the intent of the Legislature that in funding capital improvement requirements
60344 under this section the General Fund be considered as a funding source for at least half of those
60345 costs.

60346 Section 1194. Section **63A-5-204** is amended to read:

60347 **63A-5-204. Specific powers and duties of director.**

60348 (1) As used in this section, "capitol hill facilities" and "capitol hill grounds" have the
60349 same meaning as provided in Section 63C-9-102.

60350 (2) (a) The director shall:

60351 (i) recommend rules to the executive director for the use and management of facilities
60352 and grounds owned or occupied by the state for the use of its departments and agencies;

60353 (ii) supervise and control the allocation of space, in accordance with legislative directive
60354 through annual appropriations acts or other specific legislation, to the various departments,
60355 commissions, institutions, and agencies in all buildings or space owned, leased, or rented by or
60356 to the state, except capitol hill facilities and capitol hill grounds and except as otherwise
60357 provided by law;

60358 (iii) comply with the procedures and requirements of Title 63A, Chapter 5, Part 3,
60359 Division of Facilities Construction and Management Leasing;

60360 (iv) except as provided in Subsection (2)(b), acquire, as authorized by the Legislature
60361 through the appropriations act or other specific legislation, and hold title to, in the name of the
60362 division, all real property, buildings, fixtures, or appurtenances owned by the state or any of its
60363 agencies;

60364 (v) adopt and use a common seal, of a form and design determined by the director, and
60365 of which courts shall take judicial notice;

60366 (vi) file a description and impression of the seal with the Division of Archives;

60367 (vii) collect and maintain all deeds, abstracts of title, and all other documents evidencing
60368 title to or interest in property belonging to the state or any of its departments, except
60369 institutions of higher education and the School and Institutional Trust Lands Administration;

- 60370 (viii) report all properties acquired by the state, except those acquired by institutions of
60371 higher education, to the director of the Division of Finance for inclusion in the state's financial
60372 records;
- 60373 (ix) before charging a rate, fee, or other amount for services provided by the division's
60374 internal service fund to an executive branch agency, or to a subscriber of services other than an
60375 executive branch agency:
- 60376 (A) submit the proposed rates, fees, and cost analysis to the Rate Committee
60377 established in Section 63A-1-114; and
- 60378 (B) obtain the approval of the Legislature as required by Section [~~63-38-3.5~~]
60379 63J-1-306;
- 60380 (x) conduct a market analysis by July 1, 2005, and periodically thereafter, of proposed
60381 rates and fees, which analysis shall include a comparison of the division's rates and fees with the
60382 fees of other public or private sector providers where comparable services and rates are
60383 reasonably available;
- 60384 (xi) implement the State Building Energy Efficiency Program under Section [~~63-9-67~~]
60385 63A-5-701; and
- 60386 (xii) take all other action necessary for carrying out the purposes of this chapter.
- 60387 (b) Legislative approval is not required for acquisitions by the division that cost less
60388 than \$250,000.
- 60389 (3) (a) The director shall direct or delegate maintenance and operations, preventive
60390 maintenance, and facilities inspection programs and activities for any department, commission,
60391 institution, or agency, except:
- 60392 (i) the State Capitol Preservation Board; and
60393 (ii) state institutions of higher education.
- 60394 (b) The director may choose to delegate responsibility for these functions only when the
60395 director determines that:
- 60396 (i) the department or agency has requested the responsibility;
60397 (ii) the department or agency has the necessary resources and skills to comply with

- 60398 facility maintenance standards approved by the State Building Board; and
- 60399 (iii) the delegation would result in net cost savings to the state as a whole.
- 60400 (c) The State Capitol Preservation Board and state institutions of higher education are
- 60401 exempt from Division of Facilities Construction and Management oversight.
- 60402 (d) Each state institution of higher education shall comply with the facility maintenance
- 60403 standards approved by the State Building Board.
- 60404 (e) Except for the State Capitol Preservation Board, agencies and institutions that are
- 60405 exempt from division oversight shall annually report their compliance with the facility
- 60406 maintenance standards to the division in the format required by the division.
- 60407 (f) The division shall:
- 60408 (i) prescribe a standard format for reporting compliance with the facility maintenance
- 60409 standards;
- 60410 (ii) report agency and institution compliance or noncompliance with the standards to the
- 60411 Legislature; and
- 60412 (iii) conduct periodic audits of exempt agencies and institutions to ensure that they are
- 60413 complying with the standards.
- 60414 (4) (a) In making any allocations of space under Subsection (2), the director shall:
- 60415 (i) conduct studies to determine the actual needs of each department, commission,
- 60416 institution, or agency; and
- 60417 (ii) comply with the restrictions contained in this Subsection (4).
- 60418 (b) The supervision and control of the legislative area is reserved to the Legislature.
- 60419 (c) The supervision and control of the judicial area is reserved to the judiciary for trial
- 60420 courts only.
- 60421 (d) The director may not supervise or control the allocation of space for entities in the
- 60422 public and higher education systems.
- 60423 (e) The supervision and control of capitol hill facilities and capitol hill grounds is
- 60424 reserved to the State Capitol Preservation Board.
- 60425 (5) The director may:

60426 (a) hire or otherwise procure assistance and services, professional, skilled, or otherwise,
60427 that are necessary to carry out the director's responsibilities, and may expend funds provided for
60428 that purpose either through annual operating budget appropriations or from nonlapsing project
60429 funds;

60430 (b) sue and be sued in the name of the division; and

60431 (c) hold, buy, lease, and acquire by exchange or otherwise, as authorized by the
60432 Legislature, whatever real or personal property that is necessary for the discharge of the
60433 director's duties.

60434 (6) Notwithstanding the provisions of Subsection (2)(a)(iv), the following entities may
60435 hold title to any real property, buildings, fixtures, and appurtenances held by them for purposes
60436 other than administration that are under their control and management:

60437 (a) the Office of Trust Administrator;

60438 (b) the Department of Transportation;

60439 (c) the Division of Forestry, Fire and State Lands;

60440 (d) the Department of Natural Resources;

60441 (e) the Utah National Guard;

60442 (f) any area vocational center or other institution administered by the State Board of
60443 Education;

60444 (g) any institution of higher education; and

60445 (h) the Utah Science Technology and Research Governing Authority.

60446 (7) The director shall ensure that any firm performing testing and inspection work
60447 governed by the American Society for Testing Materials Standard E-329 on public buildings
60448 under the director's supervision shall:

60449 (a) fully comply with the American Society for Testing Materials standard specifications
60450 for agencies engaged in the testing and inspection of materials known as ASTM E-329; and

60451 (b) carry a minimum of \$1,000,000 of errors and omissions insurance.

60452 (8) Notwithstanding Subsections (2)(a)(iii) and (iv), the School and Institutional Trust
60453 Lands Administration may hold title to any real property, buildings, fixtures, and appurtenances

60454 held by it that are under its control.

60455 Section 1195. Section **63A-5-205** is amended to read:

60456 **63A-5-205. Contracting powers of director -- Retainage.**

60457 (1) As used in this section, "capital developments" and "capital improvements" have the
60458 same meaning as provided in Section 63A-5-104.

60459 (2) In accordance with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
60460 Code, the director may:

60461 (a) enter into contracts for any work or professional services which the division or the
60462 State Building Board may do or have done; and

60463 (b) as a condition of any contract for architectural or engineering services, prohibit the
60464 architect or engineer from retaining a sales or agent engineer for the necessary design work.

60465 (3) The judgment of the director as to the responsibility and qualifications of a bidder is
60466 conclusive, except in case of fraud or bad faith.

60467 (4) The division shall make all payments to the contractor for completed work in
60468 accordance with the contract and pay the interest specified in the contract on any payments that
60469 are late.

60470 (5) If any payment on a contract with a private contractor to do work for the division or
60471 the State Building Board is retained or withheld, it shall be retained or withheld and released as
60472 provided in Section 13-8-5.

60473 Section 1196. Section **63A-5-206** is amended to read:

60474 **63A-5-206. Construction, alteration, and repair of state facilities -- Powers of**
60475 **director -- Exceptions -- Expenditure of appropriations -- Notification to local**
60476 **governments for construction or modification of certain facilities.**

60477 (1) As used in this section:

60478 (a) "Capital developments" and "capital improvements" have the same meaning as
60479 provided in Section 63A-5-104.

60480 (b) "Compliance agency" has the same meaning as provided in Subsection 58-56-3(4).

60481 (c) (i) "Facility" means any building, structure, or other improvement that is constructed

60482 on property owned by the state, its departments, commissions, institutions, or agencies.

60483 (ii) "Facility" does not mean an unoccupied structure that is a component of the state
60484 highway system.

60485 (d) "Life cycle cost-effective" means, as provided for in rules adopted by the State
60486 Building Board, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
60487 Administrative Rulemaking Act, the most prudent cost of owning and operating a facility,
60488 including the initial cost, energy costs, operation and maintenance costs, repair costs, and the
60489 costs of energy conservation and renewable energy systems.

60490 (e) "Local government" means the county, municipality, or local school district that
60491 would have jurisdiction to act as the compliance agency if the property on which the project is
60492 being constructed were not owned by the state.

60493 (f) "Renewable energy system" means a system designed to use solar, wind, geothermal
60494 power, wood, or other replenishable energy source to heat, cool, or provide electricity to a
60495 building.

60496 (2) (a) (i) Except as provided in Subsections (3) and (4), the director shall exercise
60497 direct supervision over the design and construction of all new facilities, and all alterations,
60498 repairs, and improvements to existing facilities if the total project construction cost, regardless
60499 of the funding source, is greater than \$100,000.

60500 (ii) A state entity may exercise direct supervision over the design and construction of all
60501 new facilities, and all alterations, repairs, and improvements to existing facilities if:

60502 (A) the total project construction cost, regardless of the funding sources, is \$100,000 or
60503 less; and

60504 (B) the state entity assures compliance with the division's forms and contracts and the
60505 division's design, construction, alteration, repair, improvements, and code inspection standards.

60506 (b) The director shall prepare or have prepared by private firms or individuals designs,
60507 plans, and specifications for the projects administered by the division.

60508 (c) Before proceeding with construction, the director and the officials charged with the
60509 administration of the affairs of the particular department, commission, institution, or agency

60510 shall approve the location, design, plans, and specifications.

60511 (3) Projects for the construction of new facilities and alterations, repairs, and
60512 improvements to existing facilities are not subject to Subsection (2) if the project:

60513 (a) occurs on property under the jurisdiction of the State Capitol Preservation Board;

60514 (b) is within a designated research park at the University of Utah or Utah State
60515 University;

60516 (c) occurs within the boundaries of This is the Place State Park and is administered by
60517 This is the Place Foundation except that This is the Place Foundation may request the director
60518 to administer the design and construction; or

60519 (d) is for the creation and installation of art under Title 9, Chapter 6, Part 4, Utah
60520 Percent-for-Art Act.

60521 (4) (a) (i) The State Building Board may authorize the delegation of control over
60522 design, construction, and all other aspects of any project to entities of state government on a
60523 project-by-project basis or for projects within a particular dollar range and a particular project
60524 type.

60525 (ii) The state entity to whom control is delegated shall assume fiduciary control over
60526 project finances, shall assume all responsibility for project budgets and expenditures, and shall
60527 receive all funds appropriated for the project, including any contingency funds contained in the
60528 appropriated project budget.

60529 (iii) Delegation of project control does not exempt the state entity from complying with
60530 the codes and guidelines for design and construction adopted by the division and the State
60531 Building Board.

60532 (iv) State entities that receive a delegated project may not access, for the delegated
60533 project, the division's statewide contingency reserve and project reserve authorized in Section
60534 63A-5-209.

60535 (b) For facilities that will be owned, operated, maintained, and repaired by an entity that
60536 is not a state agency or institution and that are located on state property, the State Building
60537 Board may authorize the owner to administer the design and construction of the project instead

60538 of the division.

60539 (5) Notwithstanding any other provision of this section, if a donor donates land to an
60540 eligible institution of higher education and commits to build a building or buildings on that land,
60541 and the institution agrees to provide funds for the operations and maintenance costs from
60542 sources other than state funds, and agrees that the building or buildings will not be eligible for
60543 state capital improvement funding, the higher education institution may:

60544 (a) oversee and manage the construction without involvement, oversight, or
60545 management from the division; or

60546 (b) arrange for management of the project by the division.

60547 (6) (a) The role of compliance agency as provided in Title 58, Chapter 56, Utah
60548 Uniform Building Standards Act, shall be provided by:

60549 (i) the director, for projects administered by the division;

60550 (ii) the entity designated by the State Capitol Preservation Board, for projects under
60551 Subsection (3)(a);

60552 (iii) the local government, for projects exempt from the division's administration under
60553 Subsection (3)(b) or administered by This is the Place Foundation under Subsection (3)(c);

60554 (iv) the state entity or local government designated by the State Building Board, for
60555 projects under Subsection (4); or

60556 (v) the institution, for projects exempt from the division's administration under
60557 Subsection (5)(a).

60558 (b) For the installation of art under Subsection (3)(d), the role of compliance agency
60559 shall be provided by the entity that is acting in this capacity for the balance of the project as
60560 provided in Subsection (6)(a).

60561 (c) The local government acting as the compliance agency under Subsection (6)(a)(iii)
60562 may:

60563 (i) only review plans and inspect construction to enforce the building codes as adopted
60564 by the Uniform Building Codes Commission; and

60565 (ii) charge a building permit fee of no more than the amount it could have charged if the

60566 land upon which the improvements are located were not owned by the state.

60567 (d) (i) The use of state property and any improvements constructed on state property,
60568 including improvements constructed by nonstate entities, is not subject to the zoning authority
60569 of local governments as provided in Sections 10-9a-304 and 17-27a-304.

60570 (ii) The state entity controlling the use of the state property shall consider any input
60571 received from the local government in determining how the property shall be used.

60572 (7) Before construction may begin, the director shall review the design of projects
60573 exempted from the division's administration under Subsection (4) to determine if the design:

60574 (a) complies with any restrictions placed on the project by the State Building Board;
60575 and

60576 (b) is appropriate for the purpose and setting of the project.

60577 (8) The director shall ensure that state-owned facilities, except for facilities under the
60578 control of the State Capitol Preservation Board, are life cycle cost-effective.

60579 (9) The director may expend appropriations for statewide projects from funds provided
60580 by the Legislature for those specific purposes and within guidelines established by the State
60581 Building Board.

60582 (10) (a) The director, with the approval of the Office of Legislative Fiscal Analyst, shall
60583 develop standard forms to present capital development and capital improvement cost summary
60584 data.

60585 (b) The director shall:

60586 (i) within 30 days after the completion of each capital development project, submit cost
60587 summary data for the project on the standard form to the Office of Legislative Fiscal Analyst;
60588 and

60589 (ii) upon request, submit cost summary data for a capital improvement project to the
60590 Office of Legislative Fiscal Analyst on the standard form.

60591 (11) Notwithstanding the requirements of [~~Title 63, Chapter 38~~] Title 63J, Chapter 1,
60592 Budgetary Procedures Act, the director may:

60593 (a) accelerate the design of projects funded by any appropriation act passed by the

60594 Legislature in its annual general session;

60595 (b) use any unencumbered existing account balances to fund that design work; and

60596 (c) reimburse those account balances from the amount funded for those projects when
60597 the appropriation act funding the project becomes effective.

60598 (12) (a) The director, [~~his~~] the director's designee, or the state entity to whom control
60599 has been designated under Subsection (4), shall notify in writing the elected representatives of
60600 local government entities directly and substantively affected by any diagnostic, treatment,
60601 parole, probation, or other secured facility project exceeding \$250,000, if:

60602 (i) the nature of the project has been significantly altered since prior notification;

60603 (ii) the project would significantly change the nature of the functions presently
60604 conducted at the location; or

60605 (iii) the project is new construction.

60606 (b) At the request of either the state entity or the local government entity,
60607 representatives from the state entity and the affected local entity shall conduct or participate in a
60608 local public hearing or hearings to discuss these issues.

60609 (13) (a) (i) Before beginning the construction of student housing on property owned by
60610 the state or a public institution of higher education, the director shall provide written notice of
60611 the proposed construction, as provided in Subsection (13)(a)(ii), if any of the proposed student
60612 housing buildings is within 300 feet of privately owned residential property.

60613 (ii) Each notice under Subsection (13)(a)(i) shall be provided to the legislative body
60614 and, if applicable, the mayor of:

60615 (A) the county in whose unincorporated area the privately owned residential property is
60616 located; or

60617 (B) the municipality in whose boundaries the privately owned residential property is
60618 located.

60619 (b) (i) Within 21 days after receiving the notice required by Subsection (13)(a)(i), a
60620 county or municipality entitled to the notice may submit a written request to the director for a
60621 public hearing on the proposed student housing construction.

60622 (ii) If a county or municipality requests a hearing under Subsection (13)(b)(i), the
60623 director and the county or municipality shall jointly hold a public hearing to provide information
60624 to the public and to allow the director and the county or municipality to receive input from the
60625 public about the proposed student housing construction.

60626 Section 1197. Section **63A-5-208** is amended to read:

60627 **63A-5-208. Definitions -- Certain public construction bids to list subcontractors**
60628 **-- Changing subcontractors -- Bidders as subcontractors -- Dispute resolution process --**
60629 **Penalties.**

60630 (1) As used in this section:

60631 (a) "First-tier subcontractor" means a subcontractor who contracts directly with the
60632 prime contractor.

60633 (b) "Subcontractor" means any person or entity under contract with a contractor or
60634 another subcontractor to provide services or labor for the construction, installation, or repair of
60635 an improvement to real property.

60636 (c) "Subcontractor" includes a trade contractor or specialty contractor.

60637 (d) "Subcontractor" does not include suppliers who provide only materials, equipment,
60638 or supplies to a contractor or subcontractor.

60639 (2) The director shall apply the provisions of this section to achieve fair and competitive
60640 bidding and to discourage bid-shopping by contractors.

60641 (3) (a) (i) (A) On each public construction project, the director shall require the
60642 apparent lowest three bidders to submit a list of their first-tier subcontractors indicating each
60643 subcontractor's name, bid amount, and other information required by rule.

60644 (B) Other bidders who are not one of the apparent lowest three bidders may also submit
60645 a list of their first-tier subcontractors containing the information required by this Subsection (3).

60646 (C) The director may not consider any bid submitted by a bidder if the bidder fails to
60647 submit a subcontractor list meeting the requirements of this section.

60648 (ii) On projects where the contractor's total bid is less than \$500,000, subcontractors
60649 whose bid is less than \$20,000 need not be listed.

60650 (iii) On projects where the contractor's total bid is \$500,000 or more, subcontractors
60651 whose bid is less than \$35,000 need not be listed.

60652 (b) (i) The bidders shall submit this list within 24 hours after the bid opening time, not
60653 including Saturdays, Sundays, and state holidays.

60654 (ii) This list does not limit the director's right to authorize a change in the listing of any
60655 subcontractor.

60656 (c) The bidders shall verify that all subcontractors listed as part of their bids are licensed
60657 as required by state law.

60658 (d) Twenty-four hours after the bid opening, the contractor may change [~~his~~] the
60659 contractor's subcontractors only after:

60660 (i) receiving permission from the director; and

60661 (ii) establishing that:

60662 (A) the change is in the best interest of the state; and

60663 (B) the contractor establishes reasons for the change that meet the standards established
60664 by the State Building Board.

60665 (e) If the director approves any changes in subcontractors that result in a net lower
60666 contract price for subcontracted work, the total of the prime contract may be reduced to reflect
60667 the changes.

60668 (4) (a) A bidder may list himself as a subcontractor when the bidder is currently licensed
60669 to perform the portion of the work for which the bidder lists himself as a subcontractor and:

60670 (i) the bidder intends to perform the work of a subcontractor himself; or

60671 (ii) the bidder intends to obtain a subcontractor to perform the work at a later date
60672 because the bidder was unable to:

60673 (A) obtain a bid from a qualified subcontractor; or

60674 (B) obtain a bid from a qualified subcontractor at a cost that the bidder considers to be
60675 reasonable.

60676 (b) (i) When the bidder intends to perform the work of a subcontractor himself, the
60677 director may, by written request, require that the bidder provide the director with information

60678 indicating the bidder's:

60679 (A) previous experience in the type of work to be performed; and

60680 (B) qualifications for performing the work.

60681 (ii) The bidder must respond in writing within five business days of receiving the

60682 director's written request.

60683 (iii) If the bidder's submitted information causes the director to reasonably believe that

60684 self-performance of the portion of the work by the bidder is likely to yield a substandard

60685 finished product, the director shall:

60686 (A) require the bidder to use a subcontractor for the portion of the work in question

60687 and obtain the subcontractor bid under the supervision of the director; or

60688 (B) reject the bidder's bid.

60689 (c) (i) When the bidder intends to obtain a subcontractor to perform the work at a later

60690 date, the bidder shall provide documentation with the subcontractor list describing:

60691 (A) the bidder's efforts to obtain a bid of a qualified subcontractor at a reasonable cost;

60692 and

60693 (B) why the bidder was unable to obtain a qualified subcontractor bid.

60694 (ii) If the bidder who intends to obtain a subcontractor to perform the work at a later

60695 date is awarded a contract, the director shall supervise the bidder's efforts to obtain a qualified

60696 subcontractor bid.

60697 (iii) The director may not adjust the amount of the contract awarded in order to reflect

60698 the actual amount of the subcontractor's bid.

60699 (5) The division may not disclose any subcontractor bid amounts obtained under this

60700 section until the division has awarded the project to a contractor.

60701 (6) (a) The director shall, in consultation with the State Building Board, prepare draft

60702 rules establishing a process for resolving disputes involved with contracts under the division's

60703 procurement authority.

60704 (b) The draft rules shall be presented to the Government Operations Interim Committee

60705 for review, comment, and recommendations before August 31, 2004.

- 60706 (c) The director shall consider, and the rules may include:
- 60707 (i) requirements regarding preliminary resolution efforts between the parties directly
60708 involved with the dispute;
- 60709 (ii) requirements for the filing of claims, including notification, timeframes, and
60710 documentation;
- 60711 (iii) identification of the types of costs eligible for allocation and a method for allocating
60712 costs among the parties to the dispute;
- 60713 (iv) required time periods, not to exceed 60 days, for the resolution of the claim;
- 60714 (v) provision for an independent hearing officer, panel, or arbitrator to extend the time
60715 period for resolution of the claim by not to exceed 60 additional days for good cause;
- 60716 (vi) provision for the extension of required time periods if the claimant agrees;
- 60717 (vii) requirements that decisions be issued in writing;
- 60718 (viii) provisions for administrative appeals of the decision;
- 60719 (ix) provisions for the timely payment of claims after resolution of the dispute, including
60720 any appeals;
- 60721 (x) a requirement that the final determination resulting from the dispute resolution
60722 process provided for in the rules is a final agency action subject to judicial review as provided in
60723 Sections [~~63-46b-14~~] 63G-4-401 and [~~63-46b-15~~] 63G-4-402;
- 60724 (xi) a requirement that a claim or dispute that does not include a monetary claim against
60725 the division or its agents is not limited to the dispute resolution process provided for in this
60726 Subsection (6);
- 60727 (xii) requirements for claims and disputes to be eligible for this dispute resolution
60728 process;
- 60729 (xiii) the use of an independent hearing officer, panel, arbitration, or mediation; and
- 60730 (xiv) the circumstances under which a subcontractor may file a claim directly with the
60731 division.
- 60732 (d) Persons pursuing claims under the process required by this Subsection (6):
- 60733 (i) are bound by the decision reached under this process unless the decision is properly

60734 appealed; and

60735 (ii) may not pursue claims or disputes under the dispute resolution process established
60736 in Sections [~~63-56-805~~] 63G-6-805 through [~~63-56-814~~] 63G-6-814.

60737 (7) In addition to all other reasons allowed by law or rule, the director may reject all
60738 bids if none of the bidders whose bid is within the budget of the project submit a subcontractor
60739 list that meets the requirements of this section.

60740 (8) Any violation of this section, or any fraudulent misrepresentation by a contractor,
60741 subcontractor, or supplier, may be grounds for:

60742 (a) the contractor, subcontractor, or supplier to be suspended or debarred by the
60743 director; or

60744 (b) the contractor or subcontractor to be disciplined by the Division of Professional and
60745 Occupational Licensing.

60746 Section 1198. Section **63A-5-302** is amended to read:

60747 **63A-5-302. Leasing responsibilities of the director.**

60748 (1) The director shall:

60749 (a) lease, in the name of the division, all real property space to be occupied by an
60750 agency;

60751 (b) in leasing space, comply with:

60752 (i) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code; and

60753 (ii) any legislative mandates contained in the appropriations act or other specific
60754 legislation;

60755 (c) apply the criteria contained in Subsection (e) to prepare a report evaluating each
60756 high-cost lease at least 12 months before it expires;

60757 (d) evaluate each lease under the division's control and apply the criteria contained in
60758 Subsection (e), when appropriate, to evaluate those leases;

60759 (e) in evaluating leases:

60760 (i) determine whether or not the lease is cost-effective when the needs of the agency to
60761 be housed in the leased facilities are considered;

- 60762 (ii) determine whether or not another option such as construction, use of other
- 60763 state-owned space, or a lease-purchase agreement is more cost-effective than leasing;
- 60764 (iii) determine whether or not the significant lease terms are cost-effective and provide
- 60765 the state with sufficient flexibility and protection from liability;
- 60766 (iv) compare the proposed lease payments to the current market rates, and evaluate
- 60767 whether or not the proposed lease payments are reasonable under current market conditions;
- 60768 (v) compare proposed significant lease terms to the current market, and recommend
- 60769 whether or not these proposed terms are reasonable under current market conditions; and
- 60770 (vi) if applicable, recommend that the lease or modification to a lease be approved or
- 60771 disapproved;
- 60772 (f) based upon the evaluation, include in the report recommendations that identify viable
- 60773 alternatives to:
 - 60774 (i) make the lease cost-effective; or
 - 60775 (ii) meet the agency's needs when the lease expires; and
 - 60776 (g) upon request, provide the information included in the report to:
 - 60777 (i) the agency benefited by the lease; and
 - 60778 (ii) the Office of Legislative Fiscal Analyst.
 - 60779 (2) The director may:
 - 60780 (a) subject to legislative appropriation, enter into facility leases with terms of up to ten
 - 60781 years when the length of the lease's term is economically advantageous to the state; and
 - 60782 (b) with the approval of the State Building Board and subject to legislative
 - 60783 appropriation, enter into facility leases with terms of more than ten years when the length of the
 - 60784 lease's term is economically advantageous to the state.

60785 Section 1199. Section **63A-5-501**, which is renumbered from Section 63-9-21 is

60786 renumbered and amended to read:

Part 5. Keys to Public Buildings

60788 [~~63-9-21~~]. **63A-5-501**. **Making keys to buildings of state, political subdivisions**

60789 **or colleges and universities without permission prohibited.**

60790 No person shall knowingly make or cause to be made any key or duplicate key for any
60791 building, laboratory, facility, room, dormitory, hall or any other structure or part thereof owned
60792 by the state, by any political subdivision thereof or by the board of regents or other governing
60793 body of any college or university which is supported wholly or in part by the state without the
60794 prior written consent of the state, political subdivision, board of regents, or other governing
60795 body.

60796 Section 1200. Section **63A-5-502**, which is renumbered from Section 63-9-22 is
60797 renumbered and amended to read:

60798 **[63-9-22]. 63A-5-502. Violation -- Misdemeanor.**

60799 Any person who violates this act shall be guilty of a misdemeanor.

60800 Section 1201. Section **63A-5-601**, which is renumbered from Section 63-9-63 is
60801 renumbered and amended to read:

60802 **Part 6. Energy Conservation and Alternative Financing**

60803 **[63-9-63]. 63A-5-601. Legislative findings and policy.**

60804 (1) The Legislature finds the following:

60805 (a) The operation of facilities owned and controlled by the state consumes significant
60806 amounts of energy.

60807 (b) Facilities owned and controlled by the state present a significant opportunity for
60808 energy cost savings through the implementation of conservation measures.

60809 (c) Principles which produce efficient facility management in the private sector are
60810 equally applicable to the management of public buildings and facilities.

60811 (d) There exists, in the private sector, favorable alternative methods of financing energy
60812 conservation measures which are not readily adaptable to financing state facility energy
60813 efficiency improvements due to current budgetary practices.

60814 (e) Maximization of energy conservation efforts in light of limited resources requires
60815 careful advance planning by responsible agencies.

60816 (2) The Legislature declares that it is the policy of the state to:

60817 (a) undertake aggressive programs designed to reduce energy use in state facilities in

60818 order to reduce the operating costs of state government and to set an example of energy
60819 efficiency for the public;

60820 (b) utilize, to the greatest practical extent, alternative funding sources and methods of
60821 financing energy efficiency improvements in state facilities in a manner which minimizes the
60822 necessity for increased appropriations;

60823 (c) employ private sector management incentive principles, to the extent practicable, to
60824 implement the policies in Subsections (2)(a) and (b);

60825 (d) develop incentives to encourage state entities to conserve energy, reduce energy
60826 costs, and utilize renewable energy sources where practicable; and

60827 (e) procure and use energy efficient products where practicable.

60828 Section 1202. Section **63A-5-701**, which is renumbered from Section 63-9-67 is
60829 renumbered and amended to read:

60830 **Part 7. State Building Energy Efficiency Program**

60831 **[~~63-9-67~~]. 63A-5-701. State Building Energy Efficiency Program.**

60832 (1) For purposes of this section:

60833 (a) "Division" means the Division of Facilities Construction and Management
60834 established in Section 63A-5-201.

60835 (b) "Energy efficiency measures" means actions taken or initiated by a state agency that
60836 reduce the state agency's energy use, increase the state agency's energy efficiency, reduce source
60837 energy consumption, reduce water consumption, or lower the costs of energy or water to the
60838 state agency.

60839 (c) "Energy savings agreement" means an agreement entered into by a state agency
60840 whereby the state agency implements energy efficiency measures and finances the costs
60841 associated with implementation of energy efficiency measures using the stream of expected
60842 savings in utility costs resulting from implementation of the energy efficiency measures as the
60843 funding source for repayment.

60844 (d) "State agency" means each executive, legislative, and judicial branch department,
60845 agency, board, commission, or division, and includes a state institution of higher education as

60846 defined in Section 53B-3-102.

60847 (e) "State Building Energy Efficiency Program" means a program established under this
60848 section for the purpose of improving energy efficiency measures and reducing the energy costs
60849 for state facilities.

60850 (f) (i) "State facility" means any building, structure, or other improvement that is
60851 constructed on property owned by the state, its departments, commissions, institutions, or
60852 agencies, or a state institution of higher education.

60853 (ii) "State facility" does not mean:

60854 (A) an unoccupied structure that is a component of the state highway system;

60855 (B) a privately owned structure that is located on property owned by the state, its
60856 departments, commissions, institutions, or agencies, or a state institution of higher education; or

60857 (C) a structure that is located on land administered by the School and Institutional Trust
60858 Lands Administration under a lease, permit, or contract with the School and Institutional Trust
60859 Lands Administration.

60860 (2) The division shall:

60861 (a) develop and administer the state building energy efficiency program, which shall
60862 include guidelines and procedures to improve energy efficiency in the maintenance and
60863 management of state facilities;

60864 (b) provide information and assistance to state agencies in their efforts to improve
60865 energy efficiency;

60866 (c) analyze energy consumption by state agencies to identify opportunities for improved
60867 energy efficiency;

60868 (d) establish an advisory group composed of representatives of state agencies to
60869 provide information and assistance in the development and implementation of the state building
60870 energy efficiency program; and

60871 (e) submit to the governor and to the Capital Facilities and Administrative Services
60872 Appropriations Subcommittee of the Legislature an annual report that:

60873 (i) identifies strategies for long-term improvement in energy efficiency;

60874 (ii) identifies goals for energy conservation for the upcoming year; and
60875 (iii) details energy management programs and strategies that were undertaken in the
60876 previous year to improve the energy efficiency of state agencies and the energy savings
60877 achieved.

60878 (3) Each state agency shall:
60879 (a) designate a staff member that is responsible for coordinating energy efficiency
60880 efforts within the agency;
60881 (b) provide energy consumption and costs information to the division;
60882 (c) develop strategies for improving energy efficiency and reducing energy costs; and
60883 (d) provide the division with information regarding the agency's energy efficiency and
60884 reduction strategies.

60885 (4) (a) A state agency may enter into an energy savings agreement for a term of up to
60886 20 years.

60887 (b) Before entering into an energy savings agreement, the state agency shall:
60888 (i) utilize the division to oversee the project unless the project is exempt from the
60889 division's oversight or the oversight is delegated to the agency under the provisions of Section
60890 63A-5-206;

60891 (ii) obtain the prior approval of the governor or the governor's designee; and
60892 (iii) provide the Office of Legislative Fiscal Analyst with a copy of the proposed
60893 agreement before the agency enters into the agreement.

60894 Section 1203. Section **63A-5-801**, which is renumbered from Section 63-9-68 is
60895 renumbered and amended to read:

60896 **Part 8. State Memorials**

60897 **[~~63-9-68~~]. 63A-5-801. Memorials by the state or state agencies.**

60898 (1) As used in this section:
60899 (a) "State agency" means any of the following of the state that holds title to state land:
60900 (i) a department;
60901 (ii) a division;

- 60902 (iii) a board;
- 60903 (iv) an institution of higher education; or
- 60904 (v) for the judicial branch, the state court administrator.

60905 (b) "State agency" does not mean a local district under Title 17B, Limited Purpose
60906 Local Government Entities - Local Districts, a special service district under Title 17A, Chapter
60907 2, Part 13, Utah Special Service District Act, or a dependent district under Title 17A, Chapter
60908 3, Dependent Districts.

60909 (2) The Legislature, the governor, or a state agency may authorize the use or donation
60910 of state land for the purpose of maintaining, erecting, or contributing to the erection or
60911 maintenance of a memorial to commemorate those individuals who have:

60912 (a) participated in or have given their lives in any of the one or more wars or military
60913 conflicts in which the United States of America has been a participant; or

60914 (b) given their lives in association with public service on behalf of the state, including
60915 firefighters, peace officers, highway patrol officers, or other public servants.

60916 (3) The use or donation of state land in relation to a memorial described in Subsection
60917 (2) may include:

60918 (a) using or appropriating public funds for the purchase, development, improvement, or
60919 maintenance of state land on which a memorial is located or established;

60920 (b) using or appropriating public funds for the erection, improvement, or maintenance
60921 of a memorial;

60922 (c) donating or selling state land for use in relation to a memorial; or

60923 (d) authorizing the use of state land for a memorial that is funded or maintained in part
60924 or in full by another public or private entity.

60925 (4) The Legislature, the governor, or a state agency may specify the form, placement,
60926 and design of a memorial that is subject to this section if the Legislature, the governor, or the
60927 state agency holds title to, has authority over, or donates the land on which a memorial is
60928 established.

60929 (5) Memorials within the definition of a capital development as defined in Section

60930 63A-5-104 must be approved as provided for in Section 63A-5-104.

60931 (6) Nothing in this section shall be construed as a prohibition of memorials, including
60932 those for purposes not covered by this section, which have been erected within the approval
60933 requirements in effect at the time of their erection or which may be duly authorized through
60934 other legal means.

60935 Section 1204. Section **63A-8-201** is amended to read:

60936 **63A-8-201. Office of State Debt Collection created -- Duties.**

60937 (1) The state and each state agency shall comply with the requirements of this chapter
60938 and any rules established by the Office of State Debt Collection.

60939 (2) There is created the Office of State Debt Collection in the Department of
60940 Administrative Services.

60941 (3) The office shall:

60942 (a) have overall responsibility for collecting and managing state receivables;

60943 (b) develop consistent policies governing the collection and management of state
60944 receivables;

60945 (c) oversee and monitor state receivables to ensure that state agencies are:

60946 (i) implementing all appropriate collection methods;

60947 (ii) following established receivables guidelines; and

60948 (iii) accounting for and reporting receivables in the appropriate manner;

60949 (d) develop policies, procedures, and guidelines for accounting, reporting, and
60950 collecting monies owed to the state;

60951 (e) provide information, training, and technical assistance to all state agencies on
60952 various collection-related topics;

60953 (f) write an inclusive receivables management and collection manual for use by all state
60954 agencies;

60955 (g) prepare quarterly and annual reports of the state's receivables;

60956 (h) create or coordinate a state accounts receivable database;

60957 (i) develop reasonable criteria to gauge state agencies' efforts in maintaining an effective

60958 accounts receivable program;

60959 (j) identify those state agencies that are not making satisfactory progress toward
60960 implementing collection techniques and improving accounts receivable collections;

60961 (k) coordinate information, systems, and procedures between state agencies to
60962 maximize the collection of past-due accounts receivable;

60963 (l) establish an automated cash receipt process between state agencies;

60964 (m) establish procedures for writing off accounts receivable for accounting and
60965 collection purposes;

60966 (n) establish standard time limits after which an agency will delegate responsibility to
60967 collect state receivables to the office or its designee;

60968 (o) be a real party in interest for an account receivable referred to the office by any state
60969 agency; and

60970 (p) allocate monies collected for judgments registered under Section 77-18-6 in
60971 accordance with Sections [~~63-63a-2~~] 51-9-402, 63A-8-302, and 78-3-14.5.

60972 (4) The office may:

60973 (a) recommend to the Legislature new laws to enhance collection of past-due accounts
60974 by state agencies;

60975 (b) collect accounts receivables for higher education entities, if the higher education
60976 entity agrees;

60977 (c) prepare a request for proposal for consulting services to:

60978 (i) analyze the state's receivable management and collection efforts; and

60979 (ii) identify improvements needed to further enhance the state's effectiveness in
60980 collecting its receivables;

60981 (d) contract with private or state agencies to collect past-due accounts;

60982 (e) perform other appropriate and cost-effective coordinating work directly related to
60983 collection of state receivables;

60984 (f) obtain access to records of any state agency that are necessary to the duties of the
60985 office by following the procedures and requirements of Section [~~63-2-206~~] 63G-2-206;

60986 (g) collect interest and fees related to the collection of receivables under this chapter,
60987 and establish, by following the procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303:
60988 (i) a fee to cover the administrative costs of collection, on accounts administered by the
60989 office;

60990 (ii) a late penalty fee that may not be more than 10% of the account receivable on
60991 accounts administered by the office;

60992 (iii) an interest charge that is:

60993 (A) the postjudgment interest rate established by Section 15-1-4 in judgments
60994 established by the courts; or

60995 (B) not more than 2% above the prime rate as of July 1 of each fiscal year for accounts
60996 receivable for which no court judgment has been entered; and

60997 (iv) fees to collect accounts receivable for higher education;

60998 (h) collect reasonable attorney's fees and reasonable costs of collection that are related
60999 to the collection of receivables under this chapter;

61000 (i) make rules that allow accounts receivable to be collected over a reasonable period of
61001 time and under certain conditions with credit cards;

61002 (j) file a satisfaction of judgment in the district court by following the procedures and
61003 requirements of the Utah Rules of Civil Procedure;

61004 (k) ensure that judgments for which the office is the judgment creditor are renewed, as
61005 necessary; and

61006 (l) notwithstanding Section [~~63-2-206~~] 63G-2-206, share records obtained under
61007 Subsection (4)(f) with private sector vendors under contract with the state to assist state
61008 agencies in collecting debts owed to the state agencies without changing the classification of any
61009 private, controlled, or protected record into a public record.

61010 (5) The office shall ensure that:

61011 (a) a record obtained by the office or a private sector vendor as referred to in
61012 Subsection (4)(l):

61013 (i) is used only for the limited purpose of collecting accounts receivable; and

61014 (ii) is subject to federal, state, and local agency records restrictions; and
61015 (b) any person employed by, or formerly employed by, the office or a private sector
61016 vendor as referred to in Subsection (4)(1) is subject to:
61017 (i) the same duty of confidentiality with respect to the record imposed by law on
61018 officers and employees of the state agency from which the record was obtained; and
61019 (ii) any civil or criminal penalties imposed by law for violations of lawful access to a
61020 private, controlled, or protected record.

61021 (6) (a) The office shall collect accounts receivable ordered by the district court as a
61022 result of prosecution for a criminal offense that have been transferred to the office under
61023 Subsection 76-3-201.1(5)(h) or (8).

61024 (b) The office may not assess the interest charge established by the office under
61025 Subsection (4) on an account receivable subject to the postjudgment interest rate established by
61026 Section 15-1-4.

61027 (7) The office shall require state agencies to:

61028 (a) transfer collection responsibilities to the office or its designee according to time
61029 limits established by the office;

61030 (b) make annual progress towards implementing collection techniques and improved
61031 accounts receivable collections;

61032 (c) use the state's accounts receivable system or develop systems that are adequate to
61033 properly account for and report their receivables;

61034 (d) develop and implement internal policies and procedures that comply with the
61035 collections policies and guidelines established by the office;

61036 (e) provide internal accounts receivable training to staff involved in their management
61037 and collection of receivables as a supplement to statewide training;

61038 (f) bill for and make initial collection efforts of its receivables up to the time the
61039 accounts must be transferred; and

61040 (g) submit quarterly receivable reports to the office that identify the age, collection
61041 status, and funding source of each receivable.

61042 (8) The office shall use the information provided by the agencies and any additional
61043 information from the office's records to compile a one-page summary report of each agency.

61044 (9) The summary shall include:

61045 (a) the type of revenue that is owed to the agency;

61046 (b) any attempted collection activity; and

61047 (c) any costs incurred in the collection process.

61048 (10) The office shall annually provide copies of each agency's summary to the governor
61049 and to the Legislature.

61050 Section 1205. Section **63A-8-204** is amended to read:

61051 **63A-8-204. Rulemaking authority -- Collection techniques.**

61052 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
61053 Rulemaking Act, the office shall make rules:

61054 (1) providing details, as necessary, for the distribution of debts collected in accordance
61055 with the priorities under Subsection 63A-8-301(3); and

61056 (2) to govern collection techniques, which may include the use of:

61057 (a) credit reporting bureaus;

61058 (b) collection agencies;

61059 (c) garnishments;

61060 (d) liens;

61061 (e) judgments; and

61062 (f) administrative offsets.

61063 Section 1206. Section **63A-9-401** is amended to read:

61064 **63A-9-401. Division -- Duties.**

61065 (1) The division shall:

61066 (a) perform all administrative duties and functions related to management of state
61067 vehicles;

61068 (b) coordinate all purchases of state vehicles;

61069 (c) establish one or more fleet automation and information systems for state vehicles;

- 61070 (d) make rules establishing requirements for:
- 61071 (i) maintenance operations for state vehicles;
- 61072 (ii) use requirements for state vehicles;
- 61073 (iii) fleet safety and loss prevention programs;
- 61074 (iv) preventative maintenance programs;
- 61075 (v) procurement of state vehicles, including:
- 61076 (A) vehicle standards;
- 61077 (B) alternative fuel vehicle requirements;
- 61078 (C) short-term lease programs;
- 61079 (D) equipment installation; and
- 61080 (E) warranty recovery programs;
- 61081 (vi) fuel management programs;
- 61082 (vii) cost management programs;
- 61083 (viii) business and personal use practices, including commute standards;
- 61084 (ix) cost recovery and billing procedures;
- 61085 (x) disposal of state vehicles;
- 61086 (xi) reassignment of state vehicles and reallocation of vehicles throughout the fleet;
- 61087 (xii) standard use and rate structures for state vehicles; and
- 61088 (xiii) insurance and risk management requirements;
- 61089 (e) establish a parts inventory;
- 61090 (f) create and administer a fuel dispensing services program that meets the requirements
- 61091 of Subsection (2);
- 61092 (g) emphasize customer service when dealing with agencies and agency employees;
- 61093 (h) conduct an annual audit of all state vehicles for compliance with division
- 61094 requirements;
- 61095 (i) before charging a rate, fee, or other amount to an executive branch agency, or to a
- 61096 subscriber of services other than an executive branch agency:
- 61097 (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established

61098 in Section 63A-1-114; and
61099 (ii) obtain the approval of the Legislature as required by Section [~~63-38-3.5~~] 63J-1-306;
61100 and
61101 (j) conduct an annual market analysis of proposed rates and fees, which analysis shall
61102 include a comparison of the division's rates and fees with the fees of other public or private
61103 sector providers where comparable services and rates are reasonably available.
61104 (2) The division shall operate a fuel dispensing services program in a manner that:
61105 (a) reduces the risk of environmental damage and subsequent liability for leaks
61106 involving state-owned underground storage tanks;
61107 (b) eliminates fuel site duplication and reduces overall costs associated with fuel
61108 dispensing;
61109 (c) provides efficient fuel management and efficient and accurate accounting of
61110 fuel-related expenses;
61111 (d) where practicable, privatizes portions of the state's fuel dispensing system;
61112 (e) provides central planning for fuel contingencies;
61113 (f) establishes fuel dispensing sites that meet geographical distribution needs and that
61114 reflect usage patterns;
61115 (g) where practicable, uses alternative sources of energy; and
61116 (h) provides safe, accessible fuel supplies in an emergency.
61117 (3) The division shall:
61118 (a) ensure that the state and each of its agencies comply with state and federal law and
61119 state and federal rules and regulations governing underground storage tanks;
61120 (b) coordinate the installation of new state-owned underground storage tanks and the
61121 upgrading or retrofitting of existing underground storage tanks; and
61122 (c) ensure that counties, municipalities, school districts, local districts, and special
61123 service districts subscribing to services provided by the division sign a contract that:
61124 (i) establishes the duties and responsibilities of the parties;
61125 (ii) establishes the cost for the services; and

61126 (iii) defines the liability of the parties.

61127 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
61128 Administrative Rulemaking Act, the director of the Division of Fleet Operations:

61129 (i) may make rules governing fuel dispensing; and

61130 (ii) shall make rules establishing standards and procedures for purchasing the most
61131 economically appropriate size and type of vehicle for the purposes and driving conditions for
61132 which the vehicle will be used, including procedures for granting exceptions to the standards by
61133 the executive director of the Department of Administrative Services.

61134 (b) Rules made under Subsection (4)(a)(ii):

61135 (i) shall designate a standard vehicle size and type that shall be designated as the
61136 statewide standard vehicle for fleet expansion and vehicle replacement;

61137 (ii) may designate different standard vehicle size and types based on defined categories
61138 of vehicle use;

61139 (iii) may, when determining a standard vehicle size and type for a specific category of
61140 vehicle use, consider the following factors affecting the vehicle class:

61141 (A) size requirements;

61142 (B) economic savings;

61143 (C) fuel efficiency;

61144 (D) driving and use requirements;

61145 (E) safety;

61146 (F) maintenance requirements; and

61147 (G) resale value; and

61148 (iv) shall require agencies that request a vehicle size and type that is different from the
61149 standard vehicle size and type to:

61150 (A) submit a written request for a nonstandard vehicle to the division that contains the
61151 following:

61152 (I) the make and model of the vehicle requested, including acceptable alternate vehicle
61153 makes and models as applicable;

61154 (II) the reasons justifying the need for a nonstandard vehicle size or type;
 61155 (III) the date of the request; and
 61156 (IV) the name and signature of the person making the request; and
 61157 (B) obtain the division's written approval for the nonstandard vehicle.
 61158 (5) (a) (i) Each state agency and each higher education institution shall subscribe to the
 61159 fuel dispensing services provided by the division.
 61160 (ii) A state agency may not provide or subscribe to any other fuel dispensing services,
 61161 systems, or products other than those provided by the division.
 61162 (b) Counties, municipalities, school districts, local districts, special service districts, and
 61163 federal agencies may subscribe to the fuel dispensing services provided by the division if:
 61164 (i) the county or municipal legislative body, the school district, or the local district or
 61165 special service district board recommends that the county, municipality, school district, local
 61166 district, or special service district subscribe to the fuel dispensing services of the division; and
 61167 (ii) the division approves participation in the program by that government unit.
 61168 (6) The director, with the approval of the executive director, may delegate functions to
 61169 institutions of higher education, by contract or other means authorized by law, if:
 61170 (a) the agency or institution of higher education has requested the authority;
 61171 (b) in the judgment of the director, the state agency or institution has the necessary
 61172 resources and skills to perform the delegated responsibilities; and
 61173 (c) the delegation of authority is in the best interest of the state and the function
 61174 delegated is accomplished according to provisions contained in law or rule.
 61175 Section 1207. Section **63A-9-801** is amended to read:
 61176 **63A-9-801. State surplus property program -- Definitions -- Administration.**
 61177 (1) As used in this section:
 61178 (a) "Agency" means:
 61179 (i) the Utah Departments of Administrative Services, Agriculture, Alcoholic Beverage
 61180 Control, Commerce, Community and Culture, Corrections, Workforce Services, Health, Human
 61181 Resource Management, Human Services, Insurance, Natural Resources, Public Safety,

- 61182 Technology Services, and Transportation and the Labor Commission;
- 61183 (ii) the Utah Offices of the Auditor, Attorney General, Court Administrator, Crime
- 61184 Victim Reparations, Rehabilitation, and Treasurer;
- 61185 (iii) the Public Service Commission and State Tax Commission;
- 61186 (iv) the State Boards of Education, Pardons and Parole, and Regents;
- 61187 (v) the Career Service Review Board;
- 61188 (vi) other state agencies designated by the governor;
- 61189 (vii) the legislative branch, the judicial branch, and the State Board of Regents; and
- 61190 (viii) an institution of higher education, its president, and its board of trustees for
- 61191 purposes of Section 63A-9-802.
- 61192 (b) "Division" means the Division of Fleet Operations.
- 61193 (c) "Information technology equipment" means any equipment that is designed to
- 61194 electronically manipulate, store, or transfer any form of data.
- 61195 (d) "Inventory property" means property in the possession of the division that is
- 61196 available for purchase by an agency or the public.
- 61197 (e) "Judicial district" means the geographic districts established by Section 78-1-2.1.
- 61198 (f) (i) "Surplus property" means property purchased by, seized by, or donated to, an
- 61199 agency that the agency wishes to dispose of.
- 61200 (ii) "Surplus property" does not mean real property.
- 61201 (g) "Transfer" means transfer of surplus property without cash consideration.
- 61202 (2) (a) The division shall make rules establishing a state surplus property program that
- 61203 meets the requirements of this chapter by following the procedures and requirements of [~~Title~~
- 61204 ~~63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 61205 (b) Those rules shall include:
- 61206 (i) a requirement prohibiting the transfer of surplus property from one agency to
- 61207 another agency without written approval from the division;
- 61208 (ii) procedures and requirements governing division administration requirements that an
- 61209 agency must follow;

61210 (iii) requirements governing purchase priorities;

61211 (iv) requirements governing accounting, reimbursement, and payment procedures;

61212 (v) procedures for collecting bad debts;

61213 (vi) requirements and procedures for disposing of firearms;

61214 (vii) the elements of the rates or other charges assessed by the division for services and

61215 handling;

61216 (viii) procedures governing the timing and location of public sales of inventory

61217 property; and

61218 (ix) procedures governing the transfer of information technology equipment by state

61219 agencies directly to public schools.

61220 (c) The division shall report all transfers of information technology equipment by state

61221 agencies to public schools to the Utah Technology Commission and to the Legislative Interim

61222 Education Committee at the end of each fiscal year.

61223 (3) In creating and administering the program, the division shall:

61224 (a) when conditions, inventory, and demand permit:

61225 (i) establish facilities to store inventory property at geographically dispersed locations

61226 throughout the state; and

61227 (ii) hold public sales of property at geographically dispersed locations throughout the

61228 state;

61229 (b) establish, after consultation with the agency requesting the sale of surplus property,

61230 the price at which the surplus property shall be sold; and

61231 (c) transfer proceeds arising from the sale of state surplus property to the agency

61232 requesting the sale in accordance with [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary

61233 Procedures Act, less an amount established by the division by rule to pay the costs of

61234 administering the surplus property program.

61235 (4) Unless specifically exempted from this chapter by explicit reference to this chapter,

61236 each state agency shall dispose of and acquire surplus property only by participating in the

61237 division's program.

61238 Section 1208. Section **63A-9-808** is amended to read:

61239 **63A-9-808. Personal handheld electronic device -- Rulemaking on giving priority**
61240 **to state and local agencies in purchasing surplus property -- Rulemaking on the sale or**
61241 **use of a personal handheld electronic device.**

61242 (1) As used in this section, "personal handheld electronic device":

61243 (a) means an electronic device that is designed for handheld use and permits the user to
61244 store or access information, the primary value of which is specific to the user of the device; and

61245 (b) includes a mobile phone, pocket personal computer, personal digital assistant,
61246 wireless, or similar device.

61247 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
61248 Administrative Rulemaking Act, the division shall make rules:

61249 (a) giving state and local agencies priority to purchase surplus property for a 30-day
61250 period except for personal handheld electronic devices under Subsection (2)(b); and

61251 (b) allowing the sale of a personal handheld electronic device to a user who:

61252 (i) is provided the device as part of the user's employment; and

61253 (ii) subsequently makes a change in employment status including, departure, retirement,
61254 or transfer to another agency within state government.

61255 Section 1209. Section **63A-11-107** is amended to read:

61256 **63A-11-107. Records access.**

61257 (1) (a) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
61258 Records Access and Management Act, and except as provided in Subsection (1)(b), all records
61259 of a contracted parental defense attorney are protected and may not be released or made public
61260 upon subpoena, search warrant, discovery proceedings, or otherwise.

61261 (b) All records of a contracted parental defense attorney are subject to legislative
61262 subpoena, under Title 36, Chapter 14, Legislative Subpoena Powers.

61263 (2) Records released in accordance with Subsection (1)(b) shall be maintained as
61264 confidential by the Legislature. The professional legislative staff may, however, include
61265 summary data and nonidentifying information in its audits and reports to the Legislature.

61266 Section 1210. Section **63A-11-202** is amended to read:

61267 **63A-11-202. Contracted parental defense attorney.**

61268 (1) With respect to child welfare cases, a contracted parental defense attorney shall:

61269 (a) adequately prepare for and attend all court hearings, including initial and continued
61270 shelter hearings and mediations;

61271 (b) fully advise the client of the nature of the proceedings and of the client's rights,
61272 communicate to the client any offers of settlement or compromise, and advise the client
61273 regarding the reasonably foreseeable consequences of any course of action in the proceedings;

61274 (c) be reasonably available to consult with the client outside of court proceedings;

61275 (d) where attendance of a parental defense attorney is reasonably needed, attend
61276 meetings regarding the client's case with representatives of one or more of the Division of Child
61277 and Family Services, the Office of the Attorney General, and the Office of the Guardian Ad
61278 Litem;

61279 (e) represent the interest of the client at all stages of the proceedings before the trial
61280 court;

61281 (f) participate in the training courses and otherwise maintain the standards described in
61282 Subsection (3).

61283 (2) If the office enters into a contract with an attorney under Section 63A-11-105, the
61284 contract shall require that each attorney in the firm who will provide representation of parents in
61285 child welfare cases under the contract perform the duties described in Subsection (1).

61286 (3) (a) Except as otherwise provided in Subsection (3)(b), a contracted parental defense
61287 attorney shall meet the standards developed by the director which may include:

61288 (i) completion of a basic training course provided by the office;

61289 (ii) experience in child welfare cases; and

61290 (iii) participation each calendar year in continuing legal education courses providing no
61291 fewer than eight hours of instruction in child welfare law.

61292 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
61293 Administrative Rulemaking Act, the director may, by rule, exempt from the requirements of

61294 Subsection (3)(a) an attorney who has equivalent training or adequate experience.

61295 (4) Payment for the representation, costs, and expenses of the contracted parental
61296 defense attorney shall be made from the Child Welfare Parental Defense Fund as provided in
61297 Section 63A-11-203.

61298 Section 1211. Section **63A-11-204** is amended to read:

61299 **63A-11-204. Agreements for coverage by the Child Welfare Parental Defense**
61300 **Fund -- Eligibility -- County and state obligations -- Termination -- Revocation.**

61301 (1) A county legislative body and the office may annually enter into a written agreement
61302 for the office to provide parental defense attorney services in the county out of the Child
61303 Welfare Parental Defense Fund.

61304 (2) An agreement described in Subsection (1) shall provide that the county shall pay
61305 into the fund an amount defined by a formula established in rule by the office.

61306 (3) (a) After the first year of operation of the fund, any county that elects to initiate
61307 participation in the fund, or reestablish participation in the fund after participation was
61308 terminated, shall be required to make an equity payment, in addition to the assessment provided
61309 in Subsection (2).

61310 (b) The amount of the equity payment described in Subsection (3)(a) shall be
61311 determined by the office pursuant to rules established by the office under [~~Title 63, Chapter~~
61312 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

61313 (4) The agreement shall provide for revocation of the agreement for failure to pay
61314 assessments on the due date established by rule.

61315 (5) Any county that elects to withdraw from participation in the fund, or whose
61316 participation in the fund is revoked due to failure to pay its assessments when due, shall forfeit
61317 any right to any previously paid assessments by the county or coverage from the fund.

61318 Section 1212. Section **63A-12-101**, which is renumbered from Section 63-2-901 is
61319 renumbered and amended to read:

61320 **Part 1. Archives and Records Service**

61321 [~~63-2-901~~]. **63A-12-101. Division of Archives and Records Service created --**

61322 **Duties.**

61323 (1) There is created the Division of Archives and Records Service within the
61324 Department of Administrative Services.

61325 (2) The state archives shall:

61326 (a) administer the state's archives and records management programs, including storage
61327 of records, central microphotography programs, and quality control;

61328 (b) apply fair, efficient, and economical management methods to the collection,
61329 creation, use, maintenance, retention, preservation, disclosure, and disposal of records and
61330 documents;

61331 (c) establish standards, procedures, and techniques for the effective management and
61332 physical care of records;

61333 (d) conduct surveys of office operations and recommend improvements in current
61334 records management practices, including the use of space, equipment, automation, and supplies
61335 used in creating, maintaining, storing, and servicing records;

61336 (e) establish standards for the preparation of schedules providing for the retention of
61337 records of continuing value and for the prompt and orderly disposal of state records no longer
61338 possessing sufficient administrative, historical, legal, or fiscal value to warrant further retention;

61339 (f) establish, maintain, and operate centralized microphotography lab facilities and
61340 quality control for the state;

61341 (g) provide staff and support services to the records committee;

61342 (h) develop training programs to assist records officers and other interested officers and
61343 employees of governmental entities to administer this [~~chapter~~] part and Title 63G, Chapter 2,
61344 Government Records Access and Management Act;

61345 (i) provide access to public records deposited in the archives;

61346 (j) administer and maintain the Utah Public Notice Website established under Section
61347 63F-1-701;

61348 (k) provide assistance to any governmental entity in administering this [~~chapter~~] part
61349 and Title 63G, Chapter 2, Government Records Access and Management Act; and

61350 (1) prepare forms for use by all governmental entities for a person requesting access to a
61351 record.

61352 (3) The state archives may:

61353 (a) establish a report and directives management program; and

61354 (b) establish a forms management program.

61355 (4) The executive director of the Department of Administrative Services may direct the
61356 state archives to administer other functions or services consistent with this ~~[chapter]~~ part and
61357 Title 63G, Chapter 2, Government Records Access and Management Act.

61358 Section 1213. Section **63A-12-102**, which is renumbered from Section 63-2-902 is
61359 renumbered and amended to read:

61360 ~~[63-2-902].~~ **63A-12-102. State archivist -- Duties.**

61361 (1) With the approval of the governor, the executive director of the Department of
61362 Administrative Services shall appoint the state archivist to serve as director of the state archives.
61363 The state archivist shall be qualified by archival training, education, and experience.

61364 (2) The state archivist is charged with custody of the following:

61365 (a) the enrolled copy of the Utah constitution;

61366 (b) the acts and resolutions passed by the Legislature;

61367 (c) all records kept or deposited with the state archivist as provided by law;

61368 (d) the journals of the Legislature and all bills, resolutions, memorials, petitions, and
61369 claims introduced in the Senate or the House of Representatives;

61370 (e) Indian war records; and

61371 (f) oaths of office of all state officials.

61372 (3) (a) The state archivist is the official custodian of all noncurrent records of
61373 permanent or historic value that are not required by law to remain in the custody of the
61374 originating governmental entity.

61375 (b) Upon the termination of any governmental entity, its records shall be transferred to
61376 the state archives.

61377 Section 1214. Section **63A-12-103**, which is renumbered from Section 63-2-903 is

61378 renumbered and amended to read:

61379 ~~[63-2-903]~~. **63A-12-103. Duties of governmental entities.**

61380 The chief administrative officer of each governmental entity shall:

61381 (1) establish and maintain an active, continuing program for the economical and
61382 efficient management of the governmental entity's records as provided by this ~~[chapter]~~ part and
61383 Title 63G, Chapter 2, Government Records Access and Management Act;

61384 (2) appoint one or more records officers who will be trained to work with the state
61385 archives in the care, maintenance, scheduling, disposal, classification, designation, access, and
61386 preservation of records;

61387 (3) ensure that officers and employees of the governmental entity that receive or
61388 process records requests receive required training on the procedures and requirements of this
61389 ~~[chapter]~~ part and Title 63G, Chapter 2, Government Records Access and Management Act;

61390 (4) make and maintain adequate and proper documentation of the organization,
61391 functions, policies, decisions, procedures, and essential transactions of the governmental entity
61392 designed to furnish information to protect the legal and financial rights of persons directly
61393 affected by the entity's activities;

61394 (5) submit to the state archivist proposed schedules of records for final approval by the
61395 records committee;

61396 (6) cooperate with the state archivist in conducting surveys made by the state archivist;

61397 (7) comply with rules issued by the Department of Administrative Services as provided
61398 by Section ~~[63-2-904]~~ 63A-12-104;

61399 (8) report to the state archives the designation of record series that it maintains;

61400 (9) report to the state archives the classification of each record series that is classified;

61401 and

61402 (10) establish and report to the state archives retention schedules for objects that the
61403 governmental entity determines are not defined as a record under Section ~~[63-2-103]~~
61404 63G-2-103, but that have historical or evidentiary value.

61405 Section 1215. Section **63A-12-104**, which is renumbered from Section 63-2-904 is

61406 renumbered and amended to read:

61407 ~~[63-2-904]~~. **63A-12-104. Rulemaking authority.**

61408 (1) The executive director of the Department of Administrative Services, with the
61409 recommendation of the state archivist, may make rules as provided by ~~[Title 63, Chapter 46a]~~
61410 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement provisions of this
61411 ~~[chapter]~~ part and Title 63G, Chapter 2, Government Records Access and Management Act,
61412 dealing with procedures for the collection, storage, designation, classification, access, and
61413 management of records.

61414 (2) A governmental entity that includes divisions, boards, departments, committees,
61415 commissions, or other subparts that fall within the definition of a governmental entity under this
61416 chapter, may, by rule, specify at which level the requirements specified in this chapter shall be
61417 undertaken.

61418 Section 1216. Section **63A-12-105**, which is renumbered from Section 63-2-905 is
61419 renumbered and amended to read:

61420 ~~[63-2-905]~~. **63A-12-105. Records declared property of the state -- Disposition.**

61421 (1) All records created or maintained by a governmental entity of the state are the
61422 property of the state and shall not be mutilated, destroyed, or otherwise damaged or disposed
61423 of, in whole or part, except as provided in this ~~[chapter]~~ part and Title 63G, Chapter 2,
61424 Government Records Access and Management Act.

61425 (2) (a) Except as provided in Subsection (b), all records created or maintained by a
61426 political subdivision of the state are the property of the state and shall not be mutilated,
61427 destroyed, or otherwise damaged or disposed of, in whole or in part, except as provided in this
61428 ~~[chapter]~~ part and Title 63G, Chapter 2, Government Records Access and Management Act.

61429 (b) Records which constitute a valuable intellectual property shall be the property of the
61430 political subdivision.

61431 (c) The state archives may, upon request from a political subdivision, take custody of
61432 any record series of the political subdivision. A political subdivision which no longer wishes to
61433 maintain custody of a record which must be retained under the political subdivision's retention

61434 schedule or the state archive's retention schedule shall transfer it to the state archives for
61435 safekeeping and management.

61436 (3) It is unlawful for a governmental entity or political subdivision to intentionally
61437 mutilate, destroy, or otherwise damage or dispose of a record series knowing that such
61438 mutilation, destruction, or damage is in contravention of the political subdivision's or the state
61439 archive's properly adopted retention schedule.

61440 Section 1217. Section **63A-12-106**, which is renumbered from Section 63-2-906 is
61441 renumbered and amended to read:

61442 ~~[63-2-906]~~. **63A-12-106. Certified and microphotographed copies.**

61443 (1) Upon demand, the state archives shall furnish certified copies of a record in its
61444 exclusive custody that is classified public or that is otherwise determined to be public under this
61445 chapter by the originating governmental entity, the records committee, or a court of law. When
61446 certified by the state archivist under the seal of the state archives, the copy has the same legal
61447 force and effect as if certified by the originating governmental entity.

61448 (2) The state archives may microphotograph records when it determines that
61449 microphotography is an efficient and economical way to care, maintain, and preserve the record.
61450 A transcript, exemplification, or certified copy of a microphotograph has the same legal force
61451 and effect as the original. Upon review and approval of the microphotographed film by the
61452 state archivist, the source documents may be destroyed.

61453 (3) The state archives may allow another governmental entity to microphotograph
61454 records in accordance with standards set by the state archives.

61455 Section 1218. Section **63A-12-107**, which is renumbered from Section 63-2-907 is
61456 renumbered and amended to read:

61457 ~~[63-2-907]~~. **63A-12-107. Right to replevin.**

61458 To secure the safety and preservation of records, the state archivist or ~~[his]~~ the state
61459 archivist's representative may examine all records. On behalf of the state archivist, the attorney
61460 general may replevin any records that are not adequately safeguarded.

61461 Section 1219. Section **63A-12-108**, which is renumbered from Section 63-2-908 is

61462 renumbered and amended to read:

61463 ~~[63-2-908]~~. **63A-12-108**. **Inspection and summary of record series.**

61464 The state archives shall provide for public inspection of the title and a summary
61465 description of each record series.

61466 Section 1220. Section **63B-1a-401** is amended to read:

61467 **63B-1a-401. Status of bond records -- Compliance with Registered Public**
61468 **Obligations Act.**

61469 (1) The records of ownership, registration, transfer, and exchange of the bonds, and of
61470 persons to whom payment with respect to the obligations are made, are private records as
61471 provided in Section ~~[63-2-302]~~ 63G-2-302 or protected records as provided in Section
61472 ~~[63-2-304]~~ 63G-2-305.

61473 (2) The bonds and any evidences of participation interest in the bonds may be issued,
61474 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
61475 Title 15, Chapter 7, Registered Public Obligations Act.

61476 Section 1221. Section **63B-1b-101**, which is renumbered from Section 63-65-1 is
61477 renumbered and amended to read:

CHAPTER 1b. STATE FINANCING CONSOLIDATION ACT

Part 1. General Provisions

61480 ~~[63-65-1]~~. **63B-1b-101**. **Title.**

61481 This chapter ~~shall be~~ is known as the "State Financing Consolidation Act."

61482 Section 1222. Section **63B-1b-102**, which is renumbered from Section 63-65-2 is
61483 renumbered and amended to read:

61484 ~~[63-65-2]~~. **63B-1b-102**. **Definitions.**

61485 As used in this chapter:

61486 (1) "Agency bonds" means any bond, note, contract, or other evidence of indebtedness
61487 representing loans or grants made by an authorizing agency.

61488 (2) "Authorized official" means the state treasurer or other person authorized by a bond
61489 document to perform the required action.

61490 (3) "Authorizing agency" means the board, person, or unit with legal responsibility for
61491 administering and managing revolving loan funds.

61492 (4) "Bond document" means:

61493 (a) a resolution of the commission; or

61494 (b) an indenture or other similar document authorized by the commission that
61495 authorizes and secures outstanding revenue bonds from time to time.

61496 (5) "Commission" means the State Bonding Commission created in Section 63B-1-201.

61497 (6) "Revenue bonds" means any special fund revenue bonds issued under this chapter.

61498 (7) "Revolving Loan Funds" means:

61499 (a) the Water Resources Conservation and Development Fund, created in Section
61500 73-10-24;

61501 (b) the Water Resources Construction Fund, created in Section 73-10-8;

61502 (c) the Water Resources Cities Water Loan Fund, created in Section 73-10-22;

61503 (d) the Clean Fuel Conversion Funds, created in Title 19, Chapter 1, Part 4, Clean Fuels
61504 and Vehicle Technology Program Act;

61505 (e) the Water Development Security Fund and its subaccounts created in Section
61506 73-10c-5;

61507 (f) the Agriculture Resource Development Fund, created in Section 4-18-6;

61508 (g) the Utah Rural Rehabilitation Fund, created in Section 4-19-4;

61509 (h) the Permanent Community Impact Fund, created in Section 9-4-303;

61510 (i) the Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3; and

61511 (j) the Transportation Infrastructure Loan Fund, created in Section 72-2-202.

61512 Section 1223. Section **63B-1b-201**, which is renumbered from Section 63-65-3 is
61513 renumbered and amended to read:

61514 **Part 2. Officers in State Treasurer's Office**

61515 **[63-65-3]. 63B-1b-201. Investment officer -- Powers and duties.**

61516 (1) There is created within the Office of the State Treasurer an investment banking
61517 officer to advise, counsel, and render technical assistance to authorizing agencies in the

61518 management of state loan and grant programs.

61519 (2) This officer shall:

61520 (a) work cooperatively with the staff and boards of authorizing agencies as an advisor
61521 on technical financial aspects concerning loan and grant programs authorized by law;

61522 (b) coordinate procedures for the closing of and assist authorizing agencies in closing
61523 all loans and grants of funds or other subsidy agreements;

61524 (c) analyze, in conjunction with the appropriate authorizing agency, the financial
61525 feasibility and economic and capital efficiency of projects of applicants to authorizing agencies
61526 for loans and grants, review financing options, and make recommendations to each authorizing
61527 agency regarding terms of loans or grants and levels of state subsidy in accordance with the
61528 financial feasibility of the project and the efficiency of available state capital;

61529 (d) coordinate and consolidate, to the extent possible, all financial and legal analysis of
61530 financing plans and closings of loans and grants made by each authorizing agency; and

61531 (e) provide an annual report of [~~his~~] the officer's activities to the state treasurer, the
61532 governor, the Division of Finance, and the boards of each authorizing agency.

61533 (3) The analysis under Subsection (2)(c) shall include consideration of the following
61534 criteria:

61535 (a) a demonstration of need based on the applicant's overall financial profile, including
61536 overlapping debt, tax levies, user rates, fees, charges, assessments, and other revenue and
61537 obligations existing within the community as a whole;

61538 (b) the ability of the applicant to obtain financing from other, preferably private, sources
61539 on terms and conditions reasonably affordable;

61540 (c) the availability and advisability of financing methods such as loans, grants, interest
61541 buy down arrangements, bond insurance, loan or bond guarantees, or any other appropriate
61542 method;

61543 (d) the economic and efficiency of capital advantages enuring to the authorizing agency
61544 if the financing plan is adopted;

61545 (e) a demonstration of local public support for the financing plan; and

61546 (f) availability of other funds and financing methods under law.

61547 (4) Each authorizing agency shall consult with and cooperate with the officer and shall
 61548 consider [his] the officer's recommendations before proceeding to fund a project, but the final
 61549 decision as to the appropriate financing plan shall rest with the board of the authorizing agency
 61550 according to their legal authority existing at the time.

61551 Section 1224. Section **63B-1b-202**, which is renumbered from Section 63-65-4 is
 61552 renumbered and amended to read:

61553 **[63-65-4]. 63B-1b-202. Custodial officer -- Powers and duties.**

61554 (1) (a) There is created within the Division of Finance an officer responsible for the
 61555 care, custody, safekeeping, collection, and accounting of all bonds, notes, contracts, trust
 61556 documents, and other evidences of indebtedness:

61557 (i) owned or administered by the state or any of its agencies; and

61558 (ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

61559 (b) Notwithstanding Subsection (1)(a), the officer described in Subsection (1)(a) is not
 61560 responsible for the care, custody, safekeeping, collection, and accounting of a bond, note,
 61561 contract, trust document, or other evidence of indebtedness relating to the:

61562 (i) Agriculture Resource Development Fund, created in Section 4-18-6;

61563 (ii) Utah Rural Rehabilitation Fund, created in Section 4-19-4;

61564 (iii) Petroleum Storage Tank Loan Fund, created in Section 19-6-405.3;

61565 (iv) Olene Walker Housing Loan Fund, created in Section 9-4-702;

61566 (v) Business Development for Disadvantaged Rural Communities Restricted Account,
 61567 created in Section [~~63-38f-2003~~] 63M-1-2003; and

61568 (vi) Brownfields Fund, created in Section 19-8-120.

61569 (2) (a) Each authorizing agency shall deliver to this officer for the officer's care,
 61570 custody, safekeeping, collection, and accounting all bonds, notes, contracts, trust documents,
 61571 and other evidences of indebtedness:

61572 (i) owned or administered by the state or any of its agencies; and

61573 (ii) except as provided in Subsection (1)(b), relating to revolving loan funds.

61574 (b) This officer shall:

61575 (i) establish systems, programs, and facilities for the care, custody, safekeeping,
61576 collection, and accounting for the bonds, notes, contracts, trust documents, and other evidences
61577 of indebtedness submitted to the officer under this Subsection (2); and

61578 (ii) shall make available updated reports to each authorizing agency as to the status of
61579 loans under their authority.

61580 (3) The officer described in Section [~~63-65-3~~] 63B-1b-201 shall deliver to the officer
61581 described in Subsection (1)(a) for the care, custody, safekeeping, collection, and accounting by
61582 the officer described in Subsection (1)(a) of all bonds, notes, contracts, trust documents, and
61583 other evidences of indebtedness closed as provided in Subsection [~~63-65-3~~] 63B-1b-201(2)(b).

61584 Section 1225. Section **63B-1b-301**, which is renumbered from Section 63-65-5 is
61585 renumbered and amended to read:

61586 **Part 3. Transfer or Liquidation of Bonds**

61587 [~~63-65-5~~]. **63B-1b-301. State treasurer may sell, assign, or liquidate agency**
61588 **bonds -- Marketing plan required.**

61589 (1) One or more authorizing agencies may from time to time request the state treasurer
61590 to sell, assign, or liquidate agency bonds on behalf of the authorizing agencies as provided in
61591 Section [~~63-65-6~~] 63B-1b-302.

61592 (2) (a) Agency bonds shall be sold, assigned, transferred, or liquidated by the state
61593 treasurer pursuant to a marketing plan provided by the state treasurer under Section [~~63-65-6~~]
61594 63B-1b-302.

61595 (b) The governor or the governor's designee and the appropriate authorizing agency
61596 shall approve the marketing plan, in writing.

61597 Section 1226. Section **63B-1b-302**, which is renumbered from Section 63-65-6 is
61598 renumbered and amended to read:

61599 [~~63-65-6~~]. **63B-1b-302. Marketing plan and related agreements -- Use of**
61600 **proceeds of liquidation of agency bonds -- Report to Division of Finance -- Special funds**
61601 **-- Limitation on liability.**

61602 (1) (a) Before the liquidation of any agency bonds pursuant to the request of an
61603 authorizing agency as provided in Section [~~63-65-5~~] 63B-1b-301, the state treasurer shall
61604 provide a written marketing plan to the governor or the governor's designee and the appropriate
61605 authorizing agency or agencies for written approval.

61606 (b) The marketing plan may provide for:

61607 (i) the terms and conditions under which the agency bonds may be sold, assigned, or
61608 liquidated by the state treasurer;

61609 (ii) the particular agency bonds to be sold, assigned, or liquidated, or a maximum par
61610 amount of agency bonds to be sold, assigned, or liquidated;

61611 (iii) the price or a range of prices of the agency bonds to be sold, assigned, or
61612 liquidated, which may be at, above, or below par, as the state treasurer determines in the
61613 marketing plan;

61614 (iv) the terms and conditions of agreements entered into by the state treasurer on behalf
61615 of the state with financial and other institutions for financial advisory services, trustee services,
61616 insurance, letters of credit, reimbursement agreements, tender agreements, put agreements,
61617 repurchase agreements, and indexing and tender agent agreements to facilitate the marketing
61618 plan or to secure or provide liquidity to support any agreement, obligation, or contract entered
61619 into by the state treasurer on behalf of the state in connection with the sale, assignment, or
61620 liquidation of the agency bonds and any repurchase, remarketing, or other liquidation of the
61621 agency bonds and any insurance, repurchase, remarketing, tender, put, letter of credit, or
61622 agreement, obligation, or contract entered in connection with them, including payment of fees,
61623 charges, or other amounts coming due under agreements entered into with financial or other
61624 institutions by the state treasurer, from the proceeds of any sale, assignment, or other liquidation
61625 of agency bonds, and from any investment earnings on such proceeds, and no other state money
61626 may be used for this purpose;

61627 (v) the application of the proceeds received from the sale, assignment, or liquidation of
61628 agency bonds, and any investment earnings on them; and

61629 (vi) all other details relating to the sale, assignment, or liquidation of agency bonds and

61630 any related, attached, or accompanying insurance, tender, put, repurchase, remarketing, letter of
61631 credit, or other agreement, obligation, or contract deemed necessary or appropriate by the state
61632 treasurer.

61633 (c) The state treasurer, on behalf of the state, may enter into the agreements
61634 contemplated in the marketing plan.

61635 (2) (a) After the payment of, or provision for payment of, the fees, charges, or other
61636 amounts pursuant to Subsection (1), the state treasurer shall deliver the proceeds of the sale,
61637 assignment, or other liquidation of agency bonds under this section to the appropriate
61638 authorizing agency to be applied as authorized by the law creating or authorizing the loan or
61639 grant program of the authorizing agency.

61640 (b) (i) The marketing plan may provide that if any agreement, obligation, or contract
61641 entered into by the state treasurer on behalf of the state with respect to the sale, repurchase,
61642 remarketing, tender, put, assignment, or other liquidation of the agency bonds remains
61643 outstanding under the marketing plan, the proceeds, and investment earnings on them, may be
61644 pledged, escrowed, held in trust, or otherwise held in reserve by the state treasurer to secure
61645 these agreements, obligations, or contracts of the state treasurer entered into on behalf of the
61646 state.

61647 (ii) Any obligations of the state treasurer entered into on behalf of the state under
61648 Subsection (2)(b)(i) shall be limited solely to those proceeds and the investment earnings on
61649 them.

61650 (c) No holder or beneficiary of any put, tender, repurchase, remarketing, or other
61651 similar rights under such agreements, obligations, or contracts of the state treasurer entered into
61652 on behalf of the state has any rights against the state, the state treasurer or any state agency, or
61653 funds of the state, the state treasurer, or any state agency, other than those expressly set forth in
61654 the agreement or contract embodying those rights, consistent with the marketing plan and the
61655 limitation set forth in this Subsection (2).

61656 (3) (a) (i) The state treasurer may establish more than one marketing plan under this
61657 section.

61658 (ii) Agency bonds may be combined in any combination and sold, pledged, assigned, or
61659 otherwise liquidated in any amounts, at any time, and from time to time as provided in the
61660 applicable marketing plan.

61661 (b) The state treasurer may, by order, set forth the sale price, form, manner of
61662 execution, payment, manner of sale, assignment, or other liquidation, and all details of
61663 agreements or contracts entered into in connection with them, including the application of any
61664 proceeds and the investment earnings on them, consistent with the marketing plan and this
61665 section.

61666 (c) The state treasurer shall make a verified return to the Division of Finance
61667 immediately upon completion of each transaction of:

- 61668 (i) the amount of agency bonds involved;
- 61669 (ii) the amounts received in each transaction entered into under this section; and
- 61670 (iii) a brief description of any pledge or other restriction on the proceeds of the
61671 transaction or the investment earnings on the proceeds.

61672 (4) The state treasurer may:

- 61673 (a) create any funds necessary to carry out the purposes of this section;
- 61674 (b) invest all money held in those funds in accordance with Title 51, Chapter 7, State
61675 Money Management Act, and in accordance with any agreement of the state, pursuant to the
61676 marketing plan, with respect to the investment and application of the money; and

61677 (c) invest money held in the funds in obligations of any state, territory, or possession of
61678 the United States, or of any of the political subdivisions of any state, territory, or possession of
61679 the United States, or of the District of Columbia, described in Section 103, Internal Revenue
61680 Code of 1986.

61681 (5) The limitations contained in this section with respect to the liability of the state or its
61682 agencies may not be construed to limit or alter the obligations of political subdivisions on the
61683 bonds in the hands of the holders of them in any manner.

61684 Section 1227. Section **63B-1b-401**, which is renumbered from Section 63-65-7 is
61685 renumbered and amended to read:

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Part 4. Issuance of Bonds

~~[63-65-7].~~ **63B-1b-401. Pledge of agency bonds to pay revenue bonds -- Contents of financing agreements -- Use of monies received by authorizing agencies.**

(1) With the approval of the relevant authorizing agency, the State Bonding Commission may pledge, assign, or otherwise transfer any agency bonds, any monies payable on or with respect to them, any legally available monies or other security administered by an authorizing agency, or any combination of bonds, monies, or other security to provide for the payment of revenue bonds issued under Section ~~[63-65-8]~~ 63B-1b-402 and the payment of any amounts due under agreements and contracts described in Subsection ~~[63-65-8]~~ 63B-1b-402(9).

(2) (a) Before issuing revenue bonds under Section ~~[63-65-8]~~ 63B-1b-402, the commission shall enter into a financing agreement with the appropriate authorizing agency or agencies.

(b) This agreement shall specify:

(i) any agency bonds, monies, or other security to be pledged by the commission to provide for the payment of the revenue bonds;

(ii) the amount to be paid to the order of the authorizing agency or agencies for the agency bonds, monies, or other security; and

(iii) other matters that the commission considers necessary or appropriate.

(3) The amounts received by each authorizing agency from the proceeds of the revenue bonds, together with all amounts paid to the authorizing agencies pursuant to Subsection ~~[63-65-8]~~ 63B-1b-402(10), shall be applied by the authorizing agency as authorized by the law creating or authorizing the loan or grant program of the authorizing agency.

Section 1228. Section **63B-1b-402**, which is renumbered from Section 63-65-8 is renumbered and amended to read:

~~[63-65-8].~~ **63B-1b-402. Commission may authorize revenue bonds -- Contents of bond document -- Special and reserve funds -- Limitation on liability -- Restoration of monies in reserve funds -- Payment of bonds and other technical requirements -- Refunding -- Report to Division of Finance.**

61714 (1) (a) In order to provide authorizing agencies with an alternative method of
61715 liquidating agency bonds and, by doing so, providing authorizing agencies with additional funds
61716 to further the purposes of authorizing agencies, the commission may authorize the issuance of
61717 revenue bonds from time to time by the state.

61718 (b) These revenue bonds shall be payable solely from a special fund established by the
61719 state treasurer as provided in Subsection (4).

61720 (c) Revenue bonds may be sold at public or private sale and may be issued in one or
61721 more series.

61722 (2) Revenue bonds may be authorized, issued, and sold by the commission on behalf of
61723 the state at a time or times and in a manner set forth in a bond document that provides for:

61724 (a) the terms and conditions of sale, including price, whether at, below or above face
61725 value;

61726 (b) interest rates, including a variable rate;

61727 (c) authorized denomination;

61728 (d) maturity dates;

61729 (e) form;

61730 (f) manner of execution;

61731 (g) manner of authentication;

61732 (h) place and medium of payment;

61733 (i) redemption terms;

61734 (j) authorized signatures of public officials; and

61735 (k) other provisions and details considered necessary or appropriate.

61736 (3) To the extent set forth in the resolution, the proceeds of revenue bonds may be used
61737 for the purposes set forth in Subsection (1) and to:

61738 (a) provide for any necessary or desirable reserve fund as provided for in Subsection
61739 (5); and

61740 (b) pay fees, charges, and other amounts related to the issuance and sale of the revenue
61741 bonds.

61742 (4) (a) As provided in the bond document, the principal of, premium, if any, and interest
61743 on, any issue of revenue bonds is payable solely from and secured by one or more special funds
61744 consisting of:

61745 (i) the pledge and assignment of any agency bonds, including all amounts payable on or
61746 with respect to them, and other monies and security, as provided for in an agreement entered
61747 into under Subsection [~~63-65-7~~] 63B-1b-401(2);

61748 (ii) amounts on deposit in the reserve fund, if any, established under Subsection (5);

61749 (iii) amounts available pursuant to any security device or credit enhancement device that
61750 the commission authorizes for the purpose of improving the marketability of the revenue bonds;
61751 and

61752 (iv) other amounts available and pledged by the commission to secure payment of that
61753 issue of revenue bonds.

61754 (b) Owners of revenue bonds do not have recourse against the general funds or general
61755 credit of the state or its political subdivisions or agencies, but this limitation does not limit or
61756 alter the obligations of political subdivisions on agency bonds in any manner.

61757 (c) Revenue bonds do not constitute nor give rise to a general obligation or liability of,
61758 or constitute a charge or lien against, the general credit or taxing power of the state or its
61759 political subdivisions or agencies, including any authorizing agency.

61760 (d) Revenue bonds shall contain on their face a statement that:

61761 (i) the revenue bonds are payable solely from the sources set forth in this Subsection (4)
61762 and specified in the bond document with respect to the revenue bonds;

61763 (ii) neither the state nor any political subdivision of the state is obligated to pay the
61764 revenue bonds; and

61765 (iii) neither the faith and credit nor the taxing power of the state or any of its political
61766 subdivisions is pledged to the payment of principal or redemption price of, or premium, if any,
61767 or interest on the revenue bonds.

61768 (e) Revenue bonds do not constitute debt of the state within the meaning of Utah
61769 Constitution Article XIII, Sec. 5 (3) or Article XIV, Sec. 1.

61770 (5) (a) The commission may establish a reserve fund with respect to any issue of
61771 revenue bonds.

61772 (b) If a reserve fund is established, the bond document relating to that issue of revenue
61773 bonds shall specify:

61774 (i) the minimum amount that is required to be on deposit in the reserve fund;

61775 (ii) the amount of sale proceeds from the sale of that issue of revenue bonds that shall
61776 be deposited in the reserve fund; and

61777 (iii) the manner in which any deficiency in the reserve fund shall be replenished.

61778 (c) (i) On or before the first day of December of each year, the state treasurer shall
61779 certify to the governor and the director of the Division of Finance the amount, if any, that may
61780 be required to restore all reserve funds established to the minimum amount specified by the state
61781 treasurer with respect to each reserve fund.

61782 (ii) The governor may request an appropriation from the Legislature equal to the
61783 certified amount in order to restore each reserve fund to the specified minimum amount.

61784 (6) (a) (i) The commission may provide in the bond document that any signature of a
61785 public official authorized to sign revenue bonds may be by the facsimile signature of that official
61786 imprinted, engraved, stamped, or otherwise placed on the revenue bonds.

61787 (ii) If all signatures of public officials on the revenue bonds are facsimile signatures, the
61788 bond document shall provide for a manual authenticating signature on the revenue bonds by or
61789 on behalf of a designated authenticating agent.

61790 (iii) If an official ceases to hold office before delivery of the revenue bonds signed by
61791 that official, the signature or facsimile signature of the official is valid and sufficient for all
61792 purposes.

61793 (b) A facsimile of the seal of the state may be imprinted, engraved, stamped, or
61794 otherwise placed on the revenue bonds.

61795 (7) (a) The commission may provide in the bond document for the replacement of lost,
61796 destroyed, stolen, or mutilated revenue bonds or for the exchange of revenue bonds after
61797 issuance for revenue bonds of smaller or larger denominations.

61798 (b) Revenue bonds in changed denominations shall:
61799 (i) be exchanged for the original revenue bonds in the aggregate principal amounts and
61800 in a manner that prevents the duplication of interest; and
61801 (ii) bear interest at the same rate, be of the same series, mature on the same date, and be
61802 as nearly as practicable in the same form as the original revenue bonds.

61803 (8) (a) (i) Revenue bonds may be registered as to both principal and interest or may be
61804 in a book entry form under which the right to principal and interest may be transferred only
61805 through a book entry.

61806 (ii) The commission may provide for the services and payment for the services of one or
61807 more financial institutions, other entities or persons, or nominees, within or outside the state,
61808 for:

61809 (A) authentication;
61810 (B) registration;
61811 (C) transfer, including record, bookkeeping, or book entry functions;
61812 (D) exchange; and
61813 (E) payment.

61814 (b) The records of ownership, registration, transfer, and exchange of the revenue bonds,
61815 and of persons to whom payment with respect to them is made, are classified as private or
61816 protected as defined in [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access
61817 and Management Act.

61818 (c) The revenue bonds and any evidences of participation interests in the revenue bonds
61819 may be issued, executed, authenticated, registered, transferred, exchanged, and otherwise made
61820 to comply with Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the
61821 Legislature relating to the registration of obligations enacted to meet the requirements of
61822 Section 149 (a), Internal Revenue Code of 1986, or any comparable predecessor or successor
61823 provision, and applicable regulations.

61824 (9) (a) The commission may authorize the execution and delivery of whatever
61825 agreements and contracts that the commission considers necessary and appropriate in

61826 connection with the issuance of revenue bonds.

61827 (b) These agreements and contracts may include agreements and contracts with
61828 financial and other institutions for financial advisory services, trustee services, insurance, letters
61829 of credit, reimbursement agreements, tender agreements, put agreements, repurchase
61830 agreements, and indexing and tender agent agreements to:

61831 (i) facilitate the sale of the revenue bonds; or

61832 (ii) secure or provide liquidity to support any agreement, obligation, or contract entered
61833 into by an authorized officer on behalf of the state in connection with:

61834 (A) the issuance and sale of the revenue bonds;

61835 (B) any repurchase, remarketing, or other pledge of the revenue bonds; and

61836 (C) any insurance, repurchase, remarketing, tender, put, letter of credit, or agreement,
61837 obligation, or contract entered into in connection with them, including payment of fees, charges,
61838 or other amounts coming due under agreements entered into with financial or other institutions
61839 on behalf of the state.

61840 (10) When all revenue bonds of an issue have been paid, or provision for their payment
61841 has been made, there shall be transferred to the appropriate authorizing agency or agencies, in
61842 the amounts and in the manner that the commission considers fair and equitable, and to the
61843 extent not required to secure payment of the revenue bonds and related fees, charges, and other
61844 amounts:

61845 (a) all amounts remaining on deposit in any reserve fund established with respect to the
61846 issue of revenue bonds; and

61847 (b) all other amounts and all agency bonds held by the commission and any trustee and
61848 pledged to the payment of the revenue bonds.

61849 (11) (a) The state treasurer or the commission may create any funds and accounts
61850 necessary to carry out the purposes of this section.

61851 (b) (i) The state treasurer shall administer and maintain those funds and accounts.

61852 (ii) The state treasurer may invest all monies held in those funds and accounts in
61853 accordance with Title 51, Chapter 7, State Money Management Act, and in accordance with the

61854 bond document or any other agreement entered into on behalf of the state as authorized by the
61855 bond document.

61856 (iii) The commission may not approve the bond document or other agreement with
61857 respect to the investment and application of these monies unless the state treasurer has
61858 affirmatively approved any investment provisions contained in the bond document or other
61859 agreement.

61860 (c) All income from the monies invested in a fund or account created under this
61861 Subsection (11) shall accrue to the benefit of the fund or account and shall be used for the
61862 purpose for which the fund or account was established.

61863 (12) (a) The commission may authorize the issuance of refunding revenue bonds of the
61864 state in accordance with Title 11, Chapter 27, Utah Refunding Bond Act, for the purpose of
61865 refunding any revenue bonds.

61866 (b) The state is considered a "public body" and the commission its "governing body" for
61867 purposes of that act.

61868 (13) (a) Revenue bonds may not be issued under this section until an authorized official
61869 finds and certifies that all conditions precedent to the issuance of the revenue bond have been
61870 satisfied.

61871 (b) A recital on any revenue bond of a finding and certification conclusively establishes
61872 the completion and satisfaction of all conditions of this section.

61873 (14) Revenue bonds, interest paid on revenue bonds, and any income from revenue
61874 bonds is not taxable within this state for any purpose, except for the corporate franchise tax.

61875 (15) (a) Revenue bonds are legal investments for all state trust funds, insurance
61876 companies, banks, trust companies, and the State School Fund.

61877 (b) Revenue bonds may also be used as collateral to secure legal obligations.

61878 (16) Immediately upon the issuance of each issue of revenue bonds, an authorized
61879 official shall make a verified return to the Division of Finance of:

61880 (a) the aggregate principal amount of revenue bonds issued;

61881 (b) the amount of proceeds of sale of revenue bonds received by the state;

- 61882 (c) the amount paid to the authorizing agency or agencies for the agency bonds;
- 61883 (d) the total amount of all fees and expenses relating to the issuance of the revenue
- 61884 bonds;
- 61885 (e) the amount of sale proceeds of the revenue bonds used to pay fees and expenses;
- 61886 and
- 61887 (f) the amount of sale proceeds of the revenue bonds deposited in the reserve fund
- 61888 established with respect to the issue of revenue bonds, if any.

61889 Section 1229. Section **63B-1b-501**, which is renumbered from Section 63-65-8.1 is
 61890 renumbered and amended to read:

61891 **Part 5. Tax Status**

61892 **~~[63-65-8.1].~~ 63B-1b-501. Tax status -- Exemption.**

61893 The revenue bonds issued under this chapter, any interest paid on the revenue bonds,
 61894 and any income from the bonds is not taxable in Utah for any purpose, except for the corporate
 61895 franchise tax.

61896 Section 1230. Section **63B-1b-601**, which is renumbered from Section 63-65-8.2 is
 61897 renumbered and amended to read:

61898 **Part 6. Notice Requirements**

61899 **~~[63-65-8.2].~~ 63B-1b-601. Publication of resolution or notice -- Limitation on**
 61900 **actions to contest legality.**

- 61901 (1) The commission may either:
- 61902 (a) publish once in a newspaper having general circulation in Utah any resolution
- 61903 adopted by it; or
- 61904 (b) in lieu of publishing the entire resolution, publish a notice of revenue bonds to be
- 61905 issued, titled as such, containing:
- 61906 (i) the purpose of the revenue bond issue;
- 61907 (ii) the maximum principal amount that may be issued;
- 61908 (iii) the maximum number of years over which the revenue bonds may mature;
- 61909 (iv) the maximum interest rate that the revenue bonds may bear, if any;

61910 (v) the maximum discount from par, expressed as a percentage of principal amount, at
61911 which the revenue bonds may be sold; and

61912 (vi) a statement that a copy of the resolution or other bond document may be examined
61913 at the office of the state treasurer during regular business hours for at least 30 days after the
61914 publication of the notice.

61915 (2) For 30 days after the date of publication, any interested person may contest:

61916 (a) the legality of the resolution or other bond document;

61917 (b) any of the revenue bonds authorized under it; or

61918 (c) any of the provisions made for the repayment of the revenue bonds.

61919 (3) After 30 days, a person may not, for any cause, contest:

61920 (a) the legality of the resolution or other bond document;

61921 (b) any of the revenue bonds authorized under the resolution or other bond document;

61922 or

61923 (c) any of the provisions made for the security and repayment of the revenue bonds.

61924 Section 1231. Section **63B-1b-701**, which is renumbered from Section 63-65-9 is
61925 renumbered and amended to read:

61926 **Part 7. Payment of Expenses**

61927 **~~[63-65-9]~~. 63B-1b-701. Payment of expenses.**

61928 (1) All expenses incurred by the state under this chapter may be paid:

61929 (a) in the case of expenses incurred under Section ~~[63-65-6]~~ 63B-1b-302, from the
61930 proceeds of the liquidation of agency bonds; and

61931 (b) in the case of expenses incurred under Section ~~[63-65-8]~~ 63B-1b-402, from the
61932 proceeds of sale of revenue bonds.

61933 (2) (a) Any expenses incurred by the state under this chapter that are not paid from the
61934 proceeds of the liquidation of agency bonds or the issuance of state revenue bonds shall be paid
61935 from the revolving funds of the authorizing agencies.

61936 (b) These expenses are not a charge to or an appropriation from the General Fund.

61937 Section 1232. Section **63B-2-102** is amended to read:

61938 **63B-2-102. Maximum amount -- Projects authorized.**

61939 (1) The total amount of bonds issued under this part may not exceed \$80,000,000.

61940 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 61941 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 61942 Subsection (2).

61943 (b) These costs may include the cost of acquiring land, interests in land, easements and
 61944 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 61945 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 61946 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 61947 covered by construction of the projects plus a period of six months after the end of the
 61948 construction period and all related engineering, architectural, and legal fees.

61949 (c) For the division, proceeds shall be provided for the following:

61950 CAPITAL IMPROVEMENTS

| | | | |
|-------|---|--|-------------|
| 61951 | 1 | Alterations, Repairs, and Improvements | \$8,413,900 |
| 61952 | | TOTAL IMPROVEMENTS | \$8,413,900 |

61953 CAPITAL FACILITIES CONSTRUCTION

| 61954 | | | ESTIMATED |
|-------|----------|---------------------------------------|--------------|
| 61955 | | | OPERATIONS |
| 61956 | | | AND |
| 61957 | PROJECT | PROJECT | AMOUNT |
| 61958 | PRIORITY | DESCRIPTION | FUNDED |
| | | | MAINTENANCE |
| | | | COSTS |
| 61959 | 1 | Corrections - Northern Utah | \$2,729,700 |
| 61960 | | Community Corrections Center Phase II | |
| 61961 | 2 | University of Utah | \$10,200,000 |
| 61962 | | Marriot Library Phase II | \$881,600 |
| 61963 | 3 | Ogden Courts Building Phase II | \$12,096,000 |
| 61964 | 4 | Utah National Guard - | \$397,800 |
| 61965 | | Southeast Utah Armory Phase II | \$70,500 |

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| | | | | |
|-------|----|---------------------------------|--------------|-----------|
| 61966 | 5 | Southern Utah University | \$7,004,400 | \$427,000 |
| 61967 | | Library Phase II | | |
| 61968 | 6 | Utah Valley Special Events | \$11,845,300 | \$536,900 |
| 61969 | | Center Phase II | | |
| 61970 | 7 | Salt Lake Community College | \$1,300,000 | \$0 |
| 61971 | | - Land | | |
| 61972 | 8 | Tax Commission Building | \$14,224,000 | \$812,000 |
| 61973 | 9 | Dixie College Business Building | \$2,823,300 | \$187,800 |
| 61974 | 10 | Salt Lake Community College | \$4,009,500 | \$257,600 |
| 61975 | | South City 3rd Floor and Boiler | | |
| 61976 | 11 | Public Education - | \$3,456,100 | \$124,800 |
| 61977 | | Deaf and Blind Classrooms | | |
| 61978 | | TOTAL CONSTRUCTION | \$70,086,100 | |
| 61979 | | TOTAL IMPROVEMENTS AND | \$78,500,000 | |
| 61980 | | CONSTRUCTION | | |

61981 (d) For purposes of this section, operations and maintenance costs:

61982 (i) are estimates only;

61983 (ii) may include any operations and maintenance costs already funded in existing agency
61984 budgets; and

61985 (iii) are not commitments by this Legislature or future Legislatures to fund those
61986 operations and maintenance costs.

61987 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
61988 constitute a limitation on the amount that may be expended for any project.

61989 (b) The board may revise these estimates and redistribute the amount estimated for a
61990 project among the projects authorized.

61991 (c) The commission, by resolution and in consultation with the board, may delete one or
61992 more projects from this list if the inclusion of that project or those projects in the list could be
61993 construed to violate state law or federal law or regulation.

61994 (4) (a) The division may enter into agreements related to these projects before the
61995 receipt of proceeds of bonds issued under this chapter.

61996 (b) The division shall make those expenditures from unexpended and unencumbered
61997 building funds already appropriated to the Capital Projects Fund.

61998 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
61999 of bonds issued under this chapter.

62000 (d) The commission may, by resolution, make any statement of intent relating to that
62001 reimbursement that is necessary or desirable to comply with federal tax law.

62002 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
62003 is the intent of the Legislature that the balance necessary to complete the projects be addressed
62004 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

62005 (b) For those phased projects, the division may enter into contracts for amounts not to
62006 exceed the anticipated full project funding but may not allow work to be performed on those
62007 contracts in excess of the funding already authorized by the Legislature.

62008 (c) Those contracts shall contain a provision for termination of the contract for the
62009 convenience of the state as required by Section ~~[63-56-601]~~ 63G-6-601.

62010 (d) It is also the intent of the Legislature that this authorization to the division does not
62011 bind future Legislatures to fund projects initiated from this authorization.

62012 Section 1233. Section **63B-2-105** is amended to read:

62013 **63B-2-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
62014 **Replacement -- Registration -- Federal rebate.**

62015 (1) In the issuance of bonds, the commission may determine by resolution:

62016 (a) the manner of sale, including public or private sale;

62017 (b) the terms and conditions of sale, including price, whether at, below, or above face
62018 value;

62019 (c) denominations;

62020 (d) form;

62021 (e) manner of execution;

62022 (f) manner of authentication;

62023 (g) place and medium of purchase;

62024 (h) redemption terms; and

62025 (i) other provisions and details it considers appropriate.

62026 (2) The commission may by resolution adopt a plan of financing, which may include
62027 terms and conditions of arrangements entered into by the commission on behalf of the state with
62028 financial and other institutions for letters of credit, standby letters of credit, reimbursement
62029 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
62030 including payment from any legally available source of fees, charges, or other amounts coming
62031 due under the agreements entered into by the commission.

62032 (3) (a) Any signature of a public official authorized by resolution of the commission to
62033 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
62034 otherwise placed on the bonds.

62035 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
62036 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
62037 authentication agent.

62038 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
62039 the signature or facsimile signature of the official is nevertheless valid for all purposes.

62040 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
62041 placed on the bonds.

62042 (4) (a) The commission may enact resolutions providing for the replacement of lost,
62043 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
62044 or larger denominations.

62045 (b) Bonds in changed denominations shall:

62046 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
62047 manner that prevents the duplication of interest; and

62048 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
62049 practicable in the form of the original bonds.

62050 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
62051 entry form under which the right to principal and interest may be transferred only through a
62052 book entry.

62053 (b) The commission may provide for the services and payment for the services of one or
62054 more financial institutions or other entities or persons, or nominees, within or outside the state,
62055 for the authentication, registration, transfer, including record, bookkeeping, or book entry
62056 functions, exchange, and payment of the bonds.

62057 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
62058 persons to whom payment with respect to the obligations is made, are private records as
62059 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
62060 [~~63-2-304~~] 63G-2-305.

62061 (d) The bonds and any evidences of participation interest in the bonds may be issued,
62062 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
62063 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
62064 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
62065 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

62066 (6) The commission may:

62067 (a) by resolution, provide for payment to the United States of whatever amounts are
62068 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
62069 and

62070 (b) enter into agreements with financial and other institutions and attorneys to provide
62071 for:

62072 (i) the calculation, holding, and payment of those amounts; and

62073 (ii) payment from any legally available source of fees, charges, or other amounts coming
62074 due under any agreements entered into by the commission.

62075 Section 1234. Section **63B-2-205** is amended to read:

62076 **63B-2-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
62077 **Replacement -- Registration -- Federal rebate.**

- 62078 (1) In the issuance of bonds, the commission may determine by resolution:
- 62079 (a) the manner of sale, including public or private sale;
- 62080 (b) the terms and conditions of sale, including price, whether at, below, or above face
- 62081 value;
- 62082 (c) denominations;
- 62083 (d) form;
- 62084 (e) manner of execution;
- 62085 (f) manner of authentication;
- 62086 (g) place and medium of purchase;
- 62087 (h) redemption terms; and
- 62088 (i) other provisions and details it considers appropriate.
- 62089 (2) The commission may by resolution adopt a plan of financing which may include
- 62090 terms and conditions of arrangements entered into by the commission on behalf of the state with
- 62091 financial and other institutions for letters of credit, standby letters of credit, reimbursement
- 62092 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
- 62093 including payment from any legally available source of fees, charges, or other amounts coming
- 62094 due under the agreements entered into by the commission.
- 62095 (3) (a) Any signature of a public official authorized by resolution of the commission to
- 62096 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
- 62097 otherwise placed on the bonds.
- 62098 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
- 62099 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
- 62100 authentication agent.
- 62101 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
- 62102 the signature or facsimile signature of the official is nevertheless valid for all purposes.
- 62103 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
- 62104 placed on the bonds.
- 62105 (4) (a) The commission may enact resolutions providing for the replacement of lost,

62106 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
62107 or larger denominations.

62108 (b) Bonds in changed denominations shall:

62109 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
62110 manner that prevents the duplication of interest; and

62111 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
62112 practicable in the form of the original bonds.

62113 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
62114 entry form under which the right to principal and interest may be transferred only through a
62115 book entry.

62116 (b) The commission may provide for the services and payment for the services of one or
62117 more financial institutions or other entities or persons, or nominees, within or outside the state,
62118 for the authentication, registration, transfer, including record, bookkeeping, or book entry
62119 functions, exchange, and payment of the bonds.

62120 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
62121 persons to whom payment with respect to the obligations is made, are private records as
62122 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
62123 [~~63-2-304~~] 63G-2-305.

62124 (d) The bonds and any evidences of participation interest in the bonds may be issued,
62125 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
62126 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
62127 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
62128 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

62129 (6) The commission may:

62130 (a) by resolution, provide for payment to the United States of whatever amounts are
62131 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
62132 and

62133 (b) enter into agreements with financial and other institutions and attorneys to provide

62134 for:

- 62135 (i) the calculation, holding, and payment of those amounts; and
- 62136 (ii) payment from any legally available source of fees, charges, or other amounts coming
- 62137 due under any agreements entered into by the commission.

62138 Section 1235. Section **63B-2-301** is amended to read:

62139 **63B-2-301. Legislative intent -- Additional projects.**

62140 It is the intent of the Legislature that:

62141 (1) The Department of Employment Security use monies in the special administrative
62142 fund to plan, design, and construct a Davis County facility under the supervision of the director
62143 of the Division of Facilities Construction and Management unless supervisory authority is
62144 delegated by him as authorized by Section 63A-5-206.

62145 (2) The University of Utah may use donated funds to plan, design, and construct the
62146 Nora Eccles Harrison addition under the supervision of the director of the Division of Facilities
62147 Construction and Management unless supervisory authority is delegated by him as authorized by
62148 Section 63A-5-206.

62149 (3) The University of Utah may use hospital funds to plan, design, and construct the
62150 West Patient Services Building under the supervision of the director of the Division of Facilities
62151 Construction and Management unless supervisory authority is delegated by him as authorized by
62152 Section 63A-5-206.

62153 (4) The University of Utah may use federal funds to plan, design, and construct the
62154 Computational Science Building under the supervision of the director of the Division of
62155 Facilities Construction and Management unless supervisory authority is delegated by him as
62156 authorized by Section 63A-5-206.

62157 (5) The Board of Regents may issue revenue bonds to provide:

62158 (a) \$6,700,000 to plan, design, and construct single student housing at Utah State
62159 University under the supervision of the director of the Division of Facilities Construction and
62160 Management unless supervisory authority is delegated by him as authorized by Section
62161 63A-5-206; and

- 62162 (b) additional monies necessary to:
- 62163 (i) pay costs incident to the issuance and sale of the bonds;
- 62164 (ii) pay interest on the bonds that accrues during construction and acquisition of the
- 62165 project and for up to one year after construction is completed; and
- 62166 (iii) fund any reserve requirements for the bonds.
- 62167 (6) Utah State University may use federal funds to plan, design, and construct the
- 62168 Natural Resources Lab addition under the supervision of the director of the Division of
- 62169 Facilities Construction and Management unless supervisory authority is delegated by him as
- 62170 authorized by Section 63A-5-206.
- 62171 (7) Utah State University may use funds derived from property sales to plan, design,
- 62172 and construct emergency relocation facilities for the Farmington Botanical Gardens under the
- 62173 supervision of the director of the Division of Facilities Construction and Management unless
- 62174 supervisory authority is delegated by him as authorized by Section 63A-5-206.
- 62175 (8) Utah State University may use institutional funds to plan, design, and construct an
- 62176 institutional residence for the president under the supervision of the director of the Division of
- 62177 Facilities Construction and Management unless supervisory authority is delegated by him as
- 62178 authorized by Section 63A-5-206.
- 62179 (9) Weber State University may use discretionary funds to construct a remodel and
- 62180 expansion of the stores building and mail service facilities under the supervision of the director
- 62181 of the Division of Facilities Construction and Management unless supervisory authority is
- 62182 delegated by him as authorized by Section 63A-5-206.
- 62183 (10) Weber State University may use fees and auxiliary revenue to plan, design, and
- 62184 construct a remodel and expansion of the Shepherd Student Union Building under the
- 62185 supervision of the director of the Division of Facilities Construction and Management unless
- 62186 supervisory authority is delegated by him as authorized by Section 63A-5-206.
- 62187 (11) Southern Utah University may use donated funds to plan, design, and construct an
- 62188 alumni house under the supervision of the director of the Division of Facilities Construction and
- 62189 Management unless supervisory authority is delegated by him as authorized by Section

62190 63A-5-206.

62191 (12) The College of Eastern Utah may use auxiliary revenues and other fees to:

62192 (a) make lease or other payments;

62193 (b) redeem revenue bonds or repay loans issued on behalf of the college; and

62194 (c) plan, design, and construct a 200 person residence hall under the supervision of the
62195 director of the Division of Facilities Construction and Management unless supervisory authority
62196 is delegated by him as authorized by Section 63A-5-206.

62197 (13) The Sevier Valley Applied Technology Center may use private and Community
62198 Impact Board funds, if approved, to plan, design, and construct a performing arts/multi-use
62199 facility under the supervision of the director of the Division of Facilities Construction and
62200 Management unless supervisory authority is delegated by him as authorized by Section
62201 63A-5-206.

62202 (14) Ogden City and Weber County may have offices and related space for their
62203 attorneys included in the Ogden Courts building if the city and county are able to provide
62204 upfront funding to cover all costs associated with the design and construction of that space. In
62205 addition, the city and county shall cover their proportionate share of all operations and
62206 maintenance costs of their facility, including future major repairs to the building.

62207 (15) If the Legislature authorizes the Division of Facilities Construction and
62208 Management to enter into a lease purchase agreement for the Department of Human Services
62209 facility at 1385 South State Street in Salt Lake City or for the State Board of Education facility
62210 and adjacent space in Salt Lake City, or for both of those facilities, the State Building
62211 Ownership Authority, at the reasonable rates and amounts it may determine, and with technical
62212 assistance from the state treasurer, the director of the Division of Finance, and the director of
62213 the Governor's Office of Planning and Budget, may seek out the most cost effective lease
62214 purchase plans available to the state and may, pursuant to [~~Title 63, Chapter 9a, State Building
62215 Ownership Act~~] Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act,
62216 certificate out interests in, or obligations of the authority pertaining to:

62217 (a) the lease purchase obligation; or

62218 (b) lease rental payments under the lease purchase obligation.

62219 (16) Salt Lake Community College may use donated funds to plan, design, and
62220 construct an amphitheater under the supervision of the director of the Division of Facilities
62221 Construction and Management unless supervisory authority is delegated by him as authorized by
62222 Section 63A-5-206.

62223 (17) For the Tax Commission building, that:

62224 (a) All costs associated with the construction and furnishing of the Tax Commission
62225 building that are incurred before the issuance of the 1993 general obligation bonds be
62226 reimbursed by bond proceeds.

62227 (b) The maximum amount of cost that may be reimbursed from the 1993 general
62228 obligation bond proceeds for the Tax Commission building and furnishings may not exceed
62229 \$14,230,000.

62230 (c) This intent statement for Subsection (17) constitutes a declaration of official intent
62231 under Section 1.103-18 of the U.S. Treasury Regulations.

62232 Section 1236. Section **63B-3-102** is amended to read:

62233 **63B-3-102. Maximum amount -- Projects authorized.**

62234 (1) The total amount of bonds issued under this part may not exceed \$64,600,000.

62235 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
62236 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
62237 Subsection (2).

62238 (b) These costs may include the cost of acquiring land, interests in land, easements and
62239 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
62240 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
62241 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
62242 covered by construction of the projects plus a period of six months after the end of the
62243 construction period and all related engineering, architectural, and legal fees.

62244 (c) For the division, proceeds shall be provided for the following:

62245 CAPITAL IMPROVEMENTS

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| | | | | |
|-------|----------|---|--------------|-------------|
| 62246 | 1 | Alterations, Repairs, and Improvements | | \$5,000,000 |
| 62247 | | TOTAL IMPROVEMENTS | | \$5,000,000 |
| 62248 | | CAPITAL AND ECONOMIC DEVELOPMENT | | |
| 62249 | | | | ESTIMATED |
| 62250 | | | | OPERATIONS |
| 62251 | | | | AND |
| 62252 | PROJECT | PROJECT | AMOUNT | MAINTENANCE |
| 62253 | PRIORITY | DESCRIPTION | FUNDED | COSTS |
| 62254 | 1 | University of Utah | \$13,811,500 | \$881,600 |
| 62255 | | Marriott Library Phase III (Final) | | |
| 62256 | 2 | Bridgerland Applied Technology Center | \$2,400,000 | \$0 |
| 62257 | | Utah State University Space | | |
| 62258 | 3 | Weber State University - | \$2,332,100 | \$9,600 |
| 62259 | | Heat Plant | | |
| 62260 | 4 | Department of Human Services | \$4,180,000 | \$400,000 |
| 62261 | | - Division of Youth Corrections renamed | | |
| 62262 | | in 2003 to the Division of Juvenile | | |
| 62263 | | Justice Services | | |
| 62264 | 5 | Snow College - | \$3,885,100 | \$224,500 |
| 62265 | | Administrative Services/Student Center | | |
| 62266 | 6 | Ogden Weber Applied | \$750,000 | \$0 |
| 62267 | | Technology Center - | | |
| 62268 | | Metal Trades Building Design and | | |
| 62269 | | Equipment Purchase | | |
| 62270 | 7 | Department of Corrections | \$1,237,100 | \$72,000 |
| 62271 | | B-Block Remodel | | |
| 62272 | 8 | Utah State University - | \$550,000 | \$0 |
| 62273 | | Old Main Phase III Design | | |

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| | | | | |
|-------|----|---|--------------|-----------|
| 62274 | 9 | Department of Corrections - 144 bed | \$6,700,000 | \$168,800 |
| 62275 | | Uintah Expansion | | |
| 62276 | 10 | Southern Utah University | \$5,630,400 | \$314,200 |
| 62277 | | Administrative Services/Student Center | | |
| 62278 | 11 | Anasazi Museum | \$760,200 | \$8,500 |
| 62279 | 12 | Hill Air Force Base - | \$9,500,000 | \$0 |
| 62280 | | Easements Purchase | | |
| 62281 | 13 | Signetics Building Remodel | \$2,000,000 | \$0 |
| 62282 | 14 | Antelope Island Visitors Center | \$750,000 | \$30,000 |
| 62283 | 15 | State Fair Park - | \$150,000 | \$0 |
| 62284 | | Master Study | | |
| 62285 | 16 | Utah National Guard - Draper Land | \$380,800 | \$0 |
| 62286 | 17 | Davis Applied Technology Center - | \$325,000 | \$0 |
| 62287 | | Design | | |
| 62288 | 18 | Palisade State Park - Land | \$800,000 | \$0 |
| 62289 | | and Park Development | | |
| 62290 | 19 | Department of Human Services | \$80,000 | \$0 |
| 62291 | | - Cedar City Land | | |
| 62292 | 20 | Department of Human Services | \$163,400 | \$0 |
| 62293 | | - Clearfield Land | | |
| 62294 | 21 | Electronic technology, | \$2,500,000 | \$0 |
| 62295 | | equipment, and hardware | | |
| 62296 | | TOTAL CAPITAL AND ECONOMIC DEVELOPMENT | \$58,885,600 | |
| 62297 | | TOTAL IMPROVEMENTS AND | | |
| 62298 | | CAPITAL AND ECONOMIC DEVELOPMENT | \$63,885,600 | |
| 62299 | | (d) For purposes of this section, operations and maintenance costs: | | |
| 62300 | | (i) are estimates only; | | |
| 62301 | | (ii) may include any operations and maintenance costs already funded in existing agency | | |

62302 budgets; and

62303 (iii) are not commitments by this Legislature or future Legislatures to fund those
62304 operations and maintenance costs.

62305 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
62306 constitute a limitation on the amount that may be expended for any project.

62307 (b) The board may revise these estimates and redistribute the amount estimated for a
62308 project among the projects authorized.

62309 (c) The commission, by resolution and in consultation with the board, may delete one or
62310 more projects from this list if the inclusion of that project or those projects in the list could be
62311 construed to violate state law or federal law or regulation.

62312 (4) (a) The division may enter into agreements related to these projects before the
62313 receipt of proceeds of bonds issued under this chapter.

62314 (b) The division shall make those expenditures from unexpended and unencumbered
62315 building funds already appropriated to the Capital Projects Fund.

62316 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
62317 of bonds issued under this chapter.

62318 (d) The commission may, by resolution, make any statement of intent relating to that
62319 reimbursement that is necessary or desirable to comply with federal tax law.

62320 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
62321 is the intent of the Legislature that the balance necessary to complete the projects be addressed
62322 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

62323 (b) For those phased projects, the division may enter into contracts for amounts not to
62324 exceed the anticipated full project funding but may not allow work to be performed on those
62325 contracts in excess of the funding already authorized by the Legislature.

62326 (c) Those contracts shall contain a provision for termination of the contract for the
62327 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

62328 (d) It is also the intent of the Legislature that this authorization to the division does not
62329 bind future Legislatures to fund projects initiated from this authorization.

62330 Section 1237. Section **63B-3-105** is amended to read:

62331 **63B-3-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
62332 **Replacement -- Registration -- Federal rebate.**

62333 (1) In the issuance of bonds, the commission may determine by resolution:

62334 (a) the manner of sale, including public or private sale;

62335 (b) the terms and conditions of sale, including price, whether at, below, or above face
62336 value;

62337 (c) denominations;

62338 (d) form;

62339 (e) manner of execution;

62340 (f) manner of authentication;

62341 (g) place and medium of purchase;

62342 (h) redemption terms; and

62343 (i) other provisions and details it considers appropriate.

62344 (2) The commission may by resolution adopt a plan of financing, which may include
62345 terms and conditions of arrangements entered into by the commission on behalf of the state with
62346 financial and other institutions for letters of credit, standby letters of credit, reimbursement
62347 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
62348 including payment from any legally available source of fees, charges, or other amounts coming
62349 due under the agreements entered into by the commission.

62350 (3) (a) Any signature of a public official authorized by resolution of the commission to
62351 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
62352 otherwise placed on the bonds.

62353 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
62354 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
62355 authentication agent.

62356 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
62357 the signature or facsimile signature of the official is nevertheless valid for all purposes.

62358 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
62359 placed on the bonds.

62360 (4) (a) The commission may enact resolutions providing for the replacement of lost,
62361 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
62362 or larger denominations.

62363 (b) Bonds in changed denominations shall:

62364 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
62365 manner that prevents the duplication of interest; and

62366 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
62367 practicable in the form of the original bonds.

62368 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
62369 entry form under which the right to principal and interest may be transferred only through a
62370 book entry.

62371 (b) The commission may provide for the services and payment for the services of one or
62372 more financial institutions or other entities or persons, or nominees, within or outside the state,
62373 for the authentication, registration, transfer, including record, bookkeeping, or book entry
62374 functions, exchange, and payment of the bonds.

62375 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
62376 persons to whom payment with respect to the obligations is made, are private records as
62377 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
62378 [~~63-2-304~~] 63G-2-305.

62379 (d) The bonds and any evidences of participation interest in the bonds may be issued,
62380 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
62381 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
62382 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
62383 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

62384 (6) The commission may:

62385 (a) by resolution, provide for payment to the United States of whatever amounts are

62386 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
62387 and

62388 (b) enter into agreements with financial and other institutions and attorneys to provide
62389 for:

62390 (i) the calculation, holding, and payment of those amounts; and

62391 (ii) payment from any legally available source of fees, charges, or other amounts coming
62392 due under any agreements entered into by the commission.

62393 Section 1238. Section **63B-3-205** is amended to read:

62394 **63B-3-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
62395 **Replacement -- Registration -- Federal rebate.**

62396 (1) In the issuance of bonds, the commission may determine by resolution:

62397 (a) the manner of sale, including public or private sale;

62398 (b) the terms and conditions of sale, including price, whether at, below, or above face
62399 value;

62400 (c) denominations;

62401 (d) form;

62402 (e) manner of execution;

62403 (f) manner of authentication;

62404 (g) place and medium of purchase;

62405 (h) redemption terms; and

62406 (i) other provisions and details it considers appropriate.

62407 (2) The commission may by resolution adopt a plan of financing which may include
62408 terms and conditions of arrangements entered into by the commission on behalf of the state with
62409 financial and other institutions for letters of credit, standby letters of credit, reimbursement
62410 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
62411 including payment from any legally available source of fees, charges, or other amounts coming
62412 due under the agreements entered into by the commission.

62413 (3) (a) Any signature of a public official authorized by resolution of the commission to

62414 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
62415 otherwise placed on the bonds.

62416 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
62417 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
62418 authentication agent.

62419 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
62420 the signature or facsimile signature of the official is nevertheless valid for all purposes.

62421 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
62422 placed on the bonds.

62423 (4) (a) The commission may enact resolutions providing for the replacement of lost,
62424 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
62425 or larger denominations.

62426 (b) Bonds in changed denominations shall:

62427 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
62428 manner that prevents the duplication of interest; and

62429 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
62430 practicable in the form of the original bonds.

62431 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
62432 entry form under which the right to principal and interest may be transferred only through a
62433 book entry.

62434 (b) The commission may provide for the services and payment for the services of one or
62435 more financial institutions or other entities or persons, or nominees, within or outside the state,
62436 for the authentication, registration, transfer, including record, bookkeeping, or book entry
62437 functions, exchange, and payment of the bonds.

62438 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
62439 persons to whom payment with respect to the obligations is made, are private records as
62440 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
62441 [~~63-2-304~~] 63G-2-305.

62442 (d) The bonds and any evidences of participation interest in the bonds may be issued,
62443 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
62444 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
62445 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
62446 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

62447 (6) The commission may:

62448 (a) by resolution, provide for payment to the United States of whatever amounts are
62449 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
62450 and

62451 (b) enter into agreements with financial and other institutions and attorneys to provide
62452 for:

62453 (i) the calculation, holding, and payment of those amounts; and

62454 (ii) payment from any legally available source of fees, charges, or other amounts coming
62455 due under any agreements entered into by the commission.

62456 Section 1239. Section **63B-3-301** is amended to read:

62457 **63B-3-301. Legislative intent -- Additional projects.**

62458 (1) It is the intent of the Legislature that, for any lease purchase agreement that the
62459 Legislature may authorize the Division of Facilities Construction and Management to enter into
62460 during its 1994 Annual General Session, the State Building Ownership Authority, at the
62461 reasonable rates and amounts it may determine, and with technical assistance from the state
62462 treasurer, the director of the Division of Finance, and the director of the Governor's Office of
62463 Planning and Budget, may seek out the most cost effective and prudent lease purchase plans
62464 available to the state and may, pursuant to [~~Title 63, Chapter 9a, State Building Ownership Act~~]
62465 Title 63B, Chapter 1, Part 3, State Building Ownership Authority Act, certificate out interests
62466 in, or obligations of the authority pertaining to:

62467 (a) the lease purchase obligation; or

62468 (b) lease rental payments under the lease purchase obligation.

62469 (2) It is the intent of the Legislature that the Department of Transportation dispose of

62470 surplus real properties and use the proceeds from those properties to acquire or construct
62471 through the Division of Facilities Construction and Management a new District Two Complex.

62472 (3) It is the intent of the Legislature that the State Building Board allocate funds from
62473 the Capital Improvement appropriation and donations to cover costs associated with the
62474 upgrade of the Governor's Residence that go beyond the restoration costs which can be covered
62475 by insurance proceeds.

62476 (4) (a) It is the intent of the Legislature to authorize the State Building Ownership
62477 Authority under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B,
62478 Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or
62479 enter into or arrange for a lease purchase agreement in which participation interests may be
62480 created, to provide up to \$10,600,000 for the construction of a Natural Resources Building in
62481 Salt Lake City, together with additional amounts necessary to:

- 62482 (i) pay costs of issuance;
- 62483 (ii) pay capitalized interest; and
- 62484 (iii) fund any debt service reserve requirements.

62485 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62486 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62487 director of the Division of Finance, and the director of the Governor's Office of Planning and
62488 Budget.

62489 (c) It is the intent of the Legislature that the operating budget for the Department of
62490 Natural Resources not be increased to fund these lease payments.

62491 (5) (a) It is the intent of the Legislature to authorize the State Building Ownership
62492 Authority under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B,
62493 Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or
62494 enter into or arrange for a lease purchase agreement in which participation interests may be
62495 created, to provide up to \$8,300,000 for the acquisition of the office buildings currently
62496 occupied by the Department of Environmental Quality and approximately 19 acres of additional
62497 vacant land at the Airport East Business Park in Salt Lake City, together with additional

62498 amounts necessary to:

- 62499 (i) pay costs of issuance;
- 62500 (ii) pay capitalized interest; and
- 62501 (iii) fund any debt service reserve requirements.

62502 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62503 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62504 director of the Division of Finance, and the director of the Governor's Office of Planning and
62505 Budget.

62506 (6) (a) It is the intent of the Legislature to authorize the State Building Ownership
62507 Authority under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B,
62508 Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or
62509 enter into or arrange for a lease purchase agreement in which participation interests may be
62510 created, to provide up to \$9,000,000 for the acquisition or construction of up to two field
62511 offices for the Department of Human Services in the southwestern portion of Salt Lake County,
62512 together with additional amounts necessary to:

- 62513 (i) pay costs of issuance;
- 62514 (ii) pay capitalized interest; and
- 62515 (iii) fund any debt service reserve requirements.

62516 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62517 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62518 director of the Division of Finance, and the director of the Governor's Office of Planning and
62519 Budget.

62520 (7) (a) It is the intent of the Legislature to authorize the State Building Ownership
62521 Authority under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B,
62522 Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or
62523 enter into or arrange for lease purchase agreements in which participation interests may be
62524 created, to provide up to \$5,000,000 for the acquisition or construction of up to 13 stores for
62525 the Department of Alcoholic Beverage Control, together with additional amounts necessary to:

- 62526 (i) pay costs of issuance;
- 62527 (ii) pay capitalized interest; and
- 62528 (iii) fund any debt service reserve requirements.

62529 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62530 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62531 director of the Division of Finance, and the director of the Governor's Office of Planning and
62532 Budget.

62533 (c) It is the intent of the Legislature that the operating budget for the Department of
62534 Alcoholic Beverage Control not be increased to fund these lease payments.

62535 (8) (a) It is the intent of the Legislature to authorize the State Building Ownership
62536 Authority under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B,
62537 Chapter 1, Part 3, State Building Ownership Authority Act, to issue or execute obligations or
62538 enter into or arrange for a lease purchase agreement in which participation interests may be
62539 created, to provide up to \$6,800,000 for the construction of a Prerelease and Parole Center for
62540 the Department of Corrections, containing a minimum of 300 beds, together with additional
62541 amounts necessary to:

- 62542 (i) pay costs of issuance;
- 62543 (ii) pay capitalized interest; and
- 62544 (iii) fund any debt service reserve requirements.

62545 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62546 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62547 director of the Division of Finance, and the director of the Governor's Office of Planning and
62548 Budget.

62549 (9) If S.B. 275, 1994 General Session, which authorizes funding for a Courts Complex
62550 in Salt Lake City, becomes law, it is the intent of the Legislature that:

62551 (a) the Legislative Management Committee, the Interim Appropriation Subcommittees
62552 for General Government and Capital Facilities and Executive Offices, Courts, and Corrections,
62553 the Office of the Legislative Fiscal Analyst, the Governor's Office of Planning and Budget, and

62554 the State Building Board participate in a review of the proposed facility design for the Courts
62555 Complex no later than December 1994; and

62556 (b) although this review will not affect the funding authorization issued by the 1994
62557 Legislature, it is expected that Division of Facilities Construction and Management will give
62558 proper attention to concerns raised in these reviews and make appropriate design changes
62559 pursuant to the review.

62560 (10) It is the intent of the Legislature that:

62561 (a) the Division of Facilities Construction and Management, in cooperation with the
62562 Division of Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services,
62563 develop a flexible use prototype facility for the Division of Youth Corrections renamed in 2003
62564 to the Division of Juvenile Justice Services;

62565 (b) the development process use existing prototype proposals unless it can be
62566 quantifiably demonstrated that the proposals cannot be used;

62567 (c) the facility is designed so that with minor modifications, it can accommodate
62568 detention, observation and assessment, transition, and secure programs as needed at specific
62569 geographical locations;

62570 (d) (i) funding as provided in the fiscal year 1995 bond authorization for the Division of
62571 Youth Corrections renamed in 2003 to the Division of Juvenile Justice Services is used to
62572 design and construct one facility and design the other;

62573 (ii) the Division of Youth Corrections renamed in 2003 to the Division of Juvenile
62574 Justice Services shall:

62575 (A) determine the location for the facility for which design and construction are fully
62576 funded; and

62577 (B) in conjunction with the Division of Facilities Construction and Management,
62578 determine the best methodology for design and construction of the fully funded facility;

62579 (e) the Division of Facilities Construction and Management submit the prototype as
62580 soon as possible to the Capital Facilities and Administrative Services Appropriation
62581 Subcommittee and Executive Offices, Criminal Justice, and Legislature Appropriation

62582 Subcommittee for review;

62583 (f) the Division of Facilities Construction and Management issue a Request for Proposal
62584 for one of the facilities, with that facility designed and constructed entirely by the winning firm;

62585 (g) the other facility be designed and constructed under the existing Division of
62586 Facilities Construction and Management process;

62587 (h) that both facilities follow the program needs and specifications as identified by
62588 Division of Facilities Construction and Management and the Division of Youth Corrections
62589 renamed in 2003 to the Division of Juvenile Justice Services in the prototype; and

62590 (i) the fully funded facility should be ready for occupancy by September 1, 1995.

62591 (11) It is the intent of the Legislature that the fiscal year 1995 funding for the State Fair
62592 Park Master Study be used by the Division of Facilities Construction and Management to
62593 develop a master plan for the State Fair Park that:

62594 (a) identifies capital facilities needs, capital improvement needs, building configuration,
62595 and other long term needs and uses of the State Fair Park and its buildings; and

62596 (b) establishes priorities for development, estimated costs, and projected timetables.

62597 (12) It is the intent of the Legislature that:

62598 (a) the Division of Facilities Construction and Management, in cooperation with the
62599 Division of Parks and Recreation and surrounding counties, develop a master plan and general
62600 program for the phased development of Antelope Island;

62601 (b) the master plan:

62602 (i) establish priorities for development;

62603 (ii) include estimated costs and projected time tables; and

62604 (iii) include recommendations for funding methods and the allocation of responsibilities
62605 between the parties; and

62606 (c) the results of the effort be reported to the Natural Resources Appropriations
62607 Subcommittee and Capital Facilities and Administrative Services Appropriation Subcommittee.

62608 (13) It is the intent of the Legislature to authorize the University of Utah to use:

62609 (a) bond reserves to plan, design, and construct the Kingsbury Hall renovation under

62610 the supervision of the director of the Division of Facilities Construction and Management unless
62611 supervisory authority is delegated by the director; and

62612 (b) donated and other nonappropriated funds to plan, design, and construct the Biology
62613 Research Building under the supervision of the director of the Division of Facilities
62614 Construction and Management unless supervisory authority is delegated by the director.

62615 (14) It is the intent of the Legislature to authorize Utah State University to use:

62616 (a) federal and other funds to plan, design, and construct the Bee Lab under the
62617 supervision of the director of the Division of Facilities Construction and Management unless
62618 supervisory authority is delegated by the director;

62619 (b) donated and other nonappropriated funds to plan, design, and construct an Athletic
62620 Facility addition and renovation under the supervision of the director of the Division of Facilities
62621 Construction and Management unless supervisory authority is delegated by the director;

62622 (c) donated and other nonappropriated funds to plan, design, and construct a renovation
62623 to the Nutrition and Food Science Building under the supervision of the director of the Division
62624 of Facilities Construction and Management unless supervisory authority is delegated by the
62625 director; and

62626 (d) federal and private funds to plan, design, and construct the Millville Research
62627 Facility under the supervision of the director of the Division of Facilities Construction and
62628 Management unless supervisory authority is delegated by the director.

62629 (15) It is the intent of the Legislature to authorize Salt Lake Community College to use:

62630 (a) institutional funds to plan, design, and construct a remodel to the Auto Trades
62631 Office and Learning Center under the supervision of the director of the Division of Facilities
62632 Construction and Management unless supervisory authority is delegated by the director;

62633 (b) institutional funds to plan, design, and construct the relocation and expansion of a
62634 temporary maintenance compound under the supervision of the director of the Division of
62635 Facilities Construction and Management unless supervisory authority is delegated by the
62636 director; and

62637 (c) institutional funds to plan, design, and construct the Alder Amphitheater under the

62638 supervision of the director of the Division of Facilities Construction and Management unless
62639 supervisory authority is delegated by the director.

62640 (16) It is the intent of the Legislature to authorize Southern Utah University to use:

62641 (a) federal funds to plan, design, and construct a Community Services Building under
62642 the supervision of the director of the Division of Facilities Construction and Management unless
62643 supervisory authority is delegated by the director; and

62644 (b) donated and other nonappropriated funds to plan, design, and construct a stadium
62645 expansion under the supervision of the director of the Division of Facilities Construction and
62646 Management unless supervisory authority is delegated by the director.

62647 (17) It is the intent of the Legislature to authorize the Department of Corrections to use
62648 donated funds to plan, design, and construct a Prison Chapel at the Central Utah Correctional
62649 Facility in Gunnison under the supervision of the director of the Division of Facilities
62650 Construction and Management unless supervisory authority is delegated by the director.

62651 (18) If the Utah National Guard does not relocate in the Signetics Building, it is the
62652 intent of the Legislature to authorize the Guard to use federal funds and funds from Provo City
62653 to plan and design an Armory in Provo, Utah, under the supervision of the director of the
62654 Division of Facilities Construction and Management unless supervisory authority is delegated by
62655 the director.

62656 (19) It is the intent of the Legislature that the Utah Department of Transportation use
62657 \$250,000 of the fiscal year 1995 highway appropriation to fund an environmental study in
62658 Ogden, Utah of the 2600 North Corridor between Washington Boulevard and I-15.

62659 (20) It is the intent of the Legislature that the Ogden-Weber Applied Technology
62660 Center use the monies appropriated for fiscal year 1995 to design the Metal Trades Building and
62661 purchase equipment for use in that building that could be used in metal trades or other programs
62662 in other Applied Technology Centers.

62663 (21) It is the intent of the Legislature that the Bridgerland Applied Technology Center
62664 and the Ogden-Weber Applied Technology Center projects as designed in fiscal year 1995 be
62665 considered as the highest priority projects for construction funding in fiscal year 1996.

62666 (22) It is the intent of the Legislature that:

62667 (a) the Division of Facilities Construction and Management complete physical space
62668 utilization standards by June 30, 1995, for the use of technology education activities;

62669 (b) these standards are to be developed with and approved by the State Office of
62670 Education, the Board of Regents, and the Utah State Building Board;

62671 (c) these physical standards be used as the basis for:

62672 (i) determining utilization of any technology space based on number of stations capable
62673 and occupied for any given hour of operation; and

62674 (ii) requests for any new space or remodeling;

62675 (d) the fiscal year 1995 projects at the Bridgerland Applied Technology Center and the
62676 Ogden-Weber Applied Technology Center are exempt from this process; and

62677 (e) the design of the Davis Applied Technology Center take into account the utilization
62678 formulas established by the Division of Facilities Construction and Management.

62679 (23) It is the intent of the Legislature that Utah Valley State College may use the
62680 monies from the bond allocated to the remodel of the Signetics building to relocate its technical
62681 education programs at other designated sites or facilities under the supervision of the director of
62682 the Division of Facilities Construction and Management unless supervisory authority is
62683 delegated by the director.

62684 (24) It is the intent of the Legislature that the monies provided for the fiscal year 1995
62685 project for the Bridgerland Applied Technology Center be used to design and construct the
62686 space associated with Utah State University and design the technology center portion of the
62687 project.

62688 (25) It is the intent of the Legislature that the governor provide periodic reports on the
62689 expenditure of the funds provided for electronic technology, equipment, and hardware to the
62690 Information Technology Commission, the Capital Facilities and Administrative Services
62691 Appropriation Subcommittee, and the Legislative Management Committee.

62692 Section 1240. Section **63B-4-102** is amended to read:

62693 **63B-4-102. Maximum amount -- Projects authorized.**

62694 (1) The total amount of bonds issued under this part may not exceed \$45,300,000.

62695 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
62696 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
62697 Subsection (2).

62698 (b) These costs may include the cost of acquiring land, interests in land, easements and
62699 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
62700 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
62701 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
62702 covered by construction of the projects plus a period of six months after the end of the
62703 construction period, and all related engineering, architectural, and legal fees.

62704 (c) For the division, proceeds shall be provided for the following:

62705 CAPITAL IMPROVEMENTS

62706 Alterations, Repairs, and Improvements \$7,200,000

62707 TOTAL IMPROVEMENTS \$7,200,000

62708 CAPITAL AND ECONOMIC DEVELOPMENT

| 62709 | PROJECT | AMOUNT | ESTIMATED |
|-------|---|--------------|----------------|
| 62710 | DESCRIPTION | FUNDED | OPERATIONS AND |
| 62711 | | | MAINTENANCE |
| 62712 | | | COSTS |
| 62713 | Corrections - Uinta IVA | \$11,300,000 | \$212,800 |
| 62714 | Utah County Youth Correctional Facility | \$6,650,000 | \$245,000 |
| 62715 | Ogden Weber Applied Technology Center - | \$5,161,000 | \$176,000 |
| 62716 | Metal Trades | | |
| 62717 | Project Reserve Fund | \$3,500,000 | None |
| 62718 | Weber State University - Browning Center | \$3,300,000 | None |
| 62719 | Remodel | | |
| 62720 | Heber Wells Building Remodel | \$2,000,000 | None |
| 62721 | Higher Education Davis County - Land Purchase | \$1,600,000 | None |

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| | | | |
|-------|---|-------------|--------------|
| 62722 | National Guard -- Provo Armory | \$1,500,000 | \$128,000 |
| 62723 | Department of Natural Resources - Pioneer | \$900,000 | \$65,000 |
| 62724 | Trails Visitor Center | | |
| 62725 | Higher Education Design Projects | \$800,000 | Varies |
| 62726 | | | depending |
| 62727 | | | upon |
| 62728 | | | projects |
| 62729 | | | selected |
| 62730 | Salt Lake Community College - | | |
| 62731 | South Valley Planning | \$300,000 | None |
| 62732 | Division of Youth Corrections renamed in 2003 | | |
| 62733 | to the Division of Juvenile Justice | | |
| 62734 | Services - Logan Land | \$120,000 | None |
| 62735 | Purchase | | |
| 62736 | TOTAL CAPITAL AND ECONOMIC DEVELOPMENT | | \$37,131,000 |
| 62737 | TOTAL IMPROVEMENTS AND | | |
| 62738 | CAPITAL AND ECONOMIC DEVELOPMENT | | \$44,331,000 |
| 62739 | (d) For purposes of this section, operations and maintenance costs: | | |
| 62740 | (i) are estimates only; | | |
| 62741 | (ii) may include any operations and maintenance costs already funded in existing agency | | |
| 62742 | budgets; and | | |
| 62743 | (iii) are not commitments by this Legislature or future Legislatures to fund those | | |
| 62744 | operations and maintenance costs. | | |
| 62745 | (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not | | |
| 62746 | constitute a limitation on the amount that may be expended for any project. | | |
| 62747 | (b) The board may revise these estimates and redistribute the amount estimated for a | | |
| 62748 | project among the projects authorized. | | |
| 62749 | (c) The commission, by resolution and in consultation with the board, may delete one or | | |

62750 more projects from this list if the inclusion of that project or those projects in the list could be
62751 construed to violate state law or federal law or regulation.

62752 (4) (a) The division may enter into agreements related to these projects before the
62753 receipt of proceeds of bonds issued under this chapter.

62754 (b) The division shall make those expenditures from unexpended and unencumbered
62755 building funds already appropriated to the Capital Projects Fund.

62756 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
62757 of bonds issued under this chapter.

62758 (d) The commission may, by resolution, make any statement of intent relating to that
62759 reimbursement that is necessary or desirable to comply with federal tax law.

62760 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
62761 is the intent of the Legislature that the balance necessary to complete the projects be addressed
62762 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

62763 (b) For those phased projects, the division may enter into contracts for amounts not to
62764 exceed the anticipated full project funding but may not allow work to be performed on those
62765 contracts in excess of the funding already authorized by the Legislature.

62766 (c) Those contracts shall contain a provision for termination of the contract for the
62767 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

62768 (d) It is also the intent of the Legislature that this authorization to the division does not
62769 bind future Legislatures to fund projects initiated from this authorization.

62770 Section 1241. Section **63B-4-105** is amended to read:

62771 **63B-4-105. Terms and conditions of sale -- Plan of financing -- Signatures --**

62772 **Replacement -- Registration -- Federal rebate.**

62773 (1) In the issuance of bonds, the commission may determine by resolution:

62774 (a) the manner of sale, including public or private sale;

62775 (b) the terms and conditions of sale, including price, whether at, below, or above face
62776 value;

62777 (c) denominations;

- 62778 (d) form;
- 62779 (e) manner of execution;
- 62780 (f) manner of authentication;
- 62781 (g) place and medium of purchase;
- 62782 (h) redemption terms; and
- 62783 (i) other provisions and details it considers appropriate.

62784 (2) The commission may by resolution adopt a plan of financing, which may include
62785 terms and conditions of arrangements entered into by the commission on behalf of the state with
62786 financial and other institutions for letters of credit, standby letters of credit, reimbursement
62787 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
62788 including payment from any legally available source of fees, charges, or other amounts coming
62789 due under the agreements entered into by the commission.

62790 (3) (a) Any signature of a public official authorized by resolution of the commission to
62791 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
62792 otherwise placed on the bonds.

62793 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
62794 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
62795 authentication agent.

62796 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
62797 the signature or facsimile signature of the official is nevertheless valid for all purposes.

62798 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
62799 placed on the bonds.

62800 (4) (a) The commission may enact resolutions providing for the replacement of lost,
62801 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
62802 or larger denominations.

62803 (b) Bonds in changed denominations shall:

62804 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
62805 manner that prevents the duplication of interest; and

62806 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
62807 practicable in the form of the original bonds.

62808 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
62809 entry form under which the right to principal and interest may be transferred only through a
62810 book entry.

62811 (b) The commission may provide for the services and payment for the services of one or
62812 more financial institutions or other entities or persons, or nominees, within or outside the state,
62813 for the authentication, registration, transfer, including record, bookkeeping, or book entry
62814 functions, exchange, and payment of the bonds.

62815 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
62816 persons to whom payment with respect to the obligations is made, are private records as
62817 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
62818 [~~63-2-304~~] 63G-2-305.

62819 (d) The bonds and any evidences of participation interest in the bonds may be issued,
62820 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
62821 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
62822 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
62823 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

62824 (6) The commission may:

62825 (a) by resolution, provide for payment to the United States of whatever amounts are
62826 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
62827 and

62828 (b) enter into agreements with financial and other institutions and attorneys to provide
62829 for:

62830 (i) the calculation, holding, and payment of those amounts; and

62831 (ii) payment from any legally available source of fees, charges, or other amounts coming
62832 due under any agreements entered into by the commission.

62833 Section 1242. Section **63B-4-201** is amended to read:

62834 **63B-4-201. Legislative intent statements -- Capital facilities.**

62835 (1) (a) It is the intent of the Legislature that the University of Utah use institutional and
62836 other funds to plan, design, and construct two campus child care centers under the supervision
62837 of the director of the Division of Facilities Construction and Management unless supervisory
62838 authority is delegated by the director.

62839 (b) The university shall work with Salt Lake City and the surrounding neighborhood to
62840 ensure site compatibility for future recreational development by the city.

62841 (2) It is the intent of the Legislature that the University of Utah use institutional funds
62842 to plan, design, and construct:

62843 (a) the Union Parking structure under the supervision of the director of the Division of
62844 Facilities Construction and Management unless supervisory authority is delegated by the
62845 director;

62846 (b) the stadium renovation under the supervision of the director of the Division of
62847 Facilities Construction and Management unless supervisory authority is delegated by the
62848 director;

62849 (c) the Huntsman Cancer Institute under the supervision of the director of the Division
62850 of Facilities Construction and Management unless supervisory authority is delegated by the
62851 director;

62852 (d) the Business Case Method Building under the supervision of the director of the
62853 Division of Facilities Construction and Management unless supervisory authority is delegated by
62854 the director; and

62855 (e) the Fine Arts Museum expansion under the supervision of the director of the
62856 Division of Facilities Construction and Management unless supervisory authority is delegated by
62857 the director.

62858 (3) It is the intent of the Legislature that Utah State University use institutional funds to
62859 plan, design, and construct:

62860 (a) a student health services facility under the supervision of the director of the Division
62861 of Facilities Construction and Management unless supervisory authority is delegated by the

62862 director;

62863 (b) a women’s softball field under the supervision of the director of the Division of
62864 Facilities Construction and Management unless supervisory authority is delegated by the
62865 director;

62866 (c) an addition to the Nutrition and Food Services Building under the supervision of the
62867 director of the Division of Facilities Construction and Management unless supervisory authority
62868 is delegated by the director; and

62869 (d) a Human Resource Research Center under the supervision of the director of the
62870 Division of Facilities Construction and Management unless supervisory authority is delegated by
62871 the director.

62872 (4) It is the intent of the Legislature that Weber State University use institutional funds
62873 to plan, design, and construct:

62874 (a) a track renovation under the supervision of the director of the Division of Facilities
62875 Construction and Management unless supervisory authority is delegated by the director; and

62876 (b) the Dee Events Center offices under the supervision of the director of the Division
62877 of Facilities Construction and Management unless supervisory authority is delegated by the
62878 director.

62879 (5) It is the intent of the Legislature that Southern Utah University use:

62880 (a) institutional funds to plan, design, and construct an institutional residence under the
62881 supervision of the director of the Division of Facilities Construction and Management unless
62882 supervisory authority is delegated by the director; and

62883 (b) project revenues and other funds to plan, design, and construct the Shakespearean
62884 Festival support facilities under the supervision of the director of the Division of Facilities
62885 Construction and Management unless supervisory authority is delegated by the director.

62886 (6) It is the intent of the Legislature that Dixie College use institutional funds to plan,
62887 design, and construct an institutional residence under the supervision of the director of the
62888 Division of Facilities Construction and Management unless supervisory authority is delegated by
62889 the director.

62890 (7) It is the intent of the Legislature that the Division of Forestry, Fire and State Lands
62891 use federal and other funds to plan, design, and construct a wetlands enhancement facility under
62892 the supervision of the director of the Division of Facilities Construction and Management unless
62893 supervisory authority is delegated by the director.

62894 (8) (a) As provided in Subsection 63A-5-209(2), the funds appropriated to the Project
62895 Reserve Fund may only be used for the award of contracts in excess of the construction budget
62896 if these funds are required to meet the intent of the project.

62897 (b) It is the intent of the Legislature that:

62898 (i) up to \$2,000,000 of the amount may be used to award the construction contract for
62899 the Ogden Court Building; and

62900 (ii) the need for any funds remaining as of December 31, 1995 be reviewed by the 1996
62901 Legislature.

62902 (9) (a) It is the intent of the Legislature that the State Building Ownership Authority,
62903 under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1,
62904 Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or
62905 arrange for a lease purchase agreement in which participation interests may be created to
62906 provide up to \$539,700 for the purchase and demolition of the Keyston property and
62907 construction of parking facilities adjacent to the State Office of Education Building in Salt Lake
62908 City, with additional amounts necessary to:

62909 (i) pay costs of issuance;

62910 (ii) pay capitalized interest; and

62911 (iii) fund any debt service reserve requirements.

62912 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62913 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62914 director of the Division of Finance, and the director of the Governor's Office of Planning and
62915 Budget.

62916 (10) (a) It is the intent of the Legislature that the monies appropriated for Phase One of
62917 the Remodeling/Life Safety Upgrades of the Browning Fine Arts Center at Weber State

62918 University is to include design of full code compliance, life safety, space necessary to maintain
62919 required programs, and seismic upgrades.

62920 (b) The design shall identify the full scope and cost of Phase Two of the remodeling for
62921 funding consideration in the fiscal year 1997 budget cycle.

62922 (11) It is the intent of the Legislature that:

62923 (a) the fiscal year 1996 appropriation for the Davis County Higher Education land
62924 purchase includes up to \$250,000 for planning purposes;

62925 (b) the Division of Facilities Construction and Management, the Board of Regents, and
62926 the assigned institution of higher education work jointly to ensure the following elements are
62927 part of the planning process:

62928 (i) projections of student enrollment and programmatic needs for the next ten years;

62929 (ii) review and make recommendations for better use of existing space, current
62930 technologies, public/private partnerships, and other alternatives as a means to reduce the need
62931 for new facilities and still accommodate the projected student needs; and

62932 (iii) use of a master plan that includes issues of utilities, access, traffic circulation,
62933 drainage, rights of way, future developments, and other infrastructure items considered
62934 appropriate; and

62935 (c) every effort is used to minimize expenditures for this part until a definitive decision
62936 has been made by BRACC relative to Hill Air Force Base.

62937 (12) (a) It is the intent of the Legislature that the State Building Ownership Authority,
62938 under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1,
62939 Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or
62940 arrange for a lease purchase agreement in which participation interests may be created, to
62941 provide up to \$7,400,000 for the acquisition and improvement of the Human Services Building
62942 located at 120 North 200 West, Salt Lake City, Utah, with associated parking for the
62943 Department of Human Services together with additional amounts necessary to:

62944 (i) pay costs of issuance;

62945 (ii) pay capitalized interest; and

62946 (iii) fund any debt service reserve requirements.

62947 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62948 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62949 director of the Division of Finance, and the director of the Governor's Office of Planning and
62950 Budget.

62951 (13) (a) It is the intent of the Legislature that the State Building Ownership Authority,
62952 under authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1,
62953 Part 3, State Building Ownership Authority Act, issue or execute obligations or enter into or
62954 arrange for a lease purchase agreement in which participation interests may be created to
62955 provide up to \$63,218,600 for the construction of a Salt Lake Courts Complex together with
62956 additional amounts necessary to:

- 62957 (i) pay costs of issuance;
- 62958 (ii) pay capitalized interest; and
- 62959 (iii) fund any debt service reserve requirements.

62960 (b) It is the intent of the Legislature that the authority seek out the most cost effective
62961 and prudent lease purchase plan available with technical assistance from the state treasurer, the
62962 director of the Division of Finance, and the director of the Governor's Office of Planning and
62963 Budget.

62964 (c) It is the intent of the Legislature that the Division of Facilities Construction and
62965 Management lease land to the State Building Ownership Authority for the construction of a Salt
62966 Lake Courts Complex.

62967 (14) It is the intent of the Legislature that:

62968 (a) the Board of Regents use the higher education design project monies to design no
62969 more than two higher education projects from among the following projects:

- 62970 (i) College of Eastern Utah - Student Center;
- 62971 (ii) Snow College - Noyes Building;
- 62972 (iii) University of Utah - Gardner Hall;
- 62973 (iv) Utah State University - Widtsoe Hall; or

62974 (v) Southern Utah University - Physical Education Building; and
62975 (b) the higher education institutions that receive approval from the Board of Regents to
62976 design projects under this chapter design those projects under the supervision of the director of
62977 the Division of Facilities Construction and Management unless supervisory authority is
62978 delegated by the director.

62979 (15) It is the intent of the Legislature that:

62980 (a) the Board of Regents may authorize the University of Utah to use institutional funds
62981 and donated funds to design Gardner Hall; and

62982 (b) if authorized by the Board of Regents, the University of Utah may use institutional
62983 funds and donated funds to design Gardner Hall under the supervision of the director of the
62984 Division of Facilities Construction and Management unless supervisory authority is delegated by
62985 the director.

62986 (16) It is the intent of the Legislature that the Division of Facilities Construction and
62987 Management use up to \$250,000 of the capital improvement monies to fund the site
62988 improvements required at the San Juan campus of the College of Eastern Utah.

62989 Section 1243. Section **63B-4-301** is amended to read:

62990 **63B-4-301. Bonds for golf course at Wasatch Mountain State Park.**

62991 (1) The State Building Ownership Authority under authority of Title 63, Chapter 9a,
62992 State Building Ownership Authority Act, may issue or execute obligations, or enter into or
62993 arrange for a lease purchase agreement in which participation interests may be created, to
62994 provide up to \$2,500,000 for a new nine-hole golf course at Wasatch Mountain State Park for
62995 the Division of Parks and Recreation, together with additional amounts necessary to:

- 62996 (a) pay costs of issuance;
- 62997 (b) pay capitalized interest; and
- 62998 (c) fund any debt service reserve requirements.

62999 (2) (a) The State Building Ownership Authority shall work cooperatively with the
63000 Division of Parks and Recreation to seek out the most cost effective and prudent lease purchase
63001 plan available.

63002 (b) The state treasurer, the director of the Division of Finance, and the director of the
 63003 Governor's Office of Planning and Budget shall provide technical assistance to accomplish the
 63004 purpose specified in Subsection (2)(a).

63005 Section 1244. Section **63B-5-102** is amended to read:

63006 **63B-5-102. Maximum amount -- Projects authorized.**

63007 (1) The total amount of bonds issued under this part may not exceed \$32,000,000.

63008 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
 63009 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
 63010 Subsection (2).

63011 (b) These costs may include the cost of acquiring land, interests in land, easements and
 63012 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
 63013 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
 63014 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
 63015 covered by construction of the projects plus a period of six months after the end of the
 63016 construction period, and all related engineering, architectural, and legal fees.

63017 (c) For the division, proceeds shall be provided for the following:

63018 **CAPITAL IMPROVEMENTS**

63019 Alterations, Repairs, and Improvements \$7,600,000

63020 **TOTAL IMPROVEMENTS** \$7,600,000

63021 **CAPITAL AND ECONOMIC DEVELOPMENT**

| 63022 | | ESTIMATED | |
|-------|-------------------------------------|----------------|-------------|
| 63023 | | OPERATIONS AND | |
| 63024 | PROJECT | AMOUNT | MAINTENANCE |
| 63025 | DESCRIPTION | FUNDED | COSTS |
| 63026 | Corrections - Gunnison (192 Beds) | \$13,970,000 | \$210,000 |
| 63027 | University of Utah -- Gardner Hall | \$7,361,000 | \$203,900 |
| 63028 | Weber State University Davis Campus | \$771,000 | None |
| 63029 | -- Land Purchase | | |

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| | | | |
|-------|--|--------------|-----------|
| 63030 | Department of Workforce Services Cedar City | \$148,000 | None |
| 63031 | -- Land Purchase | | |
| 63032 | College of Eastern Utah Durrant School | \$400,000 | None |
| 63033 | -- Land Purchase | | |
| 63034 | State Hospital - Forensic Design (200 beds) | \$750,000 | \$575,000 |
| 63035 | TOTAL CAPITAL AND ECONOMIC DEVELOPMENT | \$23,400,000 | |
| 63036 | TOTAL IMPROVEMENTS AND | | |
| 63037 | CAPITAL AND ECONOMIC DEVELOPMENT | \$31,000,000 | |
| 63038 | (d) For purposes of this section, operations and maintenance costs: | | |
| 63039 | (i) are estimates only; | | |
| 63040 | (ii) may include any operations and maintenance costs already funded in existing agency | | |
| 63041 | budgets; and | | |
| 63042 | (iii) are not commitments by this Legislature or future Legislatures to fund those | | |
| 63043 | operations and maintenance costs. | | |
| 63044 | (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not | | |
| 63045 | constitute a limitation on the amount that may be expended for any project. | | |
| 63046 | (b) The board may revise these estimates and redistribute the amount estimated for a | | |
| 63047 | project among the projects authorized. | | |
| 63048 | (c) The commission, by resolution and in consultation with the board, may delete one or | | |
| 63049 | more projects from this list if the inclusion of that project or those projects in the list could be | | |
| 63050 | construed to violate state law or federal law or regulation. | | |
| 63051 | (4) (a) The division may enter into agreements related to these projects before the | | |
| 63052 | receipt of proceeds of bonds issued under this chapter. | | |
| 63053 | (b) The division shall make those expenditures from unexpended and unencumbered | | |
| 63054 | building funds already appropriated to the Capital Projects Fund. | | |
| 63055 | (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds | | |
| 63056 | of bonds issued under this chapter. | | |
| 63057 | (d) The commission may, by resolution, make any statement of intent relating to that | | |

63058 reimbursement that is necessary or desirable to comply with federal tax law.

63059 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
63060 is the intent of the Legislature that the balance necessary to complete the projects be addressed
63061 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

63062 (b) For those phased projects, the division may enter into contracts for amounts not to
63063 exceed the anticipated full project funding but may not allow work to be performed on those
63064 contracts in excess of the funding already authorized by the Legislature.

63065 (c) Those contracts shall contain a provision for termination of the contract for the
63066 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

63067 (d) It is also the intent of the Legislature that this authorization to the division does not
63068 bind future Legislatures to fund projects initiated from this authorization.

63069 Section 1245. Section **63B-5-105** is amended to read:

63070 **63B-5-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
63071 **Replacement -- Registration -- Federal rebate.**

63072 (1) In the issuance of bonds, the commission may determine by resolution:

- 63073 (a) the manner of sale, including public or private sale;
- 63074 (b) the terms and conditions of sale, including price, whether at, below, or above face
63075 value;
- 63076 (c) denominations;
- 63077 (d) form;
- 63078 (e) manner of execution;
- 63079 (f) manner of authentication;
- 63080 (g) place and medium of purchase;
- 63081 (h) redemption terms; and
- 63082 (i) other provisions and details it considers appropriate.

63083 (2) The commission may by resolution adopt a plan of financing, which may include
63084 terms and conditions of arrangements entered into by the commission on behalf of the state with
63085 financial and other institutions for letters of credit, standby letters of credit, reimbursement

63086 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63087 including payment from any legally available source of fees, charges, or other amounts coming
63088 due under the agreements entered into by the commission.

63089 (3) (a) Any signature of a public official authorized by resolution of the commission to
63090 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63091 otherwise placed on the bonds.

63092 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63093 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63094 authentication agent.

63095 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63096 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63097 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63098 placed on the bonds.

63099 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63100 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63101 or larger denominations.

63102 (b) Bonds in changed denominations shall:

63103 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63104 manner that prevents the duplication of interest; and

63105 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63106 practicable in the form of the original bonds.

63107 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63108 entry form under which the right to principal and interest may be transferred only through a
63109 book entry.

63110 (b) The commission may provide for the services and payment for the services of one or
63111 more financial institutions or other entities or persons, or nominees, within or outside the state,
63112 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63113 functions, exchange, and payment of the bonds.

63114 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63115 persons to whom payment with respect to the obligations are made, are private records as
63116 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63117 [~~63-2-304~~] 63G-2-305.

63118 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63119 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63120 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63121 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63122 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63123 (6) The commission may:

63124 (a) by resolution, provide for payment to the United States of whatever amounts are
63125 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63126 and

63127 (b) enter into agreements with financial and other institutions and attorneys to provide
63128 for:

63129 (i) the calculation, holding, and payment of those amounts; and

63130 (ii) payment from any legally available source of fees, charges, or other amounts coming
63131 due under any agreements entered into by the commission.

63132 Section 1246. Section **63B-6-102** is amended to read:

63133 **63B-6-102. Maximum amount -- Projects authorized.**

63134 (1) The total amount of bonds issued under this part may not exceed \$57,000,000.

63135 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
63136 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
63137 Subsection (2).

63138 (b) These costs may include the cost of acquiring land, interests in land, easements and
63139 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
63140 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
63141 convenient to the facilities, interest estimated to accrue on these bonds during the period to be

63142 covered by construction of the projects plus a period of six months after the end of the
63143 construction period, and all related engineering, architectural, and legal fees.

63144 (c) For the division, proceeds shall be provided for the following:

63145 CAPITAL AND ECONOMIC DEVELOPMENT

| 63146 | | AMOUNT | ESTIMATED |
|-------|---|--------------|-------------|
| 63147 | | | OPERATIONS |
| 63148 | | | AND |
| 63149 | PROJECT DESCRIPTION | FUNDED | MAINTENANCE |
| 63150 | Youth Corrections - Carbon / Emery (18 beds) | \$2,298,100 | \$70,000 |
| 63151 | State Hospital - 100 bed Forensic Facility | \$13,800,700 | \$320,600 |
| 63152 | Utah State University - Widtsoe Hall | \$23,986,700 | \$750,200 |
| 63153 | Davis Applied Technology Center | \$6,344,900 | \$144,000 |
| 63154 | - Medical/Health Tech Addition | | |
| 63155 | Southern Utah University -- Physical | \$1,100,000 | \$456,100 |
| 63156 | Education Building (Design) | | |
| 63157 | Salt Lake Community College -- High | \$1,165,000 | \$718,500 |
| 63158 | Technology Building, 90th So. Campus (Design) | | |
| 63159 | Department of Natural Resources - Antelope | \$3,600,000 | None |
| 63160 | Island Road | | |
| 63161 | Youth Corrections | \$1,500,000 | None |
| 63162 | - Region 1 72 Secured Bed Facility | | |
| 63163 | Department of Natural Resources - Dead Horse | \$1,350,000 | \$5,700 |
| 63164 | Point Visitors Center | | |
| 63165 | TOTAL CAPITAL AND ECONOMIC | \$55,145,400 | |
| 63166 | DEVELOPMENT | | |

63167 (d) For purposes of this section, operations and maintenance costs:

63168 (i) are estimates only;

63169 (ii) may include any operations and maintenance costs already funded in existing agency

63170 budgets; and

63171 (iii) are not commitments by this Legislature or future Legislatures to fund those
63172 operations and maintenance costs.

63173 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
63174 constitute a limitation on the amount that may be expended for any project.

63175 (b) The board may revise these estimates and redistribute the amount estimated for a
63176 project among the projects authorized.

63177 (c) The commission, by resolution and in consultation with the board, may delete one or
63178 more projects from this list if the inclusion of that project or those projects in the list could be
63179 construed to violate state law or federal law or regulation.

63180 (4) (a) The division may enter into agreements related to these projects before the
63181 receipt of proceeds of bonds issued under this chapter.

63182 (b) The division shall make those expenditures from unexpended and unencumbered
63183 building funds already appropriated to the Capital Projects Fund.

63184 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
63185 of bonds issued under this chapter.

63186 (d) The commission may, by resolution, make any statement of intent relating to that
63187 reimbursement that is necessary or desirable to comply with federal tax law.

63188 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
63189 is the intent of the Legislature that the balance necessary to complete the projects be addressed
63190 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

63191 (b) For those phased projects, the division may enter into contracts for amounts not to
63192 exceed the anticipated full project funding but may not allow work to be performed on those
63193 contracts in excess of the funding already authorized by the Legislature.

63194 (c) Those contracts shall contain a provision for termination of the contract for the
63195 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

63196 (d) It is also the intent of the Legislature that this authorization to the division does not
63197 bind future Legislatures to fund projects initiated from this authorization.

63198 Section 1247. Section **63B-6-105** is amended to read:

63199 **63B-6-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
63200 **Replacement -- Registration -- Federal rebate.**

63201 (1) In the issuance of bonds, the commission may determine by resolution:

63202 (a) the manner of sale, including public or private sale;

63203 (b) the terms and conditions of sale, including price, whether at, below, or above face
63204 value;

63205 (c) denominations;

63206 (d) form;

63207 (e) manner of execution;

63208 (f) manner of authentication;

63209 (g) place and medium of purchase;

63210 (h) redemption terms; and

63211 (i) other provisions and details it considers appropriate.

63212 (2) The commission may by resolution adopt a plan of financing, which may include
63213 terms and conditions of arrangements entered into by the commission on behalf of the state with
63214 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63215 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63216 including payment from any legally available source of fees, charges, or other amounts coming
63217 due under the agreements entered into by the commission.

63218 (3) (a) Any signature of a public official authorized by resolution of the commission to
63219 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63220 otherwise placed on the bonds.

63221 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63222 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63223 authentication agent.

63224 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63225 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63226 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63227 placed on the bonds.

63228 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63229 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63230 or larger denominations.

63231 (b) Bonds in changed denominations shall:

63232 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63233 manner that prevents the duplication of interest; and

63234 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63235 practicable in the form of the original bonds.

63236 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63237 entry form under which the right to principal and interest may be transferred only through a
63238 book entry.

63239 (b) The commission may provide for the services and payment for the services of one or
63240 more financial institutions or other entities or persons, or nominees, within or outside the state,
63241 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63242 functions, exchange, and payment of the bonds.

63243 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63244 persons to whom payment with respect to the obligations are made, are private records as
63245 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63246 [~~63-2-304~~] 63G-2-305.

63247 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63248 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63249 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63250 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63251 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63252 (6) The commission may:

63253 (a) by resolution, provide for payment to the United States of whatever amounts are

63254 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63255 and

63256 (b) enter into agreements with financial and other institutions and attorneys to provide
63257 for:

63258 (i) the calculation, holding, and payment of those amounts; and

63259 (ii) payment from any legally available source of fees, charges, or other amounts coming
63260 due under any agreements entered into by the commission.

63261 Section 1248. Section **63B-6-205** is amended to read:

63262 **63B-6-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
63263 **Replacement -- Registration -- Federal rebate.**

63264 (1) In the issuance of bonds, the commission may determine by resolution:

63265 (a) the manner of sale, including public or private sale;

63266 (b) the terms and conditions of sale, including price, whether at, below, or above face
63267 value;

63268 (c) denominations;

63269 (d) form;

63270 (e) manner of execution;

63271 (f) manner of authentication;

63272 (g) place and medium of purchase;

63273 (h) redemption terms; and

63274 (i) other provisions and details it considers appropriate.

63275 (2) The commission may, by resolution, adopt a plan of financing, which may include
63276 terms and conditions of arrangements entered into by the commission on behalf of the state with
63277 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63278 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63279 including payment from any legally available source of fees, charges, or other amounts coming
63280 due under the agreements entered into by the commission.

63281 (3) (a) Any signature of a public official authorized by resolution of the commission to

63282 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63283 otherwise placed on the bonds.

63284 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63285 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63286 authentication agent.

63287 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63288 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63289 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63290 placed on the bonds.

63291 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63292 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63293 or larger denominations.

63294 (b) Bonds in changed denominations shall:

63295 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63296 manner that prevents the duplication of interest; and

63297 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63298 practicable in the form of the original bonds.

63299 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63300 entry form under which the right to principal and interest may be transferred only through a
63301 book entry.

63302 (b) The commission may provide for the services and payment for the services of one or
63303 more financial institutions or other entities or persons, or nominees, within or outside the state,
63304 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63305 functions, exchange, and payment of the bonds.

63306 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63307 persons to whom payment with respect to the obligations is made, are private records as
63308 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
63309 [~~63-2-304~~] 63G-2-305.

63310 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63311 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63312 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63313 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63314 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63315 (6) The commission may:

63316 (a) by resolution, provide for payment to the United States of whatever amounts are
63317 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63318 and

63319 (b) enter into agreements with financial and other institutions and attorneys to provide
63320 for:

63321 (i) the calculation, holding, and payment of those amounts; and

63322 (ii) payment from any legally available source of fees, charges, or other amounts coming
63323 due under any agreements entered into by the commission.

63324 Section 1249. Section **63B-6-402** is amended to read:

63325 **63B-6-402. Maximum amount -- Projects authorized.**

63326 (1) The total amount of bonds issued under this part may not exceed \$9,000,000.

63327 (2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax
63328 Commission to provide funds to pay all or part of the cost of the project described in this
63329 Subsection (2).

63330 (b) These costs may include:

63331 (i) the cost of acquisition, development, and conversion of computer hardware and
63332 software for motor vehicle fee systems and tax collection and accounting systems of the state;

63333 (ii) interest estimated to accrue on these bonds during the period to be covered by that
63334 development and conversion, plus a period of six months following the completion of the
63335 development and conversion; and

63336 (iii) all related engineering, consulting, and legal fees.

63337 (c) For the State Tax Commission, proceeds shall be provided for the following:

| | | |
|-------|--------------|-------------|
| 63338 | PROJECT | AMOUNT |
| 63339 | DESCRIPTION | FUNDED |
| 63340 | UTAX SYSTEMS | \$8,500,000 |

63341 ACQUISITION AND DEVELOPMENT

63342 (3) The commission, by resolution may decline to issue bonds if the project could be
 63343 construed to violate state law or federal law or regulation.

63344 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it is
 63345 the intent of the Legislature that the balance necessary to complete the project be addressed by
 63346 future Legislatures, either through appropriations or through the issuance or sale of bonds.

63347 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
 63348 anticipated full project funding but may not allow work to be performed on those contracts in
 63349 excess of the funding already authorized by the Legislature.

63350 (c) Those contracts shall contain a provision for termination of the contract for the
 63351 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

63352 (d) It is also the intent of the Legislature that this authorization to the State Tax
 63353 Commission does not bind future Legislatures to fund projects initiated from this authorization.

63354 Section 1250. Section **63B-6-405** is amended to read:

63355 **63B-6-405. Terms and conditions of sale -- Plan of financing -- Signatures --**
 63356 **Replacement -- Registration -- Federal rebate.**

63357 (1) In the issuance of bonds, the commission may determine by resolution:

- 63358 (a) the manner of sale, including public or private sale;
- 63359 (b) the terms and conditions of sale, including price, whether at, below, or above face
 63360 value;
- 63361 (c) denominations;
- 63362 (d) form;
- 63363 (e) manner of execution;
- 63364 (f) manner of authentication;
- 63365 (g) place and medium of purchase;

63366 (h) redemption terms; and

63367 (i) other provisions and details it considers appropriate.

63368 (2) The commission may by resolution adopt a plan of financing, which may include
63369 terms and conditions of arrangements entered into by the commission on behalf of the state with
63370 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63371 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63372 including payment from any legally available source of fees, charges, or other amounts coming
63373 due under the agreements entered into by the commission.

63374 (3) (a) Any signature of a public official authorized by resolution of the commission to
63375 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63376 otherwise placed on the bonds.

63377 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63378 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63379 authentication agent.

63380 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63381 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63382 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63383 placed on the bonds.

63384 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63385 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63386 or larger denominations.

63387 (b) Bonds in changed denominations shall:

63388 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63389 manner that prevents the duplication of interest; and

63390 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63391 practicable in the form of the original bonds.

63392 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63393 entry form under which the right to principal and interest may be transferred only through a

63394 book entry.

63395 (b) The commission may provide for the services and payment for the services of one or
63396 more financial institutions or other entities or persons, or nominees, within or outside the state,
63397 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63398 functions, exchange, and payment of the bonds.

63399 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63400 persons to whom payment with respect to the obligations are made, are private records as
63401 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63402 [~~63-2-304~~] 63G-2-305.

63403 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63404 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63405 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63406 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63407 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63408 (6) The commission may:

63409 (a) by resolution, provide for payment to the United States of whatever amounts are
63410 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63411 and

63412 (b) enter into agreements with financial and other institutions and attorneys to provide
63413 for:

- 63414 (i) the calculation, holding, and payment of those amounts; and
- 63415 (ii) payment from any legally available source of fees, charges, or other amounts coming
63416 due under any agreements entered into by the commission.

63417 Section 1251. Section **63B-6-501** is amended to read:

63418 **63B-6-501. Revenue bond authorizations.**

63419 (1) (a) It is the intent of the Legislature that:

- 63420 (i) the State Board of Regents, on behalf of the University of Utah, issue, sell, and
63421 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow

63422 money on the credit and income and revenues of the University of Utah, other than
63423 appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping
63424 a renovation and expansion of the Robert L. Rice Stadium; and

63425 (ii) Olympic funds, University funds, and activity revenues be used as the primary
63426 revenue sources for repayment of any obligation created under the authority of this Subsection
63427 (1).

63428 (b) The bonds or other evidences of indebtedness authorized may provide up to
63429 \$50,000,000 together with other amounts necessary to pay costs of issuance, pay capitalized
63430 interest, and fund any debt service reserve requirements.

63431 (2) (a) The State Building Ownership Authority, under authority of Title 63, Chapter
63432 9a, State Building Ownership Authority Act, may issue or execute obligations or enter into or
63433 arrange for a lease purchase agreement in which participation interests may be created to
63434 provide up to \$350,000 for the remodeling and completion of the Wasatch Mountain State Park
63435 Clubhouse for the Division of Parks and Recreation, together with additional amounts necessary
63436 to pay costs of issuance, pay capitalized interest, and fund any debt service reserve
63437 requirements.

63438 (b) The State Building Ownership Authority shall work cooperatively with the Division
63439 of Parks and Recreation to seek out the most cost effective and prudent lease purchase plan
63440 available.

63441 (c) It is the intent of the Legislature that park revenues be used as the primary revenue
63442 sources for repayment of any obligation created under authority of this Subsection (2).

63443 (3) It is the intent of the Legislature that:

63444 (a) the State Building Ownership Authority, under the authority of [~~Title 63, Chapter~~
63445 ~~9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part 3, State Building Ownership
63446 Authority Act, may issue or execute obligations, or enter into or arrange for a lease purchase
63447 agreement in which participation interests may be created, to provide up to \$6,000,000 for the
63448 construction, or acquisition, or both, of liquor stores, together with additional amounts
63449 necessary to pay costs of issuance, pay capitalized interest, and fund any debt service

63450 requirements; and

63451 (b) liquor control funds be used as the primary revenue source for the repayment of any
63452 obligation created under authority of this Subsection (3).

63453 Section 1252. Section **63B-7-102** is amended to read:

63454 **63B-7-102. Maximum amount -- Projects authorized.**

63455 (1) The total amount of bonds issued under this part may not exceed \$33,600,000.

63456 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
63457 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
63458 Subsection (2).

63459 (b) These costs may include the cost of acquiring land, interests in land, easements and
63460 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
63461 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
63462 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
63463 covered by construction of the projects plus a period of six months after the end of the
63464 construction period, and all related engineering, architectural, and legal fees.

63465 (c) For the division, proceeds shall be provided for the following:

| 63466 PROJECT | 63466 AMOUNT | 63466 ESTIMATED |
|---------------------------------------|-------------------|----------------------|
| 63467 DESCRIPTION | 63467 FUNDED | 63467 OPERATIONS AND |
| 63468 | | 63468 MAINTENANCE |
| 63469 Southern Utah University | 63469 \$4,600,000 | 63469 \$0 |
| 63470 Land Purchase | | |
| 63471 Salt Lake Community College | 63471 \$3,980,700 | 63471 \$507,900 |
| 63472 High Tech Center - | | |
| 63473 Jordan Campus | | |
| 63474 Children's Special Health Care | 63474 \$755,400 | 63474 \$247,600 |
| 63475 Needs Clinic | | |
| 63476 Youth Corrections - 2 @ 32 beds | 63476 \$419,500 | 63476 \$276,000 |
| 63477 (Vernal / Logan) | | |

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| | | | |
|-------|---|--------------|-----------|
| 63478 | Corrections - Gunnison 288 bed | \$8,425,600 | \$0 |
| 63479 | and Lagoon Expansion | | |
| 63480 | University of Utah - | \$445,500 | \$101,700 |
| 63481 | Cowles Building | | |
| 63482 | Utah Valley State College - | \$1,166,300 | \$391,000 |
| 63483 | Technical Building | | |
| 63484 | Sevier Valley Applied Technology | \$3,014,300 | \$443,300 |
| 63485 | Center - Shop Expansion | | |
| 63486 | Division of Parks and Recreation | \$1,000,000 | \$22,700 |
| 63487 | Statewide Restrooms | | |
| 63488 | Murray Highway Patrol Office | \$2,300,000 | \$81,000 |
| 63489 | Department of Workforce | \$2,780,000 | \$128,100 |
| 63490 | Services - Davis County | | |
| 63491 | Employment Center | | |
| 63492 | State Hospital - Rampton II | \$1,600,000 | \$462,000 |
| 63493 | Courts - 4th District | \$1,368,000 | \$0 |
| 63494 | Land - Provo | | |
| 63495 | Dixie College - Land | \$1,000,000 | \$0 |
| 63496 | TOTAL CAPITAL AND | \$32,855,300 | |
| 63497 | ECONOMIC DEVELOPMENT | | |
| 63498 | (d) For purposes of this section, operations and maintenance costs: | | |
| 63499 | (i) are estimates only; | | |
| 63500 | (ii) may include any operations and maintenance costs already funded in existing agency | | |
| 63501 | budgets; and | | |
| 63502 | (iii) are not commitments by this Legislature or future Legislatures to fund those | | |
| 63503 | operations and maintenance costs. | | |
| 63504 | (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not | | |
| 63505 | constitute a limitation on the amount that may be expended for any project. | | |

63506 (b) The board may revise these estimates and redistribute the amount estimated for a
63507 project among the projects authorized.

63508 (c) The commission, by resolution and in consultation with the board, may delete one or
63509 more projects from this list if the inclusion of that project or those projects in the list could be
63510 construed to violate state law or federal law or regulation.

63511 (4) (a) The division may enter into agreements related to these projects before the
63512 receipt of proceeds of bonds issued under this chapter.

63513 (b) The division shall make those expenditures from unexpended and unencumbered
63514 building funds already appropriated to the Capital Projects Fund.

63515 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds
63516 of bonds issued under this chapter.

63517 (d) The commission may, by resolution, make any statement of intent relating to that
63518 reimbursement that is necessary or desirable to comply with federal tax law.

63519 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
63520 is the intent of the Legislature that the balance necessary to complete the projects be addressed
63521 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

63522 (b) For those phased projects, the division may enter into contracts for amounts not to
63523 exceed the anticipated full project funding but may not allow work to be performed on those
63524 contracts in excess of the funding already authorized by the Legislature.

63525 (c) Those contracts shall contain a provision for termination of the contract for the
63526 convenience of the state as required by Section ~~[63-56-601]~~ 63G-6-601.

63527 (d) It is also the intent of the Legislature that this authorization to the division does not
63528 bind future Legislatures to fund projects initiated from this authorization.

63529 Section 1253. Section **63B-7-105** is amended to read:

63530 **63B-7-105. Terms and conditions of sale -- Plan of financing -- Signatures --**

63531 **Replacement -- Registration -- Federal rebate.**

63532 (1) In the issuance of bonds, the commission may determine by resolution:

63533 (a) the manner of sale, including public or private sale;

63534 (b) the terms and conditions of sale, including price, whether at, below, or above face
63535 value;

63536 (c) denominations;

63537 (d) form;

63538 (e) manner of execution;

63539 (f) manner of authentication;

63540 (g) place and medium of purchase;

63541 (h) redemption terms; and

63542 (i) other provisions and details it considers appropriate.

63543 (2) The commission may by resolution adopt a plan of financing, which may include
63544 terms and conditions of arrangements entered into by the commission on behalf of the state with
63545 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63546 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63547 including payment from any legally available source of fees, charges, or other amounts coming
63548 due under the agreements entered into by the commission.

63549 (3) (a) Any signature of a public official authorized by resolution of the commission to
63550 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63551 otherwise placed on the bonds.

63552 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63553 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63554 authentication agent.

63555 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63556 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63557 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63558 placed on the bonds.

63559 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63560 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63561 or larger denominations.

63562 (b) Bonds in changed denominations shall:
63563 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63564 manner that prevents the duplication of interest; and
63565 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63566 practicable in the form of the original bonds.

63567 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63568 entry form under which the right to principal and interest may be transferred only through a
63569 book entry.

63570 (b) The commission may provide for the services and payment for the services of one or
63571 more financial institutions or other entities or persons, or nominees, within or outside the state,
63572 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63573 functions, exchange, and payment of the bonds.

63574 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63575 persons to whom payment with respect to the obligations are made, are private records as
63576 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63577 [~~63-2-304~~] 63G-2-305.

63578 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63579 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63580 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63581 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63582 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63583 (6) The commission may:
63584 (a) by resolution, provide for payment to the United States of whatever amounts are
63585 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63586 and
63587 (b) enter into agreements with financial and other institutions and attorneys to provide
63588 for:
63589 (i) the calculation, holding, and payment of those amounts; and

63590 (ii) payment from any legally available source of fees, charges, or other amounts coming
63591 due under any agreements entered into by the commission.

63592 Section 1254. Section **63B-7-205** is amended to read:

63593 **63B-7-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
63594 **Replacement -- Registration -- Federal rebate.**

63595 (1) In the issuance of bonds, the commission may determine by resolution:

63596 (a) the manner of sale, including public or private sale;

63597 (b) the terms and conditions of sale, including price, whether at, below, or above face
63598 value;

63599 (c) denominations;

63600 (d) form;

63601 (e) manner of execution;

63602 (f) manner of authentication;

63603 (g) place and medium of purchase;

63604 (h) redemption terms; and

63605 (i) other provisions and details it considers appropriate.

63606 (2) The commission may, by resolution, adopt a plan of financing, which may include
63607 terms and conditions of arrangements entered into by the commission on behalf of the state with
63608 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63609 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63610 including payment from any legally available source of fees, charges, or other amounts coming
63611 due under the agreements entered into by the commission.

63612 (3) (a) Any signature of a public official authorized by resolution of the commission to
63613 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63614 otherwise placed on the bonds.

63615 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63616 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63617 authentication agent.

63618 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63619 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63620 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63621 placed on the bonds.

63622 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63623 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63624 or larger denominations.

63625 (b) Bonds in changed denominations shall:

63626 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63627 manner that prevents the duplication of interest; and

63628 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63629 practicable in the form of the original bonds.

63630 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63631 entry form under which the right to principal and interest may be transferred only through a
63632 book entry.

63633 (b) The commission may provide for the services and payment for the services of one or
63634 more financial institutions or other entities or persons, or nominees, within or outside the state,
63635 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63636 functions, exchange, and payment of the bonds.

63637 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63638 persons to whom payment with respect to the obligations is made, are private records as
63639 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
63640 [~~63-2-304~~] 63G-2-305.

63641 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63642 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63643 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63644 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63645 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

- 63646 (6) The commission may:
- 63647 (a) by resolution, provide for payment to the United States of whatever amounts are
- 63648 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
- 63649 and
- 63650 (b) enter into agreements with financial and other institutions and attorneys to provide
- 63651 for:
- 63652 (i) the calculation, holding, and payment of those amounts; and
- 63653 (ii) payment from any legally available source of fees, charges, or other amounts coming
- 63654 due under any agreements entered into by the commission.

Section 1255. Section **63B-7-402** is amended to read:

63B-7-402. Maximum amount -- Projects authorized.

(1) The total amount of bonds issued under this part may not exceed \$16,500,000.

(2) (a) Proceeds from the issuance of bonds shall be provided to the State Tax Commission to provide funds to pay all or part of the cost of the project described in this Subsection (2).

(b) These costs may include:

(i) the cost of acquisition, development, and conversion of computer hardware and software for motor vehicle fee systems and tax collection and accounting systems of the state;

(ii) interest estimated to accrue on these bonds during the period to be covered by that development and conversion, plus a period of six months following the completion of the development and conversion; and

(iii) all related engineering, consulting, and legal fees.

(c) For the State Tax Commission, proceeds shall be provided for the following:

| PROJECT | AMOUNT |
|-----------------------------|--------------|
| DESCRIPTION | FUNDED |
| UTAX SYSTEMS | \$15,650,000 |
| ACQUISITION AND DEVELOPMENT | |

(3) The commission, by resolution may decline to issue bonds if the project could be

63674 construed to violate state law or federal law or regulation.

63675 (4) (a) For this project, for which only partial funding is provided in Subsection (2), it is
63676 the intent of the Legislature that the balance necessary to complete the project be addressed by
63677 future Legislatures, either through appropriations or through the issuance or sale of bonds.

63678 (b) The State Tax Commission may enter into contracts for amounts not to exceed the
63679 anticipated full project funding but may not allow work to be performed on those contracts in
63680 excess of the funding already authorized by the Legislature.

63681 (c) Those contracts shall contain a provision for termination of the contract for the
63682 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

63683 (d) It is also the intent of the Legislature that this authorization to the State Tax
63684 Commission does not bind future Legislatures to fund projects initiated from this authorization.
63685 Section 1256. Section **63B-7-405** is amended to read:

63686 **63B-7-405. Terms and conditions of sale -- Plan of financing -- Signatures --**
63687 **Replacement -- Registration -- Federal rebate.**

63688 (1) In the issuance of bonds, the commission may determine by resolution:

- 63689 (a) the manner of sale, including public or private sale;
- 63690 (b) the terms and conditions of sale, including price, whether at, below, or above face
63691 value;
- 63692 (c) denominations;
- 63693 (d) form;
- 63694 (e) manner of execution;
- 63695 (f) manner of authentication;
- 63696 (g) place and medium of purchase;
- 63697 (h) redemption terms; and
- 63698 (i) other provisions and details it considers appropriate.

63699 (2) The commission may by resolution adopt a plan of financing, which may include
63700 terms and conditions of arrangements entered into by the commission on behalf of the state with
63701 financial and other institutions for letters of credit, standby letters of credit, reimbursement

63702 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63703 including payment from any legally available source of fees, charges, or other amounts coming
63704 due under the agreements entered into by the commission.

63705 (3) (a) Any signature of a public official authorized by resolution of the commission to
63706 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63707 otherwise placed on the bonds.

63708 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63709 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63710 authentication agent.

63711 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63712 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63713 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63714 placed on the bonds.

63715 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63716 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63717 or larger denominations.

63718 (b) Bonds in changed denominations shall:

63719 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63720 manner that prevents the duplication of interest; and

63721 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63722 practicable in the form of the original bonds.

63723 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63724 entry form under which the right to principal and interest may be transferred only through a
63725 book entry.

63726 (b) The commission may provide for the services and payment for the services of one or
63727 more financial institutions or other entities or persons, or nominees, within or outside the state,
63728 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63729 functions, exchange, and payment of the bonds.

63730 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63731 persons to whom payment with respect to the obligations are made, are private records as
63732 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63733 [~~63-2-304~~] 63G-2-305.

63734 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63735 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63736 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63737 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63738 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63739 (6) The commission may:

63740 (a) by resolution, provide for payment to the United States of whatever amounts are
63741 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63742 and

63743 (b) enter into agreements with financial and other institutions and attorneys to provide
63744 for:

63745 (i) the calculation, holding, and payment of those amounts; and

63746 (ii) payment from any legally available source of fees, charges, or other amounts coming
63747 due under any agreements entered into by the commission.

63748 Section 1257. Section **63B-7-501** is amended to read:

63749 **63B-7-501. Revenue bond authorizations.**

63750 (1) (a) It is the intent of the Legislature that the State Building Ownership Authority,
63751 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
63752 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
63753 into or arrange for a lease purchase agreement in which participation interests may be created,
63754 to provide up to \$1,568,600 for the construction of a Utah Correctional Industries Facility at
63755 the Central Utah Correctional Facility at Gunnison, together with additional amounts necessary
63756 to pay costs of issuance, pay capitalized interest, and fund any debt service requirements.

63757 (b) The State Building Ownership Authority shall work cooperatively with the

63758 Department of Corrections to seek out the most cost effective and prudent lease purchase plan
63759 available.

63760 (c) It is the intent of the Legislature that program revenues be used as the primary
63761 revenue source for repayment of any obligation created under authority of this Subsection (1).

63762 (2) It is the intent of the Legislature that:

63763 (a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and
63764 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
63765 money on the credit, income, and revenues of the University of Utah, other than appropriations
63766 of the Legislature, to finance the cost of constructing, furnishing, and equipping student
63767 housing;

63768 (b) University funds and housing rental revenues be used as the primary revenue source
63769 for repayment of any obligation created under authority of this Subsection (2); and

63770 (c) the bonds or other evidences of indebtedness authorized by this Subsection (2) may
63771 provide up to \$86,000,000 together with other amounts necessary to pay costs of issuance, pay
63772 capitalized interest, and fund any debt service reserve requirements.

63773 (3) It is the intent of the Legislature that:

63774 (a) the State Board of Regents on behalf of the University of Utah issue, sell, and
63775 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
63776 money on the credit, income, and revenues of the University of Utah, other than appropriations
63777 of the Legislature, to finance the cost of constructing, furnishing, and equipping a Health
63778 Sciences Parking Structure;

63779 (b) University funds and parking revenues be used as the primary revenue source for
63780 repayment of any obligation created under authority of this Subsection (3); and

63781 (c) the bonds or other evidences of indebtedness authorized by this Subsection (3) may
63782 provide up to \$12,000,000, together with other amounts necessary to pay costs of issuance, pay
63783 capitalized interest, and fund any debt service reserve requirements.

63784 (4) It is the intent of the Legislature that:

63785 (a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and

63786 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
63787 money on the credit and income and revenues of the University of Utah, other than
63788 appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping
63789 a Southwest Campus Parking Structure;

63790 (b) University funds and parking revenues be used as the primary revenue source for
63791 repayment of any obligation created under authority of this Subsection (4); and

63792 (c) the bonds or other evidences of indebtedness authorized by this Subsection (4) may
63793 provide up to \$7,200,000, together with other amounts necessary to pay costs of issuance, pay
63794 capitalized interest, and fund any debt service reserve requirements.

63795 (5) It is the intent of the Legislature that:

63796 (a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and
63797 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
63798 money on the credit and income and revenues of the University of Utah, other than
63799 appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping
63800 an expansion of the Eccles Broadcast Center;

63801 (b) University funds and service revenues be used as the primary revenue source for
63802 repayment of any obligation created under authority of this Subsection (5); and

63803 (c) the bonds or other evidences of indebtedness authorized by this Subsection (5) may
63804 provide up to \$5,100,000, together with other amounts necessary to pay costs of issuance, pay
63805 capitalized interest, and fund any debt service reserve requirements.

63806 (6) It is the intent of the Legislature that:

63807 (a) the State Board of Regents, on behalf of the University of Utah, issue, sell, and
63808 deliver revenue bonds or other evidences of indebtedness of the University of Utah to borrow
63809 money on the credit and income and revenues of the University of Utah, other than
63810 appropriations of the Legislature, to finance the cost of constructing, furnishing, equipping, and
63811 remodeling facilities for perinatal services, adult critical care services, clinical training and
63812 support, and upgrade of the University Hospital Rehabilitation Unit, and for purchase of the
63813 University Neuropsychiatric Institute and Summit Health Center in Park West;

63814 (b) University Hospital revenues be used as the primary revenue source for repayment
63815 of any obligation created under authority of this Subsection (6); and

63816 (c) the bonds or other evidences of indebtedness authorized by this Subsection (6) may
63817 provide up to \$23,300,000 together with other amounts necessary to pay costs of issuance, pay
63818 capitalized interest, and fund any debt service reserve requirements.

63819 (7) It is the intent of the Legislature that:

63820 (a) the State Board of Regents, on behalf of Weber State University, issue, sell, and
63821 deliver revenue bonds or other evidences of indebtedness of Weber State University to borrow
63822 money on the credit and income and revenues of Weber State University, other than
63823 appropriations of the Legislature, to finance the cost of constructing, furnishing, and equipping
63824 student housing;

63825 (b) University funds and housing rental revenues be used as the primary revenue source
63826 for repayment of any obligation created under authority of this Subsection (7); and

63827 (c) the bonds or other evidences of indebtedness authorized by this Subsection (7) may
63828 provide up to \$19,000,000 together with other amounts necessary to pay costs of issuance, pay
63829 capitalized interest, and fund any debt service reserve requirements.

63830 (8) (a) It is the intent of the Legislature that the State Building Ownership Authority,
63831 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
63832 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
63833 into or arrange for a lease purchase agreement in which participation interests may be created,
63834 to provide up to \$1,100,000 for the construction of surplus property facilities for the Division of
63835 Fleet Operations, together with additional amounts necessary to pay costs of issuance, pay
63836 capitalized interest, and fund any debt service reserve requirements.

63837 (b) The State Building Ownership Authority shall work cooperatively with the
63838 Department of Administrative Services to seek out the most cost effective and prudent lease
63839 purchase plan available.

63840 (c) It is the intent of the Legislature that Internal Service Fund revenues be used as the
63841 primary revenue source for repayment of any obligation created under authority of this

63842 Subsection (8).

63843 (9) (a) Contingent upon the state of Utah receiving a perfected security interest in
63844 accordance with Senate Joint Resolution 14, 1998 Annual General Session, the State Building
63845 Ownership Authority, under authority of Title 63, Chapter 9a, State Building Ownership
63846 Authority Act, may issue or execute obligations, or enter into or arrange for a lease purchase
63847 agreement in which participation interests may be created, to provide up to \$25,000,000 for the
63848 cost of constructing, furnishing, and equipping housing facilities at the University of Utah,
63849 together with additional amounts necessary to:

- 63850 (i) pay costs of issuance;
- 63851 (ii) pay capitalized interest; and
- 63852 (iii) fund any debt service reserve requirements.

63853 (b) The State Building Ownership Authority and the University of Utah may enter into
63854 real estate arrangements and security arrangements that are:

- 63855 (i) necessary to accomplish the purposes of this Subsection (9); and
- 63856 (ii) not inconsistent with the requirements of Senate Joint Resolution 14, 1998 Annual
63857 General Session.

63858 (10) In order to achieve a debt service savings, it is the intent of the Legislature that the
63859 State Building Ownership Authority, under authority of Title 63, Chapter 9a, State Building
63860 Ownership Authority Act, may issue or execute obligations, or enter into or arrange for a lease
63861 purchase agreement in which participation interests may be created, to provide sufficient
63862 funding to exercise the state's option to purchase the Youth Corrections Facility in Salt Lake
63863 County currently financed by Salt Lake County.

63864 Section 1258. Section **63B-7-503** is amended to read:

63865 **63B-7-503. Highway revenue bond authorization.**

63866 It is the intent of the Legislature that:

63867 (1) the State Building Ownership Authority, under the authority of [~~Title 63, Chapter~~
63868 ~~9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part 3, State Building Ownership
63869 Authority Act, may issue or execute obligations to provide up to \$10,000,000 for the

63870 acquisition of real property or any interests in real property for state, county, or municipal
63871 transportation corridors as provided in Section 72-2-117; and

63872 (2) revenues of the Transportation Corridor Preservation Revolving Loan Fund be used
63873 as the primary revenue source for the repayment of any obligation created under authority of
63874 this section.

63875 Section 1259. Section **63B-8-102** is amended to read:

63876 **63B-8-102. Maximum amount -- Projects authorized.**

63877 (1) The total amount of bonds issued under this part may not exceed \$48,500,000.

63878 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
63879 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
63880 Subsection (2).

63881 (b) These costs may include the cost of acquiring land, interests in land, easements and
63882 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
63883 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
63884 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
63885 covered by construction of the projects plus a period of six months after the end of the
63886 construction period, and all related engineering, architectural, and legal fees.

63887 (c) For the division, proceeds shall be provided for the following:

| 63888 PROJECT | 63888 AMOUNT | 63888 ESTIMATED |
|-------------------------------------|--------------|----------------------|
| 63889 DESCRIPTION | 63889 FUNDED | 63889 OPERATIONS AND |
| 63890 | | 63890 MAINTENANCE |
| 63891 Southern Utah University - | \$2,493,200 | \$447,744 |
| 63892 Physical Education Building | | |
| 63893 Utah Valley State College - | \$29,000,000 | \$721,875 |
| 63894 Information Sciences Building | | |
| 63895 University of Utah - | \$7,268,500 | \$140,217 |
| 63896 Cowles Building Renovation | | |
| 63897 Vernal District Court | \$4,539,500 | \$149,989 |

| | | | |
|-------|--|--------------|-----------|
| 63898 | Salt Lake Community College - | \$4,200,000 | \$281,784 |
| 63899 | Applied Education Center | | |
| 63900 | TOTAL CAPITAL AND | \$47,501,200 | |
| 63901 | ECONOMIC DEVELOPMENT | | |
| 63902 | (d) For purposes of this section, operations and maintenance costs: | | |
| 63903 | (i) are estimates only; | | |
| 63904 | (ii) may include any operations and maintenance costs already funded in existing agency | | |
| 63905 | budgets; and | | |
| 63906 | (iii) are not commitments by this Legislature or future Legislatures to fund those | | |
| 63907 | operations and maintenance costs. | | |
| 63908 | (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not | | |
| 63909 | constitute a limitation on the amount that may be expended for any project. | | |
| 63910 | (b) The board may revise these estimates and redistribute the amount estimated for a | | |
| 63911 | project among the projects authorized. | | |
| 63912 | (c) The commission, by resolution and in consultation with the board, may delete one or | | |
| 63913 | more projects from this list if the inclusion of that project or those projects in the list could be | | |
| 63914 | construed to violate state law or federal law or regulation. | | |
| 63915 | (4) (a) The division may enter into agreements related to these projects before the | | |
| 63916 | receipt of proceeds of bonds issued under this chapter. | | |
| 63917 | (b) The division shall make those expenditures from unexpended and unencumbered | | |
| 63918 | building funds already appropriated to the Capital Projects Fund. | | |
| 63919 | (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds | | |
| 63920 | of bonds issued under this chapter. | | |
| 63921 | (d) The commission may, by resolution, make any statement of intent relating to that | | |
| 63922 | reimbursement that is necessary or desirable to comply with federal tax law. | | |
| 63923 | (5) (a) For those projects for which only partial funding is provided in Subsection (2), it | | |
| 63924 | is the intent of the Legislature that the balance necessary to complete the projects be addressed | | |
| 63925 | by future Legislatures, either through appropriations or through the issuance or sale of bonds. | | |

63926 (b) For those phased projects, the division may enter into contracts for amounts not to
63927 exceed the anticipated full project funding but may not allow work to be performed on those
63928 contracts in excess of the funding already authorized by the Legislature.

63929 (c) Those contracts shall contain a provision for termination of the contract for the
63930 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

63931 (d) It is also the intent of the Legislature that this authorization to the division does not
63932 bind future Legislatures to fund projects initiated from this authorization.

63933 Section 1260. Section **63B-8-105** is amended to read:

63934 **63B-8-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
63935 **Replacement -- Registration -- Federal rebate.**

63936 (1) In the issuance of bonds, the commission may determine by resolution:

63937 (a) the manner of sale, including public or private sale;

63938 (b) the terms and conditions of sale, including price, whether at, below, or above face
63939 value;

63940 (c) denominations;

63941 (d) form;

63942 (e) manner of execution;

63943 (f) manner of authentication;

63944 (g) place and medium of purchase;

63945 (h) redemption terms; and

63946 (i) other provisions and details it considers appropriate.

63947 (2) The commission may by resolution adopt a plan of financing, which may include
63948 terms and conditions of arrangements entered into by the commission on behalf of the state with
63949 financial and other institutions for letters of credit, standby letters of credit, reimbursement
63950 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
63951 including payment from any legally available source of fees, charges, or other amounts coming
63952 due under the agreements entered into by the commission.

63953 (3) (a) Any signature of a public official authorized by resolution of the commission to

63954 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
63955 otherwise placed on the bonds.

63956 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
63957 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
63958 authentication agent.

63959 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
63960 the signature or facsimile signature of the official is nevertheless valid for all purposes.

63961 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
63962 placed on the bonds.

63963 (4) (a) The commission may enact resolutions providing for the replacement of lost,
63964 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
63965 or larger denominations.

63966 (b) Bonds in changed denominations shall:

63967 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
63968 manner that prevents the duplication of interest; and

63969 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
63970 practicable in the form of the original bonds.

63971 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
63972 entry form under which the right to principal and interest may be transferred only through a
63973 book entry.

63974 (b) The commission may provide for the services and payment for the services of one or
63975 more financial institutions or other entities or persons, or nominees, within or outside the state,
63976 for the authentication, registration, transfer, including record, bookkeeping, or book entry
63977 functions, exchange, and payment of the bonds.

63978 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
63979 persons to whom payment with respect to the obligations are made, are private records as
63980 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
63981 [~~63-2-304~~] 63G-2-305.

63982 (d) The bonds and any evidences of participation interest in the bonds may be issued,
63983 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
63984 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
63985 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
63986 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

63987 (6) The commission may:

63988 (a) by resolution, provide for payment to the United States of whatever amounts are
63989 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
63990 and

63991 (b) enter into agreements with financial and other institutions and attorneys to provide
63992 for:

63993 (i) the calculation, holding, and payment of those amounts; and

63994 (ii) payment from any legally available source of fees, charges, or other amounts coming
63995 due under any agreements entered into by the commission.

63996 Section 1261. Section **63B-8-205** is amended to read:

63997 **63B-8-205. Terms and conditions of sale -- Plan of financing -- Signatures --**

63998 **Replacement -- Registration -- Federal rebate.**

63999 (1) In the issuance of bonds, the commission may determine by resolution:

64000 (a) the manner of sale, including public or private sale;

64001 (b) the terms and conditions of sale, including price, whether at, below, or above face
64002 value;

64003 (c) denominations;

64004 (d) form;

64005 (e) manner of execution;

64006 (f) manner of authentication;

64007 (g) place and medium of purchase;

64008 (h) redemption terms; and

64009 (i) other provisions and details it considers appropriate.

64010 (2) The commission may, by resolution, adopt a plan of financing, which may include
64011 terms and conditions of arrangements entered into by the commission on behalf of the state with
64012 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64013 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64014 including payment from any legally available source of fees, charges, or other amounts coming
64015 due under the agreements entered into by the commission.

64016 (3) (a) Any signature of a public official authorized by resolution of the commission to
64017 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64018 otherwise placed on the bonds.

64019 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64020 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64021 authentication agent.

64022 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64023 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64024 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64025 placed on the bonds.

64026 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64027 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64028 or larger denominations.

64029 (b) Bonds in changed denominations shall:

64030 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64031 manner that prevents the duplication of interest; and

64032 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64033 practicable in the form of the original bonds.

64034 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64035 entry form under which the right to principal and interest may be transferred only through a
64036 book entry.

64037 (b) The commission may provide for the services and payment for the services of one or

64038 more financial institutions or other entities or persons, or nominees, within or outside the state,
64039 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64040 functions, exchange, and payment of the bonds.

64041 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64042 persons to whom payment with respect to the obligations is made, are private records as
64043 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
64044 [~~63-2-304~~] 63G-2-305.

64045 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64046 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64047 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64048 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64049 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64050 (6) The commission may:

64051 (a) by resolution, provide for payment to the United States of whatever amounts are
64052 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64053 and

64054 (b) enter into agreements with financial and other institutions and attorneys to provide
64055 for:

64056 (i) the calculation, holding, and payment of those amounts; and

64057 (ii) payment from any legally available source of fees, charges, or other amounts coming
64058 due under any agreements entered into by the commission.

64059 Section 1262. Section **63B-8-402** is amended to read:

64060 **63B-8-402. Maximum amount -- Projects authorized.**

64061 (1) The total amount of bonds issued under this part may not exceed \$7,400,000.

64062 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
64063 funds to pay all or part of the cost of acquiring and constructing the project listed in this
64064 Subsection (2).

64065 (b) These costs may include the cost of acquiring land, interests in land, easements and

64066 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
64067 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
64068 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
64069 covered by construction of the projects plus a period of six months after the end of the
64070 construction period, and all related engineering, architectural, and legal fees.

64071 (c) For the division, proceeds shall be provided for the following:

| 64072 | PROJECT | AMOUNT | ESTIMATED |
|-------|-----------------------------|-------------|----------------|
| 64073 | DESCRIPTION | FUNDED | OPERATIONS AND |
| 64074 | | | MAINTENANCE |
| 64075 | State Hospital - Rampton II | \$7,000,000 | \$462,000 |

64076 (d) For purposes of this section, operations and maintenance costs:

64077 (i) are estimates only;

64078 (ii) may include any operations and maintenance costs already funded in existing agency
64079 budgets; and

64080 (iii) are not commitments by this Legislature or future Legislatures to fund those
64081 operations and maintenance costs.

64082 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not
64083 constitute a limitation on the amount that may be expended for any project.

64084 (b) The board may revise these estimates and redistribute the amount estimated for a
64085 project among the projects authorized.

64086 (c) The commission, by resolution and in consultation with the board, may delete one or
64087 more projects from this list if the inclusion of that project or those projects in the list could be
64088 construed to violate state law or federal law or regulation.

64089 (4) (a) The division may enter into agreements related to these projects before the
64090 receipt of proceeds of bonds issued under this chapter.

64091 (b) The division shall make those expenditures from unexpended and unencumbered
64092 building funds already appropriated to the Capital Projects Fund.

64093 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds

64094 of bonds issued under this chapter.

64095 (d) The commission may, by resolution, make any statement of intent relating to that
64096 reimbursement that is necessary or desirable to comply with federal tax law.

64097 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it
64098 is the intent of the Legislature that the balance necessary to complete the projects be addressed
64099 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

64100 (b) For those phased projects, the division may enter into contracts for amounts not to
64101 exceed the anticipated full project funding but may not allow work to be performed on those
64102 contracts in excess of the funding already authorized by the Legislature.

64103 (c) Those contracts shall contain a provision for termination of the contract for the
64104 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

64105 (d) It is also the intent of the Legislature that this authorization to the division does not
64106 bind future Legislatures to fund projects initiated from this authorization.

64107 Section 1263. Section **63B-8-405** is amended to read:

64108 **63B-8-405. Terms and conditions of sale -- Plan of financing -- Signatures --**
64109 **Replacement -- Registration -- Federal rebate.**

64110 (1) In the issuance of bonds, the commission may determine by resolution:

64111 (a) the manner of sale, including public or private sale;

64112 (b) the terms and conditions of sale, including price, whether at, below, or above face
64113 value;

64114 (c) denominations;

64115 (d) form;

64116 (e) manner of execution;

64117 (f) manner of authentication;

64118 (g) place and medium of purchase;

64119 (h) redemption terms; and

64120 (i) other provisions and details it considers appropriate.

64121 (2) The commission may by resolution adopt a plan of financing, which may include

64122 terms and conditions of arrangements entered into by the commission on behalf of the state with
64123 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64124 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64125 including payment from any legally available source of fees, charges, or other amounts coming
64126 due under the agreements entered into by the commission.

64127 (3) (a) Any signature of a public official authorized by resolution of the commission to
64128 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64129 otherwise placed on the bonds.

64130 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64131 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64132 authentication agent.

64133 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64134 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64135 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64136 placed on the bonds.

64137 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64138 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64139 or larger denominations.

64140 (b) Bonds in changed denominations shall:

64141 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64142 manner that prevents the duplication of interest; and

64143 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64144 practicable in the form of the original bonds.

64145 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64146 entry form under which the right to principal and interest may be transferred only through a
64147 book entry.

64148 (b) The commission may provide for the services and payment for the services of one or
64149 more financial institutions or other entities or persons, or nominees, within or outside the state,

64150 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64151 functions, exchange, and payment of the bonds.

64152 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64153 persons to whom payment with respect to the obligations are made, are private records as
64154 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
64155 [~~63-2-304~~] 63G-2-305.

64156 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64157 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64158 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64159 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64160 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64161 (6) The commission may:

64162 (a) by resolution, provide for payment to the United States of whatever amounts are
64163 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64164 and

64165 (b) enter into agreements with financial and other institutions and attorneys to provide
64166 for:

64167 (i) the calculation, holding, and payment of those amounts; and

64168 (ii) payment from any legally available source of fees, charges, or other amounts coming
64169 due under any agreements entered into by the commission.

64170 Section 1264. Section **63B-8-501** is amended to read:

64171 **63B-8-501. Revenue bond authorizations.**

64172 (1) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64173 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64174 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
64175 into or arrange for a lease purchase agreement in which participation interests may be created,
64176 to provide up to \$2,510,000 for the acquisition of the Department of Human Services Office in
64177 Brigham City, together with additional amounts necessary to pay costs of issuance, pay

64178 capitalized interest, and fund any debt service reserve requirements.

64179 (b) It is the intent of the Legislature that amounts representing existing budgets for rent
 64180 for the Department of Human Services be used as the primary revenue source for the
 64181 Department of Human Services to pay the state for repayment of any obligation created under
 64182 authority of this Subsection (1).

64183 (2) (a) It is the intent of the Legislature that the State Building Ownership Authority,
 64184 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
 64185 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
 64186 into or arrange for a lease purchase agreement in which participation interests may be created,
 64187 to provide up to \$6,518,000 for the construction of an office building to house the Department
 64188 of Corrections and the Board of Pardons and Parole Administration, together with additional
 64189 amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service
 64190 reserve requirements.

64191 (b) It is the intent of the Legislature that amounts representing existing budgets for rent
 64192 for the Department of Corrections and the Board of Pardons and Parole Administration be used
 64193 as the primary revenue source for the Department of Corrections and the Board of Pardons and
 64194 Parole Administration to pay the state for repayment of any obligation created under authority
 64195 of this Subsection (2).

64196 Section 1265. Section **63B-9-102** is amended to read:

64197 **63B-9-102. State Building Ownership Authority revenue bond authorizations.**

64198 (1) It is the intent of the Legislature that the State Building Ownership Authority, under
 64199 the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part
 64200 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or
 64201 arrange for a lease purchase agreement in which participation interests may be created, to
 64202 provide up to \$10,500,000 for the construction of a multipurpose building for the state fair
 64203 park, together with additional amounts necessary to:

64204 (a) pay costs of issuance;

64205 (b) pay capitalized interest; and

64206 (c) fund any debt service reserve requirements.

64207 (2) The State Building Ownership Authority shall work cooperatively with the board of
64208 directors of the Utah State Fair Corporation to seek out the most effective and prudent lease
64209 purchase plan available.

64210 Section 1266. Section **63B-9-103** is amended to read:

64211 **63B-9-103. Other capital facility authorizations and intent language.**

64212 (1) It is the intent of the Legislature that:

64213 (a) Utah State University use institutional funds to plan, design, and construct a
64214 renovation and expansion of the Edith Bowen School under the direction of the director of the
64215 Division of Facilities Construction and Management unless supervisory authority has been
64216 delegated;

64217 (b) no state funds be used for any portion of this project; and

64218 (c) the university may request state funds for operations and maintenance to the extent
64219 that the university is able to demonstrate to the Board of Regents that the facility meets
64220 approved academic and training purposes under Board of Regents policy R710.

64221 (2) It is the intent of the Legislature that:

64222 (a) the University of Utah use institutional funds to plan, design, and construct a
64223 College of Science Math Center under the direction of the director of the Division of Facilities
64224 Construction and Management unless supervisory authority has been delegated;

64225 (b) no state funds be used for any portion of this project; and

64226 (c) the university may request state funds for operations and maintenance to the extent
64227 that the university is able to demonstrate to the Board of Regents that the facility meets
64228 approved academic and training purposes under Board of Regents policy R710.

64229 (3) It is the intent of the Legislature that:

64230 (a) the University of Utah use institutional funds to plan, design, and construct a
64231 Burbidge Athletics and Academics Building under the direction of the director of the Division of
64232 Facilities Construction and Management unless supervisory authority has been delegated;

64233 (b) no state funds be used for any portion of this project; and

- 64234 (c) the university may not request state funds for operations and maintenance.
- 64235 (4) It is the intent of the Legislature that:
- 64236 (a) the University of Utah use institutional funds to plan, design, and construct an
- 64237 expansion to the bookstore under the direction of the director of the Division of Facilities
- 64238 Construction and Management unless supervisory authority has been delegated;
- 64239 (b) no state funds be used for any portion of this project; and
- 64240 (c) the university may not request state funds for operations and maintenance.
- 64241 (5) It is the intent of the Legislature that:
- 64242 (a) the University of Utah use institutional funds to plan, design, and construct a Health
- 64243 Sciences/Basic Sciences Building under the direction of the director of the Division of Facilities
- 64244 Construction and Management unless supervisory authority has been delegated;
- 64245 (b) no state funds be used for any portion of this project; and
- 64246 (c) the university may request state funds for operations and maintenance to the extent
- 64247 that the university is able to demonstrate to the Board of Regents that the facility meets
- 64248 approved academic and training purposes under Board of Regents policy R710.
- 64249 (6) It is the intent of the Legislature that:
- 64250 (a) Weber State University use institutional funds to plan, design, and construct an
- 64251 expansion to the stadium under the direction of the director of the Division of Facilities
- 64252 Construction and Management unless supervisory authority has been delegated;
- 64253 (b) no state funds be used for any portion of this project; and
- 64254 (c) the university may not request state funds for operations and maintenance.
- 64255 (7) It is the intent of the Legislature that:
- 64256 (a) Utah Valley State College use institutional funds to plan, design, and construct a
- 64257 baseball stadium under the direction of the director of the Division of Facilities Construction
- 64258 and Management unless supervisory authority has been delegated;
- 64259 (b) no state funds be used for any portion of this project; and
- 64260 (c) the college may not request state funds for operations and maintenance.
- 64261 (8) It is the intent of the Legislature that:

- 64262 (a) Southern Utah University use institutional funds to plan, design, and construct a
64263 weight training room under the direction of the director of the Division of Facilities
64264 Construction and Management unless supervisory authority has been delegated;
- 64265 (b) no state funds be used for any portion of this project; and
64266 (c) the university may not request state funds for operations and maintenance.
- 64267 (9) It is the intent of the Legislature that:
- 64268 (a) Snow College may lease land at the Snow College Richfield campus to a private
64269 developer for the construction and operation of student housing;
- 64270 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
64271 (c) no state funds be used for any portion of this project; and
64272 (d) the college may not request state funds for operations and maintenance.
- 64273 (10) It is the intent of the Legislature that:
- 64274 (a) Salt Lake Community College may lease land at the Jordan campus to Jordan
64275 School District for the construction and operation of an Applied Technology Education Center;
- 64276 (b) the oversight and inspection of the construction comply with Section 63A-5-206;
64277 (c) no state funds be used for any portion of this project; and
64278 (d) the college may not request state funds for operations and maintenance.
- 64279 (11) It is the intent of the Legislature that:
- 64280 (a) the Department of Transportation exchange its maintenance station at Kimball
64281 Junction for property located near Highway 40 in Summit County; and
64282 (b) the Department of Transportation use federal funds, rent paid by the Salt Lake
64283 Organizing Committee for the use of the maintenance station, and any net proceeds resulting
64284 from the exchange of property to construct a replacement facility under the direction of the
64285 director of the Division of Facilities Construction and Management unless supervisory authority
64286 has been delegated.
- 64287 (12) It is the intent of the Legislature that:
- 64288 (a) the Department of Transportation sell surplus property in Utah County;
64289 (b) the Department of Transportation use funds from that sale to remodel existing space

64290 and add an addition to the Region 3 Complex; and

64291 (c) the project cost not exceed the funds received through sale of property.

64292 (13) It is the intent of the Legislature that the Department of Workforce Services use
64293 proceeds from property sales to purchase additional property adjacent to its state-owned facility
64294 in Logan.

64295 (14) (a) It is the intent of the Legislature that, because only partial funding is provided
64296 for the Heat Plant/Infrastructure Project at Utah State University, the balance necessary to
64297 complete this project be addressed by future Legislatures, either through appropriations or
64298 through the issuance of bonds.

64299 (b) (i) In compliance with Section 63A-5-207, the division may enter into contracts for
64300 amounts not to exceed the anticipated full project funding but may not allow work to be
64301 performed on those contracts in excess of the funding already authorized by the Legislature.

64302 (ii) Those contracts shall contain a provision for termination of the contract for the
64303 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

64304 (c) It is also the intent of the Legislature that this authorization to the division does not
64305 bind future Legislatures to fund the Heat Plant/Infrastructure Project at Utah State University.

64306 Section 1267. Section **63B-9-205** is amended to read:

64307 **63B-9-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
64308 **Replacement -- Registration -- Federal rebate.**

64309 (1) In the issuance of bonds, the commission may determine by resolution:

64310 (a) the manner of sale, including public or private sale;

64311 (b) the terms and conditions of sale, including price, whether at, below, or above face
64312 value;

64313 (c) denominations;

64314 (d) form;

64315 (e) manner of execution;

64316 (f) manner of authentication;

64317 (g) place and medium of purchase;

64318 (h) redemption terms; and

64319 (i) other provisions and details it considers appropriate.

64320 (2) The commission may, by resolution, adopt a plan of financing, which may include
64321 terms and conditions of arrangements entered into by the commission on behalf of the state with
64322 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64323 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64324 including payment from any legally available source of fees, charges, or other amounts coming
64325 due under the agreements entered into by the commission.

64326 (3) (a) Any signature of a public official authorized by resolution of the commission to
64327 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64328 otherwise placed on the bonds.

64329 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64330 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64331 authentication agent.

64332 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64333 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64334 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64335 placed on the bonds.

64336 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64337 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64338 or larger denominations.

64339 (b) Bonds in changed denominations shall:

64340 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64341 manner that prevents the duplication of interest; and

64342 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64343 practicable in the form of the original bonds.

64344 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64345 entry form under which the right to principal and interest may be transferred only through a

64346 book entry.

64347 (b) The commission may provide for the services and payment for the services of one or
64348 more financial institutions or other entities or persons, or nominees, within or outside the state,
64349 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64350 functions, exchange, and payment of the bonds.

64351 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64352 persons to whom payment with respect to the obligations is made, are private records as
64353 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
64354 [~~63-2-304~~] 63G-2-305.

64355 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64356 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64357 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64358 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64359 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64360 (6) The commission may:

64361 (a) by resolution, provide for payment to the United States of whatever amounts are
64362 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64363 and

64364 (b) enter into agreements with financial and other institutions and attorneys to provide
64365 for:

64366 (i) the calculation, holding, and payment of those amounts; and

64367 (ii) payment from any legally available source of fees, charges, or other amounts coming
64368 due under any agreements entered into by the commission.

64369 Section 1268. Section **63B-10-105** is amended to read:

64370 **63B-10-105. Terms and conditions of sale -- Plan of financing -- Signatures --**

64371 **Replacement -- Registration -- Federal rebate.**

64372 (1) In the issuance of bonds, the commission may determine by resolution:

64373 (a) the manner of sale, including public or private sale;

64374 (b) the terms and conditions of sale, including price, whether at, below, or above face
64375 value;

64376 (c) denominations;

64377 (d) form;

64378 (e) manner of execution;

64379 (f) manner of authentication;

64380 (g) place and medium of purchase;

64381 (h) redemption terms; and

64382 (i) other provisions and details it considers appropriate.

64383 (2) The commission may, by resolution, adopt a plan of financing, which may include
64384 terms and conditions of arrangements entered into by the commission on behalf of the state with
64385 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64386 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64387 including payment from any legally available source of fees, charges, or other amounts coming
64388 due under the agreements entered into by the commission.

64389 (3) (a) Any signature of a public official authorized by resolution of the commission to
64390 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64391 otherwise placed on the bonds.

64392 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64393 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64394 authentication agent.

64395 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64396 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64397 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64398 placed on the bonds.

64399 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64400 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64401 or larger denominations.

- 64402 (b) Bonds in changed denominations shall:
- 64403 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
- 64404 manner that prevents the duplication of interest; and
- 64405 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
- 64406 practicable in the form of the original bonds.
- 64407 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
- 64408 entry form under which the right to principal and interest may be transferred only through a
- 64409 book entry.
- 64410 (b) The commission may provide for the services and payment for the services of one or
- 64411 more financial institutions or other entities or persons, or nominees, within or outside the state,
- 64412 for the authentication, registration, transfer, including record, bookkeeping, or book entry
- 64413 functions, exchange, and payment of the bonds.
- 64414 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
- 64415 persons to whom payment with respect to the obligations is made, are private records as
- 64416 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
- 64417 [~~63-2-304~~] 63G-2-305.
- 64418 (d) The bonds and any evidences of participation interest in the bonds may be issued,
- 64419 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
- 64420 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
- 64421 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
- 64422 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.
- 64423 (6) The commission may:
- 64424 (a) by resolution, provide for payment to the United States of whatever amounts are
- 64425 necessary to comply with Section 148(f) of the Internal Revenue Code of 1986, as amended;
- 64426 and
- 64427 (b) enter into agreements with financial and other institutions and attorneys to provide
- 64428 for:
- 64429 (i) the calculation, holding, and payment of those amounts; and

64430 (ii) payment from any legally available source of fees, charges, or other amounts coming
64431 due under any agreements entered into by the commission.

64432 Section 1269. Section **63B-10-301** is amended to read:

64433 **63B-10-301. Revenue bond authorizations.**

64434 (1) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64435 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64436 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
64437 into or arrange for a lease purchase agreement in which participation interests may be created,
64438 to provide up to \$8,281,000 for the construction of an expansion of the Department of
64439 Alcoholic Beverage Control warehouse together with additional amounts necessary to pay costs
64440 of issuance, pay capitalized interest, and fund any debt service reserve requirements.

64441 (b) It is the intent of the Legislature that enhanced revenues of the Department of
64442 Alcoholic Beverage Control be used as the primary revenue source for repayment of any
64443 obligation created under authority of this Subsection (1).

64444 (2) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64445 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64446 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
64447 into or arrange for a lease purchase agreement in which participation interests may be created,
64448 to provide up to \$957,100 for the acquisition of a site and construction of a store in the western
64449 part of Salt Lake County for the Department of Alcoholic Beverage Control together with
64450 additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund any
64451 debt service reserve requirements.

64452 (b) It is the intent of the Legislature that enhanced revenues of the Department of
64453 Alcoholic Beverage Control be used as the primary revenue source for repayment of any
64454 obligation created under authority of this Subsection (2).

64455 (3) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64456 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64457 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter

64458 into or arrange for a lease purchase agreement in which participation interests may be created,
64459 to provide up to \$1,497,700 for the acquisition of a site and construction of a store in the
64460 southern part of Salt Lake County for the Department of Alcoholic Beverage Control together
64461 with additional amounts necessary to pay costs of issuance, pay capitalized interest, and fund
64462 any debt service reserve requirements.

64463 (b) It is the intent of the Legislature that enhanced revenues of the Department of
64464 Alcoholic Beverage Control be used as the primary revenue source for repayment of any
64465 obligation created under authority of this Subsection (3).

64466 (4) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64467 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64468 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
64469 into or arrange for a lease purchase agreement in which participation interests may be created,
64470 to provide up to \$100,000,000 for the acquisition and construction of a cancer clinical research
64471 hospital facility adjacent to the University of Utah Medical Center, together with additional
64472 amounts necessary to pay costs of issuance, pay capitalized interest, and fund any debt service
64473 reserve requirements.

64474 (b) The State Building Ownership Authority shall work cooperatively with the Division
64475 of Facilities Construction and Management and the University of Utah to seek out the most cost
64476 effective and prudent lease purchase plan available.

64477 (c) It is the intent of the Legislature that the University of Utah lease land to the State
64478 Building Ownership Authority for the construction of a cancer clinical research hospital facility
64479 adjacent to the University of Utah Medical Center.

64480 (d) The anticipated revenue sources for repayment of any obligation created under
64481 authority of this section are:

64482 (i) the institutional funds of the University of Utah, including the University's annual
64483 distribution of tobacco settlement funds from the state; and

64484 (ii) donations from the Huntsman Cancer Foundation and other donors.

64485 (e) By September 1 of each year of the existence of this revenue bond, the University of

64486 Utah shall give an annual report regarding the status of the bond and the bond payments to the
64487 Legislative Fiscal Analyst. This report shall be reviewed by the Higher Education
64488 Appropriations Subcommittee and the Capital Facilities Appropriation Subcommittee.

64489 (5) It is the intent of the Legislature that:

64490 (a) the Board of Regents, on behalf of the University of Utah, issue, sell, and deliver
64491 revenue bonds or other evidences of indebtedness of the University of Utah to borrow money
64492 on the credit, revenues, and reserves of the University of Utah, other than appropriations of the
64493 Legislature, to finance the cost of acquiring, constructing, furnishing, and equipping an
64494 expansion of the University Hospital;

64495 (b) University Hospital revenues be used as the primary revenue source for repayment
64496 of any obligation created under authority of this section; and

64497 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64498 up to \$25,000,000, together with other amounts necessary to pay costs of issuance, pay
64499 capitalized interest, and fund any debt service reserve requirements.

64500 (6) It is the intent of the Legislature that:

64501 (a) the Board of Regents, on behalf of Salt Lake Community College, issue, sell, and
64502 deliver revenue bonds or other evidences of indebtedness of Salt Lake Community College to
64503 borrow money on the credit, revenues, and reserves of Salt Lake Community College, other
64504 than appropriations of the Legislature, to finance the cost of acquiring, constructing, furnishing,
64505 and equipping the remodel of the cafeteria and expansion of the Student Center;

64506 (b) student fees be used as the primary revenue source for repayment of any obligation
64507 created under authority of this section; and

64508 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64509 up to \$6,000,000, together with other amounts necessary to pay costs of issuance, pay
64510 capitalized interest, and fund any debt service reserve requirements.

64511 (7) It is the intent of the Legislature that:

64512 (a) the Board of Regents, on behalf of Dixie College, issue, sell, and deliver revenue
64513 bonds or other evidences of indebtedness of Dixie College to borrow money on the credit,

64514 revenues, and reserves of Dixie College, other than appropriations of the Legislature, to finance
64515 the cost of acquiring, constructing, furnishing, and equipping an expansion of the Gardner
64516 Student Center;

64517 (b) student fees be used as the primary revenue source for repayment of any obligation
64518 created under authority of this section; and

64519 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64520 up to \$1,500,000, together with other amounts necessary to pay costs of issuance, pay
64521 capitalized interest, and fund any debt service reserve requirements.

64522 Section 1270. Section **63B-10-302** is amended to read:

64523 **63B-10-302. Other revenue bond authorizations.**

64524 (1) It is the intent of the Legislature that the State Building Ownership Authority, under
64525 the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part
64526 3, State Building Ownership Authority Act, may issue or execute obligations to provide up to
64527 \$12,000,000 for the construction of a 36-hole golf course at Soldier Hollow in the Wasatch
64528 Mountain State Park, including necessary facilities such as a clubhouse, restroom facilities, and
64529 maintenance facilities, together with additional amounts necessary to:

64530 (a) pay costs of issuance;

64531 (b) pay capitalized interest; and

64532 (c) fund any debt service reserve requirements.

64533 (2) The State Building Ownership Authority shall work cooperatively with the Division
64534 of Parks and Recreation in the design and construction of the golf course at Soldier Hollow.

64535 Section 1271. Section **63B-11-105** is amended to read:

64536 **63B-11-105. Terms and conditions of sale -- Plan of financing -- Signatures --**
64537 **Replacement -- Registration -- Federal rebate.**

64538 (1) In the issuance of bonds, the commission may determine by resolution:

64539 (a) the manner of sale, including public or private sale;

64540 (b) the terms and conditions of sale, including price, whether at, below, or above face
64541 value;

64542 (c) denominations;

64543 (d) form;

64544 (e) manner of execution;

64545 (f) manner of authentication;

64546 (g) place and medium of purchase;

64547 (h) redemption terms; and

64548 (i) other provisions and details it considers appropriate.

64549 (2) The commission may, by resolution, adopt a plan of financing, which may include
64550 terms and conditions of arrangements entered into by the commission on behalf of the state with
64551 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64552 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64553 including payment from any legally available source of fees, charges, or other amounts coming
64554 due under the agreements entered into by the commission.

64555 (3) (a) Any signature of a public official authorized by resolution of the commission to
64556 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64557 otherwise placed on the bonds.

64558 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64559 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64560 authentication agent.

64561 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64562 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64563 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64564 placed on the bonds.

64565 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64566 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64567 or larger denominations.

64568 (b) Bonds in changed denominations shall:

64569 (i) be exchanged for the original bonds in like aggregate principal amounts and in a

64570 manner that prevents the duplication of interest; and

64571 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64572 practicable in the form of the original bonds.

64573 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64574 entry form under which the right to principal and interest may be transferred only through a
64575 book entry.

64576 (b) The commission may provide for the services and payment for the services of one or
64577 more financial institutions or other entities or persons, or nominees, within or outside the state,
64578 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64579 functions, exchange, and payment of the bonds.

64580 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64581 persons to whom payment with respect to the obligations is made, are private records as
64582 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section
64583 [~~63-2-304~~] 63G-2-305.

64584 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64585 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64586 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64587 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64588 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64589 (6) The commission may:

64590 (a) by resolution, provide for payment to the United States of whatever amounts are
64591 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64592 and

64593 (b) enter into agreements with financial and other institutions and attorneys to provide
64594 for:

64595 (i) the calculation, holding, and payment of those amounts; and

64596 (ii) payment from any legally available source of fees, charges, or other amounts coming
64597 due under any agreements entered into by the commission.

64598 Section 1272. Section **63B-11-202** is amended to read:

64599 **63B-11-202. Maximum amount -- Projects authorized.**

64600 (1) (a) The total amount of bonds issued under this part may not exceed \$21,250,000.

64601 (b) When Utah State University certifies to the commission that the university has
64602 obtained reliable commitments, convertible to cash, of \$5,000,000 or more in nonstate funds to
64603 construct an addition to the new engineering building and demolish the existing engineering
64604 classroom building, the commission may issue and sell general obligation bonds in a total
64605 amount not to exceed \$6,100,000.

64606 (c) When the University of Utah certifies to the commission that the university has
64607 obtained reliable commitments, convertible to cash, of \$13,000,000 or more in nonstate funds to
64608 construct a new engineering building, the commission may issue and sell general obligation
64609 bonds in a total amount not to exceed \$15,150,000.

64610 (2) (a) Proceeds from the issuance of bonds shall be provided to the division to provide
64611 funds to pay all or part of the cost of acquiring and constructing the projects listed in this
64612 Subsection (2).

64613 (b) These costs may include the cost of acquiring land, interests in land, easements and
64614 rights-of-way, improving sites, and acquiring, constructing, equipping, and furnishing facilities
64615 and all structures, roads, parking facilities, utilities, and improvements necessary, incidental, or
64616 convenient to the facilities, interest estimated to accrue on these bonds during the period to be
64617 covered by construction of the projects plus a period of six months after the end of the
64618 construction period, and all related engineering, architectural, and legal fees.

64619 (c) For the division, proceeds shall be provided for the following:

| 64620 PROJECT | AMOUNT | ESTIMATED OPERATING |
|----------------------------|-------------|-----------------------|
| 64621 DESCRIPTION | FUNDED | AND MAINTENANCE COSTS |
| 64622 1. Utah State | \$5,943,500 | \$425,000 |
| 64623 University | | |
| 64624 Engineering Building | | |
| 64625 Renovation | | |

| | | | |
|-------|--|--------------|--------------|
| 64626 | 2. University of | \$15,000,000 | \$489,000 |
| 64627 | Utah New | | |
| 64628 | Engineering Building | | |
| 64629 | COSTS OF ISSUANCE | \$306,500 | |
| 64630 | TOTAL CAPITAL AND ECONOMIC DEVELOPMENT | | \$21,250,000 |

64631 (d) For purposes of this section, operations and maintenance costs:

64632 (i) are estimates only;

64633 (ii) may include any operations and maintenance costs already funded in existing agency

64634 budgets; and

64635 (iii) are not commitments by this Legislature or future Legislatures to fund those

64636 operations and maintenance costs.

64637 (3) (a) The amounts funded as listed in Subsection (2) are estimates only and do not

64638 constitute a limitation on the amount that may be expended for any project.

64639 (b) The board may revise these estimates and redistribute the amount estimated for a

64640 project among the projects authorized.

64641 (c) The commission, by resolution and in consultation with the board, may delete one or

64642 more projects from this list if the inclusion of that project or those projects in the list could be

64643 construed to violate state law or federal law or regulation.

64644 (4) (a) The division may enter into agreements related to these projects before the

64645 receipt of proceeds of bonds issued under this chapter.

64646 (b) The division shall make those expenditures from unexpended and unencumbered

64647 building funds already appropriated to the Capital Projects Fund.

64648 (c) The division shall reimburse the Capital Projects Fund upon receipt of the proceeds

64649 of bonds issued under this chapter.

64650 (d) The commission may, by resolution, make any statement of intent relating to that

64651 reimbursement that is necessary or desirable to comply with federal tax law.

64652 (5) (a) For those projects for which only partial funding is provided in Subsection (2), it

64653 is the intent of the Legislature that the balance necessary to complete the projects be addressed

64654 by future Legislatures, either through appropriations or through the issuance or sale of bonds.

64655 (b) For those phased projects, the division may enter into contracts for amounts not to
64656 exceed the anticipated full project funding but may not allow work to be performed on those
64657 contracts in excess of the funding already authorized by the Legislature.

64658 (c) Those contracts shall contain a provision for termination of the contract for the
64659 convenience of the state as required by Section [~~63-56-601~~] 63G-6-601.

64660 (d) It is also the intent of the Legislature that this authorization to the division does not
64661 bind future Legislatures to fund projects initiated from this authorization.

64662 Section 1273. Section **63B-11-205** is amended to read:

64663 **63B-11-205. Terms and conditions of sale -- Plan of financing -- Signatures --**
64664 **Replacement -- Registration -- Federal rebate.**

64665 (1) In the issuance of bonds, the commission may determine by resolution:

64666 (a) the manner of sale, including public or private sale;
64667 (b) the terms and conditions of sale, including price, whether at, below, or above face
64668 value;

64669 (c) denominations;

64670 (d) form;

64671 (e) manner of execution;

64672 (f) manner of authentication;

64673 (g) place and medium of purchase;

64674 (h) redemption terms; and

64675 (i) other provisions and details it considers appropriate.

64676 (2) The commission may, by resolution, adopt a plan of financing, which may include
64677 terms and conditions of arrangements entered into by the commission on behalf of the state with
64678 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64679 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64680 including payment from any legally available source of fees, charges, or other amounts coming
64681 due under the agreements entered into by the commission.

64682 (3) (a) Any signature of a public official authorized by resolution of the commission to
64683 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64684 otherwise placed on the bonds.

64685 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64686 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64687 authentication agent.

64688 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64689 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64690 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64691 placed on the bonds.

64692 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64693 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64694 or larger denominations.

64695 (b) Bonds in changed denominations shall:

64696 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64697 manner that prevents the duplication of interest; and

64698 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64699 practicable in the form of the original bonds.

64700 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64701 entry form under which the right to principal and interest may be transferred only through a
64702 book entry.

64703 (b) The commission may provide for the services and payment for the services of one or
64704 more financial institutions or other entities or persons, or nominees, within or outside the state,
64705 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64706 functions, exchange, and payment of the bonds.

64707 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64708 persons to whom payment with respect to the obligations is made, are private records as
64709 provided in Section [~~63-2-302~~] 63G-2-302 or protected records as provided in Section

64710 [~~63-2-304~~] 63G-2-305.

64711 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64712 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64713 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64714 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64715 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64716 (6) The commission may:

64717 (a) by resolution, provide for payment to the United States of whatever amounts are
64718 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64719 and

64720 (b) enter into agreements with financial and other institutions and attorneys to provide
64721 for:

64722 (i) the calculation, holding, and payment of those amounts; and

64723 (ii) payment from any legally available source of fees, charges, or other amounts coming
64724 due under any agreements entered into by the commission.

64725 Section 1274. Section **63B-11-305** is amended to read:

64726 **63B-11-305. Terms and conditions of sale -- Plan of financing -- Signatures --**
64727 **Replacement -- Registration -- Federal rebate.**

64728 (1) In the issuance of bonds, the commission may determine by resolution:

64729 (a) the manner of sale, including public or private sale;

64730 (b) the terms and conditions of sale, including price, whether at, below, or above face
64731 value;

64732 (c) denominations;

64733 (d) form;

64734 (e) manner of execution;

64735 (f) manner of authentication;

64736 (g) place and medium of purchase;

64737 (h) redemption terms; and

64738 (i) other provisions and details it considers appropriate.

64739 (2) The commission may, by resolution, adopt a plan of financing, which may include
64740 terms and conditions of arrangements entered into by the commission on behalf of the state with
64741 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64742 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64743 including payment from any legally available source of fees, charges, or other amounts coming
64744 due under the agreements entered into by the commission.

64745 (3) (a) Any signature of a public official authorized by resolution of the commission to
64746 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64747 otherwise placed on the bonds.

64748 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64749 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64750 authentication agent.

64751 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64752 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64753 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64754 placed on the bonds.

64755 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64756 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64757 or larger denominations.

64758 (b) Bonds in changed denominations shall:

64759 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64760 manner that prevents the duplication of interest; and

64761 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64762 practicable in the form of the original bonds.

64763 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64764 entry form under which the right to principal and interest may be transferred only through a
64765 book entry.

64766 (b) The commission may provide for the services and payment for the services of one or
64767 more financial institutions or other entities or persons, or nominees, within or outside the state,
64768 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64769 functions, exchange, and payment of the bonds.

64770 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64771 persons to whom payment with respect to the obligations is made, are private records as
64772 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
64773 [~~63-2-304~~] 63G-2-305.

64774 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64775 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64776 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64777 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64778 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64779 (6) The commission may:

64780 (a) by resolution, provide for payment to the United States of whatever amounts are
64781 necessary to comply with Section 148(f) of the Internal Revenue Code of 1986, as amended;
64782 and

64783 (b) enter into agreements with financial and other institutions and attorneys to provide
64784 for:

64785 (i) the calculation, holding, and payment of those amounts; and

64786 (ii) payment from any legally available source of fees, charges, or other amounts coming
64787 due under any agreements entered into by the commission.

64788 Section 1275. Section **63B-11-505** is amended to read:

64789 **63B-11-505. Terms and conditions of sale -- Plan of financing -- Signatures --**
64790 **Replacement -- Registration -- Federal rebate.**

64791 (1) In the issuance of bonds, the commission may determine by resolution:

64792 (a) the manner of sale, including public or private sale;

64793 (b) the terms and conditions of sale, including price, whether at, below, or above face

64794 value;

64795 (c) denominations;

64796 (d) form;

64797 (e) manner of execution;

64798 (f) manner of authentication;

64799 (g) place and medium of purchase;

64800 (h) redemption terms; and

64801 (i) other provisions and details it considers appropriate.

64802 (2) The commission may, by resolution, adopt a plan of financing, which may include
64803 terms and conditions of arrangements entered into by the commission on behalf of the state with
64804 financial and other institutions for letters of credit, standby letters of credit, reimbursement
64805 agreements, and remarketing, indexing, and tender agent agreements to secure the bonds,
64806 including payment from any legally available source of fees, charges, or other amounts coming
64807 due under the agreements entered into by the commission.

64808 (3) (a) Any signature of a public official authorized by resolution of the commission to
64809 sign the bonds may be a facsimile signature of that official imprinted, engraved, stamped, or
64810 otherwise placed on the bonds.

64811 (b) If all signatures of public officials on the bonds are facsimile signatures, provision
64812 shall be made for a manual authenticating signature on the bonds by or on behalf of a designated
64813 authentication agent.

64814 (c) If an official ceases to hold office before delivery of the bonds signed by that official,
64815 the signature or facsimile signature of the official is nevertheless valid for all purposes.

64816 (d) A facsimile of the state seal may be imprinted, engraved, stamped, or otherwise
64817 placed on the bonds.

64818 (4) (a) The commission may enact resolutions providing for the replacement of lost,
64819 destroyed, or mutilated bonds, or for the exchange of bonds after issuance for bonds of smaller
64820 or larger denominations.

64821 (b) Bonds in changed denominations shall:

64822 (i) be exchanged for the original bonds in like aggregate principal amounts and in a
64823 manner that prevents the duplication of interest; and

64824 (ii) bear interest at the same rate, mature on the same date, and be as nearly as
64825 practicable in the form of the original bonds.

64826 (5) (a) Bonds may be registered as to both principal and interest or may be in a book
64827 entry form under which the right to principal and interest may be transferred only through a
64828 book entry.

64829 (b) The commission may provide for the services and payment for the services of one or
64830 more financial institutions or other entities or persons, or nominees, within or outside the state,
64831 for the authentication, registration, transfer, including record, bookkeeping, or book entry
64832 functions, exchange, and payment of the bonds.

64833 (c) The records of ownership, registration, transfer, and exchange of the bonds, and of
64834 persons to whom payment with respect to the obligations is made, are private records as
64835 provided in Section [~~63-2-302~~] 63G-2-302, or protected records as provided in Section
64836 [~~63-2-304~~] 63G-2-305.

64837 (d) The bonds and any evidences of participation interest in the bonds may be issued,
64838 executed, authenticated, registered, transferred, exchanged, and otherwise made to comply with
64839 Title 15, Chapter 7, Registered Public Obligations Act, or any other act of the Legislature
64840 relating to the registration of obligations enacted to meet the requirements of Section 149 of the
64841 Internal Revenue Code of 1986, as amended, or any successor to it, and applicable regulations.

64842 (6) The commission may:

64843 (a) by resolution, provide for payment to the United States of whatever amounts are
64844 necessary to comply with Section 148 (f) of the Internal Revenue Code of 1986, as amended;
64845 and

64846 (b) enter into agreements with financial and other institutions and attorneys to provide
64847 for:

64848 (i) the calculation, holding, and payment of those amounts; and

64849 (ii) payment from any legally available source of fees, charges, or other amounts coming

64850 due under any agreements entered into by the commission.

64851 Section 1276. Section **63B-11-701** is amended to read:

64852 **63B-11-701. Revenue bond authorizations.**

64853 (1) It is the intent of the Legislature that:

64854 (a) the Board of Regents, on behalf of the University of Utah, issue, sell, and deliver
64855 revenue bonds or other evidences of indebtedness of the University of Utah to borrow money
64856 on the credit, revenues, and reserves of the University of Utah, other than appropriations of the
64857 Legislature, to refinance the cost of acquiring, constructing, furnishing, and equipping the
64858 East-Campus Central Plant and related energy improvements;

64859 (b) savings in heating and cooling costs be used as the primary revenue source for
64860 repayment of any obligation created under authority of this section; and

64861 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64862 up to \$33,000,000, together with other amounts necessary to pay costs of issuance, pay
64863 capitalized interest, and fund any debt service reserve requirements.

64864 (2) It is the intent of the Legislature that:

64865 (a) the Board of Regents, on behalf of Utah State University, issue, sell, and deliver
64866 revenue bonds or other evidences of indebtedness of Utah State University to borrow money on
64867 the credit, revenues, and reserves of Utah State University, other than appropriations of the
64868 Legislature, to finance the cost of acquiring, constructing, furnishing, and equipping research
64869 and office facilities at its Research Park;

64870 (b) revenues from research activities, the Utah State University Research Foundation,
64871 and other institutional funds be used as the primary revenue source for repayment of any
64872 obligation created under authority of this section; and

64873 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64874 up to \$19,000,000, together with other amounts necessary to pay costs of issuance, pay
64875 capitalized interest, and fund any debt service reserve requirements.

64876 (3) It is the intent of the Legislature that:

64877 (a) the Board of Regents, on behalf of Southern Utah University, issue, sell, and deliver

64878 revenue bonds or other evidences of indebtedness of Southern Utah University to borrow
64879 money on the credit, revenues, and reserves of Southern Utah University, other than
64880 appropriations of the Legislature, to finance the cost of acquiring, constructing, furnishing, and
64881 equipping a Student Living and Learning Facility;

64882 (b) student housing and other auxiliary revenues and student building fees be used as
64883 the primary revenue source for repayment of any obligation created under authority of this
64884 section; and

64885 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64886 up to \$9,000,000, together with other amounts necessary to pay costs of issuance, pay
64887 capitalized interest, and fund any debt service reserve requirements.

64888 (4) It is the intent of the Legislature that:

64889 (a) the Board of Regents, on behalf of Snow College, issue, sell, and deliver revenue
64890 bonds or other evidences of indebtedness of Snow College to borrow money on the credit,
64891 revenues, and reserves of Snow College, other than appropriations of the Legislature, to finance
64892 the cost of acquiring, constructing, furnishing, and equipping a Multi-Event Center in Richfield;

64893 (b) usage fees and other operating revenues be used as the primary revenue source for
64894 repayment of any obligation created under authority of this section; and

64895 (c) the bonds or other evidences of indebtedness authorized by this section may provide
64896 up to \$2,500,000, together with other amounts necessary to pay costs of issuance, pay
64897 capitalized interest, and fund any debt service reserve requirements.

64898 (5) It is the intent of the Legislature that the State Building Ownership Authority, under
64899 the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part
64900 3, State Building Ownership Authority Act, may issue or execute obligations, or enter into or
64901 arrange for a lease purchase agreement in which participation interests may be created, to
64902 provide up to \$1,836,000 for the acquisition of a site and construction of a store in Tooele for
64903 the Department of Alcoholic Beverage Control, together with additional amounts necessary to
64904 pay costs of issuance, pay capitalized interest, and fund any debt service reserve requirements.

64905 Section 1277. Section **63B-12-201** is amended to read:

64906 **63B-12-201. Revenue bond authorizations.**

64907 (1) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64908 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64909 1, Part 3, State Building Ownership Authority Act, may issue or execute obligations, or enter
64910 into or arrange for a lease purchase agreement in which participation interests may be created,
64911 to provide up to \$14,099,000 for the construction of a state courthouse in the City of West
64912 Jordan together with additional amounts necessary to pay costs of issuance, pay capitalized
64913 interest, and fund any debt service reserve requirements.

64914 (b) It is the intent of the Legislature that, before entering into the obligations authorized
64915 by this Subsection (1), the State Building Ownership Authority shall confirm that the projected
64916 amount of fees in the Courts Complex Fund, Fund 106, along with other funds in existing
64917 budgets of the courts are adequate to cover the repayment of any obligation created under
64918 authority of this Subsection (1).

64919 (c) It is further the intent of the Legislature that when Sandy City has entered into a
64920 binding agreement with the Division of Facilities Construction and Management to purchase the
64921 existing Sandy Courthouse at an amount that will provide sale proceeds, net of any rent that
64922 may be charged to the courts for occupying the Sandy Courthouse during construction of the
64923 new courthouse, of not less than \$4,500,000, those proceeds may be used to include
64924 replacement space for the district court in the new courthouse.

64925 (2) (a) It is the intent of the Legislature that the State Building Ownership Authority,
64926 under the authority of [~~Title 63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter
64927 1, Part 3, State Building Ownership Authority Act, issue or execute obligations, or enter into or
64928 arrange for a lease purchase agreement in which participation interests may be created, to
64929 provide up to \$1,242,000 for the construction of a driver license office in West Valley City,
64930 together with additional amounts necessary to pay costs of issuance, pay capitalized interest,
64931 and fund any debt service reserve requirements.

64932 (b) It is further the intent of the Legislature that fees for driver licenses be used as the
64933 primary revenue source for repayment of any obligation created under authority of this

64934 Subsection (2).

64935 Section 1278. Section **63C-4-101** is amended to read:

64936 **63C-4-101. Creation of Constitutional Defense Council -- Membership --**
64937 **Vacancies -- Reports -- Per diem and funding.**

64938 (1) There is created the Constitutional Defense Council.

64939 (2) (a) The defense council shall consist of the following 11 members:

64940 (i) the governor, who shall serve as chair of the council;

64941 (ii) the president of the Senate or [~~his~~] the president of the Senate's designee;

64942 (iii) the speaker of the House or [~~his~~] the speaker of the House's designee;

64943 (iv) the minority leader of the Senate or [~~his~~] the minority leader of the Senate's
64944 designee;

64945 (v) the minority leader of the House or [~~his~~] the minority leader of the House's
64946 designee;

64947 (vi) the attorney general or [~~his~~] the attorney general's designee;

64948 (vii) one citizen member appointed by the governor; and

64949 (viii) four elected county commissioners, county council members, or county executives
64950 from different counties who are selected by the Utah Association of Counties.

64951 (b) The council shall select a vice-chair from its members.

64952 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
64953 appointed for the unexpired term in the same manner as the original appointment.

64954 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), the defense council shall meet at
64955 least monthly or more frequently as needed.

64956 (ii) The defense council need not meet monthly if the chair, after polling the members,
64957 determines that a majority of the members do not wish to meet.

64958 (b) The governor or any six members of the council may call a meeting of the council.

64959 (c) Before calling a meeting, the governor or council members shall solicit items for the
64960 agenda from other members of the council.

64961 (d) (i) The Constitutional Defense Council shall require that any entity that receives

64962 monies from the Constitutional Defense Restricted Account provide financial reports and
64963 litigation reports to the Council.

64964 (ii) Nothing in this Subsection (4)(d) prohibits the council from closing a meeting under
64965 Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying
64966 with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management
64967 Act.

64968 (e) A majority of the membership on the defense council is required for a quorum to
64969 conduct council business. A majority vote of the quorum is required for any action taken by the
64970 defense council.

64971 (5) The Office of the Attorney General shall provide staff to the defense council.

64972 (6) (a) (i) State government officer and employee members who do not receive salary,
64973 per diem, or expenses from their agency for their service may receive per diem and expenses
64974 incurred in the performance of their official duties from the council at the rates established by
64975 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

64976 (ii) State government officer and employee members may decline to receive per diem
64977 and expenses for their service.

64978 (b) (i) Local government members who do not receive salary, per diem, or expenses
64979 from the entity that they represent for their service may receive per diem and expenses incurred
64980 in the performance of their official duties at the rates established by the Division of Finance
64981 under Sections 63A-3-106 and 63A-3-107.

64982 (ii) Local government members may decline to receive per diem and expenses for their
64983 service.

64984 (c) Legislators on the committee shall receive compensation and expenses as provided
64985 by law and legislative rule.

64986 (7) (a) The council shall be funded from the Constitutional Defense Restricted Account
64987 created in Section 63C-4-103.

64988 (b) Monies appropriated for or received by the council may be expended by the
64989 governor in consultation with the council.

64990 Section 1279. Section **63C-4-102** is amended to read:

64991 **63C-4-102. Duties.**

64992 (1) The Constitutional Defense Council is a council to assist the governor and the
64993 Legislature on the following types of issues:

64994 (a) the constitutionality of unfunded federal mandates;

64995 (b) when making recommendations to challenge the federal mandates and regulations
64996 described in Subsections (1)(e)(i) through (v), the rationale for and effectiveness of those
64997 federal mandates or regulations;

64998 (c) legal and policy issues surrounding state and local government rights under R.S.
64999 2477;

65000 (d) legal issues relating to the rights of the School and Institutional Trust Lands
65001 Administration and its beneficiaries; and

65002 (e) the advisability, feasibility, estimated cost, and likelihood of success of challenging:

65003 (i) federal court rulings that hinder the management of the state's prison system and
65004 place undue financial hardship on the state's taxpayers;

65005 (ii) federal laws or regulations that reduce or negate water rights or the rights of owners
65006 of private property, or the rights and interest of state and local governments, including
65007 sovereignty interests and the power to provide for the health, safety, and welfare, and promote
65008 the prosperity of their inhabitants;

65009 (iii) conflicting federal regulations or policies in land management on federal land;

65010 (iv) federal intervention that would damage the state's mining, timber, and ranching
65011 industries;

65012 (v) the authority of the Environmental Protection Agency and Congress to mandate
65013 local air quality standards and penalties; and

65014 (vi) other issues that are relevant to Subsections (1)(a) through (e).

65015 (2) The council chair may require the attorney general or a designee to provide
65016 testimony on potential legal actions that would enhance the state's sovereignty or authority on
65017 issues affecting Utah and the well-being of its citizens.

65018 (3) The council chair may direct the attorney general to initiate and prosecute any
65019 action that the council determines will further its purposes.

65020 (4) (a) Subject to the provisions of this section, the council may select and employ
65021 attorneys to implement the purposes and duties of the council.

65022 (b) The council chair may, in consultation with the council, direct any council attorney
65023 in any manner considered appropriate by the attorney general to best serve the purposes of the
65024 council.

65025 (c) The attorney general shall negotiate a contract for services with any attorney
65026 selected and approved for employment under this section.

65027 (5) The council chair shall, only with the concurrence of the council, review and
65028 approve all claims for payments for legal services that are submitted to the council.

65029 (6) Within five business days' notice, the council chair may, with the concurrence of the
65030 council, order the attorney general or an attorney employed by the council to cease work to be
65031 charged to the fund.

65032 (7) (a) At least 20 calendar days before the state submits comments on the draft
65033 environmental impact statement or environmental assessment for a proposed land management
65034 plan of any federal land management agency, the governor shall make those documents available
65035 to:

65036 (i) members of the council; and

65037 (ii) any county executive, county council member, or county commissioner of a county
65038 that is covered by the management plan and that has established formal cooperating agency
65039 status with the relevant federal land management agency regarding the proposed plan.

65040 (b) (i) Council members or local government officials receiving the documents may
65041 make recommendations to the governor or the governor's designee concerning changes to the
65042 documents before they are submitted to the federal land management agency.

65043 (ii) Council members or local government officials shall submit recommendations to the
65044 governor or the governor's designee no later than ten calendar days after receiving the
65045 documents under Subsection (7)(a).

65046 (c) Documents transmitted or received under this Subsection (7) are drafts and are
65047 protected records pursuant to Subsection [~~63-2-304~~] 63G-2-305(22).

65048 (8) The council shall submit a report on December 1 of each year to the speaker of the
65049 House of Representatives and the president of the Senate that summarizes the council's
65050 activities.

65051 Section 1280. Section **63C-4-103** is amended to read:

65052 **63C-4-103. Creation of Constitutional Defense Restricted Account -- Sources of**
65053 **funds -- Uses of funds -- Reports.**

65054 (1) There is created a restricted account within the General Fund known as the
65055 Constitutional Defense Restricted Account.

65056 (2) The account consists of monies from the following revenue sources:

65057 (a) monies deposited to the account as required by Section 53C-3-203;

65058 (b) voluntary contributions;

65059 (c) monies received by the Constitutional Defense Council from other state agencies;

65060 and

65061 (d) appropriations made by the Legislature.

65062 (3) Funds in the account shall be nonlapsing.

65063 (4) The account balance may not exceed \$2,000,000.

65064 (5) The Legislature may annually appropriate monies from the Constitutional Defense
65065 Restricted Account to one or more of the following:

65066 (a) the Constitutional Defense Council to carry out its duties in Section 63C-4-102;

65067 (b) the Public Lands Policy Coordinating Office to carry out its duties in Section

65068 [~~63-38d-603~~] 63J-4-603;

65069 (c) the Public Lands Policy Coordinating Council to carry out its duties in Section

65070 [~~63-38d-605~~] 63J-4-605;

65071 (d) the Office of the Governor, to be used only for the purpose of asserting, defending,

65072 or litigating state and local government rights under R.S. 2477, in accordance with a plan

65073 developed and approved as provided in Section 63C-4-104;

65074 (e) a county or association of counties to assist counties, consistent with the purposes
65075 of the council, in pursuing issues affecting the counties; or

65076 (f) the Office of the Attorney General, to be used only for public lands counsel and
65077 assistance and litigation to the state or local governments including asserting, defending, or
65078 litigating state and local government rights under R.S. 2477 in accordance with a plan
65079 developed and approved as provided in Section 63C-4-104.

65080 (6) (a) The Constitutional Defense Council shall require that any entity that receives
65081 monies from the Constitutional Defense Restricted Account provide financial reports and
65082 litigation reports to the Council.

65083 (b) Nothing in this Subsection (6) prohibits the council from closing a meeting under
65084 Title 52, Chapter 4, Open and Public Meetings Act, or prohibits the council from complying
65085 with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management
65086 Act.

65087 Section 1281. Section **63C-7-210** is amended to read:

65088 **63C-7-210. Exemption from certain acts.**

65089 (1) The Utah Communications Agency Network is exempt from:

65090 (a) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;

65091 (b) Title 63A, Utah Administrative Services Code, except as provided in Section
65092 63A-4-205.5;

65093 (c) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;

65094 (d) [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act; and

65095 (e) Title 67, Chapter 19, Utah State Personnel Management Act.

65096 (2) The board shall adopt budgetary procedures, accounting, procurement, and
65097 personnel policies substantially similar to those from which they have been exempted in
65098 Subsection (1).

65099 Section 1282. Section **63C-8-105** is amended to read:

65100 **63C-8-105. Powers of council.**

65101 The council may:

65102 (1) conduct surveys, with the assistance of the Division of Occupational and
65103 Professional Licensing within the Department of Commerce, to assess and meet changing
65104 market and education needs;

65105 (2) notwithstanding the provisions of Subsection 35A-4-312(3), receive information
65106 obtained by the Division of Workforce Information and Payment Services under the provisions
65107 of Section 35A-4-312 for purposes consistent with the council's duties as identified under
65108 Section 63C-8-104, including identifying changes in the medical and health care workforce
65109 numbers, types, and geographic distribution;

65110 (3) appoint advisory committees of broad representation on interdisciplinary clinical
65111 education, workforce mix planning and projections, funding mechanisms, and other topics as is
65112 necessary;

65113 (4) use federal monies for necessary administrative expenses to carry out its duties and
65114 powers as permitted by federal law;

65115 (5) distribute program monies in accordance with Subsection 63C-8-104(7); and

65116 (6) as is necessary to carry out its duties under Section 63C-8-104:

65117 (a) hire employees; and

65118 (b) adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
65119 Administrative Rulemaking Act.

65120 Section 1283. Section **63C-8-106** is amended to read:

65121 **63C-8-106. Rural residency training program.**

65122 (1) For purposes of this section:

65123 (a) "Physician" means:

65124 (i) a person licensed to practice medicine under Title 58 Chapter 67, Utah Medical
65125 Practice Act or Title 58, Chapter 68, Utah Osteopathic Medical Practice Act; and

65126 (ii) a person licensed to practice dentistry under Title 58, Chapter 69, Dentist and
65127 Dental Hygienist Practice Act.

65128 (b) "Rural residency training program" means an accredited clinical training program as
65129 defined in Section 63C-8-101 which places a physician into a rural county for a part or all of the

65130 physician's clinical training.

65131 (2) (a) Subject to appropriations from the Legislature, the council shall establish a pilot
65132 program to place physicians into rural residency training programs.

65133 (b) The pilot program shall begin July 1, 2005 and sunset July 1, 2015, in accordance
65134 with Section [~~63-55-263~~] 63I-1-263.

65135 (3) (a) The council shall report to the Legislature's Health and Human Services Interim
65136 Committee concerning the implementation of the pilot program and the success of the program
65137 in increasing the retention or recruitment of physicians in rural counties in the state.

65138 (b) The report required by this Subsection (3) shall be made by November 30 of each
65139 year.

65140 Section 1284. Section **63C-9-301** is amended to read:

65141 **63C-9-301. Board powers -- Subcommittees.**

65142 (1) The board shall:

65143 (a) except as provided in Subsection (2), exercise complete jurisdiction and stewardship
65144 over capitol hill facilities, capitol hill grounds, and the capitol hill complex;

65145 (b) preserve, maintain, and restore the capitol hill complex, capitol hill facilities, capitol
65146 hill grounds, and their contents;

65147 (c) before October 1 of each year, review and approve the executive director's annual
65148 budget request for submittal to the governor and Legislature;

65149 (d) by October 1 of each year, prepare and submit a recommended budget request for
65150 the upcoming fiscal year for the capitol hill complex to:

65151 (i) the governor, through the Governor's Office of Planning and Budget; and

65152 (ii) the Legislature's appropriations subcommittee responsible for capitol hill facilities,
65153 through the Office of Legislative Fiscal Analyst;

65154 (e) review and approve the executive director's:

65155 (i) annual work plan;

65156 (ii) long-range master plan for the capitol hill complex, capitol hill facilities, and capitol
65157 hill grounds; and

- 65158 (iii) furnishings plan for placement and care of objects under the care of the board;
- 65159 (f) approve all changes to the buildings and their grounds, including:
- 65160 (i) restoration, remodeling, and rehabilitation projects;
- 65161 (ii) usual maintenance program; and
- 65162 (iii) any transfers or loans of objects under the board's care;
- 65163 (g) define and identify all significant aspects of the capitol hill complex, capitol hill
- 65164 facilities, and capitol hill grounds, after consultation with the:
- 65165 (i) Division of Facilities Construction and Management;
- 65166 (ii) State Library Division;
- 65167 (iii) Division of Archives and Records Service;
- 65168 (iv) Division of State History;
- 65169 (v) Office of Museum Services; and
- 65170 (vi) Arts Council;
- 65171 (h) inventory, define, and identify all significant contents of the buildings and all
- 65172 state-owned items of historical significance that were at one time in the buildings, after
- 65173 consultation with the:
- 65174 (i) Division of Facilities Construction and Management;
- 65175 (ii) State Library Division;
- 65176 (iii) Division of Archives and Records Service;
- 65177 (iv) Division of State History;
- 65178 (v) Office of Museum Services; and
- 65179 (vi) Arts Council;
- 65180 (i) maintain archives relating to the construction and development of the buildings, the
- 65181 contents of the buildings and their grounds, including documents such as plans, specifications,
- 65182 photographs, purchase orders, and other related documents, the original copies of which shall
- 65183 be maintained by the Division of Archives and Records Service;
- 65184 (j) comply with federal and state laws related to program and facility accessibility; and
- 65185 (k) establish procedures for receiving, hearing, and deciding complaints or other issues

65186 raised about the capitol hill complex, capitol hill facilities, and capitol hill grounds, or their use.

65187 (2) Notwithstanding Subsection (1)(a), the supervision and control of the legislative
65188 area, as defined in Section 36-5-1, is reserved to the Legislature.

65189 (3) (a) The board shall make rules to govern, administer, and regulate the capitol hill
65190 complex, capitol hill facilities, and capitol hill grounds by following the procedures and
65191 requirements of [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
65192 Act.

65193 (b) A person who violates a rule adopted by the board under the authority of this
65194 Subsection (3) is subject to a civil penalty not to exceed \$2,500 for each violation, plus the
65195 amount of any actual damages, expenses, and costs related to the violation of the rule that are
65196 incurred by the state.

65197 (c) The board may take any other legal action allowed by law.

65198 (d) If any violation of a rule adopted by the board is also an offense under Title 76,
65199 Utah Criminal Code, the violation is subject to the civil penalty, damages, expenses, and costs
65200 allowed under this Subsection (3) in addition to any criminal prosecution.

65201 (e) The board may not apply this section or rules adopted under the authority of this
65202 section in a manner that violates a person's rights under the Utah Constitution or the First
65203 Amendment to the United States Constitution, including the right of persons to peaceably
65204 assemble.

65205 (f) The board shall send proposed rules under this section to the legislative general
65206 counsel and the governor's general counsel for review and comment before the board adopts the
65207 rules.

65208 (4) The board is exempt from the requirements of [~~Title 63, Chapter 56~~] Title 63G,
65209 Chapter 6, Utah Procurement Code, but shall adopt procurement rules substantially similar to
65210 the requirements of that chapter.

65211 (5) (a) The board may:

65212 (i) establish subcommittees made up of board members and members of the public to
65213 assist and support the executive director in accomplishing the executive director's duties;

- 65214 (ii) establish fees for the use of capitol hill facilities and capitol hill grounds;
- 65215 (iii) assign and allocate specific duties and responsibilities to any other state agency, if
65216 the other agency agrees to perform the duty or accept the responsibility;
- 65217 (iv) contract with another state agency to provide services;
- 65218 (v) delegate by specific motion of the board any authority granted to it by this section to
65219 the executive director;
- 65220 (vi) in conjunction with Salt Lake City, expend monies to improve or maintain public
65221 property contiguous to East Capitol Boulevard and capitol hill;
- 65222 (vii) provide wireless Internet service to the public without a fee in any capitol hill
65223 facility; and
- 65224 (viii) when necessary, consult with the:
- 65225 (A) Division of Facilities Construction and Management;
- 65226 (B) State Library Division;
- 65227 (C) Division of Archives and Records Service;
- 65228 (D) Division of State History;
- 65229 (E) Office of Museum Services; and
- 65230 (F) Arts Council.
- 65231 (b) The board's provision of wireless Internet service under Subsection (5)(a)(vii) shall
65232 be discontinued in the legislative area if the president of the Senate and the speaker of the
65233 House of Representatives each submit a signed letter to the board indicating that the service is
65234 disruptive to the legislative process and is to be discontinued.
- 65235 (c) If a budget subcommittee is established by the board, the following shall serve as ex
65236 officio, nonvoting members of the budget subcommittee:
- 65237 (i) the legislative fiscal analyst, or the analyst's designee, who shall be from the Office of
65238 Legislative Fiscal Analyst; and
- 65239 (ii) the director of the Governor's Office of Planning and Budget, or the director's
65240 designee, who shall be from the Governor's Office of Planning and Budget.
- 65241 (d) If a preservation and maintenance subcommittee is established by the board, the

65242 board may, by majority vote, appoint one or each of the following to serve on the subcommittee
65243 as voting members of the subcommittee:

65244 (i) an architect, who shall be selected from a list of three architects submitted by the
65245 American Institute of Architects; or

65246 (ii) an engineer, who shall be selected from a list of three engineers submitted by the
65247 American Civil Engineers Council.

65248 (e) If the board establishes any subcommittees, the board may, by majority vote,
65249 appoint up to two people who are not members of the board to serve, at the will of the board,
65250 as nonvoting members of a subcommittee.

65251 (f) Members of each subcommittee shall, at the first meeting of each calendar year,
65252 select one individual to act as chair of the subcommittee for a one-year term.

65253 (6) (a) The board, and the employees of the board, may not move the office of the
65254 governor, lieutenant governor, president of the Senate, speaker of the House of
65255 Representatives, or a member of the Legislature from the State Capitol Building unless the
65256 removal is approved by:

65257 (i) the governor, in the case of the governor's office;

65258 (ii) the lieutenant governor, in the case of the lieutenant governor's office;

65259 (iii) the president of the Senate, in the case of the president's office or the office of a
65260 member of the Senate; or

65261 (iv) the speaker of the House of Representatives, in the case of the speaker's office or
65262 the office of a member of the House.

65263 (b) The board and the employees of the board have no control over the furniture,
65264 furnishings, and decorative objects in the offices of the governor, lieutenant governor, or the
65265 members of the Legislature except as necessary to inventory or conserve items of historical
65266 significance owned by the state.

65267 (c) The board and the employees of the board have no control over records and
65268 documents produced by or in the custody of a state agency, official, or employee having an
65269 office in a building on the capitol hill complex.

65270 (d) Except for items identified by the board as having historical significance, and except
65271 as provided in Subsection (6)(b), the board and the employees of the board have no control
65272 over moveable furnishings and equipment in the custody of a state agency, official, or employee
65273 having an office in a building on the capitol hill complex.

65274 Section 1285. Section **63C-11-202** is amended to read:

65275 **63C-11-202. Powers and duties of authority.**

65276 (1) The authority shall:

65277 (a) hire an executive director, who shall serve as staff to the authority;

65278 (b) oversee and make any necessary rules concerning the Pete Suazo Utah Athletic
65279 Commission created in Section 63C-11-303; and

65280 (c) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
65281 Administrative Rulemaking Act, necessary for the administration of this chapter.

65282 (2) The authority may:

65283 (a) hire employees to carry out its duties as budgetary constraints allow;

65284 (b) solicit and accept contributions of moneys, services, and facilities from any other
65285 sources, public or private, and shall use these funds for coordinating the promotion and
65286 enhancement of sporting opportunities in Utah; and

65287 (c) contract with an existing not-for-profit organization for the purpose of sports
65288 development throughout the state, including:

65289 (i) branding, advertising, and marketing;

65290 (ii) sports tourism promotion, including attracting and developing sporting events;

65291 (iii) coordinating with any other entity the promotion or enhancement of sporting
65292 opportunities in Utah;

65293 (iv) partnering with existing entities for Olympic-related sports development;

65294 (v) coordinating with the Division of Parks and Recreation to establish a destination
65295 golf program to promote golf-related tourism; and

65296 (vi) coordinating with existing entities the recruitment and relocation of the United
65297 States Olympic Committee National Governing Bodies and other organizations governing

65298 sports.

65299 (3) The authority may not perform any of the functions listed in Subsections (2)(c)(i)
65300 through (vi).

65301 (4) (a) The not-for-profit organization contracted with in Subsection (1):

65302 (i) shall have at least five years' experience in the promotion, development, and
65303 marketing of sports events and sports tourism;

65304 (ii) shall represent all geographic areas of the state; and

65305 (iii) may not have a financial or ownership interest in any sports venue.

65306 (b) Development of sports under the contract entered into under Subsection (1) shall
65307 include:

65308 (i) summer and winter sports;

65309 (ii) amateur and professional sports; and

65310 (iii) participatory and spectator sports.

65311 Section 1286. Section **63C-11-302** is amended to read:

65312 **63C-11-302. Definitions.**

65313 As used in this part:

65314 (1) "Bodily injury" is as defined in Section 76-1-601.

65315 (2) "Boxing" means the sport of attack and defense using the fist, which is covered by
65316 an approved boxing glove.

65317 (3) (a) "Club fighting" means any contest of unarmed combat, whether admission is
65318 charged or not, where:

65319 (i) the rules of the contest are not approved by the commission;

65320 (ii) a licensed physician or osteopath is not in attendance;

65321 (iii) an HIV negative test regarding each contestant not less than 180 days before the
65322 contest has not been provided to the commission;

65323 (iv) the contest is not conducted in accordance with commission rules; or

65324 (v) the contestants are not matched by the weight standards described in Section
65325 63C-11-324.

- 65326 (b) "Club fighting" does not include sparring if:
- 65327 (i) it is conducted for training purposes;
- 65328 (ii) no tickets are sold to spectators;
- 65329 (iii) no concessions are available for spectators;
- 65330 (iv) protective clothing, including protective headgear, a mouthguard, and a protective
- 65331 cup, is worn; and
- 65332 (v) for boxing, 16 ounce boxing gloves are worn.
- 65333 (4) "Commission" means the Pete Suazo Utah Athletic Commission created in this part.
- 65334 (5) "Contest" means a live match, performance, or exhibition involving two or more
- 65335 persons engaged in unarmed combat.
- 65336 (6) "Contestant" means an individual who participates in a contest.
- 65337 (7) "Designated commission member" means a member of the commission designated
- 65338 to:
- 65339 (a) attend and supervise a particular contest; and
- 65340 (b) act on the behalf of the commission at a contest venue.
- 65341 (8) "Elimination boxing contest" means a contest where:
- 65342 (a) a number of contestants participate in a tournament;
- 65343 (b) the duration is not more than 48 hours; and
- 65344 (c) the loser of each contest is eliminated from further competition.
- 65345 (9) "Exhibition" means an engagement in which the participants show or display their
- 65346 skills without necessarily striving to win.
- 65347 (10) "Judge" means an individual qualified by training or experience to:
- 65348 (a) rate the performance of contestants;
- 65349 (b) score a contest; and
- 65350 (c) determine with other judges whether there is a winner of the contest or whether the
- 65351 contestants performed equally, resulting in a draw.
- 65352 (11) "Licensee" means an individual licensed by the commission to act as a:
- 65353 (a) contestant;

- 65354 (b) judge;
- 65355 (c) manager;
- 65356 (d) promoter;
- 65357 (e) referee; or
- 65358 (f) second.
- 65359 (12) "Manager" means an individual who represents a contestant for the purposes of:
- 65360 (a) obtaining a contest for a contestant;
- 65361 (b) negotiating terms and conditions of the contract under which the contestant will
- 65362 engage in a contest; or
- 65363 (c) arranging for a second for the contestant at a contest.
- 65364 (13) "Promoter" means a person who engages in producing or staging contests and
- 65365 promotions.
- 65366 (14) "Promotion" means a single contest or a combination of contests that:
- 65367 (a) occur during the same time and at the same location; and
- 65368 (b) is produced or staged by a promoter.
- 65369 (15) "Purse" means any money, prize, remuneration, or any other valuable consideration
- 65370 a contestant receives or may receive for participation in a contest.
- 65371 (16) "Referee" means an individual qualified by training or experience to act as the
- 65372 official attending a contest at the point of contact between contestants for the purpose of:
- 65373 (a) enforcing the rules relating to the contest;
- 65374 (b) stopping the contest in the event the health, safety, and welfare of a contestant or
- 65375 any other person in attendance at the contest is in jeopardy; and
- 65376 (c) to act as a judge if so designated by the commission.
- 65377 (17) "Round" means one of a number of individual time periods that, taken together,
- 65378 constitute a contest during which contestants are engaged in a form of unarmed combat.
- 65379 (18) "Second" means an individual who attends a contestant at the site of the contest
- 65380 before, during, and after the contest in accordance with contest rules.
- 65381 (19) "Secretary" means the secretary of the Pete Suazo Utah Athletic Commission.

65382 (20) "Serious bodily injury" is as defined in Section 76-1-601.

65383 (21) "Total gross receipts" means the amount of the face value of all tickets sold to a
65384 particular contest plus any sums received as consideration for holding the contest at a particular
65385 location.

65386 (22) "Ultimate fighting" means a live contest, whether or not an admission fee is
65387 charged, in which:

65388 (a) contest rules permit contestants to use a combination of boxing, kicking, wrestling,
65389 hitting, punching, or other combative contact techniques;

65390 (b) contest rules incorporate a formalized system of combative techniques against which
65391 a contestant's performance is judged to determine the prevailing contestant;

65392 (c) contest rules divide nonchampionship contests into three equal and specified rounds
65393 of no more than five minutes per round with a rest period of one minute between each round;

65394 (d) contest rules divide championship contests into five equal and specified rounds of no
65395 more than five minutes per round with a rest period of one minute between each round; and

65396 (e) contest rules prohibit contestants from:

65397 (i) using anything that is not part of the human body, except for boxing gloves, to
65398 intentionally inflict serious bodily injury upon an opponent through direct contact or the
65399 expulsion of a projectile;

65400 (ii) striking a person who demonstrates an inability to protect himself from the advances
65401 of an opponent;

65402 (iii) biting; or

65403 (iv) direct, intentional, and forceful strikes to the eyes, groin area, adam's apple area of
65404 the neck, and temple area of the head.

65405 (23) (a) "Unarmed combat" means boxing or any other form of competition in which a
65406 blow is usually struck which may reasonably be expected to inflict bodily injury.

65407 (b) "Unarmed combat" does not include a competition or exhibition between
65408 participants in which the participants engage in simulated combat for entertainment purposes.

65409 (24) "Unlawful conduct" means organizing, promoting, or participating in a contest

65410 which involves contestants that are not licensed under this part.

65411 (25) "Unprofessional conduct" means:

65412 (a) entering into a contract for a contest in bad faith;

65413 (b) participating in any sham or fake contest;

65414 (c) participating in a contest pursuant to a collusive understanding or agreement in

65415 which the contestant competes in or terminates the contest in a manner that is not based upon

65416 honest competition or the honest exhibition of the skill of the contestant;

65417 (d) engaging in an act or conduct that is detrimental to a contest, including any foul or

65418 unsportsmanlike conduct in connection with a contest;

65419 (e) failing to comply with any limitation, restriction, or condition placed on a license;

65420 (f) striking of a downed opponent by a contestant while the contestant remains on the

65421 contestant's feet unless the commission, following a hearing conducted under Subsection

65422 63C-11-316(3) and before the contest, has exempted the contest and each contestant from this

65423 Subsection (25)(f);

65424 (g) after entering the ring or contest area, penetrating an area within four feet of an

65425 opponent by a contestant, manager or second before the commencement of the contest; or

65426 (h) as further defined by rules made by the commission under [~~Title 63, Chapter 46a]~~

65427 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

65428 (26) "White-collar contest" means a contest conducted at a training facility where no

65429 alcohol is served in which:

65430 (a) for boxing:

65431 (i) neither contestant is or has been a licensed contestant in any state or an amateur

65432 registered with USA Boxing, Inc.;

65433 (ii) no cash prize, or other prize valued at greater than \$35, is awarded;

65434 (iii) protective clothing, including protective headgear, a mouthguard, a protective cup,

65435 and for a female contestant a chestguard, is worn;

65436 (iv) 16 ounce boxing gloves are worn;

65437 (v) the contest is no longer than three rounds of no longer than three minutes each;

- 65438 (vi) no winner is declared; and
- 65439 (vii) the contestants do not compete in a cage; and
- 65440 (b) for ultimate fighting:
- 65441 (i) neither contestant is or has been a licensed contestant in any state or an amateur
- 65442 registered with USA Boxing, Inc.;
- 65443 (ii) no cash prize, or other prize valued at greater than \$35, is awarded;
- 65444 (iii) protective clothing, including a protective mouthguard and a protective cup, is
- 65445 worn;
- 65446 (iv) elbow strikes are not allowed;
- 65447 (v) a contestant is not allowed to stand and strike a downed opponent;
- 65448 (vi) a closed-hand blow to the head is not allowed while either contestant is on the
- 65449 ground;
- 65450 (vii) the contest is no longer than three rounds of no longer than three minutes each;
- 65451 and
- 65452 (viii) no winner is declared.
- 65453 Section 1287. Section **63C-11-304** is amended to read:
- 65454 **63C-11-304. Commission powers and duties.**
- 65455 (1) The commission shall:
- 65456 (a) purchase and use a seal;
- 65457 (b) adopt rules for the administration of this part in accordance with [~~Title 63, Chapter~~
- 65458 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 65459 (c) prepare all forms of contracts between sponsors, licensees, promoters, and
- 65460 contestants; and
- 65461 (d) hold hearings relating to matters under its jurisdiction, including violations of this
- 65462 part or rules promulgated under this part.
- 65463 (2) The commission may subpoena witnesses, take evidence, and require the production
- 65464 of books, papers, documents, records, contracts, recordings, tapes, correspondence, or other
- 65465 information relevant to an investigation if the commission or its designee considers it necessary.

65466 Section 1288. Section **63C-11-308** is amended to read:

65467 **63C-11-308. Licensing.**

65468 (1) A license is required for a person to act as or to represent that the person is a:

65469 (a) promoter;

65470 (b) manager;

65471 (c) contestant;

65472 (d) second;

65473 (e) referee; or

65474 (f) judge.

65475 (2) The commission shall issue to a person who qualifies under this part a license in the
65476 classifications of:

65477 (a) promoter;

65478 (b) manager;

65479 (c) contestant;

65480 (d) second;

65481 (e) referee; or

65482 (f) judge.

65483 (3) All moneys collected pursuant to this section and Sections 63C-11-312,
65484 63C-11-315, 63C-11-318, and 63C-11-321 shall be deposited in the General Fund.

65485 (4) Each applicant for licensure as a promoter shall:

65486 (a) submit an application in a form prescribed by the commission;

65487 (b) pay the fee determined by the commission under Section [~~63-38-3.2~~] 63J-1-303;

65488 (c) provide to the commission evidence of financial responsibility, which shall include
65489 financial statements and other information that the commission may reasonably require to
65490 determine that the applicant or licensee is able to competently perform as and meet the
65491 obligations of a promoter in this state;

65492 (d) produce information, documentation, and assurances as may be required to establish
65493 by a preponderance of the evidence the applicant's reputation for good character, honesty,

65494 integrity, and responsibility, which shall include information, documentation, and assurances
65495 that the applicant:

65496 (i) has not been convicted of a crime in any jurisdiction which the commission
65497 determines by the nature of the crime and circumstances surrounding the crime should disqualify
65498 the applicant from licensure in the public interest;

65499 (ii) is not engaging in illegal gambling with respect to sporting events or gambling with
65500 respect to the promotions the applicant is promoting;

65501 (iii) has not been found in a criminal or civil proceeding to have engaged in or
65502 attempted to engage in any fraud or misrepresentation in connection with a contest or any other
65503 sporting event; and

65504 (iv) has not been found in a criminal or civil proceeding to have violated or attempted
65505 to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating
65506 to the regulation of contests in this state or any other jurisdiction;

65507 (e) acknowledge in writing to the commission receipt, understanding, and intent to
65508 comply with this part and the rules made under this part; and

65509 (f) if requested by the commission or the secretary, meet with the commission or the
65510 secretary to examine the applicant's qualifications for licensure.

65511 (5) Each applicant for licensure as a contestant shall:

65512 (a) be not less than 18 years of age at the time the application is submitted to the
65513 commission;

65514 (b) submit an application in a form prescribed by the commission;

65515 (c) pay the fee established by the commission under Section [~~63-38-3.2~~] 63J-1-303;

65516 (d) provide a certificate of physical examination, dated not more than 60 days prior to
65517 the date of application for license, in a form provided by the commission, completed by a
65518 licensed physician and surgeon certifying that the applicant is free from any physical or mental
65519 condition that indicates the applicant should not engage in activity as a contestant;

65520 (e) provide the commission with an accurate history of all matches that the applicant
65521 has engaged in since becoming a contestant, including information on whether the applicant

65522 won or lost each contest, and the matches in which there was a knockout or technical knockout;

65523 (f) produce information, documentation, and assurances as may be required to establish
65524 by a preponderance of the evidence the applicant's reputation for good character, honesty,
65525 integrity, and responsibility, which shall include information, documentation, and assurances
65526 that the applicant:

65527 (i) has not been convicted of a crime in any jurisdiction which the commission
65528 determines by the nature of the crime and circumstances surrounding that crime should
65529 disqualify the applicant from licensure in the public interest;

65530 (ii) is not engaging in illegal gambling with respect to sporting events or gambling with
65531 respect to a contest in which the applicant will participate;

65532 (iii) has not been found in a criminal or civil proceeding to have engaged in or
65533 attempted to have engaged in any fraud or misrepresentation in connection with a contest or any
65534 other sporting event; and

65535 (iv) has not been found in a criminal or civil proceeding to have violated or attempted
65536 to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating
65537 to the regulation of contests in this state or any other jurisdiction;

65538 (g) acknowledge in writing to the commission receipt, understanding, and intent to
65539 comply with this part and the rules made under this part; and

65540 (h) if requested by the commission or the secretary, meet with the commission or the
65541 secretary to examine the applicant's qualifications for licensure.

65542 (6) Each applicant for licensure as a manager or second shall:

65543 (a) submit an application in a form prescribed by the commission;

65544 (b) pay a fee determined by the commission under Section [~~63-38-3.2~~] 63J-1-303;

65545 (c) produce information, documentation, and assurances as may be required to establish
65546 by a preponderance of the evidence the applicant's reputation for good character, honesty,
65547 integrity, and responsibility, which shall include information, documentation, and assurances
65548 that the applicant:

65549 (i) has not been convicted of a crime in any jurisdiction which the commission

65550 determines by the nature of the crime and circumstances surrounding that crime should
65551 disqualify the applicant from licensure in the public interest;

65552 (ii) is not engaging in illegal gambling with respect to sporting events or gambling with
65553 respect to a contest in which the applicant is participating;

65554 (iii) has not been found in a criminal or civil proceeding to have engaged in or
65555 attempted to have engaged in any fraud or misrepresentation in connection with a contest or any
65556 other sporting event; and

65557 (iv) has not been found in a criminal or civil proceeding to have violated or attempted
65558 to violate any law with respect to a contest in any jurisdiction or any law, rule, or order relating
65559 to the regulation of contests in this state or any other jurisdiction;

65560 (d) acknowledge in writing to the commission receipt, understanding, and intent to
65561 comply with this part and the rules made under this part; and

65562 (e) if requested by the commission or secretary, meet with the commission or the
65563 secretary to examine the applicant's qualifications for licensure.

65564 (7) Each applicant for licensure as a referee or judge shall:

65565 (a) submit an application in a form prescribed by the commission;

65566 (b) pay a fee determined by the commission under Section [~~63-38-3.2~~] 63J-1-303;

65567 (c) produce information, documentation, and assurances as may be required to establish
65568 by a preponderance of the evidence the applicant's reputation for good character, honesty,
65569 integrity, and responsibility, which shall include information, documentation, and assurances
65570 that the applicant:

65571 (i) has not been convicted of a crime in any jurisdiction which the commission
65572 determines by the nature of the crime and circumstances surrounding the crime should disqualify
65573 the applicant from licensure in the public interest;

65574 (ii) is not engaging in illegal gambling with respect to sporting events or gambling with
65575 respect to a contest in which the applicant is participating;

65576 (iii) has not been found in a criminal or civil proceeding to have engaged in or
65577 attempted to have engaged in any fraud or misrepresentation in connection with a contest or any

65578 other sporting event; and

65579 (iv) has not been found in a criminal or civil proceeding to have violated or attempted
65580 to violate any law with respect to contests in any jurisdiction or any law, rule, or order relating
65581 to the regulation of contests in this state or any other jurisdiction;

65582 (d) acknowledge in writing to the commission receipt, understanding, and intent to
65583 comply with this part and the rules made under this part;

65584 (e) provide evidence satisfactory to the commission that the applicant is qualified by
65585 training and experience to competently act as a referee or judge in a contest; and

65586 (f) if requested by the commission or the secretary, meet with the commission or the
65587 secretary to examine the applicant's qualifications for licensure.

65588 (8) (a) A licensee serves at the pleasure, and under the direction, of the commission
65589 while participating in any way at a contest.

65590 (b) A licensee's license may be suspended, or a fine imposed, if the licensee does not
65591 follow the commission's direction at an event or contest.

65592 Section 1289. Section **63C-11-310** is amended to read:

65593 **63C-11-310. Grounds for denial of license -- Disciplinary proceedings --**
65594 **Reinstatement.**

65595 (1) The commission shall refuse to issue a license to an applicant and shall refuse to
65596 renew or shall revoke, suspend, restrict, place on probation, or otherwise act upon the license of
65597 a licensee who does not meet the qualifications for licensure under this part.

65598 (2) The commission may refuse to issue a license to an applicant and may refuse to
65599 renew or may revoke, suspend, restrict, place on probation, issue a public or private reprimand
65600 to, or otherwise act upon the license of any licensee if:

65601 (a) the applicant or licensee has engaged in unlawful or unprofessional conduct, as
65602 defined by statute or rule under this part;

65603 (b) the applicant or licensee has been determined to be mentally incompetent for any
65604 reason by a court of competent jurisdiction; or

65605 (c) the applicant or licensee is unable to practice the occupation or profession with

65606 reasonable skill and safety because of illness, drunkenness, excessive use of drugs, narcotics,
65607 chemicals, or any other type of material, or as a result of any other mental or physical condition,
65608 when the licensee's condition demonstrates a threat or potential threat to the public health,
65609 safety, or welfare.

65610 (3) Any licensee whose license under this part has been suspended, revoked, or
65611 restricted may apply for reinstatement of the license at reasonable intervals and upon
65612 compliance with any conditions imposed upon the licensee by statute, rule, or terms of the
65613 license suspension, revocation, or restriction.

65614 (4) The commission may issue cease and desist orders:

65615 (a) to a licensee or applicant who may be disciplined under Subsection (1) or (2); and

65616 (b) to any person who otherwise violates this part or any rules adopted under this part.

65617 (5) (a) The commission may impose an administrative fine for acts of unprofessional or
65618 unlawful conduct under this part.

65619 (b) An administrative fine under this Subsection (5) may not exceed \$2,500 for each
65620 separate act of unprofessional or unlawful conduct.

65621 (c) The commission shall comply with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
65622 Administrative Procedures Act, in any action to impose an administrative fine under this part.

65623 (d) The imposition of a fine under this Subsection (5) does not affect any other action
65624 the commission or department may take concerning a license issued under this part.

65625 (6) (a) The commission may not take disciplinary action against any person for unlawful
65626 or unprofessional conduct under this part, unless the commission initiates an adjudicative
65627 proceeding regarding the conduct within four years after the conduct is reported to the
65628 commission, except under Subsection (6)(b).

65629 (b) The commission may not take disciplinary action against any person for unlawful or
65630 unprofessional conduct more than ten years after the occurrence of the conduct, unless the
65631 proceeding is in response to a civil or criminal judgment or settlement and the proceeding is
65632 initiated within one year following the judgment or settlement.

65633 (7) (a) Notwithstanding [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative

65634 Procedures Act, the following may immediately suspend the license of a licensee at such time
65635 and for such period that the following believes is necessary to protect the health, safety, and
65636 welfare of the licensee, another licensee, or the public:

- 65637 (i) the commission;
- 65638 (ii) a designated commission member; or
- 65639 (iii) if a designated commission member is not present, the secretary.

65640 (b) The commission shall establish by rule appropriate procedures to invoke the
65641 suspension and to provide a suspended licensee a right to a hearing before the commission with
65642 respect to the suspension within a reasonable time after the suspension.

65643 Section 1290. Section **63C-11-311** is amended to read:

65644 **63C-11-311. Additional fees for license of promoter -- Dedicated credits --**
65645 **Promotion of contests -- Annual exemption of showcase event.**

65646 (1) In addition to the payment of any other fees and money due under this part, every
65647 promoter shall pay a license fee determined by the commission, which may be:

- 65648 (a) (i) \$100 for a contest or event occurring in a venue of fewer than 200 seats;
- 65649 (ii) \$200 for a contest or event occurring in a venue of at least 200 but fewer than 500

65650 seats;

- 65651 (iii) \$300 for a contest or event occurring in a venue of at least 500 seats but fewer than
65652 1,000 seats;

- 65653 (iv) \$400 for a contest or event occurring in a venue of at least 1,000 seats but fewer
65654 than 3,000 seats; or

- 65655 (v) \$600 for a contest or event occurring in a venue of at least 3,000 seats; and

65656 (b) 3% of total gross receipts from the sale, lease, or other exploitation of broadcasting,
65657 television, and motion picture rights for each contest or exhibition.

65658 (2) (a) One-half of license fees collected under Subsection (1)(a) from professional
65659 boxing contests or exhibitions shall be deposited in the General Fund.

65660 (b) One-half of license fees collected under Subsection (1)(a) from professional boxing
65661 contests or exhibitions shall be retained by the commission as a dedicated credit to be used by

65662 the commission to award grants to organizations that promote amateur boxing in the state.

65663 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
65664 Administrative Rulemaking Act, the commission shall adopt rules:

65665 (a) governing the manner in which applications for grants under Subsection (2) may be
65666 submitted to the commission; and

65667 (b) establishing standards for awarding grants under Subsection (2) to organizations
65668 which promote amateur boxing in the state.

65669 (4) (a) For the purpose of creating a greater interest in contests in the state, the
65670 commission may exempt from the payment of license fees under this section one contest or
65671 exhibition in each calendar year, intended as a showcase event.

65672 (b) The commission shall select the contest or exhibition to be exempted based on
65673 factors which include:

65674 (i) attraction of the optimum number of spectators;

65675 (ii) costs of promoting and producing the contest or exhibition;

65676 (iii) ticket pricing;

65677 (iv) committed promotions and advertising of the contest or exhibition;

65678 (v) rankings and quality of the contestants; and

65679 (vi) committed television and other media coverage of the contest or exhibition.

65680 Section 1291. Section **63C-11-315** is amended to read:

65681 **63C-11-315. Approval to hold contest or promotion -- Bond required.**

65682 (1) An application to hold a contest or multiple contests as part of a single promotion
65683 shall be made by a licensed promoter to the commission on forms provided by the commission.

65684 (2) The application shall be accompanied by a contest fee determined by the
65685 commission under Section [~~63-38-3.2~~] 63J-1-303.

65686 (3) (a) The commission may approve or deny approval to hold a contest or promotion
65687 permitted under this part.

65688 (b) Provisional approval under Subsection (3)(a) shall be granted upon a determination
65689 by the commission that:

- 65690 (i) the promoter of the contest or promotion is properly licensed;
- 65691 (ii) a bond meeting the requirements of Subsection (6) has been posted by the promoter
65692 of the contest or promotion; and
- 65693 (iii) the contest or promotion will be held in accordance with this part and rules made
65694 under this part.
- 65695 (4) (a) Final approval to hold a contest or promotion may not be granted unless the
65696 commission receives not less than seven days before the day of the contest with ten or more
65697 rounds:
- 65698 (i) proof of a negative HIV test performed not more than 180 days before the day of the
65699 contest for each contestant;
- 65700 (ii) a copy of each contestant's federal identification card;
- 65701 (iii) a copy of a signed contract between each contestant and the promoter for the
65702 contest;
- 65703 (iv) a statement specifying the maximum number of rounds of the contest;
- 65704 (v) a statement specifying the site, date, and time of weigh-in; and
- 65705 (vi) the name of the physician selected from among a list of registered and
65706 commission-approved ringside physicians who shall act as ringside physician for the contest.
- 65707 (b) Notwithstanding Subsection (4)(a), the commission may approve a contest or
65708 promotion if the requirements under Subsection (4)(a) are not met because of unforeseen
65709 circumstances beyond the promoter's control.
- 65710 (5) Final approval for a contest under ten rounds in duration may be granted as
65711 determined by the commission after receiving the materials identified in Subsection (4) at a time
65712 determined by the commission.
- 65713 (6) An applicant shall post a surety bond or cashier's check with the commission in the
65714 greater of \$10,000 or the amount of the purse, providing for forfeiture and disbursement of the
65715 proceeds if the applicant fails to comply with:
- 65716 (a) the requirements of this part; or
- 65717 (b) rules made under this part relating to the promotion or conduct of the contest or

65718 promotion.

65719 Section 1292. Section **63C-11-316** is amended to read:

65720 **63C-11-316. Rules for the conduct of contests.**

65721 (1) The commission shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
65722 63G, Chapter 3, Utah Administrative Rulemaking Act, for the conduct of contests in the state.

65723 (2) The rules shall include:

65724 (a) authority for:

65725 (i) stopping contests; and

65726 (ii) impounding purses with respect to contests when there is a question with respect to
65727 the contest, contestants, or any other licensee associated with the contest; and

65728 (b) reasonable and necessary provisions to ensure that all obligations of a promoter with
65729 respect to any promotion or contest are paid in accordance with agreements made by the
65730 promoter.

65731 (3) (a) The commission may, in its discretion, exempt a contest and each contestant
65732 from the definition of unprofessional conduct found in Subsection 63C-11-302(25)(f) after:

65733 (i) a promoter requests the exemption; and

65734 (ii) the commission considers relevant factors, including:

65735 (A) the experience of the contestants;

65736 (B) the win and loss records of each contestant;

65737 (C) each contestant's level of training; and

65738 (D) any other evidence relevant to the contestants' professionalism and the ability to
65739 safely conduct the contest.

65740 (b) The commission's hearing of a request for an exemption under this Subsection (3) is
65741 an informal adjudicative proceeding under Section [~~63-46b-4~~] 63G-4-202.

65742 (c) The commission's decision to grant or deny a request for an exemption under this
65743 Subsection (3) is not subject to agency review under Section [~~63-46b-12~~] 63G-4-301.

65744 Section 1293. Section **63C-11-317** is amended to read:

65745 **63C-11-317. Medical examinations and drug tests.**

65746 (1) The commission shall adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title
65747 63G, Chapter 3, Utah Administrative Rulemaking Act, for medical examinations and drug
65748 testing of contestants, including provisions under which contestants shall:

65749 (a) produce evidence based upon competent laboratory examination that they are HIV
65750 negative as a condition of participating as a contestant in any contest;

65751 (b) be subject to random drug testing before or after participation in a contest, and
65752 sanctions, including barring participation in a contest or withholding a percentage of any purse,
65753 that shall be placed against a contestant testing positive for alcohol or any other drug that in the
65754 opinion of the commission is inconsistent with the safe and competent participation of that
65755 contestant in a contest;

65756 (c) be subject to a medical examination by the ringside physician not more than 30
65757 hours before the contest to identify any physical ailment or communicable disease that, in the
65758 opinion of the commission or designated commission member, are inconsistent with the safe and
65759 competent participation of that contestant in the contest; and

65760 (d) be subject to medical testing for communicable diseases as considered necessary by
65761 the commission to protect the health, safety, and welfare of the licensees and the public.

65762 (2) (a) Medical information concerning a contestant shall be provided by the contestant
65763 or medical professional or laboratory.

65764 (b) A promoter or manager may not provide to or receive from the commission medical
65765 information concerning a contestant.

65766 Section 1294. Section **63C-11-318** is amended to read:

65767 **63C-11-318. Contests.**

65768 (1) Except as provided in Section 63C-11-325, a licensee may not participate in:

65769 (a) a boxing contest as a contestant if that person has participated in another boxing
65770 contest as a contestant within 30 days before the proposed boxing contest; or

65771 (b) an ultimate fighting contest as a contestant if that person has participated in another
65772 ultimate fighting contest as a contestant within six days before the proposed ultimate fighting
65773 contest.

65774 (2) Subsection (1) applies regardless of where the previous boxing contest occurred.

65775 (3) During the period of time beginning 60 minutes before the beginning of a contest,
65776 the promoter shall demonstrate the promoter's compliance with the commission's security
65777 requirements to all commission members present at the contest.

65778 (4) The commission shall establish fees in accordance with Section [~~63-38-3.2~~]
65779 63J-1-303 to be paid by a promoter for the conduct of each contest or event composed of
65780 multiple contests conducted under this part.

65781 Section 1295. Section **63D-2-103** is amended to read:

65782 **63D-2-103. Collection of personally identifiable information.**

65783 (1) A governmental entity may not collect personally identifiable information related to
65784 a user of the governmental entity's governmental website unless the governmental entity has
65785 taken reasonable steps to ensure that on the day on which the personally identifiable information
65786 is collected the governmental entity's governmental website complies with Subsection (2).

65787 (2) A governmental website shall contain a privacy policy statement that discloses:

65788 (a) (i) the identity of the governmental website operator; and

65789 (ii) how the governmental website operator may be contacted:

65790 (A) by telephone; or

65791 (B) electronically;

65792 (b) the personally identifiable information collected by the governmental entity;

65793 (c) a summary of how the personally identifiable information is used by:

65794 (i) the governmental entity; or

65795 (ii) the governmental website operator;

65796 (d) the practices of the following related to disclosure of personally identifiable
65797 information collected:

65798 (i) the governmental entity; or

65799 (ii) the governmental website operator;

65800 (e) the procedures, if any, by which a user of a governmental entity may request:

65801 (i) access to the user's personally identifiable information; and

65802 (ii) access to correct the user's personally identifiable information; and
65803 (f) without compromising the integrity of the security measures, a general description of
65804 the security measures in place to protect a user's personally identifiable information from
65805 unintended disclosure.

65806 (3) (a) Personally identifiable information is not a classification of records under [~~Title~~
65807 ~~63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

65808 (b) Access to government records is governed by [~~Title 63, Chapter 2~~] Title 63G,
65809 Chapter 2, Government Records Access and Management Act.

65810 Section 1296. Section **63E-1-102** is amended to read:

65811 **63E-1-102. Definitions.**

65812 As used in this title:

65813 (1) "Authorizing statute" means the statute creating an entity as an independent entity.

65814 (2) "Committee" means the Retirement and Independent Entities Committee created in
65815 Section 63E-1-201.

65816 (3) "Independent corporation" means a corporation incorporated in accordance with
65817 Chapter 2, Independent Corporations Act.

65818 (4) (a) "Independent entity" means an entity having a public purpose relating to the
65819 state or its citizens that is individually created by the state or is given by the state the right to
65820 exist and conduct its affairs as an:

65821 (i) independent state agency; or

65822 (ii) independent corporation.

65823 (b) "Independent entity" includes the:

65824 (i) Dairy Commission created in Title 4, Chapter 22, Dairy Promotion Act;

65825 (ii) Heber Valley Railroad Authority created in Title 9, Chapter 3, Part 3, Heber Valley
65826 Historic Railroad Authority;

65827 (iii) Utah Science Center Authority created in Title 9, Chapter 3, Part 4, Utah Science
65828 Center Authority;

65829 (iv) Utah Housing Corporation created in Title 9, Chapter 4, Part 9, Utah Housing

- 65830 Corporation Act;
- 65831 (v) Utah State Fair Corporation created in Title 9, Chapter 4, Part 11, Utah State Fair
- 65832 Corporation Act;
- 65833 (vi) Workers' Compensation Fund created in Title 31A, Chapter 33, Workers'
- 65834 Compensation Fund;
- 65835 (vii) Utah State Retirement Office created in Title 49, Chapter 11, Utah State
- 65836 Retirement Systems Administration;
- 65837 (viii) School and Institutional Trust Lands Administration created in Title 53C, Chapter
- 65838 1, Part 2, School and Institutional Trust Lands Administration;
- 65839 (ix) Utah Communications Agency Network created in Title 63C, Chapter 7, Utah
- 65840 Communications Agency Network Act; and
- 65841 (x) Utah Capital Investment Corporation created in [~~Title 63, Chapter 38f~~] Title 63M,
- 65842 Chapter 1, Part 12, Utah Venture Capital Enhancement Act.
- 65843 (c) Notwithstanding this Subsection (4), "independent entity" does not include:
- 65844 (i) the Public Service Commission of Utah created in Section 54-1-1;
- 65845 (ii) an institution within the state system of higher education;
- 65846 (iii) a city, county, or town;
- 65847 (iv) a local school district;
- 65848 (v) a local district under Title 17B, Limited Purpose Local Government Entities - Local
- 65849 Districts; or
- 65850 (vi) a special service district under Title 17A, Chapter 2, Part 13, Utah Special Service
- 65851 District Act.
- 65852 (5) "Independent state agency" means an entity that is created by the state, but is
- 65853 independent of the governor's direct supervisory control.
- 65854 (6) "Monies held in trust" means monies maintained for the benefit of:
- 65855 (a) one or more private individuals, including public employees;
- 65856 (b) one or more public or private entities; or
- 65857 (c) the owners of a quasi-public corporation.

65858 (7) "Public corporation" means an artificial person, public in ownership, individually
 65859 created by the state as a body politic and corporate for the administration of a public purpose
 65860 relating to the state or its citizens.

65861 (8) "Quasi-public corporation" means an artificial person, private in ownership,
 65862 individually created as a corporation by the state which has accepted from the state the grant of
 65863 a franchise or contract involving the performance of a public purpose relating to the state or its
 65864 citizens.

65865 Section 1297. Section **63E-2-109** is amended to read:

65866 **63E-2-109. State statutes.**

65867 (1) Except as specifically modified in its authorizing statute, each independent
 65868 corporation shall be exempt from the statutes governing state agencies, including:

- 65869 (a) Title 51, Chapter 5, Funds Consolidation Act;
- 65870 (b) Title 51, Chapter 7, State Money Management Act;
- 65871 (c) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act;
- 65872 (d) [~~Title 63, Chapter 38a~~] Title 63J, Chapter 2, Revenue Procedures and Control Act;
- 65873 (e) [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 65874 (f) [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act;
- 65875 (g) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code;
- 65876 (h) Title 63A, Utah Administrative Services Code; and
- 65877 (i) Title 67, Chapter 19, Utah Personnel Management Act.

65878 (2) Except as specifically modified in its authorizing statute, each independent
 65879 corporation shall be subject to:

- 65880 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 65881 (b) [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
 65882 Management Act.

65883 (3) Each independent corporation board may adopt its own policies and procedures
 65884 governing its:

- 65885 (a) funds management;

65886 (b) audits; and

65887 (c) personnel.

65888 Section 1298. Section **63F-1-103** is amended to read:

65889 **63F-1-103. Department of Technology Services.**

65890 (1) There is created within state government the Department of Technology Services
65891 which has all of the policymaking functions, regulatory and enforcement powers, rights, duties,
65892 and responsibilities outlined in this title.

65893 (2) In accordance with Subsection [~~63-38-3.5~~] 63J-1-306(7), the department has
65894 authority to operate as an internal service fund agency as provided in Section [~~63-38-3.5~~]
65895 63J-1-306.

65896 Section 1299. Section **63F-1-204** is amended to read:

65897 **63F-1-204. Agency information technology plans.**

65898 (1) (a) By July 1 of each year, each executive branch agency shall submit an agency
65899 information technology plan to the chief information officer at the department level, unless the
65900 governor or the chief information officer request an information technology plan be submitted
65901 by a subunit of a department, or by an executive branch agency other than a department.

65902 (b) The information technology plans required by this section shall be in the form and
65903 level of detail required by the chief information officer, by administrative rule adopted in
65904 accordance with Section 63F-1-206, and shall include, at least:

65905 (i) the information technology objectives of the agency;

65906 (ii) any performance measures used by the agency for implementing the agency's
65907 information technology objectives;

65908 (iii) any planned expenditures related to information technology;

65909 (iv) the agency's need for appropriations for information technology;

65910 (v) how the agency's development of information technology coordinates with other
65911 state and local governmental entities;

65912 (vi) any efforts the agency has taken to develop public and private partnerships to
65913 accomplish the information technology objectives of the agency; and

65914 (vii) the efforts the executive branch agency has taken to conduct transactions
65915 electronically in compliance with Section 46-4-503.

65916 (2) (a) Except as provided in Subsection (2)(b), an agency information technology plan
65917 described in Subsection (1) shall comply with the executive branch strategic plan established in
65918 accordance with Section 63F-1-203.

65919 (b) If the executive branch agency submitting the agency information technology plan
65920 justifies the need to depart from the executive branch strategic plan, an agency information
65921 technology plan may depart from the executive branch strategic plan to the extent approved by
65922 the chief information officer.

65923 (3) (a) On receipt of a state agency information technology plan, the chief information
65924 officer shall forward a complete copy of the agency information technology plan to the Division
65925 of Enterprise Technology created in Section 63F-1-401 and the Division of Integrated
65926 Technology created in Section 63F-1-501.

65927 (b) The divisions shall provide the chief information officer a written analysis of each
65928 agency plan submitted in accordance with Sections 63F-1-404 and 63F-1-504.

65929 (4) (a) The chief information officer shall review each agency plan to determine:

65930 (i) (A) whether the agency plan complies with the executive branch strategic plan and
65931 state information architecture; or

65932 (B) to the extent that the agency plan does not comply with the executive branch
65933 strategic plan or state information architecture, whether the executive branch entity is justified
65934 in departing from the executive branch strategic plan, or state information architecture; and

65935 (ii) whether the agency plan meets the information technology and other needs of:

65936 (A) the executive branch agency submitting the plan; and

65937 (B) the state.

65938 (b) In conducting the review required by Subsection (4)(a), the chief information officer
65939 shall consider the analysis submitted by the divisions under Subsection (3).

65940 (5) After the chief information officer conducts the review described in Subsection (4)
65941 of an agency information technology plan, the chief information officer may:

- 65942 (a) approve the agency information technology plan;
- 65943 (b) disapprove the agency information technology plan; or
- 65944 (c) recommend modifications to the agency information technology plan.
- 65945 (6) An executive branch agency or the department may not submit a request for
- 65946 appropriation related to information technology or an information technology system to the
- 65947 governor in accordance with Section [~~63-38-2~~] 63J-1-201 until after the executive branch
- 65948 agency's information technology plan is approved by the chief information officer.

65949 Section 1300. Section **63F-1-205** is amended to read:

65950 **63F-1-205. Approval of acquisitions of information technology.**

65951 (1) (a) In accordance with Subsection (2), the chief information officer shall approve

65952 the acquisition by an executive branch agency of:

- 65953 (i) information technology equipment;
- 65954 (ii) telecommunications equipment;
- 65955 (iii) software;
- 65956 (iv) services related to the items listed in Subsections (1)(a)(i) through (iii); and
- 65957 (v) data acquisition.

65958 (b) The chief information officer may negotiate the purchase, lease, or rental of private

65959 or public information technology or telecommunication services or facilities in accordance with

65960 this section.

65961 (c) Where practical, efficient, and economically beneficial, the chief information officer

65962 shall use existing private and public information technology or telecommunication resources.

65963 (2) Before negotiating a purchase, lease, or rental under Subsection (1) for an amount

65964 that exceeds the value established by the chief information officer by rule in accordance with

65965 Section 63F-1-206, the chief information officer shall:

65966 (a) conduct an analysis of the needs of executive branch agencies and subscribers of

65967 services and the ability of the proposed information technology or telecommunications services

65968 or supplies to meet those needs; and

65969 (b) for purchases, leases, or rentals not covered by an existing statewide contract,

65970 provide in writing to the chief procurement officer in the Division of Purchasing and General
65971 Services that:

- 65972 (i) the analysis required in Subsection (2)(a) was completed; and
- 65973 (ii) based on the analysis, the proposed purchase, lease, rental, or master contract of
65974 services, products, or supplies is practical, efficient, and economically beneficial to the state and
65975 the executive branch agency or subscriber of services.

65976 (3) In approving an acquisition described in Subsections (1) and (2), the chief
65977 information officer shall:

65978 (a) establish by administrative rule, in accordance with Section 63F-1-206, standards
65979 under which an agency must obtain approval from the chief information officer before acquiring
65980 the items listed in Subsections (1) and (2);

65981 (b) for those acquisitions requiring approval, determine whether the acquisition is in
65982 compliance with:

- 65983 (i) the executive branch strategic plan;
- 65984 (ii) the applicable agency information technology plan;
- 65985 (iii) the budget for the executive branch agency or department as adopted by the
65986 Legislature; and

65987 (iv) [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code; and

65988 (c) in accordance with Section 63F-1-207, require coordination of acquisitions between
65989 two or more executive branch agencies if it is in the best interests of the state.

65990 (4) (a) Each executive branch agency shall provide the chief information officer with
65991 complete access to all information technology records, documents, and reports:

- 65992 (i) at the request of the chief information officer; and
- 65993 (ii) related to the executive branch agency's acquisition of any item listed in Subsection
65994 (1).

65995 (b) Beginning July 1, 2006 and in accordance with administrative rules established by
65996 the department under Section 63F-1-206, no new technology projects may be initiated by an
65997 executive branch agency or the department unless the technology project is described in a

65998 formal project plan and the business case analysis has been approved by the chief information
65999 officer and agency head. The project plan and business case analysis required by this Subsection
66000 (4) shall be in the form required by the chief information officer, and shall include:

- 66001 (i) a statement of work to be done and existing work to be modified or displaced;
- 66002 (ii) total cost of system development and conversion effort, including system analysis
66003 and programming costs, establishment of master files, testing, documentation, special equipment
66004 cost and all other costs, including overhead;
- 66005 (iii) savings or added operating costs that will result after conversion;
- 66006 (iv) other advantages or reasons that justify the work;
- 66007 (v) source of funding of the work, including ongoing costs;
- 66008 (vi) consistency with budget submissions and planning components of budgets; and
- 66009 (vii) whether the work is within the scope of projects or initiatives envisioned when the
66010 current fiscal year budget was approved.

66011 (5) (a) The chief information officer and the Division of Purchasing and General
66012 Services shall work cooperatively to establish procedures under which the chief information
66013 officer shall monitor and approve acquisitions as provided in this section.

66014 (b) The procedures established under this section shall include at least the written
66015 certification required by Subsection [~~63-56-204~~] 63G-6-204(8).

66016 Section 1301. Section ~~63F-1-206~~ is amended to read:

66017 **63F-1-206. Rulemaking -- Policies.**

66018 (1) (a) Except as provided in Subsection (2), in accordance with [~~Title 63, Chapter 46a~~]
66019 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the chief information officer shall
66020 make rules that:

- 66021 (i) provide standards that impose requirements on executive branch agencies that:
 - 66022 (A) are related to the security of the statewide area network; and
 - 66023 (B) establish standards for when an agency must obtain approval before obtaining items
66024 listed in Subsection 63F-1-205(1);
- 66025 (ii) specify the detail and format required in an agency information technology plan

66026 submitted in accordance with Section 63F-1-204;

66027 (iii) provide for standards related to the privacy policies of websites operated by or on

66028 behalf of an executive branch agency;

66029 (iv) provide for the acquisition, licensing, and sale of computer software;

66030 (v) specify the requirements for the project plan and business case analysis required by

66031 Section 63F-1-205;

66032 (vi) provide for project oversight of agency technology projects when required by

66033 Section 63F-1-205;

66034 (vii) establish, in accordance with Subsection 63F-1-205(2), the implementation of the

66035 needs assessment for information technology purchases; and

66036 (viii) establish telecommunications standards and specifications in accordance with

66037 Section 63F-1-404.

66038 (b) The rulemaking authority in this Subsection (1) is in addition to any other

66039 rulemaking authority granted by this title.

66040 (2) (a) Notwithstanding [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

66041 Administrative Rulemaking Act, and subject to Subsection (2)(b), the chief information officer

66042 may adopt a policy that outlines procedures to be followed by the chief information officer in

66043 facilitating the implementation of this title by executive branch agencies if the policy:

66044 (i) is consistent with the executive branch strategic plan; and

66045 (ii) is not required to be made by rule under Subsection (1) or Section [~~63-46a-3~~]

66046 63G-3-201.

66047 (b) (i) A policy adopted by the chief information officer under Subsection (2)(a) may

66048 not take effect until 30 days after the day on which the chief information officer submits the

66049 policy to:

66050 (A) the governor; and

66051 (B) all cabinet level officials.

66052 (ii) During the 30-day period described in Subsection (2)(b)(i), cabinet level officials

66053 may review and comment on a policy submitted under Subsection (2)(b)(i).

66054 (3) (a) Notwithstanding Subsection (1) or (2) or [~~Title 63, Chapter 46a~~] Title 63G,
66055 Chapter 3, Utah Administrative Rulemaking Act, without following the procedures of
66056 Subsection (1) or (2), the chief information officer may adopt a security procedure to be
66057 followed by executive branch agencies to protect the statewide area network if:

66058 (i) broad communication of the security procedure would create a significant potential
66059 for increasing the vulnerability of the statewide area network to breach or attack; and

66060 (ii) after consultation with the chief information officer, the governor agrees that broad
66061 communication of the security procedure would create a significant potential increase in the
66062 vulnerability of the statewide area network to breach or attack.

66063 (b) A security procedure described in Subsection (3)(a) is classified as a protected
66064 record under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
66065 Management Act.

66066 (c) The chief information officer shall provide a copy of the security procedure as a
66067 protected record to:

66068 (i) the chief justice of the Utah Supreme Court for the judicial branch;

66069 (ii) the speaker of the House of Representatives and the president of the Senate for the
66070 legislative branch;

66071 (iii) the chair of the Board of Regents; and

66072 (iv) the chair of the State Board of Education.

66073 Section 1302. Section **63F-1-207** is amended to read:

66074 **63F-1-207. Coordination within the executive branch -- Cooperation with other**
66075 **branches.**

66076 (1) In accordance with the executive branch strategic plan and the requirements of this
66077 title, the chief information officer shall coordinate the development of information technology
66078 systems between two or more executive branch agencies subject to:

66079 (a) the budget approved by the Legislature; and

66080 (b) [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act.

66081 (2) In addition to the coordination described in Subsection (1), the chief information

66082 officer shall promote cooperation regarding information technology in a manner consistent with
66083 the interbranch coordination plan created in accordance with Section 63F-1-201.

66084 Section 1303. Section **63F-1-209** is amended to read:

66085 **63F-1-209. Delegation of department staff to executive branch agencies --**
66086 **Prohibition against executive branch agency information technology staff.**

66087 (1) (a) The chief information officer shall assign department staff to serve an agency
66088 in-house if the chief information officer and the executive branch agency director jointly
66089 determine it is appropriate to provide information technology services to:

- 66090 (i) the agency's unique mission critical functions and applications;
- 66091 (ii) the agency's participation in and use of statewide enterprise architecture under the
66092 Division of Enterprise Technology; and
- 66093 (iii) the agency's use of coordinated technology services with other agencies that share
66094 similar characteristics with the agency under the Division of Integrated Technology.

66095 (b) (i) An agency may request the chief information officer to assign in-house staff
66096 support from the department.

66097 (ii) The chief information officer shall respond to the agency's request for in-house staff
66098 support in accordance with Subsection (1)(a).

66099 (c) The department shall enter into service agreements with an agency when department
66100 staff is assigned in-house to the agency under the provisions of this section.

66101 (d) An agency that receives in-house staff support assigned from the department under
66102 the provision of this section is responsible for paying the rates charged by the department for
66103 that staff as established under Section 63F-1-301.

66104 (2) (a) After July 1, 2006, an executive branch agency may not create a full-time
66105 equivalent position or part-time position, or request an appropriation to fund a full-time
66106 equivalent position or part-time position under the provisions of Section [~~63-38-2~~] 63J-1-201
66107 for the purpose of providing information technology services to the agency unless:

- 66108 (i) the chief information officer has approved a delegation under Section 63F-1-208;
- 66109 and

66110 (ii) the Division of Agency Services conducts an audit under Section 63F-1-604 and
66111 finds that the delegation of information technology services to the agency meets the
66112 requirements of Section 63F-1-208.

66113 (b) The prohibition against a request for appropriation under Subsection (2)(a) does not
66114 apply to a request for appropriation needed to pay rates imposed under Subsection (1)(d).

66115 Section 1304. Section **63F-1-301** is amended to read:

66116 **63F-1-301. Cost based services -- Fees -- Rate committee.**

66117 (1) The chief information officer shall:

66118 (a) at the lowest practical cost, manage the delivery of efficient and cost-effective
66119 information technology and telecommunication services for:

66120 (i) all executive branch agencies; and

66121 (ii) entities that subscribe to the services in accordance with Section 63F-1-303; and

66122 (b) provide priority service to public safety agencies.

66123 (2) (a) In accordance with this Subsection (2), the chief information officer shall
66124 prescribe a schedule of fees for all services rendered by the department to:

66125 (i) an executive branch entity; or

66126 (ii) an entity that subscribes to services rendered by the department in accordance with
66127 Section 63F-1-303.

66128 (b) Each fee included in the schedule of fees required by Subsection (2)(a):

66129 (i) shall be equitable;

66130 (ii) should be based upon a zero based, full cost accounting of activities necessary to
66131 provide each service for which a fee is established; and

66132 (iii) for each service multiplied by the projected consumption of the service recovers no
66133 more or less than the full cost of each service.

66134 (c) Before charging a fee for its services to an executive branch agency or to a
66135 subscriber of services other than an executive branch agency, the chief information officer shall:

66136 (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established
66137 in Section 63F-1-302; and

66138 (ii) obtain the approval of the Legislature as required by Section [~~63-38-3.5~~] 63J-1-306.
66139 (d) The chief information officer shall conduct a market analysis by July 1, 2006, and
66140 periodically thereafter, of proposed rates and fees, which analysis shall include a comparison of
66141 the department's rates with the fees of other public or private sector providers where
66142 comparable services and rates are reasonably available.

66143 Section 1305. Section **63F-1-302** is amended to read:

66144 **63F-1-302. Information Technology Rate Committee -- Membership -- Duties.**

66145 (1) (a) There is created an Information Technology Rate Committee which shall consist
66146 of:

- 66147 (i) the director of the Governor's Office of Planning and Budget, or a designee;
- 66148 (ii) the executive directors, or their designee, of three executive branch agencies that
66149 use services and pay rates to one of the department internal service funds, appointed by the
66150 governor for a two-year term;
- 66151 (iii) the director of the Division of Finance, or a designee; and
- 66152 (iv) the chief information officer.

66153 (b) (i) The director of the Division of Finance shall serve as chair of the committee.

66154 (ii) Members of the committee who are state government employees and who do not
66155 receive salary, per diem, or expenses from their agency for their service on the committee shall
66156 receive no compensation, benefits, per diem, or expenses for the member's service on the
66157 committee.

66158 (c) The department shall provide staff services to the committee.

66159 (2) (a) Any internal service funds managed by the department shall submit to the
66160 committee a proposed rate and fee schedule for services rendered by the department to an
66161 executive branch agency or an entity that subscribes to services rendered by the department.

66162 (b) The committee shall:

- 66163 (i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings
66164 Act;
- 66165 (ii) review the proposed rate and fee schedule and determine if the proposed fee is

66166 based on cost recovery as required by Subsection 63F-1-301(2)(b);

66167 (iii) review the proposed rate and fee schedules and may approve, increase, or decrease
66168 the rate and fee;

66169 (iv) recommend a proposed rate and fee schedule for each internal service fund to:

66170 (A) the Governor's Office of Planning and Budget; and

66171 (B) the Office of Legislative Fiscal Analyst for review by the Legislature in accordance
66172 with Section [~~63-38-3.5~~] 63J-1-306, which requires the Legislature to approve the internal
66173 service fund agency's rates, fees, and budget in an appropriations act; and

66174 (v) in accordance with Section [~~63-38-3.5~~] 63J-1-306, review and approve, increase or
66175 decrease an interim rate, fee, or amount when an internal service fund agency begins a new
66176 service or introduces a new product between annual general sessions of the Legislature, which
66177 rate, fee, or amount shall be submitted to the Legislature at the next annual general session.

66178 (c) The committee may in accordance with Subsection [~~63-38-3.5~~] 63J-1-306(4)
66179 decrease a rate, fee, or amount that has been approved by the Legislature.

66180 Section 1306. Section **63F-1-509** is amended to read:

66181 **63F-1-509. Statewide Global Positioning Reference Network created -- Advisory**
66182 **committee.**

66183 (1) (a) There is created the Statewide Global Positioning Reference Network to
66184 improve the quality of geographic information system data and the productivity, efficiency, and
66185 cost-effectiveness of government services.

66186 (b) The network shall provide a system of permanently mounted, fully networked,
66187 global positioning system base stations that will provide real time radio navigation and establish
66188 a standard statewide coordinate reference system.

66189 (c) The center shall administer the network.

66190 (2) (a) There is created the Global Positioning Systems Advisory Committee to advise
66191 the center on implementing and maintaining the network.

66192 (b) The committee membership shall consist of:

66193 (i) the center manager or the manager's designee;

- 66194 (ii) a representative from the Department of Transportation created by Section
- 66195 72-1-201 designated by the executive director appointed under Section 72-1-202;
- 66196 (iii) the chief information officer or the chief information officer's designee;
- 66197 (iv) a representative from the Utah Association of County Surveyors; and
- 66198 (v) a representative from the Utah Council of Land Surveyors.
- 66199 (c) The representative from the center shall be the chair of the committee.
- 66200 (d) The committee shall meet upon the call of the chair or a majority of the committee
- 66201 members.
- 66202 (e) The committee chair shall give reasonable notice to each member prior to any
- 66203 meeting.
- 66204 (f) Three members shall constitute a quorum for the transaction of business.
- 66205 (g) The center shall provide staff support to the committee.
- 66206 (h) Committee members who are state government employees shall receive no
- 66207 additional compensation for their work on the committee.
- 66208 (i) Committee members who are not state government employees shall receive no
- 66209 compensation or expenses for their work on the committee.
- 66210 (j) The committee shall recommend rules to the chief information officer for adoption
- 66211 under Subsection (3).
- 66212 (3) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 66213 Administrative Rulemaking Act, the chief information officer shall make, in consultation with
- 66214 the committee, rules providing for operating policies and procedures for the network.
- 66215 (b) The rules shall consider:
- 66216 (i) network development that serves a public purpose;
- 66217 (ii) increased productivity and efficiency for state agencies; and
- 66218 (iii) costs and longevity of the network.
- 66219 Section 1307. Section **63G-1-101** is enacted to read:

TITLE 63G. GENERAL GOVERNMENT

CHAPTER 1. STATE SYMBOLS AND DESIGNATIONS

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Part 1. General Provisions

63G-1-101. Title.

- (1) This title is known as "General Government."
- (2) This chapter is known as "State Symbols and Designations."

Section 1308. Section **63G-1-201**, which is renumbered from Section 63-13-1.5 is renumbered and amended to read:

Part 2. State Language

[63-13-1.5]. 63G-1-201. Official state language.

- (1) English is declared to be the official language of Utah.
- (2) As the official language of this State, the English language is the sole language of the government, except as otherwise provided in this section.

(3) Except as provided in Subsection (4), all official documents, transactions, proceedings, meetings, or publications issued, conducted, or regulated by, on behalf of, or representing the state and its political subdivisions shall be in English.

(4) Languages other than English may be used when required:

- (a) by the United States Constitution, the Utah State Constitution, federal law, or federal regulation;
- (b) by law enforcement or public health and safety needs;
- (c) by public and higher education systems according to rules made by the State Board of Education and the State Board of Regents to comply with Subsection (5);
- (d) in judicial proceedings, when necessary to insure that justice is served;
- (e) to promote and encourage tourism and economic development, including the hosting of international events such as the Olympics; and
- (f) by libraries to:
 - (i) collect and promote foreign language materials; and
 - (ii) provide foreign language services and activities.

(5) The State Board of Education and the State Board of Regents shall make rules governing the use of foreign languages in the public and higher education systems that promote

66250 the following principles:

66251 (a) non-English speaking children and adults should become able to read, write, and
66252 understand English as quickly as possible;

66253 (b) foreign language instruction should be encouraged;

66254 (c) formal and informal programs in English as a Second Language should be initiated,
66255 continued, and expanded; and

66256 (d) public schools should establish communication with non-English speaking parents of
66257 children within their systems, using a means designed to maximize understanding when
66258 necessary, while encouraging those parents who do not speak English to become more
66259 proficient in English.

66260 (e) Unless exempted by Subsection (4), all state funds appropriated or designated for
66261 the printing or translation of materials or the provision of services or information in a language
66262 other than English shall be returned to the General Fund.

66263 (a) Each state agency that has state funds appropriated or designated for the printing or
66264 translation of materials or the provision of services or information in a language other than
66265 English shall:

66266 (i) notify the Division of Finance that those monies exist and the amount of those
66267 monies; and

66268 (ii) return those monies to the Division of Finance.

66269 (b) The Division of Finance shall account for those monies and inform the Legislature
66270 of the existence and amount of those monies at the beginning of the Legislature's annual general
66271 session.

66272 (c) The Legislature may appropriate any monies received under this section to the State
66273 School Board for use in English as a Second Language programs.

66274 (7) Nothing in this section affects the ability of government employees, private
66275 businesses, non-profit organizations, or private individuals to exercise their rights under:

66276 (a) the First Amendment of the United States Constitution; and

66277 (b) Utah Constitution, Article 1, Sections 1 and 15.

66278 (8) If any provision of this section, or the application of any such provision to any
66279 person or circumstance, is held invalid, the remainder of this act shall be given effect without the
66280 invalid provision or application.

66281 Section 1309. Section **63G-1-301**, which is renumbered from Section 63-13-2 is
66282 renumbered and amended to read:

66283 **Part 3. State Holidays**

66284 **~~[63-13-2].~~ 63G-1-301. Legal holidays -- Personal preference day -- Governor**
66285 **authorized to declare additional days.**

66286 (1) (a) The following-named days are legal holidays in this state:

66287 (i) every Sunday;

66288 (ii) January 1, called New Year's Day;

66289 (iii) the third Monday of January, called Dr. Martin Luther King, Jr. Day;

66290 (iv) the third Monday of February, called Washington and Lincoln Day;

66291 (v) the last Monday of May, called Memorial Day;

66292 (vi) July 4, called Independence Day;

66293 (vii) July 24, called Pioneer Day;

66294 (viii) the first Monday of September, called Labor Day;

66295 (ix) the second Monday of October, called Columbus Day;

66296 (x) November 11, called Veterans' Day;

66297 (xi) the fourth Thursday of November, called Thanksgiving Day;

66298 (xii) December 25, called Christmas; and

66299 (xiii) all days which may be set apart by the President of the United States, or the
66300 governor of this state by proclamation as days of fast or thanksgiving.

66301 (b) If any of the holidays under Subsection (1)(a), except the first mentioned, namely
66302 Sunday, falls on Sunday, then the following Monday shall be the holiday.

66303 (c) If any of the holidays under Subsection (1)(a) falls on Saturday the preceding Friday
66304 shall be the holiday.

66305 (d) Each employee may select one additional day, called Personal Preference Day, to be

66306 scheduled pursuant to rules adopted by the Department of Human Resource Management.

66307 (2) (a) Whenever in [~~his~~] the governor's opinion extraordinary conditions exist justifying
66308 the action, the governor may:

66309 (i) declare, by proclamation, legal holidays in addition to those holidays under
66310 Subsection (1); and

66311 (ii) limit the holidays to certain classes of business and activities to be designated by
66312 [~~him~~] the governor.

66313 (b) A holiday may not extend for a longer period than 60 consecutive days.

66314 (c) Any holiday may be renewed for one or more periods not exceeding 30 days each as
66315 the governor may consider necessary, and any holiday may, by like proclamation, be terminated
66316 before the expiration of the period for which it was declared.

66317 Section 1310. Section **63G-1-401**, which is renumbered from Section 63-13-5.6 is
66318 renumbered and amended to read:

66319 **Part 4. State Commemorative Periods**

66320 [~~63-13-5.6~~]. **63G-1-401. Commemorative periods.**

66321 (1) The following days shall be commemorated yearly:

66322 (a) Bill of Rights Day, on December 15;

66323 (b) Constitution Day, on September 17;

66324 (c) Yellow Ribbon Day, on the third Monday in May, in honor of men and women who
66325 are serving or have served in the U.S. armed forces around the world in defense of freedom;

66326 (d) POW/MIA Recognition Day, on the third Friday in September; and

66327 (e) Indigenous People Day, the Monday immediately preceding Thanksgiving.

66328 (2) The Department of Veterans' Affairs shall coordinate activities, special programs,
66329 and promotional information to heighten public awareness and involvement relating to
66330 Subsections (1)(c) and (d).

66331 (3) The month of November shall be commemorated yearly as American Indian
66332 Heritage Month.

66333 (4) The first full week of May shall be commemorated yearly as State Water Week to

66334 recognize the importance of water conservation, quality, and supply in the state.

66335 Section 1311. Section **63G-1-501**, which is renumbered from Section 63-13-5 is
66336 renumbered and amended to read:

66337 **Part 5. State Flag**

66338 **[~~63-13-5~~]. 63G-1-501. State flag.**

66339 The state flag of Utah shall be a flag of blue field, fringed, with gold borders, with the
66340 following device worked in natural colors on the center of the blue field:

66341 The center a shield; above the shield and thereon an American eagle with outstretched
66342 wings; the top of the shield pierced with six arrows arranged crosswise; upon the shield under
66343 the arrows the word "Industry," and below the word "Industry" on the center of the shield, a
66344 beehive; on each side of the beehive, growing sego lilies; below the beehive and near the bottom
66345 of the shield, the word "Utah," and below the word "Utah" and on the bottom of the shield, the
66346 figures "1847"; with the appearance of being back of the shield there shall be two American
66347 flags on flagstuffs placed crosswise with the flag so draped that they will project beyond each
66348 side of the shield, the heads of the flagstuffs appearing in front of the eagle's wings and the
66349 bottom of each staff appearing over the face of the draped flag below the shield; below the
66350 shield and flags and upon the blue field, the figures "1896"; around the entire design, a narrow
66351 circle in gold.

66352 Section 1312. Section **63G-1-601**, which is renumbered from Section 63-13-5.5 is
66353 renumbered and amended to read:

66354 **Part 6. State Symbols**

66355 **[~~63-13-5.5~~]. 63G-1-601. State symbols.**

66356 (1) Utah's state animal is the elk.

66357 (2) Utah's state bird is the sea gull.

66358 (3) Utah's state centennial astronomical symbol is the Beehive Cluster located in the
66359 constellation of Cancer the Crab.

66360 (4) Utah's state centennial star is Dubhe, one of the seven bright stars composing the
66361 Big Dipper in the constellation Ursa Major.

66362 (5) Utah's state centennial tartan, which honors the first Scots known to have been in
66363 Utah and those Utahns of Scottish heritage, shall have a pattern or repeating-half-sett of
66364 white-2, blue-6, red-6, blue-4, red-6, green-18, red-6, and white-4 to represent the tartan worn
66365 anciently by the Logan and Skene clans, with the addition of a white stripe.

66366 (6) Utah's state cooking pot is the dutch oven.

66367 (7) Utah's state emblem is the beehive.

66368 (8) Utah's state fish is the Bonneville cutthroat trout.

66369 (9) Utah's state flower is the sego lily.

66370 (10) Utah's state folk dance is the square dance, the folk dance that is called, cued, or
66371 prompted to the dancers and includes squares, rounds, clogging, contra, line, and heritage
66372 dances.

66373 (11) Utah's state fossil is the Allosaurus.

66374 (12) Utah's state fruit is the cherry.

66375 (13) Utah's state vegetable is the Spanish sweet onion.

66376 (14) Utah's historic state vegetable is the sugar beet.

66377 (15) Utah's state gem is topaz, as is prominently found in the Thomas Mountain Range
66378 in Juab County, Utah.

66379 (16) Utah's state grass is Indian rice grass.

66380 (17) Utah's state hymn is "Utah We Love Thee" by Evan Stephens.

66381 (18) Utah's state insect is the honeybee.

66382 (19) Utah's state mineral is copper.

66383 (20) Utah's state motto is "Industry."

66384 (21) Utah's state railroad museum is Ogden Union Station.

66385 (22) Utah's state rock is coal.

66386 (23) Utah's state song is "Utah This is the Place" by Sam and Gary Francis.

66387 (24) Utah's state tree is the blue spruce.

66388 Section 1313. Section **63G-2-101**, which is renumbered from Section 63-2-101 is
66389 renumbered and amended to read:

66390 **CHAPTER 2. GOVERNMENT RECORDS ACCESS AND MANAGEMENT ACT**

66391 **Part 1. General Provisions**

66392 ~~[63-2-101]~~. **63G-2-101. Title.**

66393 This chapter is known as the "Government Records Access and Management Act."

66394 Section 1314. Section **63G-2-102**, which is renumbered from Section 63-2-102 is

66395 renumbered and amended to read:

66396 ~~[63-2-102]~~. **63G-2-102. Legislative intent.**

66397 (1) In enacting this act, the Legislature recognizes two constitutional rights:

66398 (a) the public's right of access to information concerning the conduct of the public's
66399 business; and

66400 (b) the right of privacy in relation to personal data gathered by governmental entities.

66401 (2) The Legislature also recognizes a public policy interest in allowing a government to
66402 restrict access to certain records, as specified in this chapter, for the public good.

66403 (3) It is the intent of the Legislature to:

66404 (a) promote the public's right of easy and reasonable access to unrestricted public
66405 records;

66406 (b) specify those conditions under which the public interest in allowing restrictions on
66407 access to records may outweigh the public's interest in access;

66408 (c) prevent abuse of confidentiality by governmental entities by permitting confidential
66409 treatment of records only as provided in this chapter;

66410 (d) provide guidelines for both disclosure and restrictions on access to government
66411 records, which are based on the equitable weighing of the pertinent interests and which are
66412 consistent with nationwide standards of information practices;

66413 (e) favor public access when, in the application of this act, countervailing interests are
66414 of equal weight; and

66415 (f) establish fair and reasonable records management practices.

66416 Section 1315. Section **63G-2-103**, which is renumbered from Section 63-2-103 is

66417 renumbered and amended to read:

66418 ~~[63-2-103]~~. 63G-2-103. **Definitions.**

66419 As used in this chapter:

66420 (1) "Audit" means:

66421 (a) a systematic examination of financial, management, program, and related records for
66422 the purpose of determining the fair presentation of financial statements, adequacy of internal
66423 controls, or compliance with laws and regulations; or

66424 (b) a systematic examination of program procedures and operations for the purpose of
66425 determining their effectiveness, economy, efficiency, and compliance with statutes and
66426 regulations.

66427 (2) "Chronological logs" mean the regular and customary summary records of law
66428 enforcement agencies and other public safety agencies that show:

66429 (a) the time and general nature of police, fire, and paramedic calls made to the agency;
66430 and

66431 (b) [~~and~~] any arrests or jail bookings made by the agency.

66432 (3) "Classification," "classify," and their derivative forms mean determining whether a
66433 record series, record, or information within a record is public, private, controlled, protected, or
66434 exempt from disclosure under Subsection [~~63-2-201~~] 63G-2-201(3)(b).

66435 (4) (a) "Computer program" means:

66436 (i) a series of instructions or statements that permit the functioning of a computer
66437 system in a manner designed to provide storage, retrieval, and manipulation of data from the
66438 computer system; and

66439 (ii) any associated documentation and source material that explain how to operate the
66440 computer program.

66441 (b) "Computer program" does not mean:

66442 (i) the original data, including numbers, text, voice, graphics, and images;

66443 (ii) analysis, compilation, and other manipulated forms of the original data produced by
66444 use of the program; or

66445 (iii) the mathematical or statistical formulas, excluding the underlying mathematical

66446 algorithms contained in the program, that would be used if the manipulated forms of the original
66447 data were to be produced manually.

66448 (5) (a) "Contractor" means:

66449 (i) any person who contracts with a governmental entity to provide goods or services
66450 directly to a governmental entity; or

66451 (ii) any private, nonprofit organization that receives funds from a governmental entity.

66452 (b) "Contractor" does not mean a private provider.

66453 (6) "Controlled record" means a record containing data on individuals that is controlled
66454 as provided by Section [~~63-2-303~~] 63G-2-304.

66455 (7) "Designation," "designate," and their derivative forms mean indicating, based on a
66456 governmental entity's familiarity with a record series or based on a governmental entity's review
66457 of a reasonable sample of a record series, the primary classification that a majority of records in
66458 a record series would be given if classified and the classification that other records typically
66459 present in the record series would be given if classified.

66460 (8) "Elected official" means each person elected to a state office, county office,
66461 municipal office, school board or school district office, local district office, or special service
66462 district office, but does not include judges.

66463 (9) "Explosive" means a chemical compound, device, or mixture:

66464 (a) commonly used or intended for the purpose of producing an explosion; and

66465 (b) that contains oxidizing or combustive units or other ingredients in proportions,
66466 quantities, or packing so that:

66467 (i) an ignition by fire, friction, concussion, percussion, or detonator of any part of the
66468 compound or mixture may cause a sudden generation of highly heated gases; and

66469 (ii) the resultant gaseous pressures are capable of:

66470 (A) producing destructive effects on contiguous objects; or

66471 (B) causing death or serious bodily injury.

66472 (10) "Government audit agency" means any governmental entity that conducts an audit.

66473 (11) (a) "Governmental entity" means:

66474 (i) executive department agencies of the state, the offices of the governor, lieutenant
66475 governor, state auditor, attorney general, and state treasurer, the Board of Pardons and Parole,
66476 the Board of Examiners, the National Guard, the Career Service Review Board, the State Board
66477 of Education, the State Board of Regents, and the State Archives;

66478 (ii) the Office of the Legislative Auditor General, Office of the Legislative Fiscal
66479 Analyst, Office of Legislative Research and General Counsel, the Legislature, and legislative
66480 committees, except any political party, group, caucus, or rules or sifting committee of the
66481 Legislature;

66482 (iii) courts, the Judicial Council, the Office of the Court Administrator, and similar
66483 administrative units in the judicial branch;

66484 (iv) any state-funded institution of higher education or public education; or

66485 (v) any political subdivision of the state, but, if a political subdivision has adopted an
66486 ordinance or a policy relating to information practices pursuant to Section [~~63-2-701~~]
66487 63G-2-701, this chapter shall apply to the political subdivision to the extent specified in Section
66488 [~~63-2-701~~] 63G-2-701 or as specified in any other section of this chapter that specifically refers
66489 to political subdivisions.

66490 (b) "Governmental entity" also means every office, agency, board, bureau, committee,
66491 department, advisory board, or commission of an entity listed in Subsection (11)(a) that is
66492 funded or established by the government to carry out the public's business.

66493 (12) "Gross compensation" means every form of remuneration payable for a given
66494 period to an individual for services provided including salaries, commissions, vacation pay,
66495 severance pay, bonuses, and any board, rent, housing, lodging, payments in kind, and any
66496 similar benefit received from the individual's employer.

66497 (13) "Individual" means a human being.

66498 (14) (a) "Initial contact report" means an initial written or recorded report, however
66499 titled, prepared by peace officers engaged in public patrol or response duties describing official
66500 actions initially taken in response to either a public complaint about or the discovery of an
66501 apparent violation of law, which report may describe:

- 66502 (i) the date, time, location, and nature of the complaint, the incident, or offense;
- 66503 (ii) names of victims;
- 66504 (iii) the nature or general scope of the agency's initial actions taken in response to the
66505 incident;
- 66506 (iv) the general nature of any injuries or estimate of damages sustained in the incident;
- 66507 (v) the name, address, and other identifying information about any person arrested or
66508 charged in connection with the incident; or
- 66509 (vi) the identity of the public safety personnel, except undercover personnel, or
66510 prosecuting attorney involved in responding to the initial incident.
- 66511 (b) Initial contact reports do not include follow-up or investigative reports prepared
66512 after the initial contact report. However, if the information specified in Subsection (14)(a)
66513 appears in follow-up or investigative reports, it may only be treated confidentially if it is private,
66514 controlled, protected, or exempt from disclosure under Subsection [~~63-2-201~~]
66515 63G-2-201(3)(b).
- 66516 (15) "Legislative body" means the Legislature.
- 66517 (16) "Notice of compliance" means a statement confirming that a governmental entity
66518 has complied with a records committee order.
- 66519 (17) "Person" means:
- 66520 (a) an individual;
- 66521 (b) a nonprofit or profit corporation;
- 66522 (c) a partnership;
- 66523 (d) a sole proprietorship;
- 66524 (e) other type of business organization; or
- 66525 (f) any combination acting in concert with one another.
- 66526 (18) "Private provider" means any person who contracts with a governmental entity to
66527 provide services directly to the public.
- 66528 (19) "Private record" means a record containing data on individuals that is private as
66529 provided by Section [~~63-2-302~~] 63G-2-302.

66530 (20) "Protected record" means a record that is classified protected as provided by
66531 Section [~~63-2-304~~] 63G-2-305.

66532 (21) "Public record" means a record that is not private, controlled, or protected and that
66533 is not exempt from disclosure as provided in Subsection [~~63-2-201~~] 63G-2-201(3)(b).

66534 (22) (a) "Record" means a book, letter, document, paper, map, plan, photograph, film,
66535 card, tape, recording, electronic data, or other documentary material regardless of physical form
66536 or characteristics:

66537 (i) that is prepared, owned, received, or retained by a governmental entity or political
66538 subdivision; and

66539 (ii) where all of the information in the original is reproducible by photocopy or other
66540 mechanical or electronic means.

66541 (b) "Record" does not mean:

66542 (i) a personal note or personal communication prepared or received by an employee or
66543 officer of a governmental entity in the employee's or officer's private capacity;

66544 (ii) a temporary draft or similar material prepared for the originator's personal use or
66545 prepared by the originator for the personal use of an individual for whom the originator is
66546 working;

66547 (iii) material that is legally owned by an individual in the individual's private capacity;

66548 (iv) material to which access is limited by the laws of copyright or patent unless the
66549 copyright or patent is owned by a governmental entity or political subdivision;

66550 (v) proprietary software;

66551 (vi) junk mail or a commercial publication received by a governmental entity or an
66552 official or employee of a governmental entity;

66553 (vii) a book that is cataloged, indexed, or inventoried and contained in the collections of
66554 a library open to the public;

66555 (viii) material that is cataloged, indexed, or inventoried and contained in the collections
66556 of a library open to the public, regardless of physical form or characteristics of the material;

66557 (ix) a daily calendar or other personal note prepared by the originator for the

66558 originator's personal use or for the personal use of an individual for whom the originator is
66559 working;

66560 (x) a computer program that is developed or purchased by or for any governmental
66561 entity for its own use;

66562 (xi) a note or internal memorandum prepared as part of the deliberative process by:

66563 (A) a member of the judiciary;

66564 (B) an administrative law judge;

66565 (C) a member of the Board of Pardons and Parole; or

66566 (D) a member of any other body charged by law with performing a quasi-judicial
66567 function; or

66568 (xii) a telephone number or similar code used to access a mobile communication device
66569 that is used by an employee or officer of a governmental entity, provided that the employee or
66570 officer of the governmental entity has designated at least one business telephone number that is
66571 a public record as provided in Section [~~63-2-301~~] 63G-2-301.

66572 (23) "Record series" means a group of records that may be treated as a unit for
66573 purposes of designation, description, management, or disposition.

66574 (24) "Records committee" means the State Records Committee created in Section
66575 [~~63-2-501~~] 63G-2-501.

66576 (25) "Records officer" means the individual appointed by the chief administrative officer
66577 of each governmental entity, or the political subdivision to work with state archives in the care,
66578 maintenance, scheduling, designation, classification, disposal, and preservation of records.

66579 (26) "Schedule," "scheduling," and their derivative forms mean the process of
66580 specifying the length of time each record series should be retained by a governmental entity for
66581 administrative, legal, fiscal, or historical purposes and when each record series should be
66582 transferred to the state archives or destroyed.

66583 (27) "Sponsored research" means research, training, and other sponsored activities as
66584 defined by the federal Executive Office of the President, Office of Management and Budget:

66585 (a) conducted:

66586 (i) by an institution within the state system of higher education defined in Section
66587 53B-1-102; and

66588 (ii) through an office responsible for sponsored projects or programs; and

66589 (b) funded or otherwise supported by an external:

66590 (i) person that is not created or controlled by the institution within the state system of
66591 higher education; or

66592 (ii) federal, state, or local governmental entity.

66593 (28) "State archives" means the Division of Archives and Records Service created in
66594 Section ~~[63-2-90]~~ 63A-12-101.

66595 (29) "State archivist" means the director of the state archives.

66596 (30) "Summary data" means statistical records and compilations that contain data
66597 derived from private, controlled, or protected information but that do not disclose private,
66598 controlled, or protected information.

66599 Section 1316. Section **63G-2-104**, which is renumbered from Section 63-2-104 is
66600 renumbered and amended to read:

66601 ~~[63-2-104]~~. **63G-2-104. Administrative Procedures Act not applicable.**

66602 ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, does not
66603 apply to this chapter except as provided in Section ~~[63-2-603]~~ 63G-2-603.

66604 Section 1317. Section **63G-2-105**, which is renumbered from Section 63-2-105 is
66605 renumbered and amended to read:

66606 ~~[63-2-105]~~. **63G-2-105. Confidentiality agreements.**

66607 If a governmental entity or political subdivision receives a request for a record that is
66608 subject to a confidentiality agreement executed before April 1, 1992, the law in effect at the
66609 time the agreement was executed, including late judicial interpretations of the law, shall govern
66610 access to the record, unless all parties to the confidentiality agreement agree in writing to be
66611 governed by the provisions of this chapter.

66612 Section 1318. Section **63G-2-106**, which is renumbered from Section 63-2-106 is
66613 renumbered and amended to read:

66614 ~~[63-2-106].~~ **63G-2-106. Records of security measures.**

66615 The records of a governmental entity or political subdivision regarding security
66616 measures designed for the protection of persons or property, public or private, are not subject
66617 to this chapter. These records include:

- 66618 (1) security plans;
- 66619 (2) security codes and combinations, and passwords;
- 66620 (3) passes and keys;
- 66621 (4) security procedures; and
- 66622 (5) building and public works designs, to the extent that the records or information
66623 relate to the ongoing security measures of a public entity.

66624 Section 1319. Section **63G-2-107**, which is renumbered from Section 63-2-107 is
66625 renumbered and amended to read:

66626 ~~[63-2-107].~~ **63G-2-107. Disclosure of records subject to federal law.**

66627 Notwithstanding the provisions of Subsections ~~[63-2-201]~~ 63G-2-201(6)(a) and (b), this
66628 chapter does not apply to a record containing protected health information as defined in 45
66629 C.F.R., Part 164, Standards for Privacy of Individually Identifiable Health Information, if the
66630 record is:

- 66631 (1) controlled or maintained by a governmental entity; and
- 66632 (2) governed by 45 C.F.R., Parts 160 and 164, Standards for Privacy of Individually
66633 Identifiable Health Information.

66634 Section 1320. Section **63G-2-201**, which is renumbered from Section 63-2-201 is
66635 renumbered and amended to read:

66636 **Part 2. Access to Records**

66637 ~~[63-2-201].~~ **63G-2-201. Right to inspect records and receive copies of records.**

66638 (1) Every person has the right to inspect a public record free of charge, and the right to
66639 take a copy of a public record during normal working hours, subject to Sections ~~[63-2-203]~~
66640 63G-2-203 and ~~[63-2-204]~~ 63G-2-204.

66641 (2) A record is public unless otherwise expressly provided by statute.

66642 (3) The following records are not public:

66643 (a) a record that is private, controlled, or protected under Sections [~~63-2-302~~]
66644 63G-2-302, [~~63-2-302.5~~] 63G-2-303, [~~63-2-303~~] 63G-2-304, and [~~63-2-304~~] 63G-2-305; and

66645 (b) a record to which access is restricted pursuant to court rule, another state statute,
66646 federal statute, or federal regulation, including records for which access is governed or
66647 restricted as a condition of participation in a state or federal program or for receiving state or
66648 federal funds.

66649 (4) Only a record specified in Section [~~63-2-302~~] 63G-2-302, [~~63-2-302.5~~] 63G-2-303,
66650 [~~63-2-303~~] 63G-2-304, or [~~63-2-304~~] 63G-2-305 may be classified private, controlled, or
66651 protected.

66652 (5) (a) A governmental entity may not disclose a record that is private, controlled, or
66653 protected to any person except as provided in Subsection (5)(b), Subsection (5)(c), Section
66654 [~~63-2-202~~] 63G-2-202, [~~63-2-206~~] 63G-2-206, or [~~63-2-302.5~~] 63G-2-303.

66655 (b) A governmental entity may disclose a record that is private under Subsection
66656 [~~63-2-302~~] 63G-2-302(2) or protected under Section [~~63-2-304~~] 63G-2-305 to persons other
66657 than those specified in Section [~~63-2-202~~] 63G-2-202 or [~~63-2-206~~] 63G-2-206 if the head of a
66658 governmental entity, or a designee, determines that:

66659 (i) there is no interest in restricting access to the record; or

66660 (ii) the interests favoring access outweighs the interest favoring restriction of access.

66661 (c) In addition to the disclosure under Subsection (5)(b), a governmental entity may
66662 disclose a record that is protected under Subsection [~~63-2-304~~] 63G-2-305(51) if:

66663 (i) the head of the governmental entity, or a designee, determines that the disclosure:

66664 (A) is mutually beneficial to:

66665 (I) the subject of the record;

66666 (II) the governmental entity; and

66667 (III) the public; and

66668 (B) serves a public purpose related to:

66669 (I) public safety; or

- 66670 (II) consumer protection; and
- 66671 (ii) the person who receives the record from the governmental entity agrees not to use
66672 or allow the use of the record for advertising or solicitation purposes.
- 66673 (6) (a) The disclosure of a record to which access is governed or limited pursuant to
66674 court rule, another state statute, federal statute, or federal regulation, including a record for
66675 which access is governed or limited as a condition of participation in a state or federal program
66676 or for receiving state or federal funds, is governed by the specific provisions of that statute, rule,
66677 or regulation.
- 66678 (b) This chapter applies to records described in Subsection (6)(a) insofar as this chapter
66679 is not inconsistent with the statute, rule, or regulation.
- 66680 (7) A governmental entity shall provide a person with a certified copy of a record if:
- 66681 (a) the person requesting the record has a right to inspect it;
- 66682 (b) the person identifies the record with reasonable specificity; and
- 66683 (c) the person pays the lawful fees.
- 66684 (8) (a) In response to a request, a governmental entity is not required to:
- 66685 (i) create a record;
- 66686 (ii) compile, format, manipulate, package, summarize, or tailor information;
- 66687 (iii) provide a record in a particular format, medium, or program not currently
66688 maintained by the governmental entity;
- 66689 (iv) fulfill a person's records request if the request unreasonably duplicates prior records
66690 requests from that person; or
- 66691 (v) fill a person's records request if:
- 66692 (A) the record requested is accessible in the identical physical form and content in a
66693 public publication or product produced by the governmental entity receiving the request;
- 66694 (B) the governmental entity provides the person requesting the record with the public
66695 publication or product; and
- 66696 (C) the governmental entity specifies where the record can be found in the public
66697 publication or product.

66698 (b) Upon request, a governmental entity may provide a record in a particular form
66699 under Subsection (8)(a)(ii) or (iii) if:

66700 (i) the governmental entity determines it is able to do so without unreasonably
66701 interfering with the governmental entity's duties and responsibilities; and

66702 (ii) the requester agrees to pay the governmental entity for providing the record in the
66703 requested form in accordance with Section [~~63-2-203~~] 63G-2-203.

66704 (9) (a) A governmental entity may allow a person requesting more than 50 pages of
66705 records to copy the records if:

66706 (i) the records are contained in files that do not contain records that are exempt from
66707 disclosure, or the records may be segregated to remove private, protected, or controlled
66708 information from disclosure; and

66709 (ii) the governmental entity provides reasonable safeguards to protect the public from
66710 the potential for loss of a public record.

66711 (b) When the requirements of Subsection (9)(a) are met, the governmental entity may:

66712 (i) provide the requester with the facilities for copying the requested records and
66713 require that the requester make the copies; or

66714 (ii) allow the requester to provide the requester's own copying facilities and personnel
66715 to make the copies at the governmental entity's offices and waive the fees for copying the
66716 records.

66717 (10) (a) A governmental entity that owns an intellectual property right and that offers
66718 the intellectual property right for sale or license may control by ordinance or policy the
66719 duplication and distribution of the material based on terms the governmental entity considers to
66720 be in the public interest.

66721 (b) Nothing in this chapter shall be construed to limit or impair the rights or protections
66722 granted to the governmental entity under federal copyright or patent law as a result of its
66723 ownership of the intellectual property right.

66724 (11) A governmental entity may not use the physical form, electronic or otherwise, in
66725 which a record is stored to deny, or unreasonably hinder the rights of a person to inspect and

66726 receive a copy of a record under this chapter.

66727 (12) A governmental entity may provide access to an electronic copy of a record in lieu
66728 of providing access to its paper equivalent.

66729 Section 1321. Section **63G-2-202**, which is renumbered from Section 63-2-202 is
66730 renumbered and amended to read:

66731 **[63-2-202]. 63G-2-202. Access to private, controlled, and protected documents.**

66732 (1) Upon request, a governmental entity shall disclose a private record to:

66733 (a) the subject of the record;

66734 (b) the parent or legal guardian of an unemancipated minor who is the subject of the
66735 record;

66736 (c) the legal guardian of a legally incapacitated individual who is the subject of the
66737 record;

66738 (d) any other individual who:

66739 (i) has a power of attorney from the subject of the record;

66740 (ii) submits a notarized release from the subject of the record or ~~[his]~~ the individual's
66741 legal representative dated no more than 90 days before the date the request is made; or

66742 (iii) if the record is a medical record described in Subsection ~~[63-2-302]~~

66743 63G-2-302(1)(b), is a health care provider, as defined in Section 26-33a-102, if releasing the
66744 record or information in the record is consistent with normal professional practice and medical
66745 ethics; or

66746 (e) any person to whom the record must be provided pursuant to:

66747 (i) court order as provided in Subsection (7); or

66748 (ii) a legislative subpoena as provided in Title 36, Chapter 14.

66749 (2) (a) Upon request, a governmental entity shall disclose a controlled record to:

66750 (i) a physician, psychologist, certified social worker, insurance provider or producer, or
66751 a government public health agency upon submission of:

66752 (A) a release from the subject of the record that is dated no more than 90 days prior to
66753 the date the request is made; and

66754 (B) a signed acknowledgment of the terms of disclosure of controlled information as
66755 provided by Subsection (2)(b); and

66756 (ii) any person to whom the record must be disclosed pursuant to:

66757 (A) a court order as provided in Subsection (7); or

66758 (B) a legislative subpoena as provided in Title 36, Chapter 14.

66759 (b) A person who receives a record from a governmental entity in accordance with
66760 Subsection (2)(a)(i) may not disclose controlled information from that record to any person,
66761 including the subject of the record.

66762 (3) If there is more than one subject of a private or controlled record, the portion of the
66763 record that pertains to another subject shall be segregated from the portion that the requester is
66764 entitled to inspect.

66765 (4) Upon request, a governmental entity shall disclose a protected record to:

66766 (a) the person who submitted the record;

66767 (b) any other individual who:

66768 (i) has a power of attorney from all persons, governmental entities, or political
66769 subdivisions whose interests were sought to be protected by the protected classification; or

66770 (ii) submits a notarized release from all persons, governmental entities, or political
66771 subdivisions whose interests were sought to be protected by the protected classification or from
66772 their legal representatives dated no more than 90 days prior to the date the request is made;

66773 (c) any person to whom the record must be provided pursuant to:

66774 (i) a court order as provided in Subsection (7); or

66775 (ii) a legislative subpoena as provided in Title 36, Chapter 14; or

66776 (d) the owner of a mobile home park, subject to the conditions of Subsection
66777 41-1a-116(5).

66778 (5) A governmental entity may disclose a private, controlled, or protected record to
66779 another governmental entity, political subdivision, another state, the United States, or a foreign
66780 government only as provided by Section [~~63-2-206~~] 63G-2-206.

66781 (6) Before releasing a private, controlled, or protected record, the governmental entity

66782 shall obtain evidence of the requester's identity.

66783 (7) A governmental entity shall disclose a record pursuant to the terms of a court order
66784 signed by a judge from a court of competent jurisdiction, provided that:

66785 (a) the record deals with a matter in controversy over which the court has jurisdiction;

66786 (b) the court has considered the merits of the request for access to the record; and

66787 (c) the court has considered and, where appropriate, limited the requester's use and
66788 further disclosure of the record in order to protect:

66789 (i) privacy interests in the case of private or controlled records;

66790 (ii) business confidentiality interests in the case of records protected under Subsection
66791 ~~[63-2-304]~~ 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

66792 (iii) privacy interests or the public interest in the case of other protected records;

66793 (d) to the extent the record is properly classified private, controlled, or protected, the
66794 interests favoring access, considering limitations thereon, outweigh the interests favoring
66795 restriction of access; and

66796 (e) where access is restricted by a rule, statute, or regulation referred to in Subsection
66797 ~~[63-2-201]~~ 63G-2-201(3)(b), the court has authority independent of this chapter to order
66798 disclosure.

66799 (8) (a) A governmental entity may disclose or authorize disclosure of private or
66800 controlled records for research purposes if the governmental entity:

66801 (i) determines that the research purpose cannot reasonably be accomplished without use
66802 or disclosure of the information to the researcher in individually identifiable form;

66803 (ii) determines that:

66804 (A) the proposed research is bona fide; and

66805 (B) the value of the research outweighs the infringement upon personal privacy;

66806 (iii) (A) requires the researcher to assure the integrity, confidentiality, and security of
66807 the records; and

66808 (B) requires the removal or destruction of the individual identifiers associated with the
66809 records as soon as the purpose of the research project has been accomplished;

66810 (iv) prohibits the researcher from:
66811 (A) disclosing the record in individually identifiable form, except as provided in
66812 Subsection (8)(b); or
66813 (B) using the record for purposes other than the research approved by the governmental
66814 entity; and
66815 (v) secures from the researcher a written statement of the researcher's understanding of
66816 and agreement to the conditions of this Subsection (8) and the researcher's understanding that
66817 violation of the terms of this Subsection (8) may subject the researcher to criminal prosecution
66818 under Section [~~63-2-801~~] 63G-2-801.
66819 (b) A researcher may disclose a record in individually identifiable form if the record is
66820 disclosed for the purpose of auditing or evaluating the research program and no subsequent use
66821 or disclosure of the record in individually identifiable form will be made by the auditor or
66822 evaluator except as provided by this section.
66823 (c) A governmental entity may require indemnification as a condition of permitting
66824 research under this Subsection (8).
66825 (9) (a) Under Subsections [~~63-2-201~~] 63G-2-201(5)(b) and [~~63-2-401~~] 63G-2-401(6),
66826 a governmental entity may disclose to persons other than those specified in this section records
66827 that are:
66828 (i) private under Section [~~63-2-302~~] 63G-2-302; or
66829 (ii) protected under Section [~~63-2-304~~] 63G-2-305 subject to Section [~~63-2-308~~]
66830 63G-2-309 if a claim for business confidentiality has been made under Section [~~63-2-308~~]
66831 63G-2-309.
66832 (b) Under Subsection [~~63-2-403~~] 63G-2-403(11)(b), the records committee may require
66833 the disclosure to persons other than those specified in this section of records that are:
66834 (i) private under Section [~~63-2-302~~] 63G-2-302;
66835 (ii) controlled under Section [~~63-2-303~~] 63G-2-304; or
66836 (iii) protected under Section [~~63-2-304~~] 63G-2-305 subject to Section [~~63-2-308~~]
66837 63G-2-309 if a claim for business confidentiality has been made under Section [~~63-2-308~~]

66838 63G-2-309.

66839 (c) Under Subsection [~~63-2-404~~] 63G-2-404(8), the court may require the disclosure of
66840 records that are private under Section [~~63-2-302~~] 63G-2-302, controlled under Section
66841 [~~63-2-303~~] 63G-2-304, or protected under Section [~~63-2-304~~] 63G-2-305 to persons other than
66842 those specified in this section.

66843 Section 1322. Section **63G-2-203**, which is renumbered from Section 63-2-203 is
66844 renumbered and amended to read:

66845 [~~63-2-203~~]. **63G-2-203. Fees.**

66846 (1) A governmental entity may charge a reasonable fee to cover the governmental
66847 entity's actual cost of providing a record. This fee shall be approved by the governmental
66848 entity's executive officer.

66849 (2) (a) When a governmental entity compiles a record in a form other than that normally
66850 maintained by the governmental entity, the actual costs under this section may include the
66851 following:

66852 (i) the cost of staff time for compiling, formatting, manipulating, packaging,
66853 summarizing, or tailoring the record either into an organization or media to meet the person's
66854 request;

66855 (ii) the cost of staff time for search, retrieval, and other direct administrative costs for
66856 complying with a request; and

66857 (iii) in the case of fees for a record that is the result of computer output other than word
66858 processing, the actual incremental cost of providing the electronic services and products
66859 together with a reasonable portion of the costs associated with formatting or interfacing the
66860 information for particular users, and the administrative costs as set forth in Subsections (2)(a)(i)
66861 and (ii).

66862 (b) An hourly charge under Subsection (2)(a) may not exceed the salary of the lowest
66863 paid employee who, in the discretion of the custodian of records, has the necessary skill and
66864 training to perform the request.

66865 (c) Notwithstanding Subsections (2)(a) and (b), no charge may be made for the first

66866 quarter hour of staff time.

66867 (3) (a) Fees shall be established as provided in this Subsection (3).

66868 (b) A governmental entity with fees established by the Legislature:

66869 (i) shall establish the fees defined in Subsection (2), or other actual costs associated
66870 with this section through the budget process; and

66871 (ii) may use the procedures of Section [~~63-38-3.2~~] 63J-1-303 to set fees until the
66872 Legislature establishes fees through the budget process.

66873 (c) Political subdivisions shall establish fees by ordinance or written formal policy
66874 adopted by the governing body.

66875 (d) The judiciary shall establish fees by rules of the judicial council.

66876 (4) A governmental entity may fulfill a record request without charge and is encouraged
66877 to do so when it determines that:

66878 (a) releasing the record primarily benefits the public rather than a person;

66879 (b) the individual requesting the record is the subject of the record, or an individual
66880 specified in Subsection [~~63-2-202~~] 63G-2-202(1) or (2); or

66881 (c) the requester's legal rights are directly implicated by the information in the record,
66882 and the requester is impecunious.

66883 (5) A governmental entity may not charge a fee for:

66884 (a) reviewing a record to determine whether it is subject to disclosure, except as
66885 permitted by Subsection (2)(a)(ii); or

66886 (b) inspecting a record.

66887 (6) (a) A person who believes that there has been an unreasonable denial of a fee waiver
66888 under Subsection (4) may appeal the denial in the same manner as a person appeals when
66889 inspection of a public record is denied under Section [~~63-2-205~~] 63G-2-205.

66890 (b) The adjudicative body hearing the appeal has the same authority when a fee waiver
66891 or reduction is denied as it has when the inspection of a public record is denied.

66892 (7) (a) All fees received under this section by a governmental entity subject to
66893 Subsection (3)(b) shall be retained by the governmental entity as a dedicated credit.

66894 (b) Those funds shall be used to recover the actual cost and expenses incurred by the
66895 governmental entity in providing the requested record or record series.

66896 (8) (a) A governmental entity may require payment of past fees and future estimated
66897 fees before beginning to process a request if:

66898 (i) fees are expected to exceed \$50; or

66899 (ii) the requester has not paid fees from previous requests.

66900 (b) Any prepaid amount in excess of fees due shall be returned to the requester.

66901 (9) This section does not alter, repeal, or reduce fees established by other statutes or
66902 legislative acts.

66903 (10) (a) Notwithstanding Subsection (3)(c), fees for voter registration records shall be
66904 set as provided in this Subsection (10).

66905 (b) The lieutenant governor shall:

66906 (i) after consultation with county clerks, establish uniform fees for voter registration
66907 and voter history records that meet the requirements of this section; and

66908 (ii) obtain legislative approval of those fees by following the procedures and
66909 requirements of Section [~~63-38-3-2~~] 63J-1-303.

66910 Section 1323. Section **63G-2-204**, which is renumbered from Section 63-2-204 is
66911 renumbered and amended to read:

66912 **[~~63-2-204~~]. 63G-2-204. Requests -- Time limit for response and extraordinary**
66913 **circumstances.**

66914 (1) A person making a request for a record shall furnish the governmental entity with a
66915 written request containing:

66916 (a) the person's name, mailing address, and daytime telephone number, if available; and

66917 (b) a description of the record requested that identifies the record with reasonable
66918 specificity.

66919 (2) (a) Subject to Subsection (2)(b), a person making a request for a record shall submit
66920 the request to the governmental entity that prepares, owns, or retains the record.

66921 (b) In response to a request for a record, a governmental entity may not provide a

66922 record that it has received under Section [~~63-2-206~~] 63G-2-206 as a shared record if the record
66923 was shared for the purpose of auditing, if the governmental entity is authorized by state statute
66924 to conduct an audit.

66925 (c) If a governmental entity is prohibited from providing a record under Subsection
66926 (2)(b), it shall:

66927 (i) deny the records request; and

66928 (ii) inform the person making the request that records requests must be submitted to the
66929 governmental entity that prepares, owns, or retains the record.

66930 (d) A governmental entity may make rules in accordance with [~~Title 63, Chapter 46a~~]
66931 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying where and to whom
66932 requests for access shall be directed.

66933 (3) (a) As soon as reasonably possible, but no later than ten business days after
66934 receiving a written request, or five business days after receiving a written request if the
66935 requester demonstrates that expedited response to the record request benefits the public rather
66936 than the person, the governmental entity shall respond to the request by:

66937 (i) approving the request and providing the record;

66938 (ii) denying the request;

66939 (iii) notifying the requester that it does not maintain the record and providing, if known,
66940 the name and address of the governmental entity that does maintain the record; or

66941 (iv) notifying the requester that because of one of the extraordinary circumstances listed
66942 in Subsection (4), it cannot immediately approve or deny the request.

66943 (b) The notice described in Subsection (3)(a)(iv) shall:

66944 (i) describe the circumstances relied upon; and

66945 (ii) specify the date when the records will be available.

66946 (c) Any person who requests a record to obtain information for a story or report for
66947 publication or broadcast to the general public is presumed to be acting to benefit the public
66948 rather than a person.

66949 (4) The following circumstances constitute "extraordinary circumstances" that allow a

66950 governmental entity to delay approval or denial by an additional period of time as specified in
66951 Subsection (5) if the governmental entity determines that due to the extraordinary circumstances
66952 it cannot respond within the time limits provided in Subsection (3):

66953 (a) another governmental entity is using the record, in which case the originating
66954 governmental entity shall promptly request that the governmental entity currently in possession
66955 return the record;

66956 (b) another governmental entity is using the record as part of an audit, and returning the
66957 record before the completion of the audit would impair the conduct of the audit;

66958 (c) (i) the request is for a voluminous quantity of records or a record series containing a
66959 substantial number of records;

66960 (ii) the requester seeks a substantial number of records or records series in requests
66961 filed within five working days of each other;

66962 (d) the governmental entity is currently processing a large number of records requests;

66963 (e) the request requires the governmental entity to review a large number of records to
66964 locate the records requested;

66965 (f) the decision to release a record involves legal issues that require the governmental
66966 entity to seek legal counsel for the analysis of statutes, rules, ordinances, regulations, or case
66967 law;

66968 (g) segregating information that the requester is entitled to inspect from information
66969 that the requester is not entitled to inspect requires extensive editing; or

66970 (h) segregating information that the requester is entitled to inspect from information
66971 that the requester is not entitled to inspect requires computer programming.

66972 (5) If one of the extraordinary circumstances listed in Subsection (4) precludes approval
66973 or denial within the time specified in Subsection (3), the following time limits apply to the
66974 extraordinary circumstances:

66975 (a) for claims under Subsection (4)(a), the governmental entity currently in possession
66976 of the record shall return the record to the originating entity within five business days of the
66977 request for the return unless returning the record would impair the holder's work;

66978 (b) for claims under Subsection (4)(b), the originating governmental entity shall notify
66979 the requester when the record is available for inspection and copying;

66980 (c) for claims under Subsections (4)(c), (d), and (e), the governmental entity shall:
66981 (i) disclose the records that it has located which the requester is entitled to inspect;
66982 (ii) provide the requester with an estimate of the amount of time it will take to finish the
66983 work required to respond to the request;

66984 (iii) complete the work and disclose those records that the requester is entitled to
66985 inspect as soon as reasonably possible; and

66986 (iv) for any person that does not establish a right to an expedited response as authorized
66987 by Subsection (3)(a), a governmental entity may choose to:

66988 (A) require the person to provide for copying of the records as provided in Subsection
66989 [~~63-2-201~~] 63G-2-201(9); or

66990 (B) treat a request for multiple records as separate record requests, and respond
66991 sequentially to each request;

66992 (d) for claims under Subsection (4)(f), the governmental entity shall either approve or
66993 deny the request within five business days after the response time specified for the original
66994 request has expired;

66995 (e) for claims under Subsection (4)(g), the governmental entity shall fulfill the request
66996 within 15 business days from the date of the original request; or

66997 (f) for claims under Subsection (4)(h), the governmental entity shall complete its
66998 programming and disclose the requested records as soon as reasonably possible.

66999 (6) (a) If a request for access is submitted to an office of a governmental entity other
67000 than that specified by rule in accordance with Subsection (2), the office shall promptly forward
67001 the request to the appropriate office.

67002 (b) If the request is forwarded promptly, the time limit for response begins when the
67003 record is received by the office specified by rule.

67004 (7) If the governmental entity fails to provide the requested records or issue a denial
67005 within the specified time period, that failure is considered the equivalent of a determination

67006 denying access to the record.

67007 Section 1324. Section **63G-2-205**, which is renumbered from Section 63-2-205 is
67008 renumbered and amended to read:

67009 ~~[63-2-205]~~. **63G-2-205. Denials.**

67010 (1) If the governmental entity denies the request in whole or part, it shall provide a
67011 notice of denial to the requester either in person or by sending the notice to the requester's
67012 address.

67013 (2) The notice of denial shall contain the following information:

67014 (a) a description of the record or portions of the record to which access was denied,
67015 provided that the description does not disclose private, controlled, or protected information or
67016 information exempt from disclosure under Subsection ~~[63-2-201]~~ 63G-2-201(3)(b);

67017 (b) citations to the provisions of this chapter, court rule or order, another state statute,
67018 federal statute, or federal regulation that exempt the record or portions of the record from
67019 disclosure, provided that the citations do not disclose private, controlled, or protected
67020 information or information exempt from disclosure under Subsection ~~[63-2-201]~~
67021 63G-2-201(3)(b);

67022 (c) a statement that the requester has the right to appeal the denial to the chief
67023 administrative officer of the governmental entity; and

67024 (d) the time limits for filing an appeal, and the name and business address of the chief
67025 administrative officer of the governmental entity.

67026 (3) Unless otherwise required by a court or agency of competent jurisdiction, a
67027 governmental entity may not destroy or give up custody of any record to which access was
67028 denied until the period for an appeal has expired or the end of the appeals process, including
67029 judicial appeal.

67030 Section 1325. Section **63G-2-206**, which is renumbered from Section 63-2-206 is
67031 renumbered and amended to read:

67032 ~~[63-2-206]~~. **63G-2-206. Sharing records.**

67033 (1) A governmental entity may provide a record that is private, controlled, or protected

67034 to another governmental entity, a government-managed corporation, a political subdivision, the
67035 federal government, or another state if the requesting entity:

67036 (a) serves as a repository or archives for purposes of historical preservation,
67037 administrative maintenance, or destruction;

67038 (b) enforces, litigates, or investigates civil, criminal, or administrative law, and the
67039 record is necessary to a proceeding or investigation;

67040 (c) is authorized by state statute to conduct an audit and the record is needed for that
67041 purpose; or

67042 (d) is one that collects information for presentence, probationary, or parole purposes.

67043 (2) (a) A governmental entity may provide a private, controlled, or protected record or
67044 record series to another governmental entity, a political subdivision, a government-managed
67045 corporation, the federal government, or another state if the requesting entity provides written
67046 assurance:

67047 (i) that the record or record series is necessary to the performance of the governmental
67048 entity's duties and functions;

67049 (ii) that the record or record series will be used for a purpose similar to the purpose for
67050 which the information in the record or record series was collected or obtained; and

67051 (iii) that the use of the record or record series produces a public benefit that outweighs
67052 the individual privacy right that protects the record or record series.

67053 (b) A governmental entity may provide a private, controlled, or protected record or
67054 record series to a contractor or a private provider according to the requirements of Subsection
67055 (6)(b).

67056 (3) (a) A governmental entity shall provide a private, controlled, or protected record to
67057 another governmental entity, a political subdivision, a government-managed corporation, the
67058 federal government, or another state if the requesting entity:

67059 (i) is entitled by law to inspect the record;

67060 (ii) is required to inspect the record as a condition of participating in a state or federal
67061 program or for receiving state or federal funds; or

67062 (iii) is an entity described in Subsection (1)(a), (b), (c), or (d).

67063 (b) Subsection (3)(a)(iii) applies only if the record is a record described in Subsection
67064 [~~63-2-304~~] 63G-2-305(4).

67065 (4) Before disclosing a record or record series under this section to another
67066 governmental entity, another state, the United States, a foreign government, or to a contractor
67067 or private provider, the originating governmental entity shall:

67068 (a) inform the recipient of the record's classification and the accompanying restrictions
67069 on access; and

67070 (b) if the recipient is not a governmental entity to which this chapter applies, obtain the
67071 recipient's written agreement which may be by mechanical or electronic transmission that it will
67072 abide by those restrictions on access unless a statute, federal regulation, or interstate agreement
67073 otherwise governs the sharing of the record or record series.

67074 (5) A governmental entity may disclose a record to another state, the United States, or
67075 a foreign government for the reasons listed in Subsections (1) and (2) without complying with
67076 the procedures of Subsection (2) or (4) if disclosure is authorized by executive agreement,
67077 treaty, federal statute, compact, federal regulation, or state statute.

67078 (6) (a) Subject to Subsections (6)(b) and (c), an entity receiving a record under this
67079 section is subject to the same restrictions on disclosure of the record as the originating entity.

67080 (b) A contractor or a private provider may receive information under this section only
67081 if:

67082 (i) the contractor or private provider's use of the record or record series produces a
67083 public benefit that outweighs the individual privacy right that protects the record or record
67084 series;

67085 (ii) the record or record series it requests:

67086 (A) is necessary for the performance of a contract with a governmental entity;

67087 (B) will only be used for the performance of the contract with the governmental entity;

67088 (C) will not be disclosed to any other person; and

67089 (D) will not be used for advertising or solicitation purposes; and

67090 (iii) the contractor or private provider gives written assurance to the governmental
67091 entity that is providing the record or record series that it will adhere to the restrictions of this
67092 Subsection (6)(b).

67093 (c) The classification of a record already held by a governmental entity and the
67094 applicable restrictions on disclosure of that record are not affected by the governmental entity's
67095 receipt under this section of a record with a different classification that contains information that
67096 is also included in the previously held record.

67097 (7) Notwithstanding any other provision of this section, if a more specific court rule or
67098 order, state statute, federal statute, or federal regulation prohibits or requires sharing
67099 information, that rule, order, statute, or federal regulation controls.

67100 (8) The following records may not be shared under this section:

67101 (a) records held by the Division of Oil, Gas and Mining that pertain to any person and
67102 that are gathered under authority of Title 40, Chapter 6, Board and Division of Oil, Gas and
67103 Mining; and

67104 (b) records of publicly funded libraries as described in Subsection [~~63-2-302~~]
67105 63G-2-302(1)(c).

67106 (9) Records that may evidence or relate to a violation of law may be disclosed to a
67107 government prosecutor, peace officer, or auditor.

67108 Section 1326. Section **63G-2-207**, which is renumbered from Section 63-2-207 is
67109 renumbered and amended to read:

67110 [~~63-2-207~~]. **63G-2-207**. **Subpoenas -- Court ordered disclosure for discovery.**

67111 (1) Subpoenas and other methods of discovery under the state or federal statutes or
67112 rules of civil, criminal, administrative, or legislative procedure are not written requests under
67113 Section [~~63-2-204~~] 63G-2-204.

67114 (2) (a) (i) Except as otherwise provided in Subsection (2)(c), in judicial or
67115 administrative proceedings in which an individual is requesting discovery of records classified
67116 private, controlled, or protected under this chapter, or otherwise restricted from access by other
67117 statutes, the court, or an administrative law judge shall follow the procedure in Subsection

67118 [~~63-2-202~~] 63G-2-202(7) before ordering disclosure.

67119 (ii) Until the court or an administrative law judge orders disclosure, these records are
67120 privileged from discovery.

67121 (b) If, the court or administrative order requires disclosure, the terms of the order may
67122 limit the requester's further use and disclosure of the record in accordance with Subsection
67123 [~~63-2-202~~] 63G-2-202(7), in order to protect the privacy interests recognized in this chapter.

67124 (c) Unless a court or administrative law judge imposes limitations in a restrictive order,
67125 this section does not limit the right to obtain:

67126 (i) records through the procedures set forth in this chapter; or

67127 (ii) medical records discoverable under state or federal court rules as authorized by
67128 Subsection [~~63-2-302~~] 63G-2-302(3).

67129 Section 1327. Section **63G-2-301**, which is renumbered from Section 63-2-301 is
67130 renumbered and amended to read:

67131 **Part 3. Classification**

67132 [~~63-2-301~~]. **63G-2-301. Records that must be disclosed.**

67133 (1) As used in this section:

67134 (a) "Business address" means a single address of a governmental agency designated for
67135 the public to contact an employee or officer of the governmental agency.

67136 (b) "Business email address" means a single email address of a governmental agency
67137 designated for the public to contact an employee or officer of the governmental agency.

67138 (c) "Business telephone number" means a single telephone number of a governmental
67139 agency designated for the public to contact an employee or officer of the governmental agency.

67140 (2) The following records are public except to the extent they contain information
67141 expressly permitted to be treated confidentially under the provisions of Subsections [~~63-2-201~~]
67142 63G-2-201(3)(b) and (6)(a):

67143 (a) laws;

67144 (b) the name, gender, gross compensation, job title, job description, business address,
67145 business email address, business telephone number, number of hours worked per pay period,

67146 dates of employment, and relevant education, previous employment, and similar job
67147 qualifications of a current or former employee or officer of the governmental entity, excluding:
67148 (i) undercover law enforcement personnel; and
67149 (ii) investigative personnel if disclosure could reasonably be expected to impair the
67150 effectiveness of investigations or endanger any individual's safety;
67151 (c) final opinions, including concurring and dissenting opinions, and orders that are
67152 made by a governmental entity in an administrative, adjudicative, or judicial proceeding except
67153 that if the proceedings were properly closed to the public, the opinion and order may be
67154 withheld to the extent that they contain information that is private, controlled, or protected;
67155 (d) final interpretations of statutes or rules by a governmental entity unless classified as
67156 protected as provided in Subsections [~~63-2-304~~] 63G-2-305(16), (17), and (18);
67157 (e) information contained in or compiled from a transcript, minutes, or report of the
67158 open portions of a meeting of a governmental entity as provided by Title 52, Chapter 4, Open
67159 and Public Meetings Act, including the records of all votes of each member of the governmental
67160 entity;
67161 (f) judicial records unless a court orders the records to be restricted under the rules of
67162 civil or criminal procedure or unless the records are private under this chapter;
67163 (g) unless otherwise classified as private under Section [~~63-2-302.5~~] 63G-2-303,
67164 records or parts of records filed with or maintained by county recorders, clerks, treasurers,
67165 surveyors, zoning commissions, the Division of Forestry, Fire and State Lands, the School and
67166 Institutional Trust Lands Administration, the Division of Oil, Gas and Mining, the Division of
67167 Water Rights, or other governmental entities that give public notice of:
67168 (i) titles or encumbrances to real property;
67169 (ii) restrictions on the use of real property;
67170 (iii) the capacity of persons to take or convey title to real property; or
67171 (iv) tax status for real and personal property;
67172 (h) records of the Department of Commerce that evidence incorporations, mergers,
67173 name changes, and uniform commercial code filings;

67174 (i) data on individuals that would otherwise be private under this chapter if the
67175 individual who is the subject of the record has given the governmental entity written permission
67176 to make the records available to the public;

67177 (j) documentation of the compensation that a governmental entity pays to a contractor
67178 or private provider;

67179 (k) summary data; and

67180 (l) voter registration records, including an individual's voting history, except for those
67181 parts of the record that are classified as private in Subsection ~~[63-2-302]~~ 63G-2-302(1)(i).

67182 (3) The following records are normally public, but to the extent that a record is
67183 expressly exempt from disclosure, access may be restricted under Subsection ~~[63-2-201]~~
67184 63G-2-201(3)(b), Section ~~[63-2-302]~~ 63G-2-302, ~~[63-2-303]~~ 63G-2-304, or ~~[63-2-304]~~
67185 63G-2-305:

67186 (a) administrative staff manuals, instructions to staff, and statements of policy;

67187 (b) records documenting a contractor's or private provider's compliance with the terms
67188 of a contract with a governmental entity;

67189 (c) records documenting the services provided by a contractor or a private provider to
67190 the extent the records would be public if prepared by the governmental entity;

67191 (d) contracts entered into by a governmental entity;

67192 (e) any account, voucher, or contract that deals with the receipt or expenditure of funds
67193 by a governmental entity;

67194 (f) records relating to government assistance or incentives publicly disclosed, contracted
67195 for, or given by a governmental entity, encouraging a person to expand or relocate a business in
67196 Utah, except as provided in Subsection ~~[63-2-304]~~ 63G-2-305(35);

67197 (g) chronological logs and initial contact reports;

67198 (h) correspondence by and with a governmental entity in which the governmental entity
67199 determines or states an opinion upon the rights of the state, a political subdivision, the public, or
67200 any person;

67201 (i) empirical data contained in drafts if:

- 67202 (i) the empirical data is not reasonably available to the requester elsewhere in similar
67203 form; and
- 67204 (ii) the governmental entity is given a reasonable opportunity to correct any errors or
67205 make nonsubstantive changes before release;
- 67206 (j) drafts that are circulated to anyone other than:
- 67207 (i) a governmental entity;
- 67208 (ii) a political subdivision;
- 67209 (iii) a federal agency if the governmental entity and the federal agency are jointly
67210 responsible for implementation of a program or project that has been legislatively approved;
- 67211 (iv) a government-managed corporation; or
- 67212 (v) a contractor or private provider;
- 67213 (k) drafts that have never been finalized but were relied upon by the governmental
67214 entity in carrying out action or policy;
- 67215 (l) original data in a computer program if the governmental entity chooses not to
67216 disclose the program;
- 67217 (m) arrest warrants after issuance, except that, for good cause, a court may order
67218 restricted access to arrest warrants prior to service;
- 67219 (n) search warrants after execution and filing of the return, except that a court, for good
67220 cause, may order restricted access to search warrants prior to trial;
- 67221 (o) records that would disclose information relating to formal charges or disciplinary
67222 actions against a past or present governmental entity employee if:
- 67223 (i) the disciplinary action has been completed and all time periods for administrative
67224 appeal have expired; and
- 67225 (ii) the charges on which the disciplinary action was based were sustained;
- 67226 (p) records maintained by the Division of Forestry, Fire and State Lands, the School
67227 and Institutional Trust Lands Administration, or the Division of Oil, Gas and Mining that
67228 evidence mineral production on government lands;
- 67229 (q) final audit reports;

67230 (r) occupational and professional licenses;
67231 (s) business licenses; and
67232 (t) a notice of violation, a notice of agency action under Section [~~63-46b-3~~] 63G-4-201,
67233 or similar records used to initiate proceedings for discipline or sanctions against persons
67234 regulated by a governmental entity, but not including records that initiate employee discipline.

67235 (4) The list of public records in this section is not exhaustive and should not be used to
67236 limit access to records.

67237 Section 1328. Section **63G-2-302**, which is renumbered from Section 63-2-302 is
67238 renumbered and amended to read:

67239 ~~[63-2-302]~~. **63G-2-302**. **Private records.**

67240 (1) The following records are private:

67241 (a) records concerning an individual's eligibility for unemployment insurance benefits,
67242 social services, welfare benefits, or the determination of benefit levels;

67243 (b) records containing data on individuals describing medical history, diagnosis,
67244 condition, treatment, evaluation, or similar medical data;

67245 (c) records of publicly funded libraries that when examined alone or with other records
67246 identify a patron;

67247 (d) records received or generated for a Senate or House Ethics Committee concerning
67248 any alleged violation of the rules on legislative ethics, prior to the meeting, and after the
67249 meeting, if the ethics committee meeting was closed to the public;

67250 (e) records received or generated for a Senate confirmation committee concerning
67251 character, professional competence, or physical or mental health of an individual:

67252 (i) if prior to the meeting, the chair of the committee determines release of the records:

67253 (A) reasonably could be expected to interfere with the investigation undertaken by the
67254 committee; or

67255 (B) would create a danger of depriving a person of a right to a fair proceeding or
67256 impartial hearing; and

67257 (ii) after the meeting, if the meeting was closed to the public;

67258 (f) employment records concerning a current or former employee of, or applicant for
67259 employment with, a governmental entity that would disclose that individual's home address,
67260 home telephone number, Social Security number, insurance coverage, marital status, or payroll
67261 deductions;

67262 (g) records or parts of records under Section [~~63-2-302.5~~] 63G-2-303 that a current or
67263 former employee identifies as private according to the requirements of that section;

67264 (h) that part of a record indicating a person's Social Security number or federal
67265 employer identification number if provided under Section 31A-23a-104, 31A-25-202,
67266 31A-26-202, 58-1-301, 61-1-4, or 61-2-6;

67267 (i) that part of a voter registration record identifying a voter's driver license or
67268 identification card number, Social Security number, or last four digits of the Social Security
67269 number;

67270 (j) a record that:

- 67271 (i) contains information about an individual;
- 67272 (ii) is voluntarily provided by the individual; and
- 67273 (iii) goes into an electronic database that:

67274 (A) is designated by and administered under the authority of the Chief Information
67275 Officer; and

67276 (B) acts as a repository of information about the individual that can be electronically
67277 retrieved and used to facilitate the individual's online interaction with a state agency;

67278 (k) information provided to the Commissioner of Insurance under:

- 67279 (i) Subsection 31A-23a-115(2)(a); or
- 67280 (ii) Subsection 31A-23a-302(3); and

67281 (l) information obtained through a criminal background check under Title 11, Chapter
67282 40, Criminal Background Checks by Political Subdivisions Operating Water Systems.

67283 (2) The following records are private if properly classified by a governmental entity:

67284 (a) records concerning a current or former employee of, or applicant for employment
67285 with a governmental entity, including performance evaluations and personal status information

67286 such as race, religion, or disabilities, but not including records that are public under Subsection
67287 [~~63-2-301~~] 63G-2-301(2)(b) or [~~63-2-301~~] 63G-2-301(3)(o), or private under Subsection
67288 (1)(b);

67289 (b) records describing an individual's finances, except that the following are public:

67290 (i) records described in Subsection [~~63-2-301~~] 63G-2-301(2);

67291 (ii) information provided to the governmental entity for the purpose of complying with
67292 a financial assurance requirement; or

67293 (iii) records that must be disclosed in accordance with another statute;

67294 (c) records of independent state agencies if the disclosure of those records would
67295 conflict with the fiduciary obligations of the agency;

67296 (d) other records containing data on individuals the disclosure of which constitutes a
67297 clearly unwarranted invasion of personal privacy; and

67298 (e) records provided by the United States or by a government entity outside the state
67299 that are given with the requirement that the records be managed as private records, if the
67300 providing entity states in writing that the record would not be subject to public disclosure if
67301 retained by it.

67302 (3) (a) As used in this Subsection (3), "medical records" means medical reports,
67303 records, statements, history, diagnosis, condition, treatment, and evaluation.

67304 (b) Medical records in the possession of the University of Utah Hospital, its clinics,
67305 doctors, or affiliated entities are not private records or controlled records under Section
67306 [~~63-2-303~~] 63G-2-304 when the records are sought:

67307 (i) in connection with any legal or administrative proceeding in which the patient's
67308 physical, mental, or emotional condition is an element of any claim or defense; or

67309 (ii) after a patient's death, in any legal or administrative proceeding in which any party
67310 relies upon the condition as an element of the claim or defense.

67311 (c) Medical records are subject to production in a legal or administrative proceeding
67312 according to state or federal statutes or rules of procedure and evidence as if the medical
67313 records were in the possession of a nongovernmental medical care provider.

67314 Section 1329. Section **63G-2-303**, which is renumbered from Section 63-2-302.5 is
67315 renumbered and amended to read:

67316 ~~[63-2-302.5]~~. **63G-2-303**. **Private information concerning certain**
67317 **government employees.**

67318 (1) As used in this section:

67319 (a) "At-risk government employee" means a current or former:

67320 (i) peace officer as specified in Section 53-13-102;

67321 (ii) supreme court justice;

67322 (iii) judge of an appellate, district, or juvenile court;

67323 (iv) justice court judge;

67324 (v) judge authorized by Title 39, Chapter 6, Utah Code of Military Justice;

67325 (vi) federal judge;

67326 (vii) federal magistrate judge;

67327 (viii) judge authorized by Armed Forces, Title 10, United States Code;

67328 (ix) United States Attorney;

67329 (x) Assistant United States Attorney;

67330 (xi) a prosecutor appointed pursuant to Armed Forces, Title 10, United States Code;

67331 (xii) a law enforcement official as defined in Section 53-5-711; or

67332 (xiii) a prosecutor authorized by Title 39, Chapter 6, Utah Code of Military Justice.

67333 (b) "Family member" means the spouse, child, sibling, parent, or grandparent of an
67334 at-risk government employee who is living with the employee.

67335 (2) (a) Pursuant to Subsection ~~[63-2-302]~~ 63G-2-302(1)(g), an at-risk government
67336 employee may file a written application that:

67337 (i) gives notice of the employee's status to each agency of a government entity holding a
67338 record or a part of a record that would disclose the employee's or the employee's family
67339 member's home address, home telephone number, Social Security number, insurance coverage,
67340 marital status, or payroll deductions; and

67341 (ii) requests that the government agency classify those records or parts of records

67342 private.

67343 (b) An at-risk government employee desiring to file an application under this section
67344 may request assistance from the government agency to identify the individual records containing
67345 the private information specified in Subsection (2)(a)(i).

67346 (c) Each government agency shall develop a form that:

67347 (i) requires the at-risk government employee to provide evidence of qualifying
67348 employment;

67349 (ii) requires the at-risk government employee to designate each specific record or part
67350 of a record containing the employee's home address, home telephone number, Social Security
67351 number, insurance coverage, marital status, or payroll deductions that the applicant desires to be
67352 classified as private; and

67353 (iii) affirmatively requests that the government entity holding those records classify
67354 them as private.

67355 (3) A county recorder, county treasurer, county auditor, or a county tax assessor may
67356 fully satisfy the requirements of this section by:

67357 (a) providing a method for the assessment roll and index and the tax roll and index that
67358 will block public access to the home address, home telephone number, situs address, and Social
67359 Security number; and

67360 (b) providing the at-risk government employee requesting the classification with a
67361 disclaimer informing the employee that the employee may not receive official announcements
67362 affecting the employee's property, including notices about proposed annexations,
67363 incorporations, or zoning modifications.

67364 (4) A government agency holding records of an at-risk government employee classified
67365 as private under this section may release the record or part of the record if:

67366 (a) the employee or former employee gives written consent;

67367 (b) a court orders release of the records; or

67368 (c) the government agency receives a certified death certificate for the employee or
67369 former employee.

67370 (5) (a) If the government agency holding the private record receives a subpoena for the
67371 records, the government agency shall attempt to notify the at-risk government employee or
67372 former employee by mailing a copy of the subpoena to the employee's last-known mailing
67373 address together with a request that the employee either:

67374 (i) authorize release of the record; or

67375 (ii) within ten days of the date that the copy and request are mailed, deliver to the
67376 government agency holding the private record a copy of a motion to quash filed with the court
67377 who issued the subpoena.

67378 (b) The government agency shall comply with the subpoena if the government agency
67379 has:

67380 (i) received permission from the at-risk government employee or former employee to
67381 comply with the subpoena;

67382 (ii) has not received a copy of a motion to quash within ten days of the date that the
67383 copy of the subpoena was mailed; or

67384 (iii) receives a court order requiring release of the records.

67385 Section 1330. Section **63G-2-304**, which is renumbered from Section 63-2-303 is
67386 renumbered and amended to read:

67387 **~~63-2-303~~. 63G-2-304. Controlled records.**

67388 A record is controlled if:

67389 (1) the record contains medical, psychiatric, or psychological data about an individual;

67390 (2) the governmental entity reasonably believes that:

67391 (a) releasing the information in the record to the subject of the record would be
67392 detrimental to the subject's mental health or to the safety of any individual; or

67393 (b) releasing the information would constitute a violation of normal professional
67394 practice and medical ethics; and

67395 (3) the governmental entity has properly classified the record.

67396 Section 1331. Section **63G-2-305**, which is renumbered from Section 63-2-304 is
67397 renumbered and amended to read:

67398 ~~[63-2-304].~~ 63G-2-305. **Protected records.**

67399 The following records are protected if properly classified by a governmental entity:

67400 (1) trade secrets as defined in Section 13-24-2 if the person submitting the trade secret
67401 has provided the governmental entity with the information specified in Section ~~[63-2-308]~~
67402 63G-2-309;

67403 (2) commercial information or nonindividual financial information obtained from a
67404 person if:

67405 (a) disclosure of the information could reasonably be expected to result in unfair
67406 competitive injury to the person submitting the information or would impair the ability of the
67407 governmental entity to obtain necessary information in the future;

67408 (b) the person submitting the information has a greater interest in prohibiting access
67409 than the public in obtaining access; and

67410 (c) the person submitting the information has provided the governmental entity with the
67411 information specified in Section ~~[63-2-308]~~ 63G-2-309;

67412 (3) commercial or financial information acquired or prepared by a governmental entity
67413 to the extent that disclosure would lead to financial speculations in currencies, securities, or
67414 commodities that will interfere with a planned transaction by the governmental entity or cause
67415 substantial financial injury to the governmental entity or state economy;

67416 (4) records the disclosure of which could cause commercial injury to, or confer a
67417 competitive advantage upon a potential or actual competitor of, a commercial project entity as
67418 defined in Subsection 11-13-103(4);

67419 (5) test questions and answers to be used in future license, certification, registration,
67420 employment, or academic examinations;

67421 (6) records the disclosure of which would impair governmental procurement
67422 proceedings or give an unfair advantage to any person proposing to enter into a contract or
67423 agreement with a governmental entity, except that this Subsection (6) does not restrict the right
67424 of a person to see bids submitted to or by a governmental entity after bidding has closed;

67425 (7) records that would identify real property or the appraisal or estimated value of real

67426 or personal property, including intellectual property, under consideration for public acquisition
67427 before any rights to the property are acquired unless:

67428 (a) public interest in obtaining access to the information outweighs the governmental
67429 entity's need to acquire the property on the best terms possible;

67430 (b) the information has already been disclosed to persons not employed by or under a
67431 duty of confidentiality to the entity;

67432 (c) in the case of records that would identify property, potential sellers of the described
67433 property have already learned of the governmental entity's plans to acquire the property;

67434 (d) in the case of records that would identify the appraisal or estimated value of
67435 property, the potential sellers have already learned of the governmental entity's estimated value
67436 of the property; or

67437 (e) the property under consideration for public acquisition is a single family residence
67438 and the governmental entity seeking to acquire the property has initiated negotiations to acquire
67439 the property as required under Section 78-34-4.5;

67440 (8) records prepared in contemplation of sale, exchange, lease, rental, or other
67441 compensated transaction of real or personal property including intellectual property, which, if
67442 disclosed prior to completion of the transaction, would reveal the appraisal or estimated value
67443 of the subject property, unless:

67444 (a) the public interest in access outweighs the interests in restricting access, including
67445 the governmental entity's interest in maximizing the financial benefit of the transaction; or

67446 (b) when prepared by or on behalf of a governmental entity, appraisals or estimates of
67447 the value of the subject property have already been disclosed to persons not employed by or
67448 under a duty of confidentiality to the entity;

67449 (9) records created or maintained for civil, criminal, or administrative enforcement
67450 purposes or audit purposes, or for discipline, licensing, certification, or registration purposes, if
67451 release of the records:

67452 (a) reasonably could be expected to interfere with investigations undertaken for
67453 enforcement, discipline, licensing, certification, or registration purposes;

67454 (b) reasonably could be expected to interfere with audits, disciplinary, or enforcement
67455 proceedings;

67456 (c) would create a danger of depriving a person of a right to a fair trial or impartial
67457 hearing;

67458 (d) reasonably could be expected to disclose the identity of a source who is not
67459 generally known outside of government and, in the case of a record compiled in the course of an
67460 investigation, disclose information furnished by a source not generally known outside of
67461 government if disclosure would compromise the source; or

67462 (e) reasonably could be expected to disclose investigative or audit techniques,
67463 procedures, policies, or orders not generally known outside of government if disclosure would
67464 interfere with enforcement or audit efforts;

67465 (10) records the disclosure of which would jeopardize the life or safety of an individual;

67466 (11) records the disclosure of which would jeopardize the security of governmental
67467 property, governmental programs, or governmental recordkeeping systems from damage, theft,
67468 or other appropriation or use contrary to law or public policy;

67469 (12) records that, if disclosed, would jeopardize the security or safety of a correctional
67470 facility, or records relating to incarceration, treatment, probation, or parole, that would interfere
67471 with the control and supervision of an offender's incarceration, treatment, probation, or parole;

67472 (13) records that, if disclosed, would reveal recommendations made to the Board of
67473 Pardons and Parole by an employee of or contractor for the Department of Corrections, the
67474 Board of Pardons and Parole, or the Department of Human Services that are based on the
67475 employee's or contractor's supervision, diagnosis, or treatment of any person within the board's
67476 jurisdiction;

67477 (14) records and audit workpapers that identify audit, collection, and operational
67478 procedures and methods used by the State Tax Commission, if disclosure would interfere with
67479 audits or collections;

67480 (15) records of a governmental audit agency relating to an ongoing or planned audit
67481 until the final audit is released;

67482 (16) records prepared by or on behalf of a governmental entity solely in anticipation of
67483 litigation that are not available under the rules of discovery;

67484 (17) records disclosing an attorney's work product, including the mental impressions or
67485 legal theories of an attorney or other representative of a governmental entity concerning
67486 litigation;

67487 (18) records of communications between a governmental entity and an attorney
67488 representing, retained, or employed by the governmental entity if the communications would be
67489 privileged as provided in Section 78-24-8;

67490 (19) (a) (i) personal files of a state legislator, including personal correspondence to or
67491 from a member of the Legislature; and

67492 (ii) notwithstanding Subsection (19)(a)(i), correspondence that gives notice of
67493 legislative action or policy may not be classified as protected under this section; and

67494 (b) (i) an internal communication that is part of the deliberative process in connection
67495 with the preparation of legislation between:

67496 (A) members of a legislative body;

67497 (B) a member of a legislative body and a member of the legislative body's staff; or

67498 (C) members of a legislative body's staff; and

67499 (ii) notwithstanding Subsection (19)(b)(i), a communication that gives notice of
67500 legislative action or policy may not be classified as protected under this section;

67501 (20) (a) records in the custody or control of the Office of Legislative Research and
67502 General Counsel, that, if disclosed, would reveal a particular legislator's contemplated
67503 legislation or contemplated course of action before the legislator has elected to support the
67504 legislation or course of action, or made the legislation or course of action public; and

67505 (b) notwithstanding Subsection (20)(a), the form to request legislation submitted to the
67506 Office of Legislative Research and General Counsel is a public document unless a legislator asks
67507 that the records requesting the legislation be maintained as protected records until such time as
67508 the legislator elects to make the legislation or course of action public;

67509 (21) research requests from legislators to the Office of Legislative Research and

67510 General Counsel or the Office of the Legislative Fiscal Analyst and research findings prepared in
67511 response to these requests;

67512 (22) drafts, unless otherwise classified as public;

67513 (23) records concerning a governmental entity's strategy about collective bargaining or
67514 pending litigation;

67515 (24) records of investigations of loss occurrences and analyses of loss occurrences that
67516 may be covered by the Risk Management Fund, the Employers' Reinsurance Fund, the
67517 Uninsured Employers' Fund, or similar divisions in other governmental entities;

67518 (25) records, other than personnel evaluations, that contain a personal recommendation
67519 concerning an individual if disclosure would constitute a clearly unwarranted invasion of
67520 personal privacy, or disclosure is not in the public interest;

67521 (26) records that reveal the location of historic, prehistoric, paleontological, or
67522 biological resources that if known would jeopardize the security of those resources or of
67523 valuable historic, scientific, educational, or cultural information;

67524 (27) records of independent state agencies if the disclosure of the records would
67525 conflict with the fiduciary obligations of the agency;

67526 (28) records of an institution within the state system of higher education defined in
67527 Section 53B-1-102 regarding tenure evaluations, appointments, applications for admissions,
67528 retention decisions, and promotions, which could be properly discussed in a meeting closed in
67529 accordance with Title 52, Chapter 4, Open and Public Meetings Act, provided that records of
67530 the final decisions about tenure, appointments, retention, promotions, or those students
67531 admitted, may not be classified as protected under this section;

67532 (29) records of the governor's office, including budget recommendations, legislative
67533 proposals, and policy statements, that if disclosed would reveal the governor's contemplated
67534 policies or contemplated courses of action before the governor has implemented or rejected
67535 those policies or courses of action or made them public;

67536 (30) records of the Office of the Legislative Fiscal Analyst relating to budget analysis,
67537 revenue estimates, and fiscal notes of proposed legislation before issuance of the final

67538 recommendations in these areas;

67539 (31) records provided by the United States or by a government entity outside the state
67540 that are given to the governmental entity with a requirement that they be managed as protected
67541 records if the providing entity certifies that the record would not be subject to public disclosure
67542 if retained by it;

67543 (32) transcripts, minutes, or reports of the closed portion of a meeting of a public body
67544 except as provided in Section 52-4-206;

67545 (33) records that would reveal the contents of settlement negotiations but not including
67546 final settlements or empirical data to the extent that they are not otherwise exempt from
67547 disclosure;

67548 (34) memoranda prepared by staff and used in the decision-making process by an
67549 administrative law judge, a member of the Board of Pardons and Parole, or a member of any
67550 other body charged by law with performing a quasi-judicial function;

67551 (35) records that would reveal negotiations regarding assistance or incentives offered
67552 by or requested from a governmental entity for the purpose of encouraging a person to expand
67553 or locate a business in Utah, but only if disclosure would result in actual economic harm to the
67554 person or place the governmental entity at a competitive disadvantage, but this section may not
67555 be used to restrict access to a record evidencing a final contract;

67556 (36) materials to which access must be limited for purposes of securing or maintaining
67557 the governmental entity's proprietary protection of intellectual property rights including patents,
67558 copyrights, and trade secrets;

67559 (37) the name of a donor or a prospective donor to a governmental entity, including an
67560 institution within the state system of higher education defined in Section 53B-1-102, and other
67561 information concerning the donation that could reasonably be expected to reveal the identity of
67562 the donor, provided that:

67563 (a) the donor requests anonymity in writing;

67564 (b) any terms, conditions, restrictions, or privileges relating to the donation may not be
67565 classified protected by the governmental entity under this Subsection (37); and

67566 (c) except for an institution within the state system of higher education defined in
67567 Section 53B-1-102, the governmental unit to which the donation is made is primarily engaged in
67568 educational, charitable, or artistic endeavors, and has no regulatory or legislative authority over
67569 the donor, a member of the donor's immediate family, or any entity owned or controlled by the
67570 donor or the donor's immediate family;

67571 (38) accident reports, except as provided in Sections 41-6a-404, 41-12a-202, and
67572 73-18-13;

67573 (39) a notification of workers' compensation insurance coverage described in Section
67574 34A-2-205;

67575 (40) (a) the following records of an institution within the state system of higher
67576 education defined in Section 53B-1-102, which have been developed, discovered, disclosed to,
67577 or received by or on behalf of faculty, staff, employees, or students of the institution:

67578 (i) unpublished lecture notes;

67579 (ii) unpublished notes, data, and information:

67580 (A) relating to research; and

67581 (B) of:

67582 (I) the institution within the state system of higher education defined in Section
67583 53B-1-102; or

67584 (II) a sponsor of sponsored research;

67585 (iii) unpublished manuscripts;

67586 (iv) creative works in process;

67587 (v) scholarly correspondence; and

67588 (vi) confidential information contained in research proposals;

67589 (b) Subsection (40)(a) may not be construed to prohibit disclosure of public information
67590 required pursuant to Subsection 53B-16-302(2)(a) or (b); and

67591 (c) Subsection (40)(a) may not be construed to affect the ownership of a record;

67592 (41) (a) records in the custody or control of the Office of Legislative Auditor General
67593 that would reveal the name of a particular legislator who requests a legislative audit prior to the

67594 date that audit is completed and made public; and

67595 (b) notwithstanding Subsection (41)(a), a request for a legislative audit submitted to the
67596 Office of the Legislative Auditor General is a public document unless the legislator asks that the
67597 records in the custody or control of the Office of Legislative Auditor General that would reveal
67598 the name of a particular legislator who requests a legislative audit be maintained as protected
67599 records until the audit is completed and made public;

67600 (42) records that provide detail as to the location of an explosive, including a map or
67601 other document that indicates the location of:

67602 (a) a production facility; or

67603 (b) a magazine;

67604 (43) information contained in the database described in Section 62A-3-311.1;

67605 (44) information contained in the Management Information System and Licensing
67606 Information System described in Title 62A, Chapter 4a, Child and Family Services;

67607 (45) information regarding National Guard operations or activities in support of the
67608 National Guard's federal mission;

67609 (46) records provided by any pawn or secondhand business to a law enforcement
67610 agency or to the central database in compliance with Title 13, Chapter 32a, Pawnshop and
67611 Secondhand Merchandise Transaction Information Act;

67612 (47) information regarding food security, risk, and vulnerability assessments performed
67613 by the Department of Agriculture and Food;

67614 (48) except to the extent that the record is exempt from this chapter pursuant to
67615 Section [~~63-2-106~~] 63G-2-106, records related to an emergency plan or program prepared or
67616 maintained by the Division of Homeland Security the disclosure of which would jeopardize:

67617 (a) the safety of the general public; or

67618 (b) the security of:

67619 (i) governmental property;

67620 (ii) governmental programs; or

67621 (iii) the property of a private person who provides the Division of Homeland Security

67622 information;

67623 (49) records of the Department of Agriculture and Food relating to the National Animal
67624 Identification System or any other program that provides for the identification, tracing, or
67625 control of livestock diseases, including any program established under Title 4, Chapter 24, Utah
67626 Livestock Brand and Anti-theft Act or Title 4, Chapter 31, Livestock Inspection and
67627 Quarantine;

67628 (50) as provided in Section 26-39-109:

67629 (a) information or records held by the Department of Health related to a complaint
67630 regarding a child care program or residential child care which the department is unable to
67631 substantiate; and

67632 (b) information or records related to a complaint received by the Department of Health
67633 from an anonymous complainant regarding a child care program or residential child care; and

67634 (51) unless otherwise classified as public under Section [~~63-2-301~~] 63G-2-301 and
67635 except as provided under Section 41-1a-116, an individual's home address, home telephone
67636 number, or personal mobile phone number, if:

67637 (a) the individual is required to provide the information in order to comply with a law,
67638 ordinance, rule, or order of a government entity; and

67639 (b) the subject of the record has a reasonable expectation that this information will be
67640 kept confidential due to:

67641 (i) the nature of the law, ordinance, rule, or order; and

67642 (ii) the individual complying with the law, ordinance, rule, or order.

67643 Section 1332. Section **63G-2-306**, which is renumbered from Section 63-2-305 is
67644 renumbered and amended to read:

67645 [~~63-2-305~~]. **63G-2-306. Procedure to determine classification.**

67646 (1) If more than one provision of this chapter could govern the classification of a
67647 record, the governmental entity shall classify the record by considering the nature of the
67648 interests intended to be protected and the specificity of the competing provisions.

67649 (2) Nothing in Subsection [~~63-2-302~~] 63G-2-302(2), Section [~~63-2-303~~] 63G-2-304, or

67650 [~~63-2-304~~] 63G-2-305 requires a governmental entity to classify a record as private, controlled,
67651 or protected.

67652 Section 1333. Section **63G-2-307**, which is renumbered from Section 63-2-306 is
67653 renumbered and amended to read:

67654 [~~63-2-306~~]. **63G-2-307. Duty to evaluate records and make designations and**
67655 **classifications.**

67656 (1) A governmental entity shall:

67657 (a) evaluate all record series that it uses or creates;

67658 (b) designate those record series as provided by this chapter and Title 63A, Chapter 12,
67659 Part 1, Archives and Records Service; and

67660 (c) report the designations of its record series to the state archives.

67661 (2) A governmental entity may classify a particular record, record series, or information
67662 within a record at any time, but is not required to classify a particular record, record series, or
67663 information until access to the record is requested.

67664 (3) A governmental entity may redesignate a record series or reclassify a record or
67665 record series, or information within a record at any time.

67666 Section 1334. Section **63G-2-308**, which is renumbered from Section 63-2-307 is
67667 renumbered and amended to read:

67668 [~~63-2-307~~]. **63G-2-308. Segregation of records.**

67669 Notwithstanding any other provision in this chapter, if a governmental entity receives a
67670 request for access to a record that contains both information that the requester is entitled to
67671 inspect and information that the requester is not entitled to inspect under this chapter, and, if the
67672 information the requester is entitled to inspect is intelligible, the governmental entity:

67673 (1) shall allow access to information in the record that the requester is entitled to
67674 inspect under this chapter; and

67675 (2) may deny access to information in the record if the information is exempt from
67676 disclosure to the requester, issuing a notice of denial as provided in Section [~~63-2-205~~]
67677 63G-2-205.

67678 Section 1335. Section **63G-2-309**, which is renumbered from Section 63-2-308 is
67679 renumbered and amended to read:

67680 **~~[63-2-308]~~. 63G-2-309. Confidentiality claims.**

67681 (1) (a) (i) Any person who provides to a governmental entity a record that the person
67682 believes should be protected under Subsection ~~[63-2-304]~~ 63G-2-305(1) or (2) or both
67683 Subsections ~~[63-2-304]~~ 63G-2-305(1) and (2) shall provide with the record:

67684 (A) a written claim of business confidentiality; and

67685 (B) a concise statement of reasons supporting the claim of business confidentiality.

67686 (ii) Any of the following who provides to an institution within the state system of higher
67687 education defined in Section 53B-1-102 a record that the person or governmental entity believes
67688 should be protected under Subsection ~~[63-2-304]~~ 63G-2-305(40)(a)(ii) or (vi) or both
67689 Subsections ~~[63-2-304]~~ 63G-2-305(40)(a)(ii) and (vi) shall provide the institution within the
67690 state system of higher education a written claim of business confidentiality in accordance with
67691 Section 53B-16-304:

67692 (A) a person;

67693 (B) a federal governmental entity;

67694 (C) a state governmental entity; or

67695 (D) a local governmental entity.

67696 (b) A person or governmental entity who complies with this Subsection (1) shall be
67697 notified by the governmental entity to whom the request for a record is made if:

67698 (i) a record claimed to be protected under one of the following is classified public:

67699 (A) Subsection ~~[63-2-304]~~ 63G-2-305(1);

67700 (B) Subsection ~~[63-2-304]~~ 63G-2-305(2);

67701 (C) Subsection ~~[63-2-304]~~ 63G-2-305(40)(a)(ii);

67702 (D) Subsection ~~[63-2-304]~~ 63G-2-305(40)(a)(vi); or

67703 (E) a combination of the provisions described in Subsections (1)(b)(i)(A) through (D);

67704 or

67705 (ii) the governmental entity to whom the request for a record is made determines that

67706 the record claimed to be protected under a provision listed in Subsection (1)(b)(i) should be
67707 released after balancing interests under Subsection [~~63-2-201~~] 63G-2-201(5)(b) or [~~Subsection~~
67708 ~~63-2-401~~] 63G-2-401(6).

67709 (2) Except as provided by court order, the governmental entity to whom the request for
67710 a record is made may not disclose a record claimed to be protected under a provision listed in
67711 Subsection (1)(b)(i) but which the governmental entity or records committee determines should
67712 be disclosed until the period in which to bring an appeal expires or the end of the appeals
67713 process, including judicial appeal. This Subsection (2) does not apply where the claimant, after
67714 notice, has waived the claim by not appealing or intervening before the records committee.

67715 (3) Disclosure or acquisition of information under this chapter does not constitute
67716 misappropriation under Subsection 13-24-2(2).

67717 Section 1336. Section **63G-2-310**, which is renumbered from Section 63-2-909 is
67718 renumbered and amended to read:

67719 [~~63-2-909~~]. **63G-2-310. Records made public after 75 years.**

67720 (1) The classification of a record is not permanent and a record that was not classified
67721 public under this act shall become a public record when the justification for the original or any
67722 subsequent restrictive classification no longer exists. A record shall be presumed to be public
67723 75 years after its creation, except that a record that contains information about an individual 21
67724 years old or younger at the time of the record's creation shall be presumed to be public 100
67725 years after its creation.

67726 (2) Subsection (1) does not apply to records of unclaimed property held by the state
67727 treasurer in accordance with Title 67, Chapter 4a, Unclaimed Property Act.

67728 Section 1337. Section **63G-2-401**, which is renumbered from Section 63-2-401 is
67729 renumbered and amended to read:

67730 **Part 4. Appeals**

67731 [~~63-2-401~~]. **63G-2-401. Appeal to head of governmental entity.**

67732 (1) (a) Any person aggrieved by a governmental entity's access determination under this
67733 chapter, including a person not a party to the governmental entity's proceeding, may appeal the

67734 determination within 30 days to the chief administrative officer of the governmental entity by
67735 filing a notice of appeal.

67736 (b) If a governmental entity claims extraordinary circumstances and specifies the date
67737 when the records will be available under Subsection [~~63-2-204~~] 63G-2-204(3), and, if the
67738 requester believes the extraordinary circumstances do not exist or that the time specified is
67739 unreasonable, the requester may appeal the governmental entity's claim of extraordinary
67740 circumstances or date for compliance within 30 days after notification of a claim of
67741 extraordinary circumstances by the governmental entity, despite the lack of a "determination" or
67742 its equivalent under Subsection [~~63-2-204~~] 63G-2-204(7).

67743 (2) The notice of appeal shall contain the following information:

67744 (a) the petitioner's name, mailing address, and daytime telephone number; and

67745 (b) the relief sought.

67746 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
67747 support of the appeal.

67748 (4) (a) If the appeal involves a record that is the subject of a business confidentiality
67749 claim under Section [~~63-2-308~~] 63G-2-309, the chief administrative officer shall:

67750 (i) send notice of the requester's appeal to the business confidentiality claimant within
67751 three business days after receiving notice, except that if notice under this section must be given
67752 to more than 35 persons, it shall be given as soon as reasonably possible; and

67753 (ii) send notice of the business confidentiality claim and the schedule for the chief
67754 administrative officer's determination to the requester within three business days after receiving
67755 notice of the requester's appeal.

67756 (b) The claimant shall have seven business days after notice is sent by the administrative
67757 officer to submit further support for the claim of business confidentiality.

67758 (5) (a) The chief administrative officer shall make a determination on the appeal within
67759 the following period of time:

67760 (i) within five business days after the chief administrative officer's receipt of the notice
67761 of appeal; or

67762 (ii) within twelve business days after the governmental entity sends the requester's
67763 notice of appeal to a person who submitted a claim of business confidentiality.

67764 (b) If the chief administrative officer fails to make a determination within the time
67765 specified in Subsection (5)(a), the failure shall be considered the equivalent of an order denying
67766 the appeal.

67767 (c) The provisions of this section notwithstanding, the parties participating in the
67768 proceeding may, by agreement, extend the time periods specified in this section.

67769 (6) The chief administrative officer may, upon consideration and weighing of the
67770 various interests and public policies pertinent to the classification and disclosure or
67771 nondisclosure, order the disclosure of information properly classified as private under [~~Section~~
67772 ~~63-2-302~~] Subsection 63G-2-302(2) or protected under Section [~~63-2-304~~] 63G-2-305 if the
67773 interests favoring access outweigh the interests favoring restriction of access.

67774 (7) The governmental entity shall send written notice of the determination of the chief
67775 administrative officer to all participants. If the chief administrative officer affirms the denial in
67776 whole or in part, the denial shall include a statement that the requester has the right to appeal
67777 the denial to either the records committee or district court, the time limits for filing an appeal,
67778 and the name and business address of the executive secretary of the records committee.

67779 (8) A person aggrieved by a governmental entity's classification or designation
67780 determination under this chapter, but who is not requesting access to the records, may appeal
67781 that determination using the procedures provided in this section. If a nonrequester is the only
67782 appellant, the procedures provided in this section shall apply, except that the determination on
67783 the appeal shall be made within 30 days after receiving the notice of appeal.

67784 (9) The duties of the chief administrative officer under this section may be delegated.

67785 Section 1338. Section **63G-2-402**, which is renumbered from Section 63-2-402 is
67786 renumbered and amended to read:

67787 [~~63-2-402~~]. **63G-2-402. Option for appealing a denial.**

67788 (1) If the chief administrative officer of a governmental entity denies a records request
67789 under Section [~~63-2-401~~] 63G-2-401, the requester may:

67790 (a) appeal the denial to the records committee as provided in Section [~~63-2-403~~]
67791 63G-2-403; or

67792 (b) petition for judicial review in district court as provided in Section [~~63-2-404~~]
67793 63G-2-404.

67794 (2) Any person aggrieved by a determination of the chief administrative officer of a
67795 governmental entity under this chapter, including persons who did not participate in the
67796 governmental entity's proceeding, may appeal the determination to the records committee as
67797 provided in Section [~~63-2-403~~] 63G-2-403.

67798 Section 1339. Section **63G-2-403**, which is renumbered from Section 63-2-403 is
67799 renumbered and amended to read:

67800 [~~63-2-403~~]. **63G-2-403. Appeals to the records committee.**

67801 (1) A petitioner, including an aggrieved person who did not participate in the appeal to
67802 the governmental entity's chief administrative officer, may appeal to the records committee by
67803 filing a notice of appeal with the executive secretary no later than:

67804 (a) 30 days after the chief administrative officer of the governmental entity has granted
67805 or denied the record request in whole or in part, including a denial under Subsection [~~63-2-204~~]
67806 63G-2-204(7);

67807 (b) 45 days after the original request for a record if:

67808 (i) the circumstances described in Subsection [~~63-2-401~~] 63G-2-401(1)(b) occur; and

67809 (ii) the chief administrative officer failed to make a determination under Section
67810 [~~63-2-401~~] 63G-2-401.

67811 (2) The notice of appeal shall contain the following information:

67812 (a) the petitioner's name, mailing address, and daytime telephone number;

67813 (b) a copy of any denial of the record request; and

67814 (c) the relief sought.

67815 (3) The petitioner may file a short statement of facts, reasons, and legal authority in
67816 support of the appeal.

67817 (4) (a) Except as provided in Subsection (4)(b), no later than five business days after

67818 receiving a notice of appeal, the executive secretary of the records committee shall:

67819 (i) schedule a hearing for the records committee to discuss the appeal at the next
67820 regularly scheduled committee meeting falling at least 14 days after the date the notice of appeal
67821 is filed but no longer than 52 calendar days after the date the notice of appeal was filed except
67822 that the records committee may schedule an expedited hearing upon application of the petitioner
67823 and good cause shown;

67824 (ii) send a copy of the notice of hearing to the petitioner; and

67825 (iii) send a copy of the notice of appeal, supporting statement, and a notice of hearing
67826 to:

67827 (A) each member of the records committee;

67828 (B) the records officer and the chief administrative officer of the governmental entity
67829 from which the appeal originated;

67830 (C) any person who made a business confidentiality claim under Section [~~63-2-308~~]
67831 63G-2-309 for a record that is the subject of the appeal; and

67832 (D) all persons who participated in the proceedings before the governmental entity's
67833 chief administrative officer.

67834 (b) (i) The executive secretary of the records committee may decline to schedule a
67835 hearing if the record series that is the subject of the appeal has been found by the committee in a
67836 previous hearing involving the same government entity to be appropriately classified as private,
67837 controlled, or protected.

67838 (ii) (A) If the executive secretary of the records committee declines to schedule a
67839 hearing, the executive secretary of the records committee shall send a notice to the petitioner
67840 indicating that the request for hearing has been denied and the reason for the denial.

67841 (B) The committee shall make rules to implement this section as provided by [~~Title 63,~~
67842 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

67843 (5) (a) A written statement of facts, reasons, and legal authority in support of the
67844 governmental entity's position must be submitted to the executive secretary of the records
67845 committee not later than five business days before the hearing.

67846 (b) The governmental entity shall send a copy of the written statement to the petitioner
67847 by first class mail, postage prepaid. The executive secretary shall forward a copy of the written
67848 statement to each member of the records committee.

67849 (6) (a) No later than ten business days after the notice of appeal is sent by the executive
67850 secretary, a person whose legal interests may be substantially affected by the proceeding may
67851 file a request for intervention before the records committee.

67852 (b) Any written statement of facts, reasons, and legal authority in support of the
67853 intervener's position shall be filed with the request for intervention.

67854 (c) The person seeking intervention shall provide copies of the statement described in
67855 Subsection (6)(b) to all parties to the proceedings before the records committee.

67856 (7) The records committee shall hold a hearing within the period of time described in
67857 Subsection (4).

67858 (8) At the hearing, the records committee shall allow the parties to testify, present
67859 evidence, and comment on the issues. The records committee may allow other interested
67860 persons to comment on the issues.

67861 (9) (a) The records committee may review the disputed records. However, if the
67862 committee is weighing the various interests under Subsection (11), the committee must review
67863 the disputed records. The review shall be in camera.

67864 (b) Members of the records committee may not disclose any information or record
67865 reviewed by the committee in camera unless the disclosure is otherwise authorized by this
67866 chapter.

67867 (10) (a) Discovery is prohibited, but the records committee may issue subpoenas or
67868 other orders to compel production of necessary evidence.

67869 (b) When the subject of a records committee subpoena disobeys or fails to comply with
67870 the subpoena, the records committee may file a motion for an order to compel obedience to the
67871 subpoena with the district court.

67872 (c) The records committee's review shall be de novo.

67873 (11) (a) No later than five business days after the hearing, the records committee shall

67874 issue a signed order either granting the petition in whole or in part or upholding the
67875 determination of the governmental entity in whole or in part.

67876 (b) The records committee may, upon consideration and weighing of the various
67877 interests and public policies pertinent to the classification and disclosure or nondisclosure, order
67878 the disclosure of information properly classified as private, controlled, or protected if the public
67879 interest favoring access outweighs the interest favoring restriction of access.

67880 (c) In making a determination under Subsection (11)(b), the records committee shall
67881 consider and, where appropriate, limit the requester's use and further disclosure of the record in
67882 order to protect:

67883 (i) privacy interests in the case of a private or controlled record;

67884 (ii) business confidentiality interests in the case of a record protected under Subsection
67885 [~~63-2-304~~] 63G-2-305(1), (2), (40)(a)(ii), or (40)(a)(vi); and

67886 (iii) privacy interests or the public interest in the case of other protected records.

67887 (12) The order of the records committee shall include:

67888 (a) a statement of reasons for the decision, including citations to this chapter, court rule
67889 or order, another state statute, federal statute, or federal regulation that governs disclosure of
67890 the record, provided that the citations do not disclose private, controlled, or protected
67891 information;

67892 (b) a description of the record or portions of the record to which access was ordered or
67893 denied, provided that the description does not disclose private, controlled, or protected
67894 information or information exempt from disclosure under Subsection [~~63-2-201~~]
67895 63G-2-201(3)(b);

67896 (c) a statement that any party to the proceeding before the records committee may
67897 appeal the records committee's decision to district court; and

67898 (d) a brief summary of the appeals process, the time limits for filing an appeal, and a
67899 notice that in order to protect its rights on appeal, the party may wish to seek advice from an
67900 attorney.

67901 (13) If the records committee fails to issue a decision within 57 calendar days of the

67902 filing of the notice of appeal, that failure shall be considered the equivalent of an order denying
67903 the appeal. The petitioner shall notify the records committee in writing if the petitioner
67904 considers the appeal denied.

67905 (14) (a) Unless a notice of intent to appeal is filed under Subsection (14)(b), each party
67906 to the proceeding shall comply with the order of the records committee.

67907 (b) If a party disagrees with the order of the records committee, that party may file a
67908 notice of intent to appeal the order of the records committee.

67909 (c) If the records committee orders the governmental entity to produce a record and no
67910 appeal is filed, or if, as a result of the appeal, the governmental entity is required to produce a
67911 record, the governmental entity shall:

67912 (i) produce the record; and

67913 (ii) file a notice of compliance with the records committee.

67914 (d) (i) If the governmental entity that is ordered to produce a record fails to file a notice
67915 of compliance or a notice of intent to appeal, the records committee may do either or both of
67916 the following:

67917 (A) impose a civil penalty of up to \$500 for each day of continuing noncompliance; or

67918 (B) send written notice of the governmental entity's noncompliance to:

67919 (I) the governor for executive branch entities;

67920 (II) the Legislative Management Committee for legislative branch entities; and

67921 (III) the Judicial Council for judicial branch agencies entities.

67922 (ii) In imposing a civil penalty, the records committee shall consider the gravity and
67923 circumstances of the violation, including whether the failure to comply was due to neglect or
67924 was willful or intentional.

67925 Section 1340. Section **63G-2-404**, which is renumbered from Section 63-2-404 is
67926 renumbered and amended to read:

67927 ~~[63-2-404]~~. **63G-2-404. Judicial review.**

67928 (1) (a) Any party to a proceeding before the records committee may petition for judicial
67929 review by the district court of the records committee's order.

67930 (b) The petition shall be filed no later than 30 days after the date of the records
67931 committee's order.

67932 (c) The records committee is a necessary party to the petition for judicial review.

67933 (d) The executive secretary of the records committee shall be served with notice of the
67934 petition in accordance with the Utah Rules of Civil Procedure.

67935 (2) (a) A requester may petition for judicial review by the district court of a
67936 governmental entity's determination as specified in Subsection [~~63-2-402~~] 63G-2-402 (1)(b).

67937 (b) The requester shall file a petition no later than:

67938 (i) 30 days after the governmental entity has responded to the records request by either
67939 providing the requested records or denying the request in whole or in part;

67940 (ii) 35 days after the original request if the governmental entity failed to respond to the
67941 request; or

67942 (iii) 45 days after the original request for records if:

67943 (A) the circumstances described in Subsection [~~63-2-401~~] 63G-2-401(1)(b) occur; and
67944 (B) the chief administrative officer failed to make a determination under Section
67945 [~~63-2-401~~] 63G-2-401.

67946 (3) The petition for judicial review shall be a complaint governed by the Utah Rules of
67947 Civil Procedure and shall contain:

67948 (a) the petitioner's name and mailing address;

67949 (b) a copy of the records committee order from which the appeal is taken, if the
67950 petitioner brought a prior appeal to the records committee;

67951 (c) the name and mailing address of the governmental entity that issued the initial
67952 determination with a copy of that determination;

67953 (d) a request for relief specifying the type and extent of relief requested; and
67954 (e) a statement of the reasons why the petitioner is entitled to relief.

67955 (4) If the appeal is based on the denial of access to a protected record, the court shall
67956 allow the claimant of business confidentiality to provide to the court the reasons for the claim of
67957 business confidentiality.

67958 (5) All additional pleadings and proceedings in the district court are governed by the
67959 Utah Rules of Civil Procedure.

67960 (6) The district court may review the disputed records. The review shall be in camera.

67961 (7) The court shall:

67962 (a) make its decision de novo, but allow introduction of evidence presented to the
67963 records committee;

67964 (b) determine all questions of fact and law without a jury; and

67965 (c) decide the issue at the earliest practical opportunity.

67966 (8) (a) The court may, upon consideration and weighing of the various interests and
67967 public policies pertinent to the classification and disclosure or nondisclosure, order the
67968 disclosure of information properly classified as private, controlled, or protected if the interest
67969 favoring access outweighs the interest favoring restriction of access.

67970 (b) The court shall consider and, where appropriate, limit the requester's use and further
67971 disclosure of the record in order to protect privacy interests in the case of private or controlled
67972 records, business confidentiality interests in the case of records protected under Subsections
67973 [~~63-2-304~~] 63G-2-305(1) and (2), and privacy interests or the public interest in the case of
67974 other protected records.

67975 Section 1341. Section **63G-2-405**, which is renumbered from Section 63-2-405 is
67976 renumbered and amended to read:

67977 ~~[63-2-405]~~. **63G-2-405**. **Confidential treatment of records for which no**
67978 **exemption applies.**

67979 (1) A court may, on appeal or in a declaratory or other action, order the confidential
67980 treatment of records for which no exemption from disclosure applies if:

67981 (a) there are compelling interests favoring restriction of access to the record; and

67982 (b) the interests favoring restriction of access clearly outweigh the interests favoring
67983 access.

67984 (2) If a governmental entity requests a court to restrict access to a record under this
67985 section, the court shall require the governmental entity to pay the reasonable attorneys' fees

67986 incurred by the lead party in opposing the governmental entity's request, if:

67987 (a) the court finds that no statutory or constitutional exemption from disclosure could
67988 reasonably apply to the record in question; and

67989 (b) the court denies confidential treatment under this section.

67990 (3) This section does not apply to records that are specifically required to be public
67991 under statutory provisions outside of this chapter or under Section [~~63-2-301~~] 63G-2-301,
67992 except as provided in Subsection (4).

67993 (4) (a) Access to drafts and empirical data in drafts may be limited under this section,
67994 but the court may consider, in its evaluation of interests favoring restriction of access, only
67995 those interests that relate to the underlying information, and not to the deliberative nature of the
67996 record.

67997 (b) Access to original data in a computer program may be limited under this section, but
67998 the court may consider, in its evaluation of interests favoring restriction of access, only those
67999 interests that relate to the underlying information, and not to the status of that data as part of a
68000 computer program.

68001 Section 1342. Section **63G-2-501**, which is renumbered from Section 63-2-501 is
68002 renumbered and amended to read:

68003 **Part 5. State Records Committee**

68004 [~~63-2-501~~]. **63G-2-501. State Records Committee created -- Membership --**
68005 **Terms -- Vacancies -- Expenses.**

68006 (1) There is created the State Records Committee within the Department of
68007 Administrative Services to consist of the following seven individuals:

68008 (a) an individual in the private sector whose profession requires him to create or
68009 manage records that if created by a governmental entity would be private or controlled;

68010 (b) the state auditor or the auditor's designee;

68011 (c) the director of the Division of State History or the director's designee;

68012 (d) the governor or the governor's designee;

68013 (e) one citizen member;

68014 (f) one elected official representing political subdivisions; and

68015 (g) one individual representing the news media.

68016 (2) The members specified in Subsections (1)(a), (e), (f), and (g) shall be appointed by
68017 the governor with the consent of the Senate.

68018 (3) (a) Except as required by Subsection (3)(b), as terms of current committee members
68019 expire, the governor shall appoint each new member or reappointed member to a four-year
68020 term.

68021 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
68022 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
68023 committee members are staggered so that approximately half of the committee is appointed
68024 every two years.

68025 (c) Each appointed member is eligible for reappointment for one additional term.

68026 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
68027 appointed for the unexpired term.

68028 (5) (a) (i) Members who are not government employees shall receive no compensation
68029 or benefits for their services, but may receive per diem and expenses incurred in the
68030 performance of the member's official duties at the rates established by the Division of Finance
68031 under Sections 63A-3-106 and 63A-3-107.

68032 (ii) Members may decline to receive per diem and expenses for their service.

68033 (b) (i) State government officer and employee members who do not receive salary, per
68034 diem, or expenses from their agency for their service may receive per diem and expenses
68035 incurred in the performance of their official duties from the committee at the rates established by
68036 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

68037 (ii) State government officer and employee members may decline to receive per diem
68038 and expenses for their service.

68039 (c) (i) Local government members who do not receive salary, per diem, or expenses
68040 from the entity that they represent for their service may receive per diem and expenses incurred
68041 in the performance of their official duties at the rates established by the Division of Finance

68042 under Sections 63A-3-106 and 63A-3-107.

68043 (ii) Local government members may decline to receive per diem and expenses for their
68044 service.

68045 Section 1343. Section **63G-2-502**, which is renumbered from Section 63-2-502 is
68046 renumbered and amended to read:

68047 **[63-2-502]. 63G-2-502. State Records Committee -- Duties.**

68048 (1) The records committee shall:

68049 (a) meet at least once every three months;

68050 (b) review and approve retention and disposal of records;

68051 (c) hear appeals from determinations of access as provided by Section [63-2-403]

68052 63G-2-403; and

68053 (d) appoint a chairman from among its members.

68054 (2) The records committee may:

68055 (a) make rules to govern its own proceedings as provided by [~~Title 63, Chapter 46a~~]

68056 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

68057 (b) by order, after notice and hearing, reassign classification and designation for any
68058 record series by a governmental entity if the governmental entity's classification or designation is
68059 inconsistent with this chapter.

68060 (3) The records committee shall annually appoint an executive secretary to the records
68061 committee. The executive secretary may not serve as a voting member of the committee.

68062 (4) Five members of the records committee are a quorum for the transaction of
68063 business.

68064 (5) The state archives shall provide staff and support services for the records
68065 committee.

68066 (6) Unless otherwise reimbursed, the citizen member, the individual in the private
68067 sector, and the representative of the news media shall receive a per diem as established by the
68068 Division of Finance in Section 63A-3-106.

68069 (7) If the records committee reassigns the classification or designation of a record or

68070 record series under Subsection (2)(b), any affected governmental entity or any other interested
68071 person may appeal the reclassification or redesignation to the district court. The district court
68072 shall hear the matter de novo.

68073 (8) The Office of the Attorney General shall provide counsel to the records committee
68074 and shall review proposed retention schedules.

68075 Section 1344. Section **63G-2-601**, which is renumbered from Section 63-2-601 is
68076 renumbered and amended to read:

68077 **Part 6. Collection of Information and Accuracy of Records**

68078 **~~[63-2-601].~~ 63G-2-601. Rights of individuals on whom data is maintained --**

68079 **Classification statement -- Notice to provider of information.**

68080 (1) (a) Each governmental entity shall file with the state archivist a statement explaining
68081 the purposes for which a record series that is designated as private or controlled is collected and
68082 used by that governmental entity.

68083 (b) The statement filed under Subsection (1)(a) is a public record.

68084 (2) (a) A governmental entity shall provide notice of the following to a person that is
68085 asked to furnish information that could be classified as a private or controlled record:

68086 (i) the reasons the person is asked to furnish the information;

68087 (ii) the intended uses of the information;

68088 (iii) the consequences for refusing to provide the information; and

68089 (iv) the classes of persons and the governmental entities that currently:

68090 (A) share the information with the governmental entity; or

68091 (B) receive the information from the governmental entity on a regular or contractual
68092 basis.

68093 (b) The notice shall be:

68094 (i) posted in a prominent place at all locations where the governmental entity collects
68095 the information; or

68096 (ii) included as part of the documents or forms that are used by the governmental entity
68097 to collect the information.

- 68098 (3) Upon request, each governmental entity shall explain to a person:
- 68099 (a) the reasons the person is asked to furnish information that could be classified as a
- 68100 private or controlled record;
- 68101 (b) the intended uses of the information referred to in Subsection (3)(a);
- 68102 (c) the consequences for refusing to provide the information referred to in Subsection
- 68103 (3)(a); and
- 68104 (d) the reasons and circumstances under which the information referred to in Subsection
- 68105 (3)(a) may be shared with or provided to other persons or governmental entities.
- 68106 (4) A governmental entity may use private or controlled records only for those
- 68107 purposes:
- 68108 (a) given in the statement filed with the state archivist under Subsection (1); or
- 68109 (b) for which another governmental entity may use the record under Section [~~63-2-206~~]
- 68110 63G-2-206.

68111 Section 1345. Section ~~63G-2-602~~, which is renumbered from Section 63-2-602 is

68112 renumbered and amended to read:

68113 ~~[63-2-602]~~. 63G-2-602. Disclosure to subject of records -- Context of use.

68114 When providing records under Subsection [~~63-2-202~~] 63G-2-202(1) or when providing

68115 public records about an individual to the persons specified in Subsection [~~63-2-202~~]

68116 63G-2-202(1), a governmental entity shall, upon request, disclose the context in which the

68117 record is used.

68118 Section 1346. Section ~~63G-2-603~~, which is renumbered from Section 63-2-603 is

68119 renumbered and amended to read:

68120 ~~[63-2-603]~~. 63G-2-603. Requests to amend a record -- Appeals.

68121 (1) Proceedings of state agencies under this section shall be governed by [~~Title 63,~~

68122 ~~Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

68123 (2) (a) Subject to Subsection (8), an individual may contest the accuracy or

68124 completeness of any public, or private, or protected record concerning him by requesting the

68125 governmental entity to amend the record. However, this section does not affect the right of

68126 access to private or protected records.

68127 (b) The request shall contain the following information:

68128 (i) the requester's name, mailing address, and daytime telephone number; and

68129 (ii) a brief statement explaining why the governmental entity should amend the record.

68130 (3) The governmental entity shall issue an order either approving or denying the request

68131 to amend as provided in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative

68132 Procedures Act, or, if the act does not apply, no later than 30 days after receipt of the request.

68133 (4) If the governmental entity approves the request, it shall correct all of its records
68134 that contain the same incorrect information as soon as practical. A governmental entity may not
68135 disclose the record until it has amended it.

68136 (5) If the governmental entity denies the request, it shall:

68137 (a) inform the requester in writing; and

68138 (b) provide a brief statement giving its reasons for denying the request.

68139 (6) (a) If a governmental entity denies a request to amend a record, the requester may
68140 submit a written statement contesting the information in the record.

68141 (b) The governmental entity shall:

68142 (i) file the requester's statement with the disputed record if the record is in a form such
68143 that the statement can accompany the record or make the statement accessible if the record is
68144 not in a form such that the statement can accompany the record; and

68145 (ii) disclose the requester's statement along with the information in the record whenever
68146 the governmental entity discloses the disputed information.

68147 (7) The requester may appeal the denial of the request to amend a record pursuant to
68148 the Administrative Procedures Act or, if that act does not apply, to district court.

68149 (8) This section does not apply to records relating to title to real or personal property,
68150 medical records, judicial case files, or any other records that the governmental entity determines
68151 must be maintained in their original form to protect the public interest and to preserve the
68152 integrity of the record system.

68153 Section 1347. Section **63G-2-604**, which is renumbered from Section 63-2-604 is

68154 renumbered and amended to read:

68155 ~~[63-2-604]~~. **63G-2-604**. **Retention and disposition of records.**

68156 (1) (a) Except for a governmental entity that is permitted to maintain its own retention
68157 schedules under Part 7, Applicability to Political Subdivisions, the Judiciary, and the
68158 Legislature, each governmental entity shall file with the State Records Committee a proposed
68159 schedule for the retention and disposition of each type of material that is defined as a record
68160 under this chapter.

68161 (b) After a retention schedule is reviewed and approved by the State Records
68162 Committee under Subsection ~~[63-2-502]~~ 63G-2-502(1)(b), the governmental entity shall
68163 maintain and destroy records in accordance with the retention schedule.

68164 (c) If a governmental entity subject to the provisions of this section has not received an
68165 approved retention schedule for a specific type of material that is classified as a record under
68166 this chapter, the model retention schedule maintained by the state archivist shall govern the
68167 retention and destruction of that type of material.

68168 (2) A retention schedule that is filed with or approved by the State Records Committee
68169 under the requirements of this section is a public record.

68170 Section 1348. Section **63G-2-701**, which is renumbered from Section 63-2-701 is
68171 renumbered and amended to read:

68172 **Part 7. Applicability to Political Subdivisions, the Judiciary, and the Legislature**
68173 ~~[63-2-701]~~. **63G-2-701**. **Political subdivisions may adopt ordinances in**
68174 **compliance with chapter.**

68175 (1) (a) Each political subdivision may adopt an ordinance or a policy applicable
68176 throughout its jurisdiction relating to information practices including classification, designation,
68177 access, denials, segregation, appeals, management, retention, and amendment of records.

68178 (b) The ordinance or policy shall comply with the criteria set forth in this section.

68179 (c) If any political subdivision does not adopt and maintain an ordinance or policy, then
68180 that political subdivision is subject to this chapter.

68181 (d) Notwithstanding the adoption of an ordinance or policy, each political subdivision is

68182 subject to Parts 1 and 3, and Sections [~~63-2-201~~] 63G-2-201, [~~63-2-202~~] 63G-2-202,
68183 [~~63-2-205~~] 63G-2-205, [~~63-2-206~~] 63G-2-206, [~~63-2-601~~] 63G-2-601, [~~63-2-602~~] 63G-2-602,
68184 [~~63-2-905~~] 63A-12-105, and [~~63-2-907~~] 63A-12-107.

68185 (e) Every ordinance, policy, or amendment to the ordinance or policy shall be filed with
68186 the state archives no later than 30 days after its effective date.

68187 (f) The political subdivision shall also report to the state archives all retention schedules,
68188 and all designations and classifications applied to record series maintained by the political
68189 subdivision.

68190 (g) The report required by Subsection (f) is notification to state archives of the political
68191 subdivision's retention schedules, designations, and classifications. The report is not subject to
68192 approval by state archives. If state archives determines that a different retention schedule is
68193 needed for state purposes, state archives shall notify the political subdivision of the state's
68194 retention schedule for the records and shall maintain the records if requested to do so under
68195 Subsection [~~63-2-905~~] 63A-12-105(2).

68196 (2) Each ordinance or policy relating to information practices shall:

68197 (a) provide standards for the classification and designation of the records of the political
68198 subdivision as public, private, controlled, or protected in accordance with Part 3 of this chapter;

68199 (b) require the classification of the records of the political subdivision in accordance
68200 with those standards;

68201 (c) provide guidelines for establishment of fees in accordance with Section [~~63-2-203~~]
68202 63G-2-203; and

68203 (d) provide standards for the management and retention of the records of the political
68204 subdivision comparable to Section [~~63-2-903~~] 63A-12-103.

68205 (3) (a) Each ordinance or policy shall establish access criteria, procedures, and response
68206 times for requests to inspect, obtain, or amend records of the political subdivision, and time
68207 limits for appeals consistent with this chapter.

68208 (b) In establishing response times for access requests and time limits for appeals, the
68209 political subdivision may establish reasonable time frames different than those set out in Section

68210 [~~63-2-204~~] 63G-2-204 and Part 4 of this chapter if it determines that the resources of the
68211 political subdivision are insufficient to meet the requirements of those sections.

68212 (4) (a) The political subdivision shall establish an appeals process for persons aggrieved
68213 by classification, designation or access decisions.

68214 (b) The policy or ordinance shall provide for:

68215 (i) an appeals board composed of the governing body of the political subdivision; or

68216 (ii) a separate appeals board composed of members of the governing body and the
68217 public, appointed by the governing body.

68218 (5) If the requester concurs, the political subdivision may also provide for an additional
68219 level of administrative review to the records committee in accordance with Section [~~63-2-403~~]
68220 63G-2-403.

68221 (6) Appeals of the decisions of the appeals boards established by political subdivisions
68222 shall be by petition for judicial review to the district court. The contents of the petition for
68223 review and the conduct of the proceeding shall be in accordance with Sections [~~63-2-402~~]
68224 63G-2-402 and [~~63-2-404~~] 63G-2-404.

68225 (7) Any political subdivision that adopts an ordinance or policy under Subsection (1)
68226 shall forward to state archives a copy and summary description of the ordinance or policy.

68227 Section 1349. Section **63G-2-702**, which is renumbered from Section 63-2-702 is
68228 renumbered and amended to read:

68229 [~~63-2-702~~]. **63G-2-702. Applicability to the judiciary.**

68230 (1) The judiciary is subject to the provisions of this chapter except as provided in this
68231 section.

68232 (2) (a) The judiciary is not subject to Part 4, Appeals, except as provided in Subsection
68233 (5).

68234 (b) The judiciary is not subject to Parts 5, State Records Committee, and 6, Collection
68235 of Information and Accuracy of Records.

68236 (c) The judiciary is subject to only the following sections in Part 9, Archives and
68237 Records Service: Sections [~~63-2-905~~] 63A-12-105 and [~~63-2-906~~] 63A-12-106.

68238 (3) The Judicial Council, the Administrative Office of the Courts, the courts, and other
68239 administrative units in the judicial branch shall designate and classify their records in accordance
68240 with Sections [~~63-2-301~~] 63G-2-301 through [~~63-2-304~~] 63G-2-305.

68241 (4) Substantially consistent with the provisions of this chapter, the Judicial Council
68242 shall:

68243 (a) make rules governing requests for access, fees, classification, designation,
68244 segregation, management, retention, denials and appeals of requests for access and retention,
68245 and amendment of judicial records;

68246 (b) establish an appellate board to handle appeals from denials of requests for access
68247 and provide that a requester who is denied access by the appellate board may file a lawsuit in
68248 district court; and

68249 (c) provide standards for the management and retention of judicial records substantially
68250 consistent with Section [~~63-2-903~~] 63A-12-103.

68251 (5) Rules governing appeals from denials of requests for access shall substantially
68252 comply with the time limits provided in Section [~~63-2-204~~] 63G-2-204 and Part 4, Appeals.

68253 (6) Upon request, the state archivist shall:

68254 (a) assist with and advise concerning the establishment of a records management
68255 program in the judicial branch; and

68256 (b) as required by the judiciary, provide program services similar to those available to
68257 the executive and legislative branches of government as provided in this chapter and Title 63A,
68258 Chapter 12, Part 1, Archives and Records Service.

68259 Section 1350. Section **63G-2-703**, which is renumbered from Section 63-2-703 is
68260 renumbered and amended to read:

68261 [~~63-2-703~~]. **63G-2-703. Applicability to the Legislature.**

68262 (1) The Legislature and its staff offices shall designate and classify records in
68263 accordance with Sections [~~63-2-301~~] 63G-2-301 through [~~63-2-304~~] 63G-2-305 as public,
68264 private, controlled, or protected.

68265 (2) (a) The Legislature and its staff offices are not subject to Section [~~63-2-203~~]

68266 63G-2-203 or to Part 4, Appeals, 5, State Records Committee, or 6, Collection of Information
68267 and Accuracy of Records.

68268 (b) The Legislature is subject to only the following sections in Part 9, Archives and
68269 Records Service: Sections [~~63-2-902~~] 63A-12-102, [~~63-2-906~~] 63A-12-106, and [~~63-2-909~~]
68270 63G-2-310.

68271 (3) The Legislature, through the Legislative Management Committee:

68272 (a) shall establish policies to handle requests for classification, designation, fees, access,
68273 denials, segregation, appeals, management, retention, and amendment of records; and

68274 (b) may establish an appellate board to hear appeals from denials of access.

68275 (4) Policies shall include reasonable times for responding to access requests consistent
68276 with the provisions of Part 2, Access to Records, fees, and reasonable time limits for appeals.

68277 (5) Upon request, the state archivist shall:

68278 (a) assist with and advise concerning the establishment of a records management
68279 program in the Legislature; and

68280 (b) as required by the Legislature, provide program services similar to those available to
68281 the executive branch of government, as provided in this chapter and Title 63A, Chapter 12, Part
68282 1, Archives and Records Service.

68283 Section 1351. Section **63G-2-801**, which is renumbered from Section 63-2-801 is
68284 renumbered and amended to read:

Part 8. Remedies

68286 [~~63-2-801~~]. **63G-2-801**. **Criminal penalties.**

68287 (1) (a) A public employee or other person who has lawful access to any private,
68288 controlled, or protected record under this chapter, and who intentionally discloses, provides a
68289 copy of, or improperly uses a private, controlled, or protected record knowing that the
68290 disclosure or use is prohibited under this chapter, is guilty of a class B misdemeanor.

68291 (b) It is a defense to prosecution under Subsection (1)(a) that the actor used or released
68292 private, controlled, or protected information in the reasonable belief that the use or disclosure of
68293 the information was necessary to expose a violation of law involving government corruption,

68294 abuse of office, or misappropriation of public funds or property.

68295 (c) It is a defense to prosecution under Subsection (1)(a) that the record could have
68296 lawfully been released to the recipient if it had been properly classified.

68297 (2) (a) A person who by false pretenses, bribery, or theft, gains access to or obtains a
68298 copy of any private, controlled, or protected record to which ~~he~~ the person is not legally
68299 entitled is guilty of a class B misdemeanor.

68300 (b) No person shall be guilty under Subsection (2)(a) who receives the record,
68301 information, or copy after the fact and without prior knowledge of or participation in the false
68302 pretenses, bribery, or theft.

68303 (3) A public employee who intentionally refuses to release a record the disclosure of
68304 which the employee knows is required by law or by final unappealed order from a governmental
68305 entity, the records committee, or a court, is guilty of a class B misdemeanor.

68306 Section 1352. Section **63G-2-802**, which is renumbered from Section 63-2-802 is
68307 renumbered and amended to read:

68308 ~~[63-2-802].~~ **63G-2-802. Injunction -- Attorney fees.**

68309 (1) A district court in this state may enjoin any governmental entity or political
68310 subdivision that violates or proposes to violate the provisions of this chapter.

68311 (2) (a) A district court may assess against any governmental entity or political
68312 subdivision reasonable ~~[attorneys']~~ attorney fees and other litigation costs reasonably incurred in
68313 connection with a judicial appeal of a denial of a records request if the requester substantially
68314 prevails.

68315 (b) In determining whether to award attorneys' fees under this section, the court shall
68316 consider:

68317 (i) the public benefit derived from the case;

68318 (ii) the nature of the requester's interest in the records; and

68319 (iii) whether the governmental entity's or political subdivision's actions had a reasonable
68320 basis.

68321 (c) ~~[Attorneys']~~ Attorney fees shall not ordinarily be awarded if the purpose of the

68322 litigation is primarily to benefit the requester's financial or commercial interest.

68323 (3) Neither [~~attorneys'~~] attorney fees nor costs shall be awarded for fees or costs
68324 incurred during administrative proceedings.

68325 (4) Notwithstanding Subsection (2), a court may only award fees and costs incurred in
68326 connection with appeals to district courts under Subsection [~~63-2-404~~] 63G-2-404(2) if the fees
68327 and costs were incurred 20 or more days after the requester provided to the governmental entity
68328 or political subdivision a statement of position that adequately explains the basis for the
68329 requester's position.

68330 (5) Claims for [~~attorneys'~~] attorney fees as provided in this section or for damages are
68331 subject to [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

68332 Section 1353. Section **63G-2-803**, which is renumbered from Section 63-2-803 is
68333 renumbered and amended to read:

68334 [~~63-2-803~~]. **63G-2-803. No liability for certain decisions of a governmental**
68335 **entity or a political subdivision.**

68336 (1) Neither the governmental entity or political subdivision, nor any officer or employee
68337 of the governmental entity or political subdivision, is liable for damages resulting from the
68338 release of a record where the person or government requesting the record presented evidence of
68339 authority to obtain the record even if it is subsequently determined that the requester had no
68340 authority.

68341 (2) Neither the governmental entity or political subdivision, nor any officer or employee
68342 of the governmental entity or political subdivision, is liable for damages arising from the
68343 negligent disclosure of records classified as private under Subsection [~~63-2-302~~]
68344 63G-2-302(1)(f) unless:

68345 (a) the disclosure was of employment records maintained by the governmental entity; or

68346 (b) the current or former government employee had previously filed the notice required
68347 by Section [~~63-2-302.5~~] 63G-2-303 and:

68348 (i) the government entity did not take reasonable steps to preclude access or
68349 distribution of the record; or

68350 (ii) the release of the record was otherwise willfully or grossly negligent.

68351 (3) A mailing from a government agency to an individual who has filed an application
68352 under Section [~~63-2-302.5~~] 63G-2-303 is not a wrongful disclosure under this chapter.

68353 Section 1354. Section **63G-2-804**, which is renumbered from Section 63-2-804 is
68354 renumbered and amended to read:

68355 ~~[63-2-804].~~ **63G-2-804. Disciplinary action.**

68356 A governmental entity or political subdivision may take disciplinary action which may
68357 include suspension or discharge against any employee of the governmental entity or political
68358 subdivision who intentionally violates any provision of this chapter.

68359 Section 1355. Section **63G-2-901**, which is renumbered from Section 63-2-1001 is
68360 renumbered and amended to read:

68361 **Part 9. Public Associations**

68362 ~~[63-2-1001].~~ **63G-2-901. Definitions -- Public associations subject to act.**

68363 (1) As used in this section:

68364 (a) "Public association" means any association, organization, or society whose members
68365 include elected or appointed public officials and for which public funds are used or paid to the
68366 public association for membership dues or for other support for the official's participation in the
68367 public association.

68368 (b) (i) "Public funds" means any monies received by a public entity from appropriations,
68369 taxes, fees, interest, or other returns on investment.

68370 (ii) "Public funds" does not include monies donated to a public entity by a person or
68371 entity.

68372 (2) The budget documents and financial statements of a public association shall be
68373 released pursuant to a written request if 50% or more of the public association's:

68374 (a) members are elected or appointed public officials from this state; and

68375 (b) membership dues or other financial support come from public funds from this state.

68376 Section 1356. Section **63G-3-101**, which is renumbered from Section 63-46a-1 is
68377 renumbered and amended to read:

68378 **CHAPTER 3. UTAH ADMINISTRATIVE RULEMAKING ACT**

68379 **Part 1. General Provisions**

68380 ~~[63-46a-1]~~. **63G-3-101. Title.**

68381 This ~~[act]~~ chapter is known as the "Utah Administrative Rulemaking Act."

68382 Section 1357. Section **63G-3-102**, which is renumbered from Section 63-46a-2 is
68383 renumbered and amended to read:

68384 ~~[63-46a-2]~~. **63G-3-102. Definitions.**

68385 As used in this chapter:

68386 (1) "Administrative record" means information an agency relies upon when making a
68387 rule under this chapter including:

- 68388 (a) the proposed rule, change in the proposed rule, and the rule analysis form;
- 68389 (b) the public comment received and recorded by the agency during the public comment
68390 period;
- 68391 (c) the agency's response to the public comment;
- 68392 (d) the agency's analysis of the public comment; and
- 68393 (e) the agency's report of its decision-making process.

68394 (2) "Agency" means each state board, authority, commission, institution, department,
68395 division, officer, or other state government entity other than the Legislature, its committees, the
68396 political subdivisions of the state, or the courts, which is authorized or required by law to make
68397 rules, adjudicate, grant or withhold licenses, grant or withhold relief from legal obligations, or
68398 perform other similar actions or duties delegated by law.

68399 (3) "Bulletin" means the Utah State Bulletin.

68400 (4) "Catchline" means a short summary of each section, part, rule, or title of the code
68401 that follows the section, part, rule, or title reference placed before the text of the rule and serves
68402 the same function as boldface in legislation as described in Section 68-3-13.

68403 (5) "Code" means the body of all effective rules as compiled and organized by the
68404 division and entitled "Utah Administrative Code."

68405 (6) "Director" means the director of the Division of Administrative Rules.

- 68406 (7) "Division" means the Division of Administrative Rules.
- 68407 (8) "Effective" means operative and enforceable.
- 68408 (9) (a) "File" means to submit a document to the division as prescribed by the division.
- 68409 (b) "Filing date" means the day and time the document is recorded as received by the
- 68410 division.
- 68411 (10) "Interested person" means any person affected by or interested in a proposed rule,
- 68412 amendment to an existing rule, or a nonsubstantive change made under Section [~~63-46a-10~~
- 68413 63G-3-402.
- 68414 (11) "Order" means an agency action that determines the legal rights, duties, privileges,
- 68415 immunities, or other interests of one or more specific persons, but not a class of persons.
- 68416 (12) "Person" means any individual, partnership, corporation, association, governmental
- 68417 entity, or public or private organization of any character other than an agency.
- 68418 (13) "Publication" or "publish" means making a rule available to the public by including
- 68419 the rule or a summary of the rule in the bulletin.
- 68420 (14) "Publication date" means the inscribed date of the bulletin.
- 68421 (15) "Register" may include an electronic database.
- 68422 (16) (a) "Rule" means an agency's written statement that:
- 68423 (i) is explicitly or implicitly required by state or federal statute or other applicable law;
- 68424 (ii) implements or interprets a state or federal legal mandate; and
- 68425 (iii) applies to a class of persons or another agency.
- 68426 (b) "Rule" includes the amendment or repeal of an existing rule.
- 68427 (c) "Rule" does not mean:
- 68428 (i) orders;
- 68429 (ii) an agency's written statement that applies only to internal management and that does
- 68430 not restrict the legal rights of a public class of persons or another agency;
- 68431 (iii) the governor's executive orders or proclamations;
- 68432 (iv) opinions issued by the attorney general's office;
- 68433 (v) declaratory rulings issued by the agency according to Section [~~63-46b-21~~]

68434 63G-4-503 except as required by Section [~~63-46a-3~~] 63G-3-201;

68435 (vi) rulings by an agency in adjudicative proceedings, except as required by Subsection
68436 [~~63-46a-3~~] 63G-3-201(6); or

68437 (vii) an agency written statement that is in violation of any state or federal law.

68438 (17) "Rule analysis" means the format prescribed by the division to summarize and
68439 analyze rules.

68440 (18) "Small business" means a business employing fewer than 50 persons.

68441 (19) "Substantive change" means a change in a rule that affects the application or
68442 results of agency actions.

68443 Section 1358. Section **63G-3-201**, which is renumbered from Section 63-46a-3 is
68444 renumbered and amended to read:

Part 2. Circumstances Requiring Rulemaking - Status of Administrative Rules

[~~63-46a-3~~]. 63G-3-201. When rulemaking is required.

(1) Each agency shall:

(a) maintain a current version of its rules; and

(b) make it available to the public for inspection during its regular business hours.

(2) In addition to other rulemaking required by law, each agency shall make rules when
68451 agency action:

(a) authorizes, requires, or prohibits an action;

(b) provides or prohibits a material benefit;

(c) applies to a class of persons or another agency; and

(d) is explicitly or implicitly authorized by statute.

(3) Rulemaking is also required when an agency issues a written interpretation of a state
68457 or federal legal mandate.

(4) Rulemaking is not required when:

(a) agency action applies only to internal agency management, inmates or residents of a
68460 state correctional, diagnostic, or detention facility, persons under state legal custody, patients
68461 admitted to a state hospital, members of the state retirement system, or students enrolled in a

68462 state education institution;

68463 (b) a standardized agency manual applies only to internal fiscal or administrative details
68464 of governmental entities supervised under statute;

68465 (c) an agency issues policy or other statements that are advisory, informative, or
68466 descriptive, and do not conform to the requirements of Subsections (2) and (3); or

68467 (d) an agency makes nonsubstantive changes in a rule, except that the agency shall file
68468 all nonsubstantive changes in a rule with the division.

68469 (5) A rule shall enumerate any penalty authorized by statute that may result from its
68470 violation.

68471 (6) Each agency shall enact rules incorporating the principles of law not already in its
68472 rules that are established by final adjudicative decisions within 120 days after the decision is
68473 announced in its cases.

68474 (7) (a) Each agency may enact a rule that incorporates by reference:

68475 (i) all or any part of another code, rule, or regulation that has been adopted by a federal
68476 agency, an agency or political subdivision of this state, an agency of another state, or by a
68477 nationally recognized organization or association;

68478 (ii) state agency implementation plans mandated by the federal government for
68479 participation in the federal program;

68480 (iii) lists, tables, illustrations, or similar materials that are subject to frequent change,
68481 fully described in the rule, and are available for public inspection; or

68482 (iv) lists, tables, illustrations, or similar materials that the director determines are too
68483 expensive to reproduce in the administrative code.

68484 (b) Rules incorporating materials by reference shall:

68485 (i) be enacted according to the procedures outlined in this chapter;

68486 (ii) state that the referenced material is incorporated by reference;

68487 (iii) state the date, issue, or version of the material being incorporated; and

68488 (iv) define specifically what material is incorporated by reference and identify any
68489 agency deviations from it.

68490 (c) The agency shall identify any substantive changes in the material incorporated by
68491 reference by following the rulemaking procedures of this chapter.

68492 (d) The agency shall maintain a complete and current copy of the referenced material
68493 available for public review at the agency and at the division.

68494 (8) (a) This chapter is not intended to inhibit the exercise of agency discretion within
68495 the limits prescribed by statute or agency rule.

68496 (b) An agency may enact a rule creating a justified exception to a rule.

68497 (9) An agency may obtain assistance from the attorney general to ensure that its rules
68498 meet legal and constitutional requirements.

68499 Section 1359. Section **63G-3-202**, which is renumbered from Section 63-46a-3.5 is
68500 renumbered and amended to read:

68501 ~~[63-46a-3.5].~~ **63G-3-202. Rules having the effect of law.**

68502 (1) An agency's written statement is a rule if it conforms to the definition of a rule under
68503 Section ~~[63-46a-2]~~ 63G-3-102, but the written statement is not enforceable unless it is made as
68504 a rule in accordance with the requirements of this chapter.

68505 (2) An agency's written statement that is made as a rule in accordance with the
68506 requirements of this chapter is enforceable and has the effect of law.

68507 Section 1360. Section **63G-3-301**, which is renumbered from Section 63-46a-4 is
68508 renumbered and amended to read:

68509 **Part 3. Rulemaking Procedures**

68510 ~~[63-46a-4].~~ **63G-3-301. Rulemaking procedure.**

68511 (1) An agency authorized to make rules is also authorized to amend or repeal those
68512 rules.

68513 (2) Except as provided in Sections ~~[63-46a-6]~~ 63G-3-303 and ~~[63-46a-7]~~ 63G-3-304,
68514 when making, amending, or repealing a rule agencies shall comply with:

68515 (a) the requirements of this section;

68516 (b) consistent procedures required by other statutes;

68517 (c) applicable federal mandates; and

- 68518 (d) rules made by the division to implement this chapter.
- 68519 (3) Subject to the requirements of this chapter, each agency shall develop and use
68520 flexible approaches in drafting rules that meet the needs of the agency and that involve persons
68521 affected by the agency's rules.
- 68522 (4) (a) Each agency shall file its proposed rule and rule analysis with the division.
- 68523 (b) Rule amendments shall be marked with new language underlined and deleted
68524 language struck out.
- 68525 (c) (i) The division shall publish the information required under [~~this~~] Subsection [~~(4)~~]
68526 (6) on the rule analysis and the text of the proposed rule in the next issue of the bulletin.
- 68527 (ii) For rule amendments, only the section or subsection of the rule being amended need
68528 be printed.
- 68529 (iii) If the director determines that the rule is too long to publish, the director shall
68530 publish the rule analysis and shall publish the rule by reference to a copy on file with the
68531 division.
- 68532 (5) Prior to filing a rule with the division, the department head shall consider and
68533 comment on the fiscal impact a rule may have on businesses.
- 68534 (6) The rule analysis shall contain:
- 68535 (a) a summary of the rule or change;
- 68536 (b) the purpose of the rule or reason for the change;
- 68537 (c) the statutory authority or federal requirement for the rule;
- 68538 (d) the anticipated cost or savings to:
- 68539 (i) the state budget;
- 68540 (ii) local governments;
- 68541 (iii) small businesses; and
- 68542 (iv) persons other than small businesses, businesses, or local governmental entities;
- 68543 (e) the compliance cost for affected persons;
- 68544 (f) how interested persons may review the full text of the rule;
- 68545 (g) how interested persons may present their views on the rule;

68546 (h) the time and place of any scheduled public hearing;

68547 (i) the name and telephone number of an agency employee who may be contacted about
68548 the rule;

68549 (j) the name of the agency head or designee who authorized the rule;

68550 (k) the date on which the rule may become effective following the public comment
68551 period; and

68552 (l) comments by the department head on the fiscal impact the rule may have on
68553 businesses.

68554 (7) (a) For a rule being repealed and reenacted, the rule analysis shall contain a
68555 summary that generally includes the following:

68556 (i) a summary of substantive provisions in the repealed rule which are eliminated from
68557 the enacted rule; and

68558 (ii) a summary of new substantive provisions appearing only in the enacted rule.

68559 (b) The summary required under this Subsection (7) is to aid in review and may not be
68560 used to contest any rule on the ground of noncompliance with the procedural requirements of
68561 this chapter.

68562 (8) A copy of the rule analysis shall be mailed to all persons who have made timely
68563 request of the agency for advance notice of its rulemaking proceedings and to any other person
68564 who, by statutory or federal mandate or in the judgment of the agency, should also receive
68565 notice.

68566 (9) (a) Following the publication date, the agency shall allow at least 30 days for public
68567 comment on the rule.

68568 (b) The agency shall review and evaluate all public comments submitted in writing
68569 within the time period under Subsection (9)(a) or presented at public hearings conducted by the
68570 agency within the time period under Subsection (9)(a).

68571 (10) (a) Except as provided in Sections [~~63-46a-6~~] 63G-3-303 and [~~63-46a-7~~]
68572 63G-3-304, a proposed rule becomes effective on any date specified by the agency that is no
68573 fewer than seven calendar days after the close of the public comment period under Subsection

68574 (9), nor more than 120 days after the publication date.

68575 (b) The agency shall provide notice of the rule's effective date to the division in the form
68576 required by the division.

68577 (c) The notice of effective date may not provide for an effective date prior to the date it
68578 is received by the division.

68579 (d) The division shall publish notice of the effective date of the rule in the next issue of
68580 the bulletin.

68581 (e) A proposed rule lapses if a notice of effective date or a change to a proposed rule is
68582 not filed with the division within 120 days of publication.

68583 (11) (a) As used in this Subsection (11), "initiate rulemaking proceedings" means the
68584 filing, for the purposes of publication in accordance with Subsection (4), of an agency's
68585 proposed rule that is required by state statute.

68586 (b) A state agency shall initiate rulemaking proceedings no later than 180 days after the
68587 effective date of the statutory provision that requires the rulemaking.

68588 (c) If a state agency does not initiate rulemaking proceedings in accordance with the
68589 time requirements in Subsection (11)(b), the state agency shall appear before the legislative
68590 Administrative Rules Review Committee and provide the reasons for the delay.

68591 Section 1361. Section **63G-3-302**, which is renumbered from Section 63-46a-5 is
68592 renumbered and amended to read:

68593 ~~**63-46a-5**~~. **63G-3-302. Public hearings.**

68594 (1) Each agency may hold a public hearing on a proposed rule, amendment to a rule, or
68595 repeal of a rule during the public comment period.

68596 (2) Each agency shall hold a public hearing on a proposed rule, amendment to a rule, or
68597 repeal of a rule if:

68598 (a) a public hearing is required by state or federal mandate;

68599 (b) (i) another state agency, ten interested persons, or an interested association having
68600 not fewer than ten members request a public hearing; and

68601 (ii) the agency receives the request in writing not more than 15 days after the

68602 publication date of the proposed rule.

68603 (3) The agency shall hold the hearing:

68604 (a) before the rule becomes effective; and

68605 (b) no less than seven days nor more than 30 days after receipt of the request for
68606 hearing.

68607 Section 1362. Section **63G-3-303**, which is renumbered from Section 63-46a-6 is
68608 renumbered and amended to read:

68609 ~~[63-46a-6].~~ **63G-3-303. Changes in rules.**

68610 (1) (a) To change a proposed rule already published in the bulletin, an agency shall file
68611 with the division:

68612 (i) the text of the changed rule; and

68613 (ii) a rule analysis containing a description of the change and the information required
68614 by Section ~~[63-46a-4]~~ 63G-3-301.

68615 (b) A change to a proposed rule may not be filed more than 120 days after publication
68616 of the rule being changed.

68617 (c) The division shall publish the rule analysis for the changed rule in the bulletin.

68618 (d) The changed proposed rule and its associated proposed rule will become effective
68619 on a date specified by the agency, not less than 30 days or more than 120 days after publication
68620 of the last change in proposed rule.

68621 (e) A changed proposed rule and its associated proposed rule lapse if a notice of
68622 effective date or another change to a proposed rule is not filed with the division within 120 days
68623 of publication of the last change in proposed rule.

68624 (2) If the rule change is nonsubstantive:

68625 (a) the agency need not comply with the requirements of Subsection (1); and

68626 (b) the agency shall notify the division of the change in writing.

68627 (3) If the rule is effective, the agency shall amend the rule according to the procedures
68628 specified in Section ~~[63-46a-4]~~ 63G-3-301.

68629 Section 1363. Section **63G-3-304**, which is renumbered from Section 63-46a-7 is

68630 renumbered and amended to read:

68631 ~~[63-46a-7]~~. **63G-3-304. Emergency rulemaking procedure.**

68632 (1) All agencies shall comply with the rulemaking procedures of Section ~~[63-46a-4]~~
68633 63G-3-301 unless an agency finds that these procedures would:

68634 (a) cause an imminent peril to the public health, safety, or welfare;

68635 (b) cause an imminent budget reduction because of budget restraints or federal
68636 requirements; or

68637 (c) place the agency in violation of federal or state law.

68638 (2) (a) When finding that its rule is excepted from regular rulemaking procedures by
68639 this section, the agency shall file with the division:

68640 (i) the text of the rule; and

68641 (ii) a rule analysis that includes the specific reasons and justifications for its findings.

68642 (b) The division shall publish the rule in the bulletin as provided in Subsection
68643 ~~[63-46a-4]~~ 63G-3-301(4).

68644 (c) The agency shall notify interested persons as provided in Subsection ~~[63-46a-4]~~
68645 63G-3-301(8).

68646 (d) The rule becomes effective for a period not exceeding 120 days on the date of filing
68647 or any later date designated in the rule.

68648 (3) If the agency intends the rule to be effective beyond 120 days, the agency shall also
68649 comply with the procedures of Section ~~[63-46a-4]~~ 63G-3-301.

68650 Section 1364. Section **63G-3-305**, which is renumbered from Section 63-46a-9 is
68651 renumbered and amended to read:

68652 ~~[63-46a-9]~~. **63G-3-305. Agency review of rules -- Schedule of filings -- Limited**
68653 **exemption for certain rules.**

68654 (1) Each agency shall review each of its rules within five years of the rule's original
68655 effective date or within five years of the filing of the last five-year review, whichever is later.
68656 Rules effective prior to 1992 need not be reviewed until 1997.

68657 (2) An agency may consider any substantial review of a rule to be a five-year review. If

68658 the agency chooses to consider a review a five-year review, it shall follow the procedures
68659 outlined in Subsection (3).

68660 (3) At the conclusion of its review, the agency shall file a notice of review on or before
68661 the anniversary date indicating its intent to continue, amend, or repeal the rule.

68662 (a) If the agency continues the rule, it shall file a statement which includes:

68663 (i) a concise explanation of the particular statutory provisions under which the rule is
68664 enacted and how these provisions authorize or require the rule;

68665 (ii) a summary of written comments received during and since the last five-year review
68666 of the rule from interested persons supporting or opposing the rule; and

68667 (iii) a reasoned justification for continuation of the rule, including reasons why the
68668 agency disagrees with comments in opposition to the rule, if any.

68669 (b) If the agency repeals the rule, it shall comply with Section [~~63-46a-4~~] 63G-3-301.

68670 (c) If the agency amends and continues the rule, it shall comply with the requirements of
68671 Section [~~63-46a-4~~] 63G-3-301 and file the statement required in Subsection (3)(a).

68672 (4) (a) The division shall publish the notice and statement in the bulletin.

68673 (b) The division may schedule the publication of agency notices and statements,
68674 provided that no notice and statement shall be published more than one year after the review
68675 deadline established under Subsection (1).

68676 (5) The division shall notify an agency of rules due for review at least 180 days prior to
68677 the anniversary date.

68678 (6) If an agency finds that it will not meet the deadline established in Subsection (1):

68679 (a) the agency may file an extension prior to the anniversary date with the division
68680 indicating the reason for the extension; and

68681 (b) the division shall publish notice of the extension in the next issue of the bulletin.

68682 (7) An extension permits the agency to file a notice no more than 120 days after the
68683 anniversary date.

68684 (8) If an agency fails to file a notice of review or extension on or before the date
68685 specified in the notice mandated in Subsection (5), the division shall:

68686 (a) publish a notice in the next issue of the bulletin that the rule has expired and is no
68687 longer enforceable;

68688 (b) remove the rule from the code; and

68689 (c) notify the agency that the rule has expired.

68690 (9) After a rule expires, an agency must comply with the requirements of Section
68691 [~~63-46a-4~~] 63G-3-301 to reenact the rule.

68692 (10) (a) Rules issued under the following provisions related to the Department of
68693 Workforce Services or Labor Commission that are in effect on July 1, 1997, are not subject to
68694 the requirements of this section until July 1, 1998:

68695 (i) Title 34, Labor in General;

68696 (ii) Title 34A, Utah Labor Code;

68697 (iii) Title 35A, Utah Workforce Services Code;

68698 (iv) Title 40, Chapter 2, Coal Mines; and

68699 (v) Title 57, Chapter 21, Utah Fair Housing Act.

68700 (b) Any rule described in Subsection (10)(a) that would have expired on or after July 1,
68701 1997 but before July 1, 1998, expires July 1, 1998, unless for that rule the Department of
68702 Workforce Services or Labor Commission files:

68703 (i) the notice of review, described in Subsection (3); or

68704 (ii) an extension described in Subsection (6).

68705 Section 1365. Section **63G-3-401**, which is renumbered from Section 63-46a-9.5 is
68706 renumbered and amended to read:

68707 **Part 4. Division of Administrative Rules**

68708 [~~63-46a-9.5~~]. **63G-3-401. Division of Administrative Rules created --**
68709 **Appointment of director.**

68710 (1) There is created within the Department of Administrative Services the Division of
68711 Administrative Rules, to be administered by a director.

68712 (2) The director of administrative rules shall be appointed by the executive director with
68713 the approval of the governor.

68714 Section 1366. Section **63G-3-402**, which is renumbered from Section 63-46a-10 is
68715 renumbered and amended to read:

68716 ~~[63-46a-10]~~. **63G-3-402. Division of Administrative Rules -- Duties**
68717 **generally.**

68718 (1) The Division of Administrative Rules shall:

68719 (a) establish all filing, publication, and hearing procedures necessary to make rules
68720 under this chapter;

68721 (b) record in a register the receipt of all agency rules, rule analysis forms, and notices of
68722 effective dates;

68723 (c) make the register, copies of all proposed rules, and rulemaking documents available
68724 for public inspection;

68725 (d) publish all proposed rules, rule analyses, notices of effective dates, and review
68726 notices in the bulletin at least monthly, except that the division may publish the complete text of
68727 any proposed rule that the director determines is too long to print or too expensive to publish by
68728 reference to the text maintained by the division;

68729 (e) compile, format, number, and index all effective rules in an administrative code, and
68730 periodically publish that code and supplements or revisions to it;

68731 (f) publish a digest of all rules and notices contained in the most recent bulletin;

68732 (g) publish at least annually an index of all changes to the administrative code and the
68733 effective date of each change;

68734 (h) print, or contract to print, all rulemaking publications the division determines
68735 necessary to implement this chapter;

68736 (i) distribute without charge the bulletin and administrative code to state-designated
68737 repositories, the Administrative Rules Review Committee, the Office of Legislative Research
68738 and General Counsel, and the two houses of the Legislature;

68739 (j) distribute without charge the digest and index to state legislators, agencies, political
68740 subdivisions on request, and the Office of Legislative Research and General Counsel;

68741 (k) distribute, at prices covering publication costs, all paper rulemaking publications to

68742 all other requesting persons and agencies;

68743 (l) provide agencies assistance in rulemaking; and

68744 (m) administer this chapter and require state agencies to comply with filing, publication,
68745 and hearing procedures.

68746 (2) The division may after notifying the agency make nonsubstantive changes to rules
68747 filed with the division or published in the bulletin or code by:

68748 (a) implementing a uniform system of formatting, punctuation, capitalization,
68749 organization, numbering, and wording;

68750 (b) correcting obvious errors and inconsistencies in punctuation, capitalization,
68751 numbering, referencing, and wording;

68752 (c) changing a catchline to more accurately reflect the substance of each section, part,
68753 rule, or title;

68754 (d) updating or correcting annotations associated with a section, part, rule, or title; and

68755 (e) merging or determining priority of any amendment, enactment, or repeal to the same
68756 rule or section made effective by an agency.

68757 (3) In addition, the division may make the following nonsubstantive changes with the
68758 concurrence of the agency:

68759 (a) eliminate duplication within rules;

68760 (b) eliminate obsolete and redundant words; and

68761 (c) correcting defective or inconsistent section and paragraph structure in arrangement
68762 of the subject matter of rules.

68763 (4) For nonsubstantive changes made in accordance with Subsection (2) or (3) after
68764 publication of the rule in the bulletin, the division shall publish a list of nonsubstantive changes
68765 in the bulletin. For each nonsubstantive change, the list shall include:

68766 (a) the affected code citation;

68767 (b) a brief description of the change; and

68768 (c) the date the change was made.

68769 (5) All funds appropriated or collected for publishing the division's publications shall be

68770 nonlapsing.

68771 Section 1367. Section **63G-3-403**, which is renumbered from Section 63-46a-10.5 is
68772 renumbered and amended to read:

68773 ~~[63-46a-10.5]~~. **63G-3-403**. **Repeal and reenactment of Utah Administrative**
68774 **Code.**

68775 (1) When the director determines that the Utah Administrative Code requires extensive
68776 revision and reorganization, the division may repeal the code and reenact a new code according
68777 to the requirements of this section.

68778 (2) The division may:

68779 (a) reorganize, reformat, and renumber the code;

68780 (b) require each agency to review its rules and make any organizational or substantive
68781 changes according to the requirements of Section ~~[63-46a-6]~~ 63G-3-303; and

68782 (c) require each agency to prepare a brief summary of all substantive changes made by
68783 the agency.

68784 (3) The division may make nonsubstantive changes in the code by:

68785 (a) adopting a uniform system of punctuation, capitalization, numbering, and wording;

68786 (b) eliminating duplication;

68787 (c) correcting defective or inconsistent section and paragraph structure in arrangement
68788 of the subject matter of rules;

68789 (d) eliminating all obsolete or redundant words;

68790 (e) correcting obvious errors and inconsistencies in punctuation, capitalization,

68791 numbering, referencing, and wording;

68792 (f) changing a catchline to more accurately reflect the substance of each section, part,
68793 rule, or title;

68794 (g) updating or correcting annotations associated with a section, part, rule, or title; and

68795 (h) merging or determining priority of any amendment, enactment, or repeal to the same
68796 rule or section made effective by an agency.

68797 (4) (a) To inform the public about the proposed code reenactment, the division shall

68798 publish in the bulletin:

68799 (i) notice of the code reenactment;

68800 (ii) the date, time, and place of a public hearing where members of the public may

68801 comment on the proposed reenactment of the code;

68802 (iii) locations where the proposed reenactment of the code may be reviewed; and

68803 (iv) agency summaries of substantive changes in the reenacted code.

68804 (b) To inform the public about substantive changes in agency rules contained in the

68805 proposed reenactment, each agency shall:

68806 (i) make the text of their reenacted rules available:

68807 (A) for public review during regular business hours; and

68808 (B) in an electronic version; and

68809 (ii) comply with the requirements of Subsection [~~63-46a-4~~] 63G-3-301(8).

68810 (5) The division shall hold a public hearing on the proposed code reenactment no fewer

68811 than 30 days nor more than 45 days after the publication required by Subsection (4)(a).

68812 (6) The division shall distribute complete text of the proposed code reenactment

68813 without charge to:

68814 (a) state-designated repositories in Utah;

68815 (b) the Administrative Rules Review Committee; and

68816 (c) the Office of Legislative Research and General Counsel.

68817 (7) The former code is repealed and the reenacted code is effective at noon on a date

68818 designated by the division that is not fewer than 45 days nor more than 90 days after the

68819 publication date required by this section.

68820 (8) Repeal and reenactment of the code meets the requirements of Section [~~63-46a-9~~]

68821 63G-3-305 for a review of all agency rules.

68822 Section 1368. Section **63G-3-501**, which is renumbered from Section 63-46a-11 is

68823 renumbered and amended to read:

Part 5. Legislative Oversight

68824 [~~63-46a-11~~]. **63G-3-501. Administrative Rules Review Committee.**

68826 (1) (a) There is created an Administrative Rules Review Committee of ten permanent
68827 members and four ex officio members.

68828 (b) (i) The committee's permanent members shall be composed of five members of the
68829 Senate, appointed by the president of the Senate, and five members of the House, appointed by
68830 the speaker of the House, with no more than three senators and three representatives from the
68831 same political party.

68832 (ii) The permanent members shall convene at least once each month as a committee to
68833 review new agency rules, amendments to existing agency rules, and repeals of existing agency
68834 rules. Meetings may be suspended at the discretion of the committee chairs.

68835 (iii) Members shall serve for two-year terms or until their successors are appointed.

68836 (iv) A vacancy exists whenever a committee member ceases to be a member of the
68837 Legislature, or when a member resigns from the committee. Vacancies shall be filled by the
68838 appointing authority, and the replacement shall serve out the unexpired term.

68839 (c) When the committee reviews existing rules, the committee's permanent members
68840 shall invite the Senate and House chairmen of the standing committee and the Senate and House
68841 chairmen of the appropriation subcommittee that have jurisdiction over the agency whose
68842 existing rules are being reviewed to participate as nonvoting, ex officio members with the
68843 committee.

68844 (d) Three representatives and three senators from the permanent members are a quorum
68845 for the transaction of business at any meeting.

68846 (2) Each agency rule as defined in Section [~~63-46a-2~~] 63G-3-102 shall be submitted to
68847 the committee at the same time public notice is given under Section [~~63-46a-4~~] 63G-3-301.

68848 (3) (a) The committee shall exercise continuous oversight of the process of rulemaking.

68849 (b) The committee shall examine rules submitted by each agency to determine:

68850 (i) whether or not they are authorized by statute;

68851 (ii) whether or not they comply with legislative intent;

68852 (iii) their impact on the economy and the government operations of the state and local
68853 political subdivisions; and

68854 (iv) their impact on affected persons.

68855 (c) To carry out these duties, the committee may examine any other issues that it
68856 considers necessary. The committee may also notify and refer rules to the chairmen of the
68857 interim committee which has jurisdiction over a particular agency when the committee
68858 determines that an issue involved in an agency's rules may be more appropriately addressed by
68859 that committee.

68860 (d) In reviewing the rules, the committee shall follow generally accepted principles of
68861 statutory construction.

68862 (4) The committee may request that the Office of the Legislative Fiscal Analyst prepare
68863 a fiscal note on any rule.

68864 (5) In order to accomplish its oversight functions, the committee has all the powers
68865 granted to legislative interim committees as set forth in Section 36-12-11.

68866 (6) (a) The committee may prepare written findings of its review of each rule and may
68867 include any recommendations, including legislative action.

68868 (b) The committee shall provide to the agency that enacted the rule:

68869 (i) its findings, if any; and

68870 (ii) a request that the agency notify the committee of any changes it makes in the rule.

68871 (c) The committee shall provide its findings to any member of the Legislature and to
68872 any person affected by the rule who requests the findings.

68873 (d) The committee shall provide its findings to the presiding officers of both the House
68874 and the Senate, Senate and House chairs of the standing committee, and the Senate and House
68875 chairs of the Appropriation Subcommittee that have jurisdiction over the agency whose rules
68876 are the subject of the findings.

68877 (7) (a) The committee may submit a report on its review of state agency rules to each
68878 member of the Legislature at each regular session.

68879 (b) The report shall include:

68880 (i) the findings and recommendations made by the committee under Subsection (6);

68881 (ii) any action taken by an agency in response to committee recommendations; and

68882 (iii) any recommendations by the committee for legislation.

68883 Section 1369. Section **63G-3-502**, which is renumbered from Section 63-46a-11.5 is
68884 renumbered and amended to read:

68885 ~~[63-46a-11.5]~~. **63G-3-502**. **Legislative reauthorization of agency rules --**
68886 **Extension of rules by governor.**

68887 (1) All grants of rulemaking power from the Legislature to a state agency in any statute
68888 are made subject to the provisions of this section.

68889 (2) (a) Except as provided in Subsection (2)(b), every agency rule that is in effect on
68890 February 28 of any calendar year expires on May 1 of that year unless it has been reauthorized
68891 by the Legislature.

68892 (b) Notwithstanding the provisions of Subsection (2)(a), an agency's rules do not expire
68893 if:

68894 (i) the rule is explicitly mandated by a federal law or regulation; or

68895 (ii) a provision of Utah's constitution vests the agency with specific constitutional
68896 authority to regulate.

68897 (3) (a) The Administrative Rules Review Committee shall have omnibus legislation
68898 prepared for consideration by the Legislature during its annual general session.

68899 (b) The omnibus legislation shall be substantially in the following form: "All rules of
68900 Utah state agencies are reauthorized except for the following:".

68901 (c) Before sending the legislation to the governor for ~~[his]~~ the governor's action, the
68902 Administrative Rules Review Committee may send a letter to the governor and to the agency
68903 explaining specifically why the committee believes any rule should not be reauthorized.

68904 (d) For the purpose of this section, the entire rule, a single section, or any complete
68905 paragraph of a rule may be excepted for reauthorization in the omnibus legislation considered by
68906 the Legislature.

68907 (4) The Legislature's reauthorization of a rule by legislation does not constitute
68908 legislative approval of the rule, nor is it admissible in any proceeding as evidence of legislative
68909 intent.

68910 (5) (a) If an agency believes that a rule that has not been reauthorized by the Legislature
68911 or that will be allowed to expire should continue in full force and effect and is a rule within their
68912 authorized rulemaking power, the agency may seek the governor's declaration extending the
68913 rule beyond the expiration date.

68914 (b) In seeking the extension, the agency shall submit a petition to the governor that
68915 affirmatively states:

68916 (i) that the rule is necessary; and

68917 (ii) a citation to the source of its authority to make the rule.

68918 (c) (i) If the governor finds that the necessity does exist, and that the agency has the
68919 authority to make the rule, ~~he~~ the governor may declare the rule to be extended by publishing
68920 that declaration in the Administrative Rules Bulletin on or before April 15 of that year.

68921 (ii) The declaration shall set forth the rule to be extended, the reasons the extension is
68922 necessary, and a citation to the source of the agency's authority to make the rule.

68923 (d) If the omnibus bill required by Subsection (3) fails to pass both houses of the
68924 Legislature or is found to have a technical legal defect preventing reauthorization of
68925 administrative rules intended to be reauthorized by the Legislature, the governor may declare all
68926 rules to be extended by publishing a single declaration in the Administrative Rules Bulletin on or
68927 before June 15 without meeting requirements of Subsections (5)(b) and (c).

68928 Section 1370. Section **63G-3-601**, which is renumbered from Section 63-46a-12 is
68929 renumbered and amended to read:

68930 **Part 6. Judicial Review**

68931 ~~[63-46a-12]~~. **63G-3-601. Interested parties -- Petition for agency action.**

68932 (1) As used in this section, "initiate rulemaking proceedings" means the filing, for the
68933 purposes of publication in accordance with Subsection ~~[63-46a-4]~~ 63G-3-301(4), of an agency's
68934 proposed rule to implement a petition for the making, amendment, or repeal of a rule as
68935 provided in this section.

68936 (2) An interested person may petition an agency to request the making, amendment, or
68937 repeal of a rule.

68938 (3) The division shall prescribe by rule the form for petitions and the procedure for their
68939 submission, consideration, and disposition.

68940 (4) A statement shall accompany the proposed rule, or proposed amendment or repeal
68941 of a rule, demonstrating that the proposed action is within the jurisdiction of the agency and
68942 appropriate to the powers of the agency.

68943 (5) Within 60 days after submission of a petition, the agency shall either deny the
68944 petition in writing, stating its reasons for the denial, or initiate rulemaking proceedings.

68945 (6) (a) If the petition is submitted to a board that has been granted rulemaking authority
68946 by the Legislature, the board shall, within 45 days of the submission of the petition, place the
68947 petition on its agenda for review.

68948 (b) Within 80 days of the submission of the petition, the board shall either:

68949 (i) deny the petition in writing stating its reasons for denial; or

68950 (ii) initiate rulemaking proceedings.

68951 (7) If the agency or board has not provided the petitioner written notice that the agency
68952 has denied the petition or initiated rulemaking proceedings within the time limitations specified
68953 in Subsection (5) or (6) respectively, the petitioner may seek a writ of mandamus in state district
68954 court.

68955 Section 1371. Section **63G-3-602**, which is renumbered from Section 63-46a-12.1 is
68956 renumbered and amended to read:

68957 ~~[63-46a-12.1]~~. **63G-3-602**. **Judicial challenge to administrative rules.**

68958 (1) (a) Any person aggrieved by a rule may obtain judicial review of the rule by filing a
68959 complaint with the county clerk in the district court where the person resides or in the district
68960 court in Salt Lake County.

68961 (b) Any person aggrieved by an agency's failure to comply with Section ~~[63-46a-3]~~
68962 **63G-3-201** may obtain judicial review of the agency's failure to comply by filing a complaint
68963 with the clerk of the district court where the person resides or in the district court in Salt Lake
68964 County.

68965 (2) (a) Except as provided in Subsection (2)(b), a person seeking judicial review under

68966 this section shall exhaust that person's administrative remedies by complying with the
68967 requirements of Section [~~63-46a-12~~] 63G-3-601 before filing the complaint.

68968 (b) When seeking judicial review of a rule, the person need not exhaust that person's
68969 administrative remedies if:

68970 (i) less than six months has passed since the date that the rule became effective and the
68971 person had submitted verbal or written comments on the rule to the agency during the public
68972 comment period;

68973 (ii) a statute granting rulemaking authority expressly exempts rules made under
68974 authority of that statute from compliance with Section [~~63-46a-12~~] 63G-3-601; or

68975 (iii) compliance with Section [~~63-46a-12~~] 63G-3-601 would cause the person
68976 irreparable harm.

68977 (3) (a) In addition to the information required by the Utah Rules of Civil Procedure, a
68978 complaint filed under this section shall contain:

68979 (i) the name and mailing address of the plaintiff;

68980 (ii) the name and mailing address of the defendant agency;

68981 (iii) the name and mailing address of any other party joined in the action as a defendant;

68982 (iv) the text of the rule or proposed rule, if any;

68983 (v) an allegation that the person filing the complaint has either exhausted the
68984 administrative remedies by complying with Section [~~63-46a-12~~] 63G-3-601 or met the
68985 requirements for waiver of exhaustion of administrative remedies established by Subsection
68986 (2)(b);

68987 (vi) the relief sought; and

68988 (vii) factual and legal allegations supporting the relief sought.

68989 (b) (i) The plaintiff shall serve a summons and a copy of the complaint as required by
68990 the Utah Rules of Civil Procedure.

68991 (ii) The defendants shall file a responsive pleading as required by the Utah Rules of Civil
68992 Procedures.

68993 (iii) The agency shall file the administrative record of the rule, if any, with its responsive

68994 pleading.

68995 (4) The district court may grant relief to the petitioner by:

68996 (a) declaring the rule invalid, if the court finds that:

68997 (i) the rule violates constitutional or statutory law or the agency does not have legal
68998 authority to make the rule;

68999 (ii) the rule is not supported by substantial evidence when viewed in light of the whole
69000 administrative record; or

69001 (iii) the agency did not follow proper rulemaking procedure;

69002 (b) declaring the rule nonapplicable to the petitioner;

69003 (c) remanding the matter to the agency for compliance with proper rulemaking
69004 procedures or further fact-finding;

69005 (d) ordering the agency to comply with Section [~~63-46a-3~~] 63G-3-201;

69006 (e) issuing a judicial stay or injunction to enjoin the agency from illegal action or action
69007 that would cause irreparable harm to the petitioner; or

69008 (f) any combination of Subsections (4)(a) through (e).

69009 (5) If the plaintiff meets the requirements of Subsection (2)(b), the district court may
69010 review and act on a complaint under this section whether or not the plaintiff has requested the
69011 agency review under Section [~~63-46a-12~~] 63G-3-601.

69012 Section 1372. Section **63G-3-603**, which is renumbered from Section 63-46a-14 is
69013 renumbered and amended to read:

69014 [~~63-46a-14~~]. **63G-3-603. Time for contesting a rule -- Statute of**
69015 **limitations.**

69016 (1) A proceeding to contest any rule on the ground of noncompliance with the
69017 procedural requirements of this chapter shall commence within two years of the effective date of
69018 the rule.

69019 (2) A proceeding to contest any rule on the ground of not being supported by
69020 substantial evidence when viewed in light of the whole administrative record shall commence
69021 within four years of the effective date of the challenged action.

69022 (3) A proceeding to contest any rule on the basis that a change to the rule made under
69023 Subsection [~~63-46a-10~~] 63G-3-402(2) or (3) substantively changed the rule shall be commenced
69024 within two years of the date the change was made.

69025 Section 1373. Section **63G-3-701**, which is renumbered from Section 63-46a-16 is
69026 renumbered and amended to read:

69027 **Part 7. Official Compilation of Administrative Rules**

69028 [~~63-46a-16~~]. **63G-3-701. Utah Administrative Code as official compilation**
69029 **of rules -- Judicial notice.**

69030 The code shall be received by all the judges, public officers, commissions, and
69031 departments of the state government as evidence of the administrative law of the state of Utah
69032 and as an authorized compilation of the administrative law of Utah. All courts shall take judicial
69033 notice of the code and its provisions.

69034 Section 1374. Section **63G-3-702**, which is renumbered from Section 63-46a-9.6 is
69035 renumbered and amended to read:

69036 [~~63-46a-9.6~~]. **63G-3-702. Utah Administrative Code -- Organization --**
69037 **Official compilation.**

69038 (1) The Utah Administrative Code shall be divided into three parts:

- 69039 (a) titles, whose number shall begin with "R";
- 69040 (b) rules; and
- 69041 (c) sections.

69042 (2) All sections contained in the code are referenced by a three-part number indicating
69043 its location in the code.

69044 (3) The division shall maintain the official compilation of the code and is the
69045 state-designated repository for administrative rules. If a dispute arises in which there is more
69046 than one version of a rule, the latest effective version on file with the division is considered the
69047 correct, current version.

69048 Section 1375. Section **63G-4-101**, which is renumbered from Section 63-46b-0.5 is
69049 renumbered and amended to read:

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CHAPTER 4. ADMINISTRATIVE PROCEDURES ACT

Part 1. General Provisions

~~[63-46b-0.5].~~ **63G-4-101. Title.**

This ~~[act]~~ chapter is known as the "Administrative Procedures Act."

Section 1376. Section **63G-4-102**, which is renumbered from Section 63-46b-1 is renumbered and amended to read:

~~[63-46b-1].~~ **63G-4-102. Scope and applicability of chapter.**

(1) Except as set forth in Subsection (2), and except as otherwise provided by a statute superseding provisions of this chapter by explicit reference to this chapter, the provisions of this chapter apply to every agency of the state and govern:

(a) state agency action that determines the legal rights, duties, privileges, immunities, or other legal interests of an identifiable person, including agency action to grant, deny, revoke, suspend, modify, annul, withdraw, or amend an authority, right, or license; and

(b) judicial review of the action.

(2) This chapter does not govern:

(a) the procedure for making agency rules, or judicial review of the procedure or rules;

(b) the issuance of a notice of a deficiency in the payment of a tax, the decision to waive a penalty or interest on taxes, the imposition of and penalty or interest on taxes, or the issuance of a tax assessment, except that this chapter governs an agency action commenced by a taxpayer or by another person authorized by law to contest the validity or correctness of the action;

(c) state agency action relating to extradition, to the granting of a pardon or parole, a commutation or termination of a sentence, or to the rescission, termination, or revocation of parole or probation, to the discipline of, resolution of a grievance of, supervision of, confinement of, or the treatment of an inmate or resident of a correctional facility, the Utah State Hospital, the Utah State Developmental Center, or a person in the custody or jurisdiction of the Division of Substance Abuse and Mental Health, or a person on probation or parole, or judicial review of the action;

(d) state agency action to evaluate, discipline, employ, transfer, reassign, or promote a

69078 student or teacher in a school or educational institution, or judicial review of the action;

69079 (e) an application for employment and internal personnel action within an agency
69080 concerning its own employees, or judicial review of the action;

69081 (f) the issuance of a citation or assessment under Title 34A, Chapter 6, Utah
69082 Occupational Safety and Health Act, and Title 58, Chapter 3a, Architects Licensing Act,
69083 Chapter 11a, Cosmetologist/Barber, Esthetician, Electrologist, and Nail Technician Licensing
69084 Act, Chapter 17b, Pharmacy Practice Act, Chapter 22, Professional Engineers and Professional
69085 Land Surveyors Licensing Act, Chapter 53, Landscape Architects Licensing Act, Chapter 55,
69086 Utah Construction Trades Licensing Act, Chapter 63, Security Personnel Licensing Act, and
69087 Chapter 76, Professional Geologist Licensing Act, except that this chapter governs an agency
69088 action commenced by the employer, licensee, or other person authorized by law to contest the
69089 validity or correctness of the citation or assessment;

69090 (g) state agency action relating to management of state funds, the management and
69091 disposal of school and institutional trust land assets, and contracts for the purchase or sale of
69092 products, real property, supplies, goods, or services by or for the state, or by or for an agency
69093 of the state, except as provided in those contracts, or judicial review of the action;

69094 (h) state agency action under Title 7, Chapter 1, Article 3, Powers and Duties of
69095 Commissioner of Financial Institutions, Title 7, Chapter 2, Possession of Depository Institution
69096 by Commissioner, Title 7, Chapter 19, Acquisition of Failing Depository Institutions or Holding
69097 Companies, and [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of
69098 Utah, or judicial review of the action;

69099 (i) the initial determination of a person's eligibility for unemployment benefits, the initial
69100 determination of a person's eligibility for benefits under Title 34A, Chapter 2, Workers'
69101 Compensation Act, and Title 34A, Chapter 3, Utah Occupational Disease Act, or the initial
69102 determination of a person's unemployment tax liability;

69103 (j) state agency action relating to the distribution or award of a monetary grant to or
69104 between governmental units, or for research, development, or the arts, or judicial review of the
69105 action;

- 69106 (k) the issuance of a notice of violation or order under Title 26, Chapter 8a, Utah
- 69107 Emergency Medical Services System Act, Title 19, Chapter 2, Air Conservation Act, Title 19,
- 69108 Chapter 3, Radiation Control Act, Title 19, Chapter 4, Safe Drinking Water Act, Title 19,
- 69109 Chapter 5, Water Quality Act, Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act,
- 69110 Title 19, Chapter 6, Part 4, Underground Storage Tank Act, or Title 19, Chapter 6, Part 7,
- 69111 Used Oil Management Act, or Title 19, Chapter 6, Part 10, Mercury Switch Removal Act,
- 69112 except that this chapter governs an agency action commenced by a person authorized by law to
- 69113 contest the validity or correctness of the notice or order;
- 69114 (l) state agency action, to the extent required by federal statute or regulation, to be
- 69115 conducted according to federal procedures;
- 69116 (m) the initial determination of a person's eligibility for government or public assistance
- 69117 benefits;
- 69118 (n) state agency action relating to wildlife licenses, permits, tags, and certificates of
- 69119 registration;
- 69120 (o) a license for use of state recreational facilities;
- 69121 (p) state agency action under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
- 69122 Records Access and Management Act, except as provided in Section [~~63-2-603~~] 63G-2-603;
- 69123 (q) state agency action relating to the collection of water commissioner fees and
- 69124 delinquency penalties, or judicial review of the action;
- 69125 (r) state agency action relating to the installation, maintenance, and repair of headgates,
- 69126 caps, valves, or other water controlling works and weirs, flumes, meters, or other water
- 69127 measuring devices, or judicial review of the action;
- 69128 (s) the issuance and enforcement of an initial order under Section 73-2-25;
- 69129 (t) (i) a hearing conducted by the Division of Securities under Section 61-1-11.1; and
- 69130 (ii) an action taken by the Division of Securities pursuant to a hearing conducted under
- 69131 Section 61-1-11.1, including a determination regarding the fairness of an issuance or exchange
- 69132 of securities described in Subsection 61-1-11.1(1); and
- 69133 (u) state agency action relating to water well driller licenses, water well drilling permits,

69134 water well driller registration, or water well drilling construction standards, or judicial review of
69135 the action.

69136 (3) This chapter does not affect a legal remedy otherwise available to:

69137 (a) compel an agency to take action; or

69138 (b) challenge an agency's rule.

69139 (4) This chapter does not preclude an agency, prior to the beginning of an adjudicative
69140 proceeding, or the presiding officer during an adjudicative proceeding from:

69141 (a) requesting or ordering a conference with parties and interested persons to:

69142 (i) encourage settlement;

69143 (ii) clarify the issues;

69144 (iii) simplify the evidence;

69145 (iv) facilitate discovery; or

69146 (v) expedite the proceeding; or

69147 (b) granting a timely motion to dismiss or for summary judgment if the requirements of
69148 Rule 12(b) or Rule 56 of the Utah Rules of Civil Procedure are met by the moving party, except
69149 to the extent that the requirements of those rules are modified by this chapter.

69150 (5) (a) A declaratory proceeding authorized by Section [~~63-46b-21~~] 63G-4-503 is not
69151 governed by this chapter, except as explicitly provided in that section.

69152 (b) Judicial review of a declaratory proceeding authorized by Section [~~63-46b-21~~]
69153 63G-4-503 is governed by this chapter.

69154 (6) This chapter does not preclude an agency from enacting a rule affecting or
69155 governing an adjudicative proceeding or from following the rule, if the rule is enacted according
69156 to the procedures outlined in [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
69157 Rulemaking Act, and if the rule conforms to the requirements of this chapter.

69158 (7) (a) If the attorney general issues a written determination that a provision of this
69159 chapter would result in the denial of funds or services to an agency of the state from the federal
69160 government, the applicability of the provision to that agency shall be suspended to the extent
69161 necessary to prevent the denial.

69162 (b) The attorney general shall report the suspension to the Legislature at its next
69163 session.

69164 (8) Nothing in this chapter may be interpreted to provide an independent basis for
69165 jurisdiction to review final agency action.

69166 (9) Nothing in this chapter may be interpreted to restrict a presiding officer, for good
69167 cause shown, from lengthening or shortening a time period prescribed in this chapter, except the
69168 time period established for judicial review.

69169 Section 1377. Section **63G-4-103**, which is renumbered from Section 63-46b-2 is
69170 renumbered and amended to read:

69171 ~~[63-46b-2]~~. **63G-4-103. Definitions.**

69172 (1) As used in this chapter:

69173 (a) "Adjudicative proceeding" means an agency action or proceeding described in
69174 Section ~~[63-46b-1]~~ 63G-4-102.

69175 (b) "Agency" means a board, commission, department, division, officer, council, office,
69176 committee, bureau, or other administrative unit of this state, including the agency head, agency
69177 employees, or other persons acting on behalf of or under the authority of the agency head, but
69178 does not mean the Legislature, the courts, the governor, any political subdivision of the state, or
69179 any administrative unit of a political subdivision of the state.

69180 (c) "Agency head" means an individual or body of individuals in whom the ultimate
69181 legal authority of the agency is vested by statute.

69182 (d) "Declaratory proceeding" means a proceeding authorized and governed by Section
69183 ~~[63-46b-21]~~ 63G-4-503.

69184 (e) "License" means a franchise, permit, certification, approval, registration, charter, or
69185 similar form of authorization required by statute.

69186 (f) "Party" means the agency or other person commencing an adjudicative proceeding,
69187 all respondents, all persons permitted by the presiding officer to intervene in the proceeding, and
69188 all persons authorized by statute or agency rule to participate as parties in an adjudicative
69189 proceeding.

69190 (g) "Person" means an individual, group of individuals, partnership, corporation,
69191 association, political subdivision or its units, governmental subdivision or its units, public or
69192 private organization or entity of any character, or another agency.

69193 (h) (i) "Presiding officer" means an agency head, or an individual or body of individuals
69194 designated by the agency head, by the agency's rules, or by statute to conduct an adjudicative
69195 proceeding.

69196 (ii) If fairness to the parties is not compromised, an agency may substitute one presiding
69197 officer for another during any proceeding.

69198 (iii) A person who acts as a presiding officer at one phase of a proceeding need not
69199 continue as presiding officer through all phases of a proceeding.

69200 (i) "Respondent" means a person against whom an adjudicative proceeding is initiated,
69201 whether by an agency or any other person.

69202 (j) "Superior agency" means an agency required or authorized by law to review the
69203 orders of another agency.

69204 (2) This section does not prohibit an agency from designating by rule the names or titles
69205 of the agency head or the presiding officers with responsibility for adjudicative proceedings
69206 before the agency.

69207 Section 1378. Section **63G-4-104**, which is renumbered from Section 63-46b-2.1 is
69208 renumbered and amended to read:

69209 ~~**[63-46b-2.1].**~~ **63G-4-104. Bases for certain recommendations and decisions**
69210 **limited.**

69211 (1) Except as provided in Subsection (2), no agency may recommend or rule on the
69212 custody, placement, including foster placement, or other disposition alternative for a minor, or
69213 the termination of parental rights, based on the fact that a parent or guardian of the minor
69214 lawfully does one or more of the following:

69215 (a) legally possesses or uses a firearm or other weapon;

69216 (b) espouses particular religious beliefs; or

69217 (c) schools the minor or other minors outside the public education system or is

69218 otherwise sympathetic to schooling a minor outside the public education system.

69219 (2) Subsection (1) does not prohibit a recommendation or ruling based on the
69220 compatibility of a minor with a particular custody, placement, or other disposition alternative as
69221 determined by the presence of any of the factors in Subsections (1)(a) through (1)(c).

69222 Section 1379. Section **63G-4-105**, which is renumbered from Section 63-46b-22 is
69223 renumbered and amended to read:

69224 ~~[63-46b-22]~~. **63G-4-105. Transition procedures.**

69225 (1) The procedures for agency action, agency review, and judicial review contained in
69226 this chapter are applicable to all agency adjudicative proceedings commenced by or before an
69227 agency on or after January 1, 1988.

69228 (2) Statutes and rules governing agency action, agency review, and judicial review that
69229 are in effect on December 31, 1987, govern all agency adjudicative proceedings commenced by
69230 or before an agency on or before December 31, 1987, even if those proceedings are still pending
69231 before an agency or a court on January 1, 1988.

69232 Section 1380. Section **63G-4-201**, which is renumbered from Section 63-46b-3 is
69233 renumbered and amended to read:

69234 **Part 2. Adjudicative Proceedings**

69235 ~~[63-46b-3]~~. **63G-4-201. Commencement of adjudicative proceedings.**

69236 (1) Except as otherwise permitted by Section ~~[63-46b-20]~~ 63G-4-502, all adjudicative
69237 proceedings shall be commenced by either:

- 69238 (a) a notice of agency action, if proceedings are commenced by the agency; or
- 69239 (b) a request for agency action, if proceedings are commenced by persons other than
69240 the agency.

69241 (2) A notice of agency action shall be filed and served according to the following
69242 requirements:

69243 (a) The notice of agency action shall be in writing, signed by a presiding officer, and
69244 shall include:

- 69245 (i) the names and mailing addresses of all persons to whom notice is being given by the

- 69246 presiding officer, and the name, title, and mailing address of any attorney or employee who has
69247 been designated to appear for the agency;
- 69248 (ii) the agency's file number or other reference number;
- 69249 (iii) the name of the adjudicative proceeding;
- 69250 (iv) the date that the notice of agency action was mailed;
- 69251 (v) a statement of whether the adjudicative proceeding is to be conducted informally
69252 according to the provisions of rules adopted under Sections [~~63-46b-4~~] 63G-4-202 and
69253 [~~63-46b-5~~] 63G-4-203, or formally according to the provisions of Sections [~~63-46b-6~~]
69254 63G-4-204 through [~~63-46b-11~~] 63G-4-209;
- 69255 (vi) if the adjudicative proceeding is to be formal, a statement that each respondent
69256 must file a written response within 30 days of the mailing date of the notice of agency action;
- 69257 (vii) if the adjudicative proceeding is to be formal, or if a hearing is required by statute
69258 or rule, a statement of the time and place of any scheduled hearing, a statement of the purpose
69259 for which the hearing is to be held, and a statement that a party who fails to attend or participate
69260 in the hearing may be held in default;
- 69261 (viii) if the adjudicative proceeding is to be informal and a hearing is required by statute
69262 or rule, or if a hearing is permitted by rule and may be requested by a party within the time
69263 prescribed by rule, a statement that the parties may request a hearing within the time provided
69264 by the agency's rules;
- 69265 (ix) a statement of the legal authority and jurisdiction under which the adjudicative
69266 proceeding is to be maintained;
- 69267 (x) the name, title, mailing address, and telephone number of the presiding officer; and
- 69268 (xi) a statement of the purpose of the adjudicative proceeding and, to the extent known
69269 by the presiding officer, the questions to be decided.
- 69270 (b) When adjudicative proceedings are commenced by the agency, the agency shall:
- 69271 (i) mail the notice of agency action to each party;
- 69272 (ii) publish the notice of agency action, if required by statute; and
- 69273 (iii) mail the notice of agency action to any other person who has a right to notice under

69274 statute or rule.

69275 (3) (a) Where the law applicable to the agency permits persons other than the agency to
69276 initiate adjudicative proceedings, that person's request for agency action shall be in writing and
69277 signed by the person invoking the jurisdiction of the agency, or by that person's representative,
69278 and shall include:

69279 (i) the names and addresses of all persons to whom a copy of the request for agency
69280 action is being sent;

69281 (ii) the agency's file number or other reference number, if known;

69282 (iii) the date that the request for agency action was mailed;

69283 (iv) a statement of the legal authority and jurisdiction under which agency action is
69284 requested;

69285 (v) a statement of the relief or action sought from the agency; and

69286 (vi) a statement of the facts and reasons forming the basis for relief or agency action.

69287 (b) The person requesting agency action shall file the request with the agency and shall
69288 mail a copy to each person known to have a direct interest in the requested agency action.

69289 (c) An agency may, by rule, prescribe one or more forms eliciting the information
69290 required by Subsection (3)(a) to serve as the request for agency action when completed and
69291 filed by the person requesting agency action.

69292 (d) The presiding officer shall promptly review a request for agency action and shall:

69293 (i) notify the requesting party in writing that the request is granted and that the
69294 adjudicative proceeding is completed;

69295 (ii) notify the requesting party in writing that the request is denied and, if the
69296 proceeding is a formal adjudicative proceeding, that the party may request a hearing before the
69297 agency to challenge the denial; or

69298 (iii) notify the requesting party that further proceedings are required to determine the
69299 agency's response to the request.

69300 (e) (i) Any notice required by Subsection (3)(d)(ii) shall contain the information
69301 required by Subsection [~~63-46b-5~~] 63G-4-203(1)(i) in addition to disclosure required by

69302 Subsection (3)(d)(ii).

69303 (ii) The agency shall mail any notice required by Subsection (3)(d) to all parties, except
69304 that any notice required by Subsection (3)(d)(iii) may be published when publication is required
69305 by statute.

69306 (iii) The notice required by Subsection (3)(d)(iii) shall:

69307 (A) give the agency's file number or other reference number;

69308 (B) give the name of the proceeding;

69309 (C) designate whether the proceeding is one of a category to be conducted informally
69310 according to the provisions of rules enacted under Sections [~~63-46b-4~~] 63G-4-202 and
69311 [~~63-46b-5~~] 63G-4-203, with citation to the applicable rule authorizing that designation, or
69312 formally according to Sections [~~63-46b-6~~] 63G-4-204 through [~~63-46b-11~~] 63G-4-209;

69313 (D) in the case of a formal adjudicative proceeding, and where respondent parties are
69314 known, state that a written response must be filed within 30 days of the date of the agency's
69315 notice if mailed, or within 30 days of the last publication date of the agency's notice, if
69316 published;

69317 (E) if the adjudicative proceeding is to be formal, or if a hearing is to be held in an
69318 informal adjudicative proceeding, state the time and place of any scheduled hearing, the purpose
69319 for which the hearing is to be held, and that a party who fails to attend or participate in a
69320 scheduled and noticed hearing may be held in default;

69321 (F) if the adjudicative proceeding is to be informal, and a hearing is required by statute
69322 or rule, or if a hearing is permitted by rule and may be requested by a party within the time
69323 prescribed by rule, state the parties' right to request a hearing and the time within which a
69324 hearing may be requested under the agency's rules; and

69325 (G) give the name, title, mailing address, and telephone number of the presiding officer.

69326 (4) When initial agency determinations or actions are not governed by this chapter, but
69327 agency and judicial review of those initial determinations or actions are subject to the provisions
69328 of this chapter, the request for agency action seeking review must be filed with the agency
69329 within the time prescribed by the agency's rules.

69330 (5) For designated classes of adjudicative proceedings, an agency may, by rule, provide
69331 for a longer response time than allowed by this section, and may provide for a shorter response
69332 time if required or permitted by applicable federal law.

69333 (6) Unless the agency provides otherwise by rule or order, an application for a package
69334 agency, license, permit, or certificate of approval filed under authority of Title 32A, Alcoholic
69335 Beverage Control Act, is not considered to be a request for agency action under this chapter.

69336 (7) If the purpose of the adjudicative proceeding is to award a license or other privilege
69337 as to which there are multiple competing applicants, the agency may, by rule or order, conduct a
69338 single adjudicative proceeding to determine the award of that license or privilege.

69339 Section 1381. Section **63G-4-202**, which is renumbered from Section 63-46b-4 is
69340 renumbered and amended to read:

69341 **~~[63-46b-4].~~ 63G-4-202. Designation of adjudicative proceedings as informal --**
69342 **Standards -- Undesignated proceedings formal.**

69343 (1) The agency may, by rule, designate categories of adjudicative proceedings to be
69344 conducted informally according to the procedures set forth in rules enacted under the authority
69345 of this chapter if:

69346 (a) the use of the informal procedures does not violate any procedural requirement
69347 imposed by a statute other than this chapter;

69348 (b) in the view of the agency, the rights of the parties to the proceedings will be
69349 reasonably protected by the informal procedures;

69350 (c) in the view of the agency, the agency's administrative efficiency will be enhanced by
69351 categorizations; and

69352 (d) the cost of formal adjudicative proceedings outweighs the potential benefits to the
69353 public of a formal adjudicative proceeding.

69354 (2) Subject to the provisions of Subsection (3), all agency adjudicative proceedings not
69355 specifically designated as informal proceedings by the agency's rules shall be conducted formally
69356 in accordance with the requirements of this chapter.

69357 (3) Any time before a final order is issued in any adjudicative proceeding, the presiding

69358 officer may convert a formal adjudicative proceeding to an informal adjudicative proceeding, or
69359 an informal adjudicative proceeding to a formal adjudicative proceeding if:

- 69360 (a) conversion of the proceeding is in the public interest; and
- 69361 (b) conversion of the proceeding does not unfairly prejudice the rights of any party.

69362 Section 1382. Section **63G-4-203**, which is renumbered from Section 63-46b-5 is
69363 renumbered and amended to read:

69364 ~~[63-46b-5]~~. **63G-4-203. Procedures for informal adjudicative proceedings.**

69365 (1) If an agency enacts rules designating one or more categories of adjudicative
69366 proceedings as informal adjudicative proceedings, the agency shall, by rule, prescribe
69367 procedures for informal adjudicative proceedings that include the following:

69368 (a) Unless the agency by rule provides for and requires a response, no answer or other
69369 pleading responsive to the allegations contained in the notice of agency action or the request for
69370 agency action need be filed.

69371 (b) The agency shall hold a hearing if a hearing is required by statute or rule, or if a
69372 hearing is permitted by rule and is requested by a party within the time prescribed by rule.

69373 (c) In any hearing, the parties named in the notice of agency action or in the request for
69374 agency action shall be permitted to testify, present evidence, and comment on the issues.

69375 (d) Hearings will be held only after timely notice to all parties.

69376 (e) Discovery is prohibited, but the agency may issue subpoenas or other orders to
69377 compel production of necessary evidence.

69378 (f) All parties shall have access to information contained in the agency's files and to all
69379 materials and information gathered in any investigation, to the extent permitted by law.

69380 (g) Intervention is prohibited, except that the agency may enact rules permitting
69381 intervention where a federal statute or rule requires that a state permit intervention.

69382 (h) All hearings shall be open to all parties.

69383 (i) Within a reasonable time after the close of an informal adjudicative proceeding, the
69384 presiding officer shall issue a signed order in writing that states the following:

69385 (i) the decision;

- 69386 (ii) the reasons for the decision;
- 69387 (iii) a notice of any right of administrative or judicial review available to the parties; and
- 69388 (iv) the time limits for filing an appeal or requesting a review.

69389 (j) The presiding officer's order shall be based on the facts appearing in the agency's
69390 files and on the facts presented in evidence at any hearings.

69391 (k) A copy of the presiding officer's order shall be promptly mailed to each of the
69392 parties.

69393 (2) (a) The agency may record any hearing.

69394 (b) Any party, at ~~his~~ the party's own expense, may have a reporter approved by the
69395 agency prepare a transcript from the agency's record of the hearing.

69396 (3) Nothing in this section restricts or precludes any investigative right or power given
69397 to an agency by another statute.

69398 Section 1383. Section **63G-4-204**, which is renumbered from Section 63-46b-6 is
69399 renumbered and amended to read:

69400 ~~[63-46b-6]~~. **63G-4-204**. **Procedures for formal adjudicative proceedings --**
69401 **Responsive pleadings.**

69402 (1) In all formal adjudicative proceedings, unless modified by rule according to
69403 Subsection ~~[63-46b-3]~~ 63G-4-201(5), the respondent, if any, shall file and serve a written
69404 response signed by the respondent or the respondent's representative within 30 days of the
69405 mailing date or last date of publication of the notice of agency action or the notice under
69406 Subsection ~~[63-46b-3]~~ 63G-4-201(3)(d), which shall include:

- 69407 (a) the agency's file number or other reference number;
- 69408 (b) the name of the adjudicative proceeding;
- 69409 (c) a statement of the relief that the respondent seeks;
- 69410 (d) a statement of the facts; and
- 69411 (e) a statement summarizing the reasons that the relief requested should be granted.

69412 (2) The respondent shall send a copy of the response filed under Subsection (1) to each
69413 party.

69414 (3) The presiding officer, or the agency by rule, may permit or require pleadings in
69415 addition to the notice of agency action, the request for agency action, and the response. All
69416 documents permitted or required to be filed shall be filed with the agency and one copy shall be
69417 sent to each party.

69418 Section 1384. Section **63G-4-205**, which is renumbered from Section 63-46b-7 is
69419 renumbered and amended to read:

69420 ~~[63-46b-7].~~ **63G-4-205. Procedures for formal adjudicative proceedings --**
69421 **Discovery and subpoenas.**

69422 (1) In formal adjudicative proceedings, the agency may, by rule, prescribe means of
69423 discovery adequate to permit the parties to obtain all relevant information necessary to support
69424 their claims or defenses. If the agency does not enact rules under this section, the parties may
69425 conduct discovery according to the Utah Rules of Civil Procedure.

69426 (2) Subpoenas and other orders to secure the attendance of witnesses or the production
69427 of evidence in formal adjudicative proceedings shall be issued by the presiding officer when
69428 requested by any party, or may be issued by the presiding officer on ~~[his]~~ the presiding officer's
69429 own motion.

69430 (3) Nothing in this section restricts or precludes any investigative right or power given
69431 to an agency by another statute.

69432 Section 1385. Section **63G-4-206**, which is renumbered from Section 63-46b-8 is
69433 renumbered and amended to read:

69434 ~~[63-46b-8].~~ **63G-4-206. Procedures for formal adjudicative proceedings --**
69435 **Hearing procedure.**

69436 (1) Except as provided in Subsections ~~[63-46b-3]~~ 63G-4-201(3)(d)(i) and (ii), in all
69437 formal adjudicative proceedings, a hearing shall be conducted as follows:

69438 (a) The presiding officer shall regulate the course of the hearing to obtain full disclosure
69439 of relevant facts and to afford all the parties reasonable opportunity to present their positions.

69440 (b) On ~~[his]~~ the presiding officer's own motion or upon objection by a party, the
69441 presiding officer:

69442 (i) may exclude evidence that is irrelevant, immaterial, or unduly repetitious;
 69443 (ii) shall exclude evidence privileged in the courts of Utah;
 69444 (iii) may receive documentary evidence in the form of a copy or excerpt if the copy or
 69445 excerpt contains all pertinent portions of the original document; and
 69446 (iv) may take official notice of any facts that could be judicially noticed under the Utah
 69447 Rules of Evidence, of the record of other proceedings before the agency, and of technical or
 69448 scientific facts within the agency's specialized knowledge.

69449 (c) The presiding officer may not exclude evidence solely because it is hearsay.

69450 (d) The presiding officer shall afford to all parties the opportunity to present evidence,
 69451 argue, respond, conduct cross-examination, and submit rebuttal evidence.

69452 (e) The presiding officer may give persons not a party to the adjudicative proceeding
 69453 the opportunity to present oral or written statements at the hearing.

69454 (f) All testimony presented at the hearing, if offered as evidence to be considered in
 69455 reaching a decision on the merits, shall be given under oath.

69456 (g) The hearing shall be recorded at the agency's expense.

69457 (h) Any party, at ~~his~~ the party's own expense, may have a person approved by the
 69458 agency prepare a transcript of the hearing, subject to any restrictions that the agency is
 69459 permitted by statute to impose to protect confidential information disclosed at the hearing.

69460 (i) All hearings shall be open to all parties.

69461 (2) This section does not preclude the presiding officer from taking appropriate
 69462 measures necessary to preserve the integrity of the hearing.

69463 Section 1386. Section **63G-4-207**, which is renumbered from Section 63-46b-9 is
 69464 renumbered and amended to read:

69465 ~~[63-46b-9]~~. **63G-4-207. Procedures for formal adjudicative proceedings --**
 69466 **Intervention.**

69467 (1) Any person not a party may file a signed, written petition to intervene in a formal
 69468 adjudicative proceeding with the agency. The person who wishes to intervene shall mail a copy
 69469 of the petition to each party. The petition shall include:

- 69470 (a) the agency's file number or other reference number;
- 69471 (b) the name of the proceeding;
- 69472 (c) a statement of facts demonstrating that the petitioner's legal rights or interests are
- 69473 substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an
- 69474 intervenor under any provision of law; and
- 69475 (d) a statement of the relief that the petitioner seeks from the agency.

69476 (2) The presiding officer shall grant a petition for intervention if the presiding officer
69477 determines that:

- 69478 (a) the petitioner's legal interests may be substantially affected by the formal
- 69479 adjudicative proceeding; and
- 69480 (b) the interests of justice and the orderly and prompt conduct of the adjudicative
- 69481 proceedings will not be materially impaired by allowing the intervention.
- 69482 (3) (a) Any order granting or denying a petition to intervene shall be in writing and
- 69483 mailed to the petitioner and each party.
- 69484 (b) An order permitting intervention may impose conditions on the intervenor's
- 69485 participation in the adjudicative proceeding that are necessary for a just, orderly, and prompt
- 69486 conduct of the adjudicative proceeding.
- 69487 (c) The presiding officer may impose the conditions at any time after the intervention.

69488 Section 1387. Section **63G-4-208**, which is renumbered from Section 63-46b-10 is
69489 renumbered and amended to read:

69490 ~~[63-46b-10]~~. **63G-4-208. Procedures for formal adjudicative proceedings**
69491 **-- Orders.**

69492 In formal adjudicative proceedings:

69493 (1) Within a reasonable time after the hearing, or after the filing of any posthearing
69494 documents permitted by the presiding officer, or within the time required by any applicable
69495 statute or rule of the agency, the presiding officer shall sign and issue an order that includes:

- 69496 (a) a statement of the presiding officer's findings of fact based exclusively on the
- 69497 evidence of record in the adjudicative proceedings or on facts officially noted;

- 69498 (b) a statement of the presiding officer's conclusions of law;
- 69499 (c) a statement of the reasons for the presiding officer's decision;
- 69500 (d) a statement of any relief ordered by the agency;
- 69501 (e) a notice of the right to apply for reconsideration;
- 69502 (f) a notice of any right to administrative or judicial review of the order available to
- 69503 aggrieved parties; and
- 69504 (g) the time limits applicable to any reconsideration or review.
- 69505 (2) The presiding officer may use the presiding officer's experience, technical
- 69506 competence, and specialized knowledge to evaluate the evidence.
- 69507 (3) A finding of fact that was contested may not be based solely on hearsay evidence
- 69508 unless that evidence is admissible under the Utah Rules of Evidence.
- 69509 (4) This section does not preclude the presiding officer from issuing interim orders to:
- 69510 (a) notify the parties of further hearings;
- 69511 (b) notify the parties of provisional rulings on a portion of the issues presented; or
- 69512 (c) otherwise provide for the fair and efficient conduct of the adjudicative proceeding.
- 69513 Section 1388. Section **63G-4-209**, which is renumbered from Section 63-46b-11 is
- 69514 renumbered and amended to read:
- 69515 **~~[63-46b-11]~~. 63G-4-209. Default.**
- 69516 (1) The presiding officer may enter an order of default against a party if:
- 69517 (a) a party in an informal adjudicative proceeding fails to participate in the adjudicative
- 69518 proceeding;
- 69519 (b) a party to a formal adjudicative proceeding fails to attend or participate in a properly
- 69520 scheduled hearing after receiving proper notice; or
- 69521 (c) a respondent in a formal adjudicative proceeding fails to file a response under
- 69522 Section ~~[63-46b-6]~~ 63G-4-204.
- 69523 (2) An order of default shall include a statement of the grounds for default and shall be
- 69524 mailed to all parties.
- 69525 (3) (a) A defaulted party may seek to have the agency set aside the default order, and

69526 any order in the adjudicative proceeding issued subsequent to the default order, by following the
69527 procedures outlined in the Utah Rules of Civil Procedure.

69528 (b) A motion to set aside a default and any subsequent order shall be made to the
69529 presiding officer.

69530 (c) A defaulted party may seek agency review under Section [~~63-46b-12~~] 63G-4-301,
69531 or reconsideration under Section [~~63-46b-13~~] 63G-4-302, only on the decision of the presiding
69532 officer on the motion to set aside the default.

69533 (4) (a) In an adjudicative proceeding begun by the agency, or in an adjudicative
69534 proceeding begun by a party that has other parties besides the party in default, the presiding
69535 officer shall, after issuing the order of default, conduct any further proceedings necessary to
69536 complete the adjudicative proceeding without the participation of the party in default and shall
69537 determine all issues in the adjudicative proceeding, including those affecting the defaulting
69538 party.

69539 (b) In an adjudicative proceeding that has no parties other than the agency and the party
69540 in default, the presiding officer shall, after issuing the order of default, dismiss the proceeding.

69541 Section 1389. Section **63G-4-301**, which is renumbered from Section 63-46b-12 is
69542 renumbered and amended to read:

69543 **Part 3. Agency Review**

69544 [~~63-46b-12~~]. **63G-4-301. Agency review -- Procedure.**

69545 (1) (a) If a statute or the agency's rules permit parties to any adjudicative proceeding to
69546 seek review of an order by the agency or by a superior agency, the aggrieved party may file a
69547 written request for review within 30 days after the issuance of the order with the person or
69548 entity designated for that purpose by the statute or rule.

69549 (b) The request shall:

- 69550 (i) be signed by the party seeking review;
- 69551 (ii) state the grounds for review and the relief requested;
- 69552 (iii) state the date upon which it was mailed; and
- 69553 (iv) be mailed to the presiding officer and to each party.

69554 (2) (a) Within 15 days of the mailing date of the request for review, or within the time
69555 period provided by agency rule, whichever is longer, any party may file a response with the
69556 person designated by statute or rule to receive the response.

69557 (b) The party who files a response under Subsection (2)(a) shall mail a copy of the
69558 response to each of the parties and to the presiding officer.

69559 (3) If a statute or the agency's rules require review of an order by the agency or a
69560 superior agency, the agency or superior agency shall review the order within a reasonable time
69561 or within the time required by statute or the agency's rules.

69562 (4) To assist in review, the agency or superior agency may by order or rule permit the
69563 parties to file briefs or other documents, or to conduct oral argument.

69564 (5) Notice of hearings on review shall be mailed to all parties.

69565 (6) (a) Within a reasonable time after the filing of any response, other filings, or oral
69566 argument, or within the time required by statute or applicable rules, the agency or superior
69567 agency shall issue a written order on review.

69568 (b) The order on review shall be signed by the agency head or by a person designated
69569 by the agency for that purpose and shall be mailed to each party.

69570 (c) The order on review shall contain:

69571 (i) a designation of the statute or rule permitting or requiring review;

69572 (ii) a statement of the issues reviewed;

69573 (iii) findings of fact as to each of the issues reviewed;

69574 (iv) conclusions of law as to each of the issues reviewed;

69575 (v) the reasons for the disposition;

69576 (vi) whether the decision of the presiding officer or agency is to be affirmed, reversed,
69577 or modified, and whether all or any portion of the adjudicative proceeding is to be remanded;

69578 (vii) a notice of any right of further administrative reconsideration or judicial review
69579 available to aggrieved parties; and

69580 (viii) the time limits applicable to any appeal or review.

69581 Section 1390. Section **63G-4-302**, which is renumbered from Section 63-46b-13 is

69582 renumbered and amended to read:

69583 ~~[63-46b-13].~~ **63G-4-302. Agency review -- Reconsideration.**

69584 (1) (a) Within 20 days after the date that an order is issued for which review by the
69585 agency or by a superior agency under Section ~~[63-46b-12]~~ 63G-4-301 is unavailable, and if the
69586 order would otherwise constitute final agency action, any party may file a written request for
69587 reconsideration with the agency, stating the specific grounds upon which relief is requested.

69588 (b) Unless otherwise provided by statute, the filing of the request is not a prerequisite
69589 for seeking judicial review of the order.

69590 (2) The request for reconsideration shall be filed with the agency and one copy shall be
69591 mailed to each party by the person making the request.

69592 (3) (a) The agency head, or a person designated for that purpose, shall issue a written
69593 order granting the request or denying the request.

69594 (b) If the agency head or the person designated for that purpose does not issue an order
69595 within 20 days after the filing of the request, the request for reconsideration shall be considered
69596 to be denied.

69597 Section 1391. Section **63G-4-401**, which is renumbered from Section 63-46b-14 is
69598 renumbered and amended to read:

69599 **Part 4. Judicial Review**

69600 ~~[63-46b-14].~~ **63G-4-401. Judicial review -- Exhaustion of administrative**
69601 **remedies.**

69602 (1) A party aggrieved may obtain judicial review of final agency action, except in
69603 actions where judicial review is expressly prohibited by statute.

69604 (2) A party may seek judicial review only after exhausting all administrative remedies
69605 available, except that:

69606 (a) a party seeking judicial review need not exhaust administrative remedies if this
69607 chapter or any other statute states that exhaustion is not required;

69608 (b) the court may relieve a party seeking judicial review of the requirement to exhaust
69609 any or all administrative remedies if:

69610 (i) the administrative remedies are inadequate; or
69611 (ii) exhaustion of remedies would result in irreparable harm disproportionate to the
69612 public benefit derived from requiring exhaustion.

69613 (3) (a) A party shall file a petition for judicial review of final agency action within 30
69614 days after the date that the order constituting the final agency action is issued or is considered to
69615 have been issued under Subsection [~~63-46b-13~~] 63G-4-302(3)(b).

69616 (b) The petition shall name the agency and all other appropriate parties as respondents
69617 and shall meet the form requirements specified in this chapter.

69618 Section 1392. Section **63G-4-402**, which is renumbered from Section 63-46b-15 is
69619 renumbered and amended to read:

69620 ~~[63-46b-15]~~. **63G-4-402**. **Judicial review -- Informal adjudicative**
69621 **proceedings.**

69622 (1) (a) The district courts have jurisdiction to review by trial de novo all final agency
69623 actions resulting from informal adjudicative proceedings, except that the juvenile courts have
69624 jurisdiction over all state agency actions relating to:

- 69625 (i) the removal or placement of children in state custody;
- 69626 (ii) the support of children under Subsection (1)(a)(i) as determined administratively
69627 under Section 78-3a-906; and
- 69628 (iii) substantiated findings of abuse or neglect made by the Division of Child and Family
69629 Services, after an evidentiary hearing.

69630 (b) Venue for judicial review of informal adjudicative proceedings shall be as provided
69631 in the statute governing the agency or, in the absence of such a venue provision, in the county
69632 where the petitioner resides or maintains the petitioner's principal place of business.

69633 (2) (a) The petition for judicial review of informal adjudicative proceedings shall be a
69634 complaint governed by the Utah Rules of Civil Procedure and shall include:

- 69635 (i) the name and mailing address of the party seeking judicial review;
- 69636 (ii) the name and mailing address of the respondent agency;
- 69637 (iii) the title and date of the final agency action to be reviewed, together with a copy,

69638 summary, or brief description of the agency action;

69639 (iv) identification of the persons who were parties in the informal adjudicative
69640 proceedings that led to the agency action;

69641 (v) a copy of the written agency order from the informal proceeding;

69642 (vi) facts demonstrating that the party seeking judicial review is entitled to obtain
69643 judicial review;

69644 (vii) a request for relief, specifying the type and extent of relief requested; and

69645 (viii) a statement of the reasons why the petitioner is entitled to relief.

69646 (b) All additional pleadings and proceedings in the district court are governed by the
69647 Utah Rules of Civil Procedure.

69648 (3) (a) The district court, without a jury, shall determine all questions of fact and law
69649 and any constitutional issue presented in the pleadings.

69650 (b) The Utah Rules of Evidence apply in judicial proceedings under this section.

69651 Section 1393. Section **63G-4-403**, which is renumbered from Section 63-46b-16 is
69652 renumbered and amended to read:

69653 ~~**[63-46b-16].**~~ **63G-4-403. Judicial review -- Formal adjudicative**
69654 **proceedings.**

69655 (1) As provided by statute, the Supreme Court or the Court of Appeals has jurisdiction
69656 to review all final agency action resulting from formal adjudicative proceedings.

69657 (2) (a) To seek judicial review of final agency action resulting from formal adjudicative
69658 proceedings, the petitioner shall file a petition for review of agency action with the appropriate
69659 appellate court in the form required by the appellate rules of the appropriate appellate court.

69660 (b) The appellate rules of the appropriate appellate court shall govern all additional
69661 filings and proceedings in the appellate court.

69662 (3) The contents, transmittal, and filing of the agency's record for judicial review of
69663 formal adjudicative proceedings are governed by the Utah Rules of Appellate Procedure, except
69664 that:

69665 (a) all parties to the review proceedings may stipulate to shorten, summarize, or

69666 organize the record;

69667 (b) the appellate court may tax the cost of preparing transcripts and copies for the
69668 record:

69669 (i) against a party who unreasonably refuses to stipulate to shorten, summarize, or
69670 organize the record; or

69671 (ii) according to any other provision of law.

69672 (4) The appellate court shall grant relief only if, on the basis of the agency's record, it
69673 determines that a person seeking judicial review has been substantially prejudiced by any of the
69674 following:

69675 (a) the agency action, or the statute or rule on which the agency action is based, is
69676 unconstitutional on its face or as applied;

69677 (b) the agency has acted beyond the jurisdiction conferred by any statute;

69678 (c) the agency has not decided all of the issues requiring resolution;

69679 (d) the agency has erroneously interpreted or applied the law;

69680 (e) the agency has engaged in an unlawful procedure or decision-making process, or has
69681 failed to follow prescribed procedure;

69682 (f) the persons taking the agency action were illegally constituted as a decision-making
69683 body or were subject to disqualification;

69684 (g) the agency action is based upon a determination of fact, made or implied by the
69685 agency, that is not supported by substantial evidence when viewed in light of the whole record
69686 before the court;

69687 (h) the agency action is:

69688 (i) an abuse of the discretion delegated to the agency by statute;

69689 (ii) contrary to a rule of the agency;

69690 (iii) contrary to the agency's prior practice, unless the agency justifies the inconsistency
69691 by giving facts and reasons that demonstrate a fair and rational basis for the inconsistency; or

69692 (iv) otherwise arbitrary or capricious.

69693 Section 1394. Section **63G-4-404**, which is renumbered from Section 63-46b-17 is

69694 renumbered and amended to read:

69695 ~~[63-46b-17]~~. **63G-4-404. Judicial review -- Type of relief.**

69696 (1) (a) In either the review of informal adjudicative proceedings by the district court or
69697 the review of formal adjudicative proceedings by an appellate court, the court may award
69698 damages or compensation only to the extent expressly authorized by statute.

69699 (b) In granting relief, the court may:

69700 (i) order agency action required by law;

69701 (ii) order the agency to exercise its discretion as required by law;

69702 (iii) set aside or modify agency action;

69703 (iv) enjoin or stay the effective date of agency action; or

69704 (v) remand the matter to the agency for further proceedings.

69705 (2) Decisions on petitions for judicial review of final agency action are reviewable by a
69706 higher court, if authorized by statute.

69707 Section 1395. Section **63G-4-405**, which is renumbered from Section 63-46b-18 is
69708 renumbered and amended to read:

69709 ~~[63-46b-18]~~. **63G-4-405. Judicial review -- Stay and other temporary**
69710 **remedies pending final disposition.**

69711 (1) Unless precluded by another statute, the agency may grant a stay of its order or
69712 other temporary remedy during the pendency of judicial review, according to the agency's rules.

69713 (2) Parties shall petition the agency for a stay or other temporary remedies unless
69714 extraordinary circumstances require immediate judicial intervention.

69715 (3) If the agency denies a stay or denies other temporary remedies requested by a party,
69716 the agency's order of denial shall be mailed to all parties and shall specify the reasons why the
69717 stay or other temporary remedy was not granted.

69718 (4) If the agency has denied a stay or other temporary remedy to protect the public
69719 health, safety, or welfare against a substantial threat, the court may not grant a stay or other
69720 temporary remedy unless it finds that:

69721 (a) the agency violated its own rules in denying the stay; or

69722 (b) (i) the party seeking judicial review is likely to prevail on the merits when the court
69723 finally disposes of the matter;

69724 (ii) the party seeking judicial review will suffer irreparable injury without immediate
69725 relief;

69726 (iii) granting relief to the party seeking review will not substantially harm other parties
69727 to the proceedings; and

69728 (iv) the threat to the public health, safety, or welfare relied upon by the agency is not
69729 sufficiently serious to justify the agency's action under the circumstances.

69730 Section 1396. Section **63G-4-501**, which is renumbered from Section 63-46b-19 is
69731 renumbered and amended to read:

69732 **Part 5. Orders and Enforcement**

69733 **~~[63-46b-19]~~. 63G-4-501. Civil enforcement.**

69734 (1) (a) In addition to other remedies provided by law, an agency may seek enforcement
69735 of an order by seeking civil enforcement in the district courts.

69736 (b) The action seeking civil enforcement of an agency's order must name, as defendants,
69737 each alleged violator against whom the agency seeks to obtain civil enforcement.

69738 (c) Venue for an action seeking civil enforcement of an agency's order shall be
69739 determined by the requirements of the Utah Rules of Civil Procedure.

69740 (d) The action may request, and the court may grant, any of the following:

69741 (i) declaratory relief;

69742 (ii) temporary or permanent injunctive relief;

69743 (iii) any other civil remedy provided by law; or

69744 (iv) any combination of the foregoing.

69745 (2) (a) Any person whose interests are directly impaired or threatened by the failure of
69746 an agency to enforce an agency's order may timely file a complaint seeking civil enforcement of
69747 that order, but the action may not be commenced:

69748 (i) until at least 30 days after the plaintiff has given notice of ~~[his]~~ the plaintiff's intent to
69749 seek civil enforcement of the alleged violation to the agency head, the attorney general, and to

69750 each alleged violator against whom the petitioner seeks civil enforcement;

69751 (ii) if the agency has filed and is diligently prosecuting a complaint seeking civil
69752 enforcement of the same order against the same or a similarly situated defendant; or

69753 (iii) if a petition for judicial review of the same order has been filed and is pending in
69754 court.

69755 (b) The complaint seeking civil enforcement of an agency's order must name, as
69756 defendants, the agency whose order is sought to be enforced, the agency that is vested with the
69757 power to enforce the order, and each alleged violator against whom the plaintiff seeks civil
69758 enforcement.

69759 (c) Except to the extent expressly authorized by statute, a complaint seeking civil
69760 enforcement of an agency's order may not request, and the court may not grant, any monetary
69761 payment apart from taxable costs.

69762 (3) In a proceeding for civil enforcement of an agency's order, in addition to any other
69763 defenses allowed by law, a defendant may defend on the ground that:

69764 (a) the order sought to be enforced was issued by an agency without jurisdiction to
69765 issue the order;

69766 (b) the order does not apply to the defendant;

69767 (c) the defendant has not violated the order; or

69768 (d) the defendant violated the order but has subsequently complied.

69769 (4) Decisions on complaints seeking civil enforcement of an agency's order are
69770 reviewable in the same manner as other civil cases.

69771 Section 1397. Section **63G-4-502**, which is renumbered from Section 63-46b-20 is
69772 renumbered and amended to read:

69773 ~~[63-46b-20]~~. **63G-4-502. Emergency adjudicative proceedings.**

69774 (1) An agency may issue an order on an emergency basis without complying with the
69775 requirements of this chapter if:

69776 (a) the facts known by the agency or presented to the agency show that an immediate
69777 and significant danger to the public health, safety, or welfare exists; and

- 69778 (b) the threat requires immediate action by the agency.
- 69779 (2) In issuing its emergency order, the agency shall:
- 69780 (a) limit its order to require only the action necessary to prevent or avoid the danger to
- 69781 the public health, safety, or welfare;
- 69782 (b) issue promptly a written order, effective immediately, that includes a brief statement
- 69783 of findings of fact, conclusions of law, and reasons for the agency's utilization of emergency
- 69784 adjudicative proceedings; and
- 69785 (c) give immediate notice to the persons who are required to comply with the order.
- 69786 (3) If the emergency order issued under this section will result in the continued
- 69787 infringement or impairment of any legal right or interest of any party, the agency shall
- 69788 commence a formal adjudicative proceeding in accordance with the other provisions of this
- 69789 chapter.
- 69790 Section 1398. Section **63G-4-503**, which is renumbered from Section 63-46b-21 is
- 69791 renumbered and amended to read:
- 69792 ~~[63-46b-21]~~. **63G-4-503. Declaratory orders.**
- 69793 (1) Any person may file a request for agency action, requesting that the agency issue a
- 69794 declaratory order determining the applicability of a statute, rule, or order within the primary
- 69795 jurisdiction of the agency to specified circumstances.
- 69796 (2) Each agency shall issue rules that:
- 69797 (a) provide for the form, contents, and filing of petitions for declaratory orders;
- 69798 (b) provide for the disposition of the petitions;
- 69799 (c) define the classes of circumstances in which the agency will not issue a declaratory
- 69800 order;
- 69801 (d) are consistent with the public interest and with the general policy of this chapter;
- 69802 and
- 69803 (e) facilitate and encourage agency issuance of reliable advice.
- 69804 (3) (a) An agency may not issue a declaratory order if:
- 69805 (i) the request is one of a class of circumstances that the agency has by rule defined as

69806 being exempt from declaratory orders; or

69807 (ii) the person requesting the declaratory order participated in an adjudicative
69808 proceeding concerning the same issue within 12 months of the date of the present request.

69809 (b) An agency may issue a declaratory order that would substantially prejudice the
69810 rights of a person who would be a necessary party, only if that person consents in writing to the
69811 determination of the matter by a declaratory proceeding.

69812 (4) Persons may intervene in declaratory proceedings if:

69813 (a) they meet the requirements of Section [~~63-46b-9~~] 63G-4-207; and

69814 (b) they file timely petitions for intervention according to agency rules.

69815 (5) An agency may provide, by rule or order, that other provisions of Sections
69816 [~~63-46b-4~~] 63G-4-202 through [~~63-46b-13~~] 63G-4-302 apply to declaratory proceedings.

69817 (6) (a) After receipt of a petition for a declaratory order, the agency may issue a written
69818 order:

69819 (i) declaring the applicability of the statute, rule, or order in question to the specified
69820 circumstances;

69821 (ii) setting the matter for adjudicative proceedings;

69822 (iii) agreeing to issue a declaratory order within a specified time; or

69823 (iv) declining to issue a declaratory order and stating the reasons for its action.

69824 (b) A declaratory order shall contain:

69825 (i) the names of all parties to the proceeding on which it is based;

69826 (ii) the particular facts on which it is based; and

69827 (iii) the reasons for its conclusion.

69828 (c) A copy of all orders issued in response to a request for a declaratory proceeding
69829 shall be mailed promptly to the petitioner and any other parties.

69830 (d) A declaratory order has the same status and binding effect as any other order issued
69831 in an adjudicative proceeding.

69832 (7) Unless the petitioner and the agency agree in writing to an extension, if an agency
69833 has not issued a declaratory order within 60 days after receipt of the petition for a declaratory

69834 order, the petition is denied.

69835 Section 1399. Section **63G-4-601**, which is renumbered from Section 63-46b-23 is
69836 renumbered and amended to read:

69837 **Part 6. Electronic Records**

69838 ~~[63-46b-23]~~. **63G-4-601. Electronic records and conversion of written**
69839 **records by governmental agencies.**

69840 A governmental agency may make rules regarding electronic records and conversion of
69841 written records as prescribed by Title 46, Chapter 4, Part 5, Electronic Records in Government
69842 Agencies.

69843 Section 1400. Section **63G-5-101**, which is renumbered from Section 63-46c-101 is
69844 renumbered and amended to read:

69845 **CHAPTER 5. GOVERNMENTAL DISPUTE RESOLUTION ACT**

69846 **Part 1. General Provisions**

69847 ~~[63-46c-101]~~. **63G-5-101. Title.**

69848 This chapter is known as the "Governmental Dispute Resolution Act."

69849 Section 1401. Section **63G-5-102**, which is renumbered from Section 63-46c-102 is
69850 renumbered and amended to read:

69851 ~~[63-46c-102]~~. **63G-5-102. Definitions.**

69852 As used in this chapter:

69853 (1) "Agency" is defined in Section ~~[63-46b-2]~~ 63G-4-103.

69854 (2) "Alternative dispute resolution" or "ADR" means a process other than litigation
69855 used to resolve disputes including mediation, arbitration, facilitation, regulatory negotiation,
69856 fact-finding, conciliation, early neutral evaluation, and policy dialogues.

69857 (3) "ADR organization" is defined in Section 78-31b-2.

69858 (4) (a) "ADR provider" means a neutral person who:

69859 (i) meets the qualifications established by Judicial Council rules authorized under

69860 Section 78-31b-5; and

69861 (ii) conducts an ADR procedure.

69862 (b) "ADR provider" includes an arbitrator, mediator, and early neutral evaluator and
69863 may be an employee or an independent contractor.

69864 (5) "Arbitration" means a private hearing before an ADR provider or panel of ADR
69865 providers who hear the evidence, consider the contentions of the parties, and enter a written
69866 award to resolve the issues presented.

69867 (6) "Mediation" is defined in Section 78-31b-2.

69868 (7) "Neutral" means a person who holds himself out to the public as a qualified person
69869 trained to use alternative dispute resolution techniques to resolve conflicts.

69870 Section 1402. Section **63G-5-201**, which is renumbered from Section 63-46c-103 is
69871 renumbered and amended to read:

69872 **Part 2. Alternative Dispute Resolution**

69873 ~~[63-46c-103].~~ **63G-5-201. Alternative dispute resolution -- Authorization --**
69874 **Procedures -- Agency coordinators -- Contracts.**

69875 (1) An agency may use an ADR procedure to resolve any dispute, issue, or controversy
69876 involving any of the agency's operations, programs, or functions, including formal and informal
69877 adjudications, rulemakings, enforcement actions, permitting, certifications, licensing, policy
69878 development, and contract administration only with the consent of all the interested parties.

69879 (2) (a) An agency may develop and adopt an ADR procedure governed by rules,
69880 adopted in accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative
69881 Rulemaking Act.

69882 (b) In developing and adopting an ADR procedure under Subsection (2)(a), an agency
69883 shall consider:

69884 (i) public interest in maintaining open access to and neutrality of an ADR provider or
69885 neutral;

69886 (ii) providing a broad selection of ADR providers or neutrals; and

69887 (iii) creating objective criteria for an ADR provider or neutral to become qualified to
69888 conduct an agency ADR procedure.

69889 (3) ADR procedures developed and used by an agency must be consistent with the

69890 requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

69891 (4) ADR procedures are voluntary and may be used:

69892 (a) at the discretion of the agency; or

69893 (b) with an agency that has adopted an ADR procedure under Subsection (2), at the
69894 request of an interested party to a dispute.

69895 (5) An agency that chooses to use an ADR procedure shall develop an agreement with
69896 interested parties that provides:

69897 (a) (i) for the appointment of an ADR provider or a neutral;

69898 (ii) whose appointment is agreed upon by all parties to the dispute;

69899 (b) specifies any limitation periods applicable to the commencement or conclusion of
69900 formal administrative or judicial proceedings and, if applicable, specifies any time periods that
69901 the parties have agreed to waive; and

69902 (c) sets forth how costs and expenses shall be apportioned among the parties.

69903 (6) (a) An ADR provider or neutral agreed upon in Subsection (5) shall have no official,
69904 financial, or personal conflict of interest with any issue or party in controversy unless the
69905 conflict of interest is fully disclosed in writing to all of the parties and all of the parties agree
69906 that the person may continue to serve.

69907 (b) An agency may make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
69908 Chapter 3, Utah Administrative Rulemaking Act, to develop standards to assure the neutrality
69909 of an ADR provider or neutral.

69910 (7) An agreement developed in accordance with Subsection (5) may be included in an
69911 enforcement order, stipulation, contract, permit, or other document entered into or issued by
69912 the agency.

69913 (8) (a) The administrative head of an agency may designate an employee as the ADR
69914 coordinator for that agency.

69915 (b) The agency ADR coordinator shall:

69916 (i) make recommendations to the agency's executive staff on issues and disputes that are
69917 suitable for alternative dispute resolution;

69918 (ii) analyze the agency's enabling statutes and rules to determine whether they contain
 69919 impediments to the use of ADR procedures and suggest any modifications;
 69920 (iii) monitor the agency's use of ADR procedures;
 69921 (iv) arrange for training of agency staff in ADR procedures; and
 69922 (v) provide information about the agency's ADR procedures to the agency's staff and to
 69923 the public.

69924 (9) In order to implement the purposes of this chapter, an agency may employ or
 69925 contract with a neutral, an ADR provider, an ADR organization, another agency, or a private
 69926 entity for any service necessary on a case-by-case basis, on a service basis, or on a program
 69927 basis.

69928 (10) ADR procedures developed and used under this chapter are subject to the
 69929 confidentiality requirements of Section 78-31b-8.

69930 Section 1403. Section **63G-5-301**, which is renumbered from Section 63-46c-104 is
 69931 renumbered and amended to read:

Part 3. Application

~~63-46c-104~~. **63G-5-301. Effect on other laws.**

69934 Nothing in this chapter or in the agreements and procedures developed in Section
 69935 ~~63-46c-103~~ 63G-5-201 shall:

- 69936 (1) limit other dispute resolution procedures available to an agency; and
- 69937 (2) deny a person a right granted under federal or other state law, including a right to an
 69938 administrative or judicial hearing.

69939 Section 1404. Section **63G-6-101** is enacted to read:

CHAPTER 6. UTAH PROCUREMENT CODE

Part 1. General Provisions

63G-6-101. Title.

This chapter is known as the "Utah Procurement Code."

69944 Section 1405. Section **63G-6-102**, which is renumbered from Section 63-56-101 is
 69945 renumbered and amended to read:

69946 ~~[63-56-101]~~. **63G-6-102**. Purpose of chapter.

69947 The underlying purposes and policies of this chapter are:

69948 (1) to simplify, clarify, and modernize the law governing procurement by this state;

69949 (2) to ensure the fair and equitable treatment of all persons who deal with the

69950 procurement system of this state;

69951 (3) to provide increased economy in state procurement activities; and

69952 (4) to foster effective broad-based competition within the free enterprise system.

69953 Section 1406. Section **63G-6-103**, which is renumbered from Section 63-56-105 is

69954 renumbered and amended to read:

69955 ~~[63-56-105]~~. **63G-6-103**. Definitions.

69956 As used in this chapter:

69957 (1) "Architect-engineer services" are those professional services within the scope of the
69958 practice of architecture as defined in Section 58-3a-102, or professional engineering as defined
69959 in Section 58-22-102.

69960 (2) "Business" means any corporation, partnership, individual, sole proprietorship, joint
69961 stock company, joint venture, or any other private legal entity.

69962 (3) "Change order" means a written order signed by the procurement officer, directing
69963 the contractor to suspend work or make changes, which the appropriate clauses of the contract
69964 authorize the procurement officer to order without the consent of the contractor or any written
69965 alteration in specifications, delivery point, rate of delivery, period of performance, price,
69966 quantity, or other provisions of any contract accomplished by mutual action of the parties to the
69967 contract.

69968 (4) (a) "Construction" means the process of building, renovation, alteration,
69969 improvement, or repair of any public building or public work.

69970 (b) "Construction" does not mean the routine operation, routine repair, or routine
69971 maintenance of existing structures, buildings, or real property.

69972 (5) (a) "Construction Manager/General Contractor" means any contractor who enters
69973 into a contract for the management of a construction project when that contract allows the

69974 contractor to subcontract for additional labor and materials that were not included in the
69975 contractor's cost proposal submitted at the time of the procurement of the Construction
69976 Manager/General Contractor's services.

69977 (b) "Construction Manager/General Contractor" does not mean a contractor whose
69978 only subcontract work not included in the contractor's cost proposal submitted as part of the
69979 procurement of construction is to meet subcontracted portions of change orders approved
69980 within the scope of the project.

69981 (6) "Contract" means any state agreement for the procurement or disposal of supplies,
69982 services, or construction.

69983 (7) "Cooperative purchasing" means procurement conducted by, or on behalf of, more
69984 than one public procurement unit, or by a public procurement unit with an external procurement
69985 unit.

69986 (8) "Cost-reimbursement contract" means a contract under which a contractor is
69987 reimbursed for costs which are allowed and allocated in accordance with the contract terms and
69988 the provisions of this chapter, and a fee, if any.

69989 (9) (a) "Design-build" means the procurement of architect-engineer services and
69990 construction by the use of a single contract with the design-build provider.

69991 (b) This method of design and construction can include the design-build provider
69992 supplying the site as part of the contract.

69993 (10) "Established catalogue price" means the price included in a catalogue, price list,
69994 schedule, or other form that:

69995 (a) is regularly maintained by a manufacturer or contractor;

69996 (b) is either published or otherwise available for inspection by customers; and

69997 (c) states prices at which sales are currently or were last made to a significant number
69998 of any category of buyers or buyers constituting the general buying public for the supplies or
69999 services involved.

70000 (11) "External procurement unit" means any buying organization not located in this
70001 state which, if located in this state, would qualify as a public procurement unit. An agency of

70002 the United States is an external procurement unit.

70003 (12) "Grant" means the furnishing by the state or by any other public or private source
70004 assistance, whether financial or otherwise, to any person to support a program authorized by
70005 law. It does not include an award whose primary purpose is to procure an end product,
70006 whether in the form of supplies, services, or construction. A contract resulting from the award
70007 is not a grant but a procurement contract.

70008 (13) "Invitation for bids" means all documents, whether attached or incorporated by
70009 reference, utilized for soliciting bids.

70010 (14) "Local public procurement unit" means any political subdivision or institution of
70011 higher education of the state or public agency of any subdivision, public authority, educational,
70012 health, or other institution, and to the extent provided by law, any other entity which expends
70013 public funds for the procurement of supplies, services, and construction, but not counties,
70014 municipalities, political subdivisions created by counties or municipalities under the Interlocal
70015 Cooperation Act, the Utah Housing Corporation, or the Legislature and its staff offices. It
70016 includes two or more local public procurement units acting under legislation which authorizes
70017 intergovernmental cooperation.

70018 (15) "Person" means any business, individual, union, committee, club, other
70019 organization, or group of individuals, not including a state agency or a local public procurement
70020 unit.

70021 (16) "Policy board" means the procurement policy board created by Section
70022 [~~63-56-201~~] 63G-6-201.

70023 (17) "Preferred bidder" means a bidder that is entitled to receive a reciprocal preference
70024 under the requirements of this chapter.

70025 (18) "Procurement" means buying, purchasing, renting, leasing, leasing with an option
70026 to purchase, or otherwise acquiring any supplies, services, or construction. It also includes all
70027 functions that pertain to the obtaining of any supply, service, or construction, including
70028 description of requirements, selection, and solicitation of sources, preparation, and award of a
70029 contract, and all phases of contract administration.

70030 (19) "Procurement officer" means any person or board duly authorized to enter into and
70031 administer contracts and make written determinations with respect thereto. It also includes an
70032 authorized representative acting within the limits of authority.

70033 (20) "Public procurement unit" means either a local public procurement unit or a state
70034 public procurement unit.

70035 (21) "Purchase description" means the words used in a solicitation to describe the
70036 supplies, services, or construction to be purchased, and includes specifications attached to or
70037 made a part of the solicitation.

70038 (22) "Purchasing agency" means any state agency other than the Division of Purchasing
70039 and General Services that is authorized by this chapter or its implementing regulations, or by
70040 delegation from the chief procurement officer, to enter into contracts.

70041 (23) "Request for proposals" means all documents, whether attached or incorporated by
70042 reference, used for soliciting proposals.

70043 (24) "Responsible bidder or offeror" means a person who has the capability in all
70044 respects to perform fully the contract requirements and who has the integrity and reliability
70045 which will assure good faith performance.

70046 (25) "Responsive bidder" means a person who has submitted a bid which conforms in
70047 all material respects to the invitation for bids.

70048 (26) "Sealed" does not preclude acceptance of electronically sealed and submitted bids
70049 or proposals in addition to bids or proposals manually sealed and submitted.

70050 (27) "Services" means the furnishing of labor, time, or effort by a contractor, not
70051 involving the delivery of a specific end product other than reports which are merely incidental to
70052 the required performance. It does not include employment agreements or collective bargaining
70053 agreements.

70054 (28) "Specification" means any description of the physical or functional characteristics,
70055 or of the nature of a supply, service, or construction item. It may include a description of any
70056 requirement for inspecting, testing, or preparing a supply, service, or construction item for
70057 delivery.

70058 (29) "State agency" or "the state" means any department, division, commission, council,
 70059 board, bureau, committee, institution, government corporation, or other establishment, official,
 70060 or employee of this state.

70061 (30) "State public procurement unit" means the Division of Purchasing and General
 70062 Services and any other purchasing agency of this state.

70063 (31) "Supplies" means all property, including equipment, materials, and printing.

70064 (32) "Using agency" means any state agency which utilizes any supplies, services, or
 70065 construction procured under this chapter.

70066 Section 1407. Section **63G-6-104**, which is renumbered from Section 63-56-102 is
 70067 renumbered and amended to read:

70068 ~~[63-56-102].~~ **63G-6-104. Application of chapter.**

70069 (1) This chapter applies only to contracts solicited or entered into after the effective
 70070 date of this chapter unless the parties agree to its application to a contract solicited or entered
 70071 into prior to the effective date.

70072 (2) Except as provided in Section ~~[63-56-103]~~ 63G-6-105, this chapter shall apply to
 70073 every expenditure of public funds irrespective of their source, including federal assistance, by
 70074 any state agency under any contract.

70075 (3) (a) Only the following sections shall apply to local public procurement units:
 70076 Sections ~~[63-56-103]~~ 63G-6-103, ~~[63-56-105]~~ 63G-6-105, ~~[63-56-301]~~ 63G-6-301,
 70077 ~~[63-56-303]~~ 63G-6-303 through ~~[63-56-420]~~ 63G-6-420, ~~[63-56-422]~~ 63G-6-422, ~~[63-56-501]~~
 70078 63G-6-501 through ~~[63-56-602]~~ 63G-6-602, ~~[63-56-801]~~ 63G-6-801 through ~~[63-56-806]~~
 70079 63G-6-806, and ~~[63-56-815]~~ 63G-6-815 through ~~[63-56-819]~~ 63G-6-819; provided, however,
 70080 that, except as provided in Sections ~~[63-56-906]~~ 63G-6-906 and ~~[63-56-907]~~ 63G-6-907, the
 70081 jurisdiction of the procurement appeals board is limited to matters involving state agencies.

70082 (b) Subsections ~~[63-56-208]~~ 63G-6-208(1)(b), ~~[63-56-503]~~ 63G-6-504(4), and
 70083 ~~[63-56-504]~~ 63G-6-505(2) also apply to local public procurement units.

70084 (c) For the purpose of application of those sections and subsections to a local public
 70085 procurement unit, "state" shall mean "local public procurement unit," "chief procurement

70086 officer" or "head of a purchasing agency" shall mean any person conducting procurement for a
70087 local public procurement unit, and "rules and regulations" shall mean ordinances and rules and
70088 regulations promulgated by a local public procurement unit to implement or supplement those
70089 sections.

70090 (d) In addition to the sections and subsections listed above and except as provided in
70091 Subsection 17B-1-108(3) relating to local districts, each local public procurement unit shall
70092 adopt ordinances relating to the procurement of architect-engineer services not inconsistent
70093 with the provisions of Part 7, Architect-Engineer Services.

70094 (e) Any other section of this chapter, or its implementing regulations, may be adopted
70095 by any local public procurement unit.

70096 (f) Any other implementing regulations adopted by local public procurement units may
70097 not be inconsistent with the provisions of this chapter.

70098 (4) Unless otherwise provided by statute, this chapter does not apply to procurement of
70099 real property.

70100 Section 1408. Section **63G-6-105**, which is renumbered from Section 63-56-103 is
70101 renumbered and amended to read:

70102 ~~[63-56-103].~~ **63G-6-105. Exemptions from chapter -- Compliance with**
70103 **federal law.**

70104 (1) This chapter is not applicable to funds administered under the Percent-for-Art
70105 Program of the Utah Percent-for-Art Act.

70106 (2) This chapter is not applicable to grants awarded by the state or contracts between
70107 the state and local public procurement units except as provided in Part 9, Intergovernmental
70108 Relations.

70109 (3) This chapter shall not prevent the state or a local public procurement unit from
70110 complying with the terms and conditions of any grant, gift, or bequest that is otherwise
70111 consistent with law.

70112 (4) When a procurement involves the expenditure of federal assistance or contract
70113 funds, the chief procurement officer or head of a purchasing agency shall comply with

70114 mandatory applicable federal law and regulations not reflected in this chapter.

70115 (5) This chapter may not supersede the requirements for retention or withholding of
70116 construction proceeds and release of construction proceeds as provided in Section 13-8-5.

70117 Section 1409. Section **63G-6-106**, which is renumbered from Section 63-56-104 is
70118 renumbered and amended to read:

70119 ~~**[63-56-104].**~~ **63G-6-106. Records.**

70120 (1) All procurement records shall be retained and disposed of in accordance with [Title
70121 ~~63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

70122 (2) Written determinations required by this chapter shall also be retained in the
70123 appropriate official contract file of the Division of Purchasing and General Services or the
70124 purchasing agency.

70125 Section 1410. Section **63G-6-201**, which is renumbered from Section 63-56-201 is
70126 renumbered and amended to read:

70127 **Part 2. Procurement Organization**

70128 ~~**[63-56-201].**~~ **63G-6-201. Creation of procurement policy board.**

70129 (1) (a) There is created a state procurement policy board.

70130 (b) The policy board shall consist of eight members who shall be appointed as follows:

70131 (i) an employee of a state institution of higher education, appointed by the board of
70132 regents;

70133 (ii) an employee of the Department of Human Services, appointed by the executive
70134 director of that department;

70135 (iii) an employee of the Department of Transportation, appointed by the executive
70136 director of that department;

70137 (iv) an employee of a school district appointed by a cooperative purchasing entity for
70138 school districts;

70139 (v) an employee of the Division of Facilities Construction and Management appointed
70140 by the director of that division;

70141 (vi) an employee of a county, appointed by the Utah Association of Counties;

70142 (vii) an employee of a city, appointed by the Utah League of Cities and Towns; and

70143 (viii) an employee of a local district or special service district, appointed by the Utah
70144 Association of Special Districts.

70145 (c) Members of the policy board shall be knowledgeable and experienced in, and have
70146 supervisory responsibility for, procurement in their official positions.

70147 (2) Members shall be appointed to four-year staggered terms.

70148 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
70149 appointed for the unexpired term.

70150 (4) (a) The policy board shall:

70151 (i) adopt rules of procedure for conducting its business; and

70152 (ii) elect a chair to serve for one year.

70153 (b) The chair may be elected to succeeding terms.

70154 (c) The chief procurement officer shall serve as the nonvoting secretary to the policy
70155 board.

70156 (5) (a) (i) Members who are not government employees shall receive no compensation
70157 or benefits for their services, but may receive per diem and expenses incurred in the
70158 performance of the member's official duties at the rates established by the Division of Finance
70159 under Sections 63A-3-106 and 63A-3-107.

70160 (ii) Members may decline to receive per diem and expenses for their service.

70161 (b) (i) State government officer and employee members who do not receive salary, per
70162 diem, or expenses from their agency for their service may receive per diem and expenses
70163 incurred in the performance of their official duties from the board at the rates established by the
70164 Division of Finance under Sections 63A-3-106 and 63A-3-107.

70165 (ii) State government officer and employee members may decline to receive per diem
70166 and expenses for their service.

70167 (c) (i) Higher education members who do not receive salary, per diem, or expenses
70168 from the entity that they represent for their service may receive per diem and expenses incurred
70169 in the performance of their official duties from the committee at the rates established by the

70170 Division of Finance under Sections 63A-3-106 and 63A-3-107.

70171 (ii) Higher education members may decline to receive per diem and expenses for their
70172 service.

70173 (d) (i) Local government members who do not receive salary, per diem, or expenses
70174 from the entity that they represent for their service may receive per diem and expenses incurred
70175 in the performance of their official duties at the rates established by the Division of Finance
70176 under Sections 63A-3-106 and 63A-3-107.

70177 (ii) Local government members may decline to receive per diem and expenses for their
70178 service.

70179 Section 1411. Section **63G-6-202**, which is renumbered from Section 63-56-202 is
70180 renumbered and amended to read:

70181 ~~[63-56-202]~~. **63G-6-202. Powers and duties of board.**

70182 (1) Except as otherwise provided in Sections [~~63-56-102~~] 63G-6-104 and [~~63-56-208~~]
70183 63G-6-208, the policy board shall:

70184 (a) make rules, consistent with this chapter, governing the procurement, management,
70185 and control of any and all supplies, services, and construction to be procured by the state; and

70186 (b) consider and decide matters of policy within the provisions of this chapter, including
70187 those referred to it by the chief procurement officer.

70188 (2) (a) The policy board may:

70189 (i) audit and monitor the implementation of its rules and the requirements of this
70190 chapter;

70191 (ii) upon the request of a local public procurement unit, review that procurement unit's
70192 proposed rules to ensure that they are not inconsistent with the provisions of this chapter; and

70193 (iii) approve the use of innovative procurement methods proposed by local public
70194 procurement units.

70195 (b) The policy board may not exercise authority over the award or administration of:

70196 (i) any particular contract; or

70197 (ii) over any dispute, claim, or litigation pertaining to any particular contract.

70198 Section 1412. Section **63G-6-203**, which is renumbered from Section 63-56-203 is
70199 renumbered and amended to read:

70200 ~~[63-56-203]~~. **63G-6-203. Chief procurement officer -- Appointment --**
70201 **Qualifications.**

70202 (1) The executive director of the Department of Administrative Services, with the
70203 consent of the governor, shall appoint the chief procurement officer after considering
70204 recommendations from the policy board.

70205 (2) The chief procurement officer shall:

70206 (a) have a minimum of eight years' experience in the large-scale procurement of supplies
70207 and services or services and construction, at least five years of which shall have been in public
70208 or comparable private procurement within 12 years preceding the date of appointment; and

70209 (b) be a person with demonstrated executive and organizational ability.

70210 (3) The chief procurement officer is also the director of the Division of Purchasing and
70211 General Services.

70212 Section 1413. Section **63G-6-204**, which is renumbered from Section 63-56-204 is
70213 renumbered and amended to read:

70214 ~~[63-56-204]~~. **63G-6-204. Duties of chief procurement officer.**

70215 Except as otherwise specifically provided in this chapter, the chief procurement officer
70216 serves as the central procurement officer of the state and shall:

70217 (1) adopt office policies governing the internal functions of the Division of Purchasing
70218 and General Services;

70219 (2) procure or supervise the procurement of all supplies, services, and construction
70220 needed by the state;

70221 (3) exercise general supervision and control over all inventories or supplies belonging to
70222 the state;

70223 (4) establish and maintain programs for the inspection, testing, and acceptance of
70224 supplies, services, and construction;

70225 (5) prepare statistical data concerning the procurement and usage of all supplies,

70226 services, and construction;

70227 (6) before June 1, 1990, notify all public procurement units of the requirements of
70228 Section [~~63-56-406~~] 63G-6-406 regarding purchases of recycled paper and recycled paper
70229 products, recycling requirements, and provide guidelines on the availability of recycled paper
70230 and paper products, including the sources of supply and the potential uses of various grades of
70231 recycled paper;

70232 (7) before July 1, 1992:

70233 (a) establish standards and specifications for determining which supplies are considered
70234 recycled, based upon [~~his~~] the chief procurement officer's review of current definitions and
70235 standards employed by national procurement, product recycling, and other relevant
70236 organizations and the federal Environmental Protection Agency;

70237 (b) compile and update as necessary the specifications, a list of recycled supplies
70238 available on state contract, and sources where the supplies may be obtained;

70239 (c) make the compiled information under Subsection (7)(b) available to:

70240 (i) all local government entities under Section 11-37-101;

70241 (ii) all local health departments under Section 26A-1-108.7;

70242 (iii) all procurement officers or other persons responsible for purchasing supplies within
70243 the public school system under Title 53A, State System of Public Education;

70244 (iv) all procurement officers or other persons responsible for purchasing supplies within
70245 the state system of higher education under Title 53B, State System of Higher Education; and

70246 (v) all procurement officers or other persons responsible for purchasing supplies for all
70247 public procurement units as defined in Section [~~63-56-105~~] 63G-6-103; and

70248 (d) present a written report to the Natural Resources, Agriculture, and Environment
70249 Interim Committee annually prior to November 30 regarding the purchases of recycled goods
70250 on state contracts during the prior fiscal year; and

70251 (8) ensure that:

70252 (a) before approving a purchase, lease, or rental not covered by an existing statewide
70253 contract for information technology or telecommunications supplies or services, the chief

70254 information officer and the agency have provided in writing to the division, that the needs
70255 analysis required in Section 63F-1-205 was completed; and

70256 (b) the oversight authority required by Subsection (8)(a) is not delegated outside the
70257 Division of Purchasing and General Services.

70258 Section 1414. Section **63G-6-205**, which is renumbered from Section 63-56-205 is
70259 renumbered and amended to read:

70260 ~~[63-56-205]~~. **63G-6-205. Delegation of authority.**

70261 Subject to rules and regulations, the chief procurement officer may delegate authority to
70262 designees or to any department, agency, or official.

70263 Section 1415. Section **63G-6-206**, which is renumbered from Section 63-56-206 is
70264 renumbered and amended to read:

70265 ~~[63-56-206]~~. **63G-6-206. Transfer of power to policy board.**

70266 Except as otherwise provided in this chapter, all rights, powers, duties, and authority
70267 relating to the procurement of supplies, services, and construction, and the management,
70268 control, warehousing, and sale of supplies, services, and construction vested in or exercised by
70269 any state agency on the effective date are transferred to the policy board as they relate to its
70270 duties and to the Division of Purchasing and General Services as they relate to its duties.

70271 Section 1416. Section **63G-6-207**, which is renumbered from Section 63-56-207 is
70272 renumbered and amended to read:

70273 ~~[63-56-207]~~. **63G-6-207. Specific statutory authority.**

70274 (1) The authority to procure certain supplies, services, and construction given the public
70275 procurement units governed by the following provisions shall be retained:

70276 (a) Title 53B, State System of Higher Education;

70277 (b) Title 63A, Chapter 5, State Building Board - Division of Facilities Construction and
70278 Management;

70279 (c) Title 67, Chapter 5, Attorney General;

70280 (d) Title 72, Transportation; and

70281 (e) Title 78, Chapter 3, District Courts.

70282 (2) This authority extends only to supplies, services, and construction to the extent
70283 provided in the cited chapters. Except as otherwise provided in Sections [~~63-56-102~~
70284 63G-6-104 and [~~63-56-103~~] 63G-6-105, the respective purchasing agencies shall procure
70285 supplies, services, and construction in accordance with this chapter.

70286 (3) (a) The Department of Transportation may make rules governing the procurement
70287 of highway construction or improvement.

70288 (b) This Subsection (3) supersedes Subsections (1) and (2).

70289 (4) The Legislature may procure supplies and services for its own needs.

70290 Section 1417. Section **63G-6-208**, which is renumbered from Section 63-56-208 is
70291 renumbered and amended to read:

70292 ~~[63-56-208].~~ **63G-6-208. Rules and regulations of policy board and**
70293 **building board.**

70294 (1) (a) Except as provided in Subsection (2), the policy board shall make rules
70295 governing state procurement by complying with the procedures and requirements of [~~Title 63,~~
70296 ~~Chapter 46a~~] Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.

70297 (b) The procurement rules adopted by the policy board under this section apply to all
70298 local public procurement units unless the local public procurement unit's legislative body has
70299 adopted separate rules governing procurement.

70300 (2) The State Building Board rules governing procurement of construction,
70301 architect-engineer services, and leases apply to the procurement of construction,
70302 architect-engineer services, and leases of real property by the Division of Facilities Construction
70303 and Management.

70304 Section 1418. Section **63G-6-209**, which is renumbered from Section 63-56-209 is
70305 renumbered and amended to read:

70306 ~~[63-56-209].~~ **63G-6-209. Procurement Advisory Council.**

70307 (1) The policy board may establish a Procurement Advisory Council, which shall meet
70308 at least once a year for the discussion of problems and recommendations for improvement of the
70309 procurement process. When requested by the policy board, the Procurement Advisory Council

70310 may conduct studies, research, analyses, and make reports and recommendations with respect to
70311 subjects or matters within the jurisdiction of the policy board. The Procurement Advisory
70312 Council shall consist of representatives of state and local government and any other persons the
70313 policy board considers desirable.

70314 (2) The chief procurement officer may appoint advisory groups to provide advice
70315 regarding any matters within the authority of the chief procurement officer.

70316 (3) Members of the Procurement Advisory Council and other advisory groups may be
70317 reimbursed for expenses incurred in the performance of their duties, as provided by the policy
70318 board.

70319 Section 1419. Section **63G-6-301**, which is renumbered from Section 63-56-301 is
70320 renumbered and amended to read:

70321 **Part 3. Specifications**

70322 ~~[63-56-301].~~ **63G-6-301. Rules and regulations for specifications of**
70323 **supplies.**

70324 Rules and regulations shall be promulgated to govern the preparation, maintenance, and
70325 content of specifications for supplies, services, and construction required by the state. Rules
70326 and regulations shall determine the extent to which a nonemployee who has prepared
70327 specifications for use by the state may participate in any state procurement using such
70328 specifications.

70329 Section 1420. Section **63G-6-302**, which is renumbered from Section 63-56-302 is
70330 renumbered and amended to read:

70331 ~~[63-56-302].~~ **63G-6-302. Duty of chief procurement officer in maintaining**
70332 **specifications of supplies.**

70333 The chief procurement officer shall prepare, issue, revise, maintain, and monitor the use
70334 of specifications for supplies, services, and construction required by the state. The chief
70335 procurement officer shall obtain expert advice and assistance from personnel of using agencies
70336 in the development of specifications and may delegate in writing to a using agency the authority
70337 to prepare and utilize its own specifications.

70338 Section 1421. Section **63G-6-303**, which is renumbered from Section 63-56-303 is
70339 renumbered and amended to read:

70340 ~~[63-56-303]~~. **63G-6-303. Purpose of specifications.**

70341 All specifications shall seek to promote overall economy and best use for the purposes
70342 intended and encourage competition in satisfying the state's needs, and shall not be unduly
70343 restrictive. The requirements of this part regarding the purposes and nonrestrictiveness of
70344 specifications shall apply to all specifications, including, but not limited to, those prepared by
70345 architects, engineers, designers, and draftsmen for public contracts.

70346 Section 1422. Section **63G-6-401**, which is renumbered from Section 63-56-401 is
70347 renumbered and amended to read:

70348 **Part 4. Source Selections and Contract Formation**

70349 ~~[63-56-401]~~. **63G-6-401. Contracts awarded by sealed bidding --**
70350 **Procedure.**

70351 (1) Contracts shall be awarded by competitive sealed bidding except as otherwise
70352 provided by this chapter.

70353 (2) (a) An invitation for bids shall be issued when a contract is to be awarded by
70354 competitive sealed bidding.

70355 (b) The invitation shall include a purchase description and all contractual terms and
70356 conditions applicable to the procurement.

70357 (3) (a) Public notice of the invitation for bids shall be given a reasonable time before the
70358 date set forth in the invitation for the opening of bids, in accordance with rules.

70359 (b) The notice may include publication in a newspaper of general circulation a
70360 reasonable time before bid opening.

70361 (4) (a) Bids shall be opened publicly in the presence of one or more witnesses at the
70362 time and place designated in the invitation for bids.

70363 (b) The amount of each bid and any other relevant information specified by rules,
70364 together with the name of each bidder, shall be recorded.

70365 (c) The record and each bid shall be open to public inspection.

70366 (5) (a) Bids shall be unconditionally accepted without alteration or correction, except as
70367 authorized in this chapter.

70368 (b) (i) Bids shall be evaluated based on the requirements set forth in the invitation for
70369 bids, which may include criteria to determine acceptability such as inspection, testing, quality,
70370 workmanship, delivery, and suitability for a particular purpose.

70371 (ii) Those criteria that will affect the bid price and be considered in evaluation for award
70372 shall be objectively measurable.

70373 (iii) The criteria may include discounts, transportation costs, and total or life cycle
70374 costs.

70375 (c) No criteria may be used in bid evaluation that are not set forth in the invitation for
70376 bids.

70377 (6) (a) Correction or withdrawal of inadvertently erroneous bids before or after award,
70378 or cancellation of awards or contracts based on the bid mistakes, shall be permitted in
70379 accordance with rules.

70380 (b) After bid opening, no changes in bid prices or other provisions of bids prejudicial to
70381 the interest of the state or fair competition may be permitted.

70382 (c) Except as otherwise provided by rule, all decisions to permit the correction or
70383 withdrawal of bids or to cancel awards or contracts based on bid mistakes shall be supported by
70384 a written determination made by the chief procurement officer or the head of a purchasing
70385 agency.

70386 (7) (a) The contract shall be awarded with reasonable promptness by written notice to
70387 the lowest responsive and responsible bidder whose bid meets the requirements and criteria set
70388 forth in the invitation for bids.

70389 (b) (i) If all bids for a construction project exceed available funds as certified by the
70390 appropriate fiscal officer, and the low responsive and responsible bid does not exceed those
70391 funds by more than 5%, the chief procurement officer or the head of a purchasing agency may,
70392 in situations where time or economic considerations preclude resolicitation of work of a
70393 reduced scope, negotiate an adjustment of the bid price, including changes in the bid

70394 requirements, with the low responsive and responsible bidder in order to bring the bid within the
70395 amount of available funds.

70396 (ii) If the State Building Board establishes alternative procedures by rule under Section
70397 63A-5-103, the Division of Facilities Construction and Management need not comply with the
70398 provisions of this Subsection (7) when a bid meets the requirements of the State Building
70399 Board's rule.

70400 (8) When it is considered impractical to prepare initially a purchase description to
70401 support an award based on price, an invitation for bids may be issued requesting the submission
70402 of unpriced offers to be followed by an invitation for bids limited to those bidders whose offers
70403 have been qualified under the criteria set forth in the first solicitation.

70404 Section 1423. Section **63G-6-402**, which is renumbered from Section 63-56-402 is
70405 renumbered and amended to read:

70406 ~~[63-56-402]~~. **63G-6-402. Contracts awarded by reverse auction.**

70407 (1) As used in this section, "reverse auction" means a process where:

70408 (a) contracts are awarded in an open and interactive environment, which may include
70409 the use of electronic media; and

70410 (b) bids are opened and made public immediately, and bidders given opportunity to
70411 submit revised, lower bids, until the bidding process is complete.

70412 (2) (a) Notwithstanding the requirements of this chapter, contracts may be awarded
70413 through a reverse auction.

70414 (b) The policy board shall make rules, consistent with this chapter, governing a reverse
70415 auction process.

70416 Section 1424. Section **63G-6-403**, which is renumbered from Section 63-56-403 is
70417 renumbered and amended to read:

70418 ~~[63-56-403]~~. **63G-6-403. Procurement -- Use of recycled goods.**

70419 The procurement officer or other person responsible for purchasing supplies for each
70420 public procurement unit shall:

70421 (1) comply with Section ~~[63-56-406]~~ 63G-6-406; and

70422 (2) (a) maintain for reference a copy of the current listing of recycled items available on
70423 state contract as issued by the chief procurement officer under Section [~~63-56-204~~] 63G-6-204;
70424 and

70425 (b) give recycled items consideration when inviting bids and purchasing supplies.

70426 Section 1425. Section **63G-6-404**, which is renumbered from Section 63-56-404 is
70427 renumbered and amended to read:

70428 ~~[63-56-404]~~. **63G-6-404**. **Preference for providers of state products.**

70429 (1) (a) All public procurement units shall, in all purchases of goods, supplies,
70430 equipment, materials, and printing, give a reciprocal preference to those bidders offering goods,
70431 supplies, equipment, materials, or printing produced, manufactured, mined, grown, or
70432 performed in Utah as against those bidders offering goods, supplies, equipment, materials, or
70433 printing produced, manufactured, mined, grown, or performed in any state that gives or requires
70434 a preference to goods, supplies, equipment, materials, or printing produced, manufactured,
70435 mined, grown, or performed in that state.

70436 (b) The amount of reciprocal preference shall be equal to the amount of the preference
70437 applied by the other state for that particular good, supply, equipment, material, or printing.

70438 (c) (i) The bidder shall certify on the bid that the goods, supplies, equipment, materials,
70439 or printing offered are produced, manufactured, mined, grown, or performed in Utah.

70440 (ii) The reciprocal preference is waived if that certification does not appear on the bid.

70441 (2) (a) If the bidder submitting the lowest responsive and responsible bid offers goods,
70442 supplies, equipment, materials, or printing produced, manufactured, mined, grown, or
70443 performed in a state that gives or requires a preference, and if another bidder has submitted a
70444 responsive and responsible bid offering goods, supplies, equipment, materials, or printing
70445 produced, manufactured, mined, grown, or performed in Utah, and with the benefit of the
70446 reciprocal preference, his bid is equal to or less than the original lowest bid, the procurement
70447 officer shall:

70448 (i) give notice to the bidder offering goods, supplies, equipment, materials, or printing
70449 produced, manufactured, mined, grown, or performed in Utah that ~~he~~ the bidder qualifies as a

70450 preferred bidder; and

70451 (ii) make the purchase from the preferred bidder if, the bidder agrees, in writing, to
70452 meet the low bid within 72 hours after notification [~~to him~~] that [~~he~~] the bidder is a preferred
70453 bidder[~~, he agrees, in writing, to meet the low bid~~].

70454 (b) The procurement officer shall include the exact price submitted by the lowest bidder
70455 in the notice [~~he~~] the procurement officer submits to the preferred bidder.

70456 (c) The procurement officer may not enter into a contract with any other bidder for the
70457 purchase until 72 hours have elapsed after notification to the preferred bidder.

70458 (3) (a) If there is more than one preferred bidder, the procurement officer shall award
70459 the contract to the willing preferred bidder who was the lowest preferred bidder originally.

70460 (b) If there were two or more equally low preferred bidders, the procurement officer
70461 shall comply with the rules adopted by the Procurement Policy Board to determine which bidder
70462 should be awarded the contract.

70463 (4) The provisions of this section do not apply if application of this section might
70464 jeopardize the receipt of federal funds.

70465 Section 1426. Section **63G-6-405**, which is renumbered from Section 63-56-405 is
70466 renumbered and amended to read:

70467 ~~[63-56-405]~~. **63G-6-405. Preference for resident contractors.**

70468 (1) As used in this section, "resident contractor" means a person, partnership,
70469 corporation, or other business entity that:

70470 (a) either has its principal place of business in Utah or that employs workers who are
70471 residents of this state when available; and

70472 (b) was transacting business on the date when bids for the public contract were first
70473 solicited.

70474 (2) (a) When awarding contracts for construction, a public procurement unit shall grant
70475 a resident contractor a reciprocal preference as against a nonresident contractor from any state
70476 that gives or requires a preference to contractors from that state.

70477 (b) The amount of the reciprocal preference shall be equal to the amount of the

70478 preference applied by the state of the nonresident contractor.

70479 (3) (a) The bidder shall certify on the bid that ~~he~~ the bidder qualifies as a resident
70480 contractor.

70481 (b) The reciprocal preference is waived if that certification does not appear on the bid.

70482 (4) (a) If the contractor submitting the lowest responsive and responsible bid is not a
70483 resident contractor and has his principal place of business in any state that gives or requires a
70484 preference to contractors from that state, and if a resident contractor has also submitted a
70485 responsive and responsible bid, and, with the benefit of the reciprocal preference, the resident
70486 contractor's bid is equal to or less than the original lowest bid, the procurement officer shall:

70487 (i) give notice to the resident contractor that ~~he~~ the resident contractor qualifies as a
70488 preferred resident contractor; and

70489 (ii) issue the contract to the resident contractor if~~;~~ the resident contractor agrees, in
70490 writing, to meet the low bid within 72 hours after notification ~~[to him]~~ that ~~he~~ the resident
70491 contractor is a preferred resident contractor~~[- he agrees, in writing, to meet the low bid].~~

70492 (b) The procurement officer shall include the exact price submitted by the lowest bidder
70493 in the notice ~~he~~ the procurement officer submits to the preferred resident contractor.

70494 (c) The procurement officer may not enter into a contract with any other bidder for the
70495 construction until 72 hours have elapsed after notification to the preferred resident contractor.

70496 (5) (a) If there is more than one preferred resident contractor, the procurement officer
70497 shall award the contract to the willing preferred resident contractor who was the lowest
70498 preferred resident contractor originally.

70499 (b) If there were two or more equally low preferred resident contractors, the
70500 procurement officer shall comply with the rules adopted by the Procurement Policy Board to
70501 determine which bidder should be awarded the contract.

70502 (6) The provisions of this section do not apply if application of this section might
70503 jeopardize the receipt of federal funds.

70504 Section 1427. Section **63G-6-406**, which is renumbered from Section 63-56-406 is
70505 renumbered and amended to read:

70506 ~~[63-56-406].~~ 63G-6-406. Preference for recycled paper and paper
70507 **products.**

70508 (1) As used in this section:

70509 (a) "Chief procurement officer" is the chief procurement officer appointed under
70510 Section ~~[63-56-203]~~ 63G-6-203.

70511 (b) "Paper" means any newspaper, high-grade office paper, fine paper, bond paper,
70512 offset paper, xerographic paper, mimeographic paper, duplicator paper, and related types of
70513 cellulosic material containing not more than 10% by weight or volume of noncellulosic material
70514 such as laminates, binders, coatings, or saturants.

70515 (c) "Paper product" means any paper items or commodities, including paper napkins,
70516 towels, corrugated and other cardboard, toilet tissue, paper and related types of cellulosic
70517 products containing not more than 10% by weight or volume of noncellulosic material such as
70518 laminates, binders, coatings, or saturants. "Paper product" does not include preprinted
70519 cellulosic products such as books, newspapers, calendars, and magazines.

70520 (d) "Postconsumer waste," "recycled paper," "recycled paper product," and "secondary
70521 waste paper material" are defined by rule made by the Division of Purchasing, Department of
70522 Administrative Services. The division rules shall be based on current definitions and standards
70523 employed by national procurement, product recycling, and other relevant organizations such as
70524 the federal Environmental Protection Agency.

70525 (2) Notwithstanding Section ~~[63-56-401]~~ 63G-6-401, which requires public
70526 procurement units to purchase products from the lowest responsible bidder, and subject to
70527 Subsection (3), every public procurement unit shall give preference to the purchase of paper and
70528 paper products which are manufactured or produced from recycled materials.

70529 (3) A public procurement unit shall give preference to purchasing recycled paper and
70530 recycled paper products unless:

70531 (a) the bid or purchase price for recycled paper or paper products exceeds by more than
70532 5% the lowest responsive and responsible bidder whose bid meets the requirements and criteria
70533 set forth in the invitation for bids;

70534 (b) there is no recycled paper or paper product reasonably available that meets the
70535 requirements and criteria set forth in the invitation for bids; or

70536 (c) the public procurement unit has purchased at least the minimum percentage
70537 purchase requirement of recycled paper or recycled paper products as provided in Subsection
70538 (4).

70539 (4) (a) The minimum percentage purchase requirement for fiscal year 1990-91 is 10%
70540 of the public procurement unit's projected annual paper and paper product purchases.

70541 (b) The minimum percentage purchase requirement shall be increased by 5% each fiscal
70542 year until the minimum percentage purchase requirement is 50%.

70543 (5) Each public procurement unit shall provide the chief procurement officer with a
70544 report at the end of each fiscal year documenting:

70545 (a) the dollar amounts of paper and paper products purchased;

70546 (b) the dollar amounts of recycled paper and recycled paper products purchased; and

70547 (c) any additional costs resulting from purchasing recycled paper or recycled paper
70548 products.

70549 (6) The chief procurement officer shall provide a written report of the information
70550 received under Subsection (5) to the Natural Resources, Agriculture, and Environment Interim
70551 Committee prior to November 30 of each year.

70552 (7) (a) Each state agency shall separate and collect all types of recyclable paper for
70553 recycling, except under Subsection (7)(b). The chief procurement officer shall maintain an
70554 updated list of which papers are recyclable.

70555 (b) If the state agency conducts an evaluation under Subsection (8) and determines the
70556 cost of recycling a certain type of recyclable paper is more than 10% greater than the cost of the
70557 current disposal method, the entity is exempt from the requirements of Subsection (7)(a)
70558 regarding that type of paper.

70559 (8) A state agency's evaluation shall:

70560 (a) determine the types and quantities of recyclable paper in the state agency's current
70561 waste stream;

- 70562 (b) determine the market value of the recyclable paper;
- 70563 (c) determine and describe the alternatives for separating recyclable paper from the
- 70564 waste stream;
- 70565 (d) for each type of paper and for each method of separation, determine the cost of
- 70566 separating and collecting the recyclable paper for recycling;
- 70567 (e) determine the cost of the current disposal method for each type of recyclable paper;
- 70568 (f) for each type of paper, compare the cost of the current disposal method with the
- 70569 cost of separating and collecting the paper for recycling; and
- 70570 (g) determine the cost of producing the report required under Subsection (13)(b).
- 70571 (9) Each evaluation conducted under Subsection (8) shall:
- 70572 (a) be in writing;
- 70573 (b) justify all estimates;
- 70574 (c) be retained by the state agency;
- 70575 (d) be accessible to the public for review; and
- 70576 (e) be submitted to the chief procurement officer.
- 70577 (10) Each state agency conducting an evaluation shall revise the evaluation as
- 70578 necessary, at least every 30 months.
- 70579 (11) A state agency that is required to separate paper for recycling shall:
- 70580 (a) designate an existing employee as a recycling coordinator to organize and
- 70581 coordinate the state agency's recycling program;
- 70582 (b) establish procedures for separating each type of paper required to be separated for
- 70583 recycling;
- 70584 (c) establish a system for separating and collecting each type of paper to be recycled,
- 70585 which assures the recyclable paper is sold to appropriate industries for reuse or recycling; and
- 70586 (d) make participation in the recycling program as easy as practicable for state agency
- 70587 personnel by establishing clear policies.
- 70588 (12) The monies received from the sale of recyclable paper shall be retained by the
- 70589 agency for:

70590 (a) reimbursement to the state agency for program administration costs incurred as a
70591 result of recycling, if any; and

70592 (b) funding recycling incentives programs.

70593 (13) (a) The recycling coordinator designated in Subsection (11) shall keep records of:

70594 (i) the quantity of paper recycled by the state agency;

70595 (ii) the costs incurred by the state agency in recycling paper; and

70596 (iii) the monies received from the sale of recyclable paper.

70597 (b) Each recycling coordinator shall provide a written report of the state agency's
70598 recycling activities including the information required under Subsection (13)(a) before
70599 September 30 of each year to the chief procurement officer.

70600 (14) The chief procurement officer shall provide a written report of the information
70601 received under Subsection (13) to the Natural Resources, Agriculture, and Environment Interim
70602 Committee prior to November 30 of each year.

70603 Section 1428. Section ~~63G-6-407~~, which is renumbered from Section 63-56-407 is
70604 renumbered and amended to read:

70605 ~~[63-56-407]~~. **63G-6-407. Use of alkaline paper.**

70606 (1) As used in this section, "alkaline paper" means paper that is acid-free, manufactured
70607 with calcium carbonate as the principal filler, and meets standards for paper approved by the
70608 American National Standards Institute, National Information Standards Organization, and
70609 American Society for Testing and Materials.

70610 (2) (a) Notwithstanding Section ~~[63-56-401]~~ 63G-6-401, which requires public
70611 procurement units to purchase products from the lowest responsible bidder, and except as
70612 provided in Subsection (2)(b), every public procurement unit shall purchase and use alkaline
70613 paper.

70614 (b) A public procurement unit shall purchase alkaline paper unless:

70615 (i) the bid or purchase price for alkaline paper or alkaline recycled paper exceeds the
70616 lowest responsive and responsible bidder whose bid meets the requirements and criteria set forth
70617 in the invitation for bids;

70618 (ii) there is no alkaline or alkaline recycled paper reasonably available that meets the
70619 requirements and criteria set forth in the invitation for bids; or

70620 (iii) other paper products have equal or better quality characteristics than alkaline paper
70621 and meet standards for paper approved by the American National Standards Institute, National
70622 Information Standards Organization, and American Society for Testing and Materials.

70623 (3) The state archivist shall promote the use of alkaline paper within state government,
70624 local units of government, and school districts.

70625 Section 1429. Section **63G-6-408**, which is renumbered from Section 63-56-408 is
70626 renumbered and amended to read:

70627 ~~[63-56-408]~~. **63G-6-408. Use of competitive sealed proposals in lieu of**
70628 **bids -- Procedure.**

70629 (1) (a) When, according to rules established by the Procurement Policy Board, the
70630 chief procurement officer, the head of a purchasing agency, or a designee of either officer above
70631 the level of procurement officer determines in writing that the use of competitive sealed bidding
70632 is either not practicable or not advantageous to the state, a contract may be entered into by
70633 competitive sealed proposals.

70634 (b) (i) Competitive sealed proposals may be used for the procurement of services of
70635 consultants, professionals, and providers as defined by the policy board by rule, whether or not
70636 the determination described in this subsection has been made.

70637 (ii) The policy board shall make rules establishing guidelines to assure maximum
70638 practicable competition in those procurements, including the relative importance, if any, of the
70639 fee to be charged by an offeror.

70640 (iii) The rules may provide that it is either not practicable or not advantageous to the
70641 state to procure certain types of supplies, services, or construction by competitive sealed
70642 bidding or competitive sealed proposals.

70643 (2) (a) Proposals shall be solicited through a request for proposals.

70644 (b) Public notice of the request for proposals shall be given in accordance with policy
70645 board rules.

70646 (3) (a) Proposals shall be opened so as to avoid disclosure of contents to competing
70647 offerors during the process of negotiation.

70648 (b) A register of proposals shall be prepared in accordance with policy board rules and
70649 shall be open for public inspection after the contract is awarded.

70650 (4) The request for proposals shall state the relative importance of price and other
70651 evaluating factors.

70652 (5) (a) As provided in the request for proposals and under policy board rules,
70653 discussions may be conducted with responsible offerors who submit proposals for the purpose
70654 of assuring full understanding of, and responsiveness to, solicitation requirements.

70655 (b) Offerors shall be accorded fair and equal treatment with respect to any opportunity
70656 for discussion and revision of proposals, and revisions may be permitted after submissions and
70657 before the contract is awarded for the purpose of obtaining best and final offers.

70658 (c) In conducting discussions, there shall be no disclosure of any information derived
70659 from proposals submitted by competing offerors.

70660 (6) (a) Award shall be made to the responsible offeror whose proposal is determined in
70661 writing to be the most advantageous to the state, taking into consideration price and the
70662 evaluation factors set forth in the request for proposals.

70663 (b) No other factors or criteria shall be used in the evaluation.

70664 (c) The contract file shall contain the basis on which the award is made.

70665 Section 1430. Section **63G-6-409**, which is renumbered from Section 63-56-409 is
70666 renumbered and amended to read:

70667 ~~[63-56-409]~~. **63G-6-409. Small purchases.**

70668 Small purchases shall be defined in, and may be made in accordance with procedures
70669 established by, rules and regulations; except that the procurement requirement shall not be
70670 artificially divided so as to constitute a small purchase under this section.

70671 Section 1431. Section **63G-6-410**, which is renumbered from Section 63-56-410 is
70672 renumbered and amended to read:

70673 ~~[63-56-410]~~. **63G-6-410. Circumstances justifying award of contract**

70674 **without competition.**

70675 A contract may be awarded for a supply, service, or construction item without
70676 competition when, under rules and regulations, the chief procurement officer, the head of a
70677 purchasing agency, or a designee of either officer above the level of procurement officer
70678 determines in writing that:

- 70679 (1) there is only one source for the required supply, service, or construction item; or
70680 (2) the award to a specific supplier, service provider, or contractor is a condition of a
70681 donation that will fund the full cost of the supply, service, or construction item.

70682 Section 1432. Section **63G-6-411**, which is renumbered from Section 63-56-411 is
70683 renumbered and amended to read:

70684 ~~**[63-56-411].**~~ **63G-6-411. Emergency procurements.**

70685 Notwithstanding any other provision of this chapter, when there exists a threat to public
70686 health, welfare, or safety under emergency conditions as defined in rules and regulations, the
70687 chief procurement officer, the head of a purchasing agency, or a designee of either officer may
70688 make or authorize others to make emergency procurements; provided that emergency
70689 procurements shall be made with as much competition as practicable under the circumstances.
70690 A written determination of the basis for the emergency and for the selection of the particular
70691 contractor shall be included in the contract file.

70692 Section 1433. Section **63G-6-412**, which is renumbered from Section 63-56-412 is
70693 renumbered and amended to read:

70694 ~~**[63-56-412].**~~ **63G-6-412. Cancellation and rejection of bids.**

70695 An invitation for bids, a request for proposals, or other solicitation may be cancelled, or
70696 any or all bids or proposals may be rejected, in whole or in part, as may be specified in the
70697 solicitation, when it is in the best interests of the state in accordance with rules and regulations.
70698 The reasons shall be made part of the contract file.

70699 Section 1434. Section **63G-6-413**, which is renumbered from Section 63-56-413 is
70700 renumbered and amended to read:

70701 ~~**[63-56-413].**~~ **63G-6-413. Determination of nonresponsibility of bidder.**

70702 A written determination of nonresponsibility of a bidder or offeror shall be made in
70703 accordance with rules and regulations. The unreasonable failure of a bidder or offeror to
70704 promptly supply information in connection with an inquiry with respect to responsibility may be
70705 grounds for a determination of nonresponsibility with respect to the bidder or offeror.
70706 Information furnished by a bidder or offeror pursuant to this section shall not be disclosed
70707 outside of the purchasing division or the purchasing agency without prior written consent by the
70708 bidder or offeror.

70709 Section 1435. Section **63G-6-414**, which is renumbered from Section 63-56-414 is
70710 renumbered and amended to read:

70711 ~~[63-56-414].~~ **63G-6-414. Prequalification of suppliers.**

70712 Prospective suppliers may be prequalified for particular types of supplies, services, and
70713 construction. Solicitation mailing lists of potential contractors shall include but shall not be
70714 limited to prequalified suppliers.

70715 Section 1436. Section **63G-6-415**, which is renumbered from Section 63-56-415 is
70716 renumbered and amended to read:

70717 ~~[63-56-415].~~ **63G-6-415. Rules and regulations to determine allowable**
70718 **incurred costs -- Required information -- Auditing of books.**

70719 (1) Rules and regulations may be promulgated to set forth cost principles to be used to
70720 determine the allowability of incurred costs for the purpose of reimbursing costs under contract
70721 provisions which provide for the reimbursement of costs; provided that if a written
70722 determination is approved at a level above the procurement officer, the cost principles may be
70723 modified by contract.

70724 (2) A person shall, except as provided in Subsection (4), submit cost or pricing data and
70725 shall certify that, to the best of the person's knowledge and belief, the cost or pricing data
70726 submitted were accurate, complete, and current as of a mutually determined specified date prior
70727 to the date of:

70728 (a) the pricing of any contract awarded by competitive sealed proposals or pursuant to
70729 the sole source procurement authority, where the total contract price is expected to exceed an

70730 amount established by rules and regulations; or

70731 (b) the pricing of any change order which is expected to exceed an amount established
70732 by rules and regulations.

70733 (3) Any contract or change order under which a certificate is required shall contain a
70734 provision that the price to the state, including profit or fee, shall be adjusted to exclude any
70735 significant sums by which the state finds that the price was increased because the
70736 contractor-furnished cost or pricing data were inaccurate, incomplete, or not current as of the
70737 date agreed upon between the parties.

70738 (4) The requirements of Subsections (2) and (3) need not be applied to contracts:

70739 (a) where the contract price is based on adequate price competition;

70740 (b) where the contract price is based on established catalogue prices or market prices;

70741 (c) where contract prices are set by law or regulation; or

70742 (d) where it is determined in writing in accordance with rules and regulations that the
70743 requirements of this section may be waived, and the reasons for such waiver are stated in
70744 writing.

70745 (5) The state may, at reasonable times and places, audit the books and records of any
70746 person who has submitted cost or pricing data pursuant to this section or any contractor or
70747 subcontractor under any negotiated contract or subcontract other than a firm fixed-price
70748 contract to the extent that the books and records relate to the cost or pricing data, contract, or
70749 subcontract. The books and records shall be maintained by the contractor for three years
70750 following the end of the fiscal year in which final payment is made under the prime contract and
70751 by the subcontractor for three years following the end of the fiscal year in which final payment is
70752 made under the subcontract, unless a shorter period is otherwise authorized in writing.

70753 Section 1437. Section **63G-6-416**, which is renumbered from Section 63-56-416 is
70754 renumbered and amended to read:

70755 ~~[63-56-416].~~ **63G-6-416. Cost-plus-a-percentage-of-cost contract**
70756 **prohibited.**

70757 (1) Subject to the limitations of this section, any type of contract which will promote

70758 the best interests of the state may be used; provided that the use of a
70759 cost-plus-a-percentage-of-cost contract is prohibited. A cost-reimbursement contract may be
70760 used only when a determination is made in writing that such contract is likely to be less costly to
70761 the state than any other type or that it is impracticable to obtain the supplies, services, or
70762 construction required except under such a contract.

70763 (2) Except with respect to firm fixed-price contracts, no contract type shall be used
70764 unless it has been determined in writing by the chief procurement officer, the head of a
70765 purchasing agency, or a designee of either officer that:

70766 (a) the proposed contractor's accounting system will permit timely development of all
70767 necessary cost data in the form required by the specific contract type contemplated; and

70768 (b) the proposed contractor's accounting system is adequate to allocate costs in
70769 accordance with generally accepted accounting principles.

70770 Section 1438. Section **63G-6-417**, which is renumbered from Section 63-56-417 is
70771 renumbered and amended to read:

70772 ~~[63-56-417]~~. **63G-6-417. Period of time for contract of supplies.**

70773 (1) Unless otherwise provided by law, a contract for supplies or services may be
70774 entered into for any period of time considered to be in the best interests of the state; provided
70775 that the term of the contract and conditions of renewal or extension, if any, are included in the
70776 solicitation and funds are available for the first fiscal period at the time of contracting. Payment
70777 and performance obligations for succeeding fiscal periods shall be subject to the availability and
70778 appropriation of funds.

70779 (2) Prior to the utilization of a multiyear contract, it shall be determined in writing that
70780 estimated requirements cover the period of the contract and are reasonably firm and continuing
70781 and that such a contract will serve the best interests of the state by encouraging effective
70782 competition or otherwise promoting economies in state procurement.

70783 (3) When funds are not appropriated or otherwise made available to support
70784 continuation of performance in a subsequent fiscal period, the contract shall be cancelled and
70785 the contractor shall be reimbursed for the reasonable value of any nonrecurring costs incurred

70786 but not amortized in the price of the supplies or services delivered under the contract. The cost
 70787 of cancellation may be paid from any appropriations available for that purpose.

70788 Section 1439. Section **63G-6-418**, which is renumbered from Section 63-56-418 is
 70789 renumbered and amended to read:

70790 ~~[63-56-418]~~. **63G-6-418. Right of state to inspect place of business of**
 70791 **contractor or subcontractor.**

70792 The state may, at reasonable times, inspect the part of the plant or place of business of a
 70793 contractor or any subcontractor which is related to the performance of any contract awarded or
 70794 to be awarded by the state.

70795 Section 1440. Section **63G-6-419**, which is renumbered from Section 63-56-419 is
 70796 renumbered and amended to read:

70797 ~~[63-56-419]~~. **63G-6-419. Determinations final except when arbitrary and**
 70798 **capricious.**

70799 The determinations required by Subsections ~~[63-56-401]~~ 63G-6-401(6), ~~[63-56-408]~~
 70800 63G-6-408(1) and (6), Sections ~~[63-56-410]~~ 63G-6-410, ~~[63-56-411]~~ 63G-6-411, ~~[63-56-413]~~
 70801 63G-6-413, Subsection ~~[63-56-415]~~ 63G-6-415(4), Section ~~[63-56-416]~~ 63G-6-416, and
 70802 Subsection ~~[63-56-417]~~ 63G-6-417(2) are final and conclusive unless they are arbitrary and
 70803 capricious or clearly erroneous.

70804 Section 1441. Section **63G-6-420**, which is renumbered from Section 63-56-420 is
 70805 renumbered and amended to read:

70806 ~~[63-56-420]~~. **63G-6-420. Factual information to attorney general if**
 70807 **collusion suspected.**

70808 When for any reason collusion or other anticompetitive practices are suspected among
 70809 bidders or offerors, a notice of the relevant facts shall be transmitted to the attorney general.

70810 Section 1442. Section **63G-6-421**, which is renumbered from Section 63-56-421 is
 70811 renumbered and amended to read:

70812 ~~[63-56-421]~~. **63G-6-421. Records of contracts made.**

70813 The chief procurement officer or the head of a purchasing agency shall maintain a record

70814 listing all contracts made under Section [~~63-56-410~~] 63G-6-410 or [~~63-56-411~~] 63G-6-411 and
70815 shall maintain the record in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
70816 Government Records Access and Management Act. The record shall contain each contractor's
70817 name, the amount and type of each contract, and a listing of the supplies, services, or
70818 construction procured under each contract.

70819 Section 1443. Section **63G-6-422**, which is renumbered from Section 63-56-422 is
70820 renumbered and amended to read:

70821 ~~[63-56-422]~~. **63G-6-422. Exemptions from source selection and contract**
70822 **requirements -- Violation penalty.**

70823 The policy board may, by rule, exempt a public procurement unit from the source
70824 selection and contract award provisions of this part, if it considers that to be in the best
70825 economic interest of the state.

70826 On projects where public funds or political subdivisions are involved, the owner shall
70827 follow the procedures outlined in the Utah Procurement Code when determining or selecting
70828 their agent or construction manager. However, no exemption shall be permitted that allows
70829 any political subdivision of this state to negotiate, enter into, or cause to be negotiated prior to
70830 open bidding for the prime contracting agent any predetermined agreement or arrangement
70831 which causes interference with the traditional fair competitive bidding process or the rights of
70832 employees under state and federal law. Any agreement or arrangement entered into in violation
70833 of this section is unenforceable and void ab initio and the parties to such an agreement or
70834 arrangement are subject to a class B misdemeanor penalty.

70835 This provision shall not apply to any political subdivision, agency, or department of this
70836 state, if, as a condition of a federal grant, there is a requirement that a schedule of
70837 predetermined wages be included in the contract.

70838 Section 1444. Section **63G-6-423**, which is renumbered from Section 63-56-423 is
70839 renumbered and amended to read:

70840 ~~[63-56-423]~~. **63G-6-423. Purchase of prison industry goods.**

70841 (1) All public procurement units shall purchase goods and services produced by the

70842 Utah Correctional Industries Division as provided by this section, which is an exemption from
 70843 this chapter. All political subdivisions of the state may purchase these goods and services and
 70844 are encouraged to do so when feasible.

70845 (2) By July 1 of each year, the director of the Utah Correctional Industries shall publish
 70846 and distribute to all state agencies and interested political subdivisions a catalog of goods and
 70847 services provided by the Correctional Industries Division. The catalog shall include a
 70848 description and price of each item offered for sale. The catalog shall be updated and revised
 70849 during the year as the director considers necessary.

70850 (3) (a) State departments, agencies, and institutions may not purchase any goods or
 70851 services provided by the Correctional Industries Division from any other source unless it has
 70852 been determined in writing by the director of Correctional Industries and the state procurement
 70853 officer or in the case of institutions of higher education, the institutional procurement officer,
 70854 that purchase from the Correctional Industries Division is not feasible due to one of the
 70855 following circumstances:

70856 (i) the good or service offered by the division does not meet the reasonable
 70857 requirements of the purchasing agency;

70858 (ii) the good or service cannot be supplied within a reasonable time by the division; or

70859 (iii) the cost of the good or service, including basic price, transportation costs, and
 70860 other expenses of acquisition, is not competitive with the cost of procuring the item from
 70861 another source.

70862 (b) In cases of disagreement, the decision may be appealed to a board consisting of the
 70863 director of the Department of Corrections, the director of Administrative Services, and a neutral
 70864 third party agreed upon by the other two members or, in the case of institutions of higher
 70865 education, the president of the involved institution shall make the final decision.

70866 Section 1445. Section **63G-6-424**, which is renumbered from Section 63-56-424 is
 70867 renumbered and amended to read:

70868 ~~[63-56-424]~~. **63G-6-424. Counties and municipalities eligible to**
 70869 **participate in state agreements, contracts, and surplus property program.**

70870 Utah counties, municipalities, and local public procurement units may purchase from or
70871 otherwise participate in state public procurement unit agreements and contracts.

70872 Section 1446. Section **63G-6-425**, which is renumbered from Section 63-56-425 is
70873 renumbered and amended to read:

70874 ~~[63-56-425]~~. **63G-6-425. Purchase from community rehabilitation**
70875 **programs.**

70876 (1) As used in this section:

70877 (a) "Board" means the Purchasing from Persons with Disabilities Advisory Board
70878 created under this section.

70879 (b) "Central not-for-profit association" means a group of experts designated by the
70880 board to do the following, under guidelines established by the board:

70881 (i) assist the board with its functions; and

70882 (ii) facilitate the implementation of board policies.

70883 (c) (i) "Community rehabilitation program" means a program that is operated primarily
70884 for the purpose of the employment and training of persons with a disability by a government
70885 agency or qualified nonprofit organization which is an income tax exempt organization under 26
70886 U.S.C. Sec. 501(c)(3) of the Internal Revenue Code.

70887 (ii) A community rehabilitation program:

70888 (A) maintains an employment ratio of at least 75% of the program employees under the
70889 procurement contract in question have severe disabilities;

70890 (B) (I) complies with any applicable occupational health and safety standards prescribed
70891 by the United States Department of Labor; or

70892 (II) is a supported employment program approved by the Utah State Office of
70893 Rehabilitation;

70894 (C) has its principal place of business in Utah;

70895 (D) produces any good provided under this section in Utah; and

70896 (E) provides any service that is provided by individuals with a majority of whom
70897 domiciled in Utah.

70898 (d) "Person with a disability" means a person with any disability as defined by and
70899 covered under the Americans with Disabilities Act of 1990, 42 U.S.C. 12102.

70900 (2) (a) There is created the Purchasing from Persons with Disabilities Advisory Board
70901 within the Division of Purchasing and General Services of the Department of Administrative
70902 Services. The board shall be composed of the following three members:

70903 (i) the director of the Division of Purchasing and General Services created under
70904 Section 63A-2-101 or a designee;

70905 (ii) the executive director of the Utah State Office of Rehabilitation created under
70906 Section 53A-24-103 or a designee; and

70907 (iii) a representative of the private business community who shall be appointed to a
70908 three-year term by the governor with the advice and consent of the Senate.

70909 (b) The board shall meet, as needed, to facilitate the procurement of goods and services
70910 from community rehabilitation programs by a public procurement unit under this chapter by:

70911 (i) identifying goods and services that are available from community rehabilitation
70912 programs according to the requirements under Subsection (4);

70913 (ii) approving prices in accordance with Subsection (4)(c) for goods and services that
70914 are identified under Subsection (2)(b)(i);

70915 (iii) developing, maintaining, and approving a preferred procurement contract list of
70916 goods and services identified and priced under Subsections (2)(b)(i) and (ii);

70917 (iv) reviewing bids received by a community rehabilitation program; and

70918 (v) awarding and renewing specified contracts for set contract times, without
70919 competitive bidding, for the purchase of goods and services under Subsection (4).

70920 (c) The provisions of Subsections (2)(b) and (4)(a) are an exception to the procurement
70921 provisions under this chapter.

70922 (3) (a) The board may designate a central not-for-profit association, appoint its
70923 members, and establish guidelines for its duties.

70924 (b) The designated central not-for-profit association serves at the pleasure of the board
70925 and the central not-for-profit association or its individual members may be removed by the

70926 board at any time by a majority vote of the board.

70927 (c) Subject to the board guidelines and discretion, a designated central not-for-profit
70928 association may be assigned to perform the following duties:

70929 (i) identify qualified community rehabilitation programs and the goods and services that
70930 they provide or have the potential to provide;

70931 (ii) help ensure that goods and services are provided at reasonable quality and delivery
70932 levels;

70933 (iii) recommend pricing for goods and services;

70934 (iv) reviewing bids and recommending the award of contracts under the board's
70935 direction;

70936 (v) collecting and reporting program data to the board and to the division; and

70937 (vi) other duties specified by the board.

70938 (4) Except as provided under Subsection (6), notwithstanding any provision in this
70939 chapter to the contrary, each public procurement unit shall purchase goods and services
70940 produced by a community rehabilitation program using the preferred procurement contract list
70941 approved under Subsection (2)(b)(iii) if:

70942 (a) the good or service offered for sale by a community rehabilitation program
70943 reasonably conforms to the needs and specifications of the public procurement unit;

70944 (b) the community rehabilitation program can supply the good or service within a
70945 reasonable time; and

70946 (c) the price of the good or service is reasonably competitive with the cost of procuring
70947 the good or service from another source.

70948 (5) Each community rehabilitation program:

70949 (a) may submit a bid to the board at any time and not necessarily in response to a
70950 request for bids; and

70951 (b) shall certify on any bid it submits to the board or to a public procurement unit under
70952 this section that it is claiming a preference under this section.

70953 (6) During a fiscal year, the requirement for a public procurement unit to purchase

70954 goods and services produced by a community rehabilitation program under the preferred
70955 procurement list under Subsection (4) does not apply if the Division of Purchasing and General
70956 Services determines that the total amount of procurement contracts with community
70957 rehabilitation programs has reached \$5 million for that fiscal year.

70958 (7) In the case of conflict between a purchase under this section and a purchase under
70959 Section [~~63-56-423~~] 63G-6-423, this section prevails.

70960 Section 1447. Section **63G-6-426**, which is renumbered from Section 63-56-426 is
70961 renumbered and amended to read:

70962 ~~[63-56-426]~~. **63G-6-426. Tie bids -- Preference for providers of state**
70963 **products -- Resolution of tie bids -- Record of tie bids.**

70964 (1) As used in this section:

70965 (a) (i) "Commodity" means a good, product, material, or item, including an agricultural,
70966 manufacturing, or mining product;

70967 (ii) "Commodity" does not include:

70968 (A) a service; or

70969 (B) construction materials or services.

70970 (b) "Provider of state products" means a bidder offering goods, supplies, products,
70971 materials, or items that are produced, manufactured, mined, or grown in the state.

70972 (c) "Tie bid" means a low responsive bid from a responsive bidder that is identical in
70973 price to a responsive bid from another responsive bidder.

70974 (2) In the event of a tie bid for the provision of a commodity where only one of the
70975 bidders having the low responsive bid is a provider of state products, a public procurement unit
70976 shall award the contract to the provider of state products if:

70977 (a) the quality of the commodity offered by the provider of state products is equal to or
70978 greater than the quality of the commodity offered by the other tied bidders;

70979 (b) the commodity offered by the provider of state products is suitable for the use
70980 required by the public procurement unit; and

70981 (c) the provider of state products is able to produce the commodity in sufficient

70982 quantity.

70983 (3) Unless Subsection (2) applies, a public procurement unit shall make an award on a
70984 tie bid by using one of the following procedures, which shall be selected in the sole discretion of
70985 the procurement officer:

70986 (a) where a tie bid includes the cost of delivery, awarding the contract to the bidder
70987 closest to the point of delivery;

70988 (b) awarding the contract to the identical bidder who received the previous award, and
70989 continue to award succeeding contracts to the same bidder so long as all low bids are tie bids;

70990 (c) awarding the contract to the bidder with the earliest delivery date;

70991 (d) if the price of the tie bid is considered excessive or the bids are unsatisfactory for
70992 another reason, rejecting all bids and negotiating a more favorable contact on the open market;
70993 or

70994 (e) if the procurement officer determines in writing that no method under this
70995 Subsection (3) will equitably resolve the tie bid, awarding the contract by drawing lots.

70996 (4) Awards of tie bids shall not be made by:

70997 (a) dividing business among tied bidders; or

70998 (b) drawing lots, except as provided in Subsection (3)(e).

70999 (5) (a) A state public procurement unit shall retain a record of each invitation for bids
71000 on which a tie bid is received, that shall include the following information:

71001 (i) the invitation for bids;

71002 (ii) the supply, service, or construction item requested by the invitation for bids;

71003 (iii) all the bidders and the prices submitted;

71004 (iv) the procedure used to resolve the tie bid; and

71005 (v) the results of the procedure used to resolve the tie bid, including the name of the
71006 bidder awarded the contract.

71007 (b) A copy of the record maintained under Subsection (5)(a) shall be provided to the
71008 attorney general for all contracts having a tie bid in excess of \$50,000.

71009 Section 1448. Section **63G-6-501**, which is renumbered from Section 63-56-501 is

71010 renumbered and amended to read:

71011 **Part 5. Procurement of Construction**

71012 ~~[63-56-501].~~ **63G-6-501. Alternative methods of construction contracting**
71013 **management.**

71014 (1) (a) Rules shall provide as many alternative methods of construction contracting
71015 management as determined to be feasible.

71016 (b) These rules shall:

71017 (i) grant to the chief procurement officer or the head of the purchasing agency
71018 responsible for carrying out the construction project the discretion to select the appropriate
71019 method of construction contracting management for a particular project; and

71020 (ii) require the procurement officer to execute and include in the contract file a written
71021 statement setting forth the facts which led to the selection of a particular method of construction
71022 contracting management for each project.

71023 (c) Before choosing a construction contracting management method, the chief
71024 procurement officer or the head of the purchasing agency responsible for carrying out the
71025 construction project shall consider the following factors:

71026 (i) when the project must be ready to be occupied;

71027 (ii) the type of project;

71028 (iii) the extent to which the requirements of the procuring agencies and the ways in
71029 which they are to be met are known;

71030 (iv) the location of the project;

71031 (v) the size, scope, complexity, and economics of the project;

71032 (vi) the source of funding and any resulting constraints necessitated by the funding
71033 source;

71034 (vii) the availability, qualification, and experience of state personnel to be assigned to
71035 the project and how much time the state personnel can devote to the project; and

71036 (viii) the availability, qualifications, and experience of outside consultants and
71037 contractors to complete the project under the various methods being considered.

71038 (2) (a) Rules adopted by state public procurement units and local public procurement
71039 units to implement this section may authorize the use of a Construction Manager/General
71040 Contractor as one method of construction contracting management.

71041 (b) Those rules shall require that:

71042 (i) the Construction Manager/General Contractor shall be selected using one of the
71043 source selection methods provided for in Part 4, Source Selections and Contract Formation, and
71044 Section [~~63-56-502~~] 63G-6-502; and

71045 (ii) when entering into any subcontract that was not specifically included in the
71046 Construction Manager/General Contractor's cost proposal submitted under the requirements of
71047 Subsection (2)(b)(i), the Construction Manager/General Contractor shall procure that
71048 subcontractor by using one of the source selection methods provided for in Part 4, Source
71049 Selections and Contract Formation, in the same manner as if the subcontract work was procured
71050 directly by the state.

71051 (3) Procurement rules adopted by the State Building Board under Subsection (1) for
71052 state building construction projects may authorize the use of a design-build provider as one
71053 method of construction contracting management.

71054 Section 1449. Section **63G-6-502**, which is renumbered from Section 63-56-502 is
71055 renumbered and amended to read:

71056 ~~[63-56-502]~~. **63G-6-502**. **Procurement of design-build transportation**
71057 **project contracts.**

71058 (1) As used in this section:

71059 (a) "Design-build transportation project contract" means the procurement of both the
71060 design and construction of a transportation project in a single contract with a company or
71061 combination of companies capable of providing the necessary engineering services and
71062 construction.

71063 (b) "Transportation agency" means:

71064 (i) the Department of Transportation;

71065 (ii) a county of the first or second class, as defined in Section 17-50-501;

71066 (iii) a municipality of the first class, as defined in Section 10-2-301;

71067 (iv) a public transit district that has more than 200,000 people residing within its

71068 boundaries; and

71069 (v) a public airport authority.

71070 (2) Except as provided in Subsection (3), a transportation agency may award a

71071 design-build transportation project contract for any transportation project that has an estimated

71072 cost of at least \$50,000,000 by following the requirements of this section.

71073 (3) (a) The Department of Transportation:

71074 (i) may award a design-build transportation project contract for any transportation

71075 project by following the requirements of this section; and

71076 (ii) shall make rules, by following the procedures and requirements of [~~Title 63, Chapter~~

71077 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for

71078 the procurement of its design-build transportation project contracts in addition to those required

71079 by this section.

71080 (b) A public transit district that has more than 200,000 people residing within its

71081 boundaries:

71082 (i) may award a design-build transportation project contract for any transportation

71083 project by following the requirements of this section; and

71084 (ii) shall pass ordinances or a resolution establishing requirements for the procurement

71085 of its design-build transportation project contracts in addition to those required by this section.

71086 (c) A design-build transportation project contract authorized under this Subsection (3)

71087 is not subject to the estimated cost threshold under Subsection (2).

71088 (4) (a) Before entering a design-build transportation project contract, a transportation

71089 agency may issue a request for qualifications to prequalify potential contractors.

71090 (b) Public notice of the request for qualifications shall be given in accordance with

71091 policy board rules.

71092 (c) A transportation agency shall require, as part of the qualifications specified in the

71093 request for qualifications, that potential contractors at least demonstrate their:

- 71094 (i) construction experience;
- 71095 (ii) design experience;
- 71096 (iii) financial, manpower, and equipment resources available for the project; and
- 71097 (iv) experience in other design-build transportation projects with attributes similar to
- 71098 the project being procured.
- 71099 (d) The request for qualifications shall identify the number of eligible competing
- 71100 proposers that the transportation agency will select to submit a proposal, which must be at least
- 71101 two.
- 71102 (5) (a) The transportation agency shall:
- 71103 (i) evaluate the responses received from the request for qualifications;
- 71104 (ii) select from their number those qualified to submit proposals; and
- 71105 (iii) invite those respondents to submit proposals based upon the transportation agency's
- 71106 request for proposals.
- 71107 (b) (i) Except as provided in Subsection (5)(b)(ii), if the transportation agency fails to
- 71108 receive at least two qualified eligible competing proposers, the transportation agency shall
- 71109 readvertise the project.
- 71110 (ii) Until July 1, 2010, a transportation agency may award a contract for a
- 71111 transportation project that has an estimated cost of \$5,000,000 or less to a qualified eligible
- 71112 proposer if:
- 71113 (A) only a single proposal is received; and
- 71114 (B) the transportation agency determines that:
- 71115 (I) the proposal is advantageous to the state; and
- 71116 (II) the proposal price is reasonable.
- 71117 (iii) The Transportation Interim Committee and Government Operations Interim
- 71118 Committee of the Legislature shall review Subsection (5)(b)(ii) prior to November 30, 2009.
- 71119 (6) The transportation agency shall issue a request for proposals to those qualified
- 71120 respondents that:
- 71121 (a) includes a scope of work statement constituting an information for proposal that

71122 may include:

- 71123 (i) preliminary design concepts;
- 71124 (ii) design criteria, needs, and objectives;
- 71125 (iii) warranty and quality control requirements;
- 71126 (iv) applicable standards;
- 71127 (v) environmental documents;
- 71128 (vi) constraints;
- 71129 (vii) time expectations or limitations;

71130 (viii) incentives or disincentives; and

71131 (ix) other special considerations;

71132 (b) requires submitters to provide:

- 71133 (i) a sealed cost proposal;
- 71134 (ii) a critical path matrix schedule, including cash flow requirements;
- 71135 (iii) proposal security; and
- 71136 (iv) other items required by the department for the project; and

71137 (c) may include award of a stipulated fee to be paid to submitters who submit
71138 unsuccessful proposals.

71139 (7) The transportation agency shall:

71140 (a) evaluate the submissions received in response to the request for proposals from the
71141 prequalified proposers;

71142 (b) comply with rules relating to discussion of proposals, best and final offers, and
71143 evaluations of the proposals submitted; and

71144 (c) after considering price and other identified factors, award the contract to the
71145 responsible proposer whose proposal is most advantageous to the state.

71146 Section 1450. Section **63G-6-503**, which is renumbered from Section 63-56-502.5 is
71147 renumbered and amended to read:

71148 ~~[63-56-502.5]~~. **63G-6-503. Definitions -- Procurement of tollway**
71149 **development agreements.**

- 71150 (1) As used in this section:
- 71151 (a) "Department" means the Department of Transportation.
- 71152 (b) "Tollway development agreement" has the same meaning as defined in Section
- 71153 72-6-202.
- 71154 (2) The department and the Transportation Commission:
- 71155 (a) may solicit a tollway development agreement proposal by following the
- 71156 requirements of this section;
- 71157 (b) may award a solicited tollway development agreement contract for any tollway
- 71158 project by following the requirements of this section; and
- 71159 (c) shall make rules, by following the procedures and requirements of [~~Title 63, Chapter~~
- 71160 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing requirements for
- 71161 the procurement of tollway development agreement proposals in addition to those required by
- 71162 this section.
- 71163 (3) (a) Before entering into a tollway development agreement, the department may
- 71164 issue a request for qualifications to prequalify potential contractors.
- 71165 (b) Public notice of the request for qualifications shall be given in accordance with
- 71166 policy board rules.
- 71167 (c) The department shall require, as part of the qualifications specified in the request for
- 71168 qualifications, that potential contractors at least provide:
- 71169 (i) a demonstration of their experience with other transportation concession projects
- 71170 with attributes similar to the project being procured;
- 71171 (ii) a financial statement of the firm or consortium of firms making the proposal;
- 71172 (iii) a conceptual project development plan and financing plan;
- 71173 (iv) the legal structure of the firm or consortium of firms making the proposal;
- 71174 (v) the organizational structure for the project; and
- 71175 (vi) a statement describing why the firm or consortium of firms is best qualified for the
- 71176 project.
- 71177 (d) The request for qualifications shall identify the number of eligible competing

- 71178 proposers that the department will select to submit a proposal.
- 71179 (4) The department shall:
- 71180 (a) evaluate the responses received from the request for qualifications;
- 71181 (b) select from their number those qualified to submit proposals; and
- 71182 (c) invite those respondents to submit proposals based upon the department's request
- 71183 for proposals.
- 71184 (5) The department shall issue a request for proposals to those qualified respondents
- 71185 that may require, as appropriate for the procurement:
- 71186 (a) a description of the proposed project or projects;
- 71187 (b) a financial plan for the project, including:
- 71188 (i) the anticipated financial commitment of all parties;
- 71189 (ii) equity, debt, and other financing mechanisms;
- 71190 (iii) an analysis of the projected return, rate of return, or both; and
- 71191 (iv) the monetary benefit and other value to a government entity;
- 71192 (c) assumptions about user fees or toll rates;
- 71193 (d) a project development and management plan, including:
- 71194 (i) the contracting structure;
- 71195 (ii) the plan for quality management;
- 71196 (iii) the proposed toll enforcement plan; and
- 71197 (iv) the plan for safety management; and
- 71198 (e) the proposal to comply with the minimum guidelines for tollway development
- 71199 agreement proposals under Section 72-6-204.
- 71200 (6) The department and the Transportation Commission:
- 71201 (a) shall evaluate the submissions received in response to the request for proposals from
- 71202 the prequalified proposers;
- 71203 (b) shall comply with rules relating to discussion of proposals, best and final offers, and
- 71204 evaluations of the proposals submitted; and
- 71205 (c) may after considering price and other identified factors and complying with the

71206 requirements of Section 72-6-206, award the contract to the responsible proposer whose
71207 proposal is most advantageous to the state.

71208 Section 1451. Section **63G-6-504**, which is renumbered from Section 63-56-503 is
71209 renumbered and amended to read:

71210 ~~[63-56-503].~~ **63G-6-504. Bid security requirements -- Directed suretyship**
71211 **prohibited -- Penalty.**

71212 (1) Bid security in amount equal to at least 5% of the amount of the bid shall be
71213 required for all competitive sealed bidding for construction contracts. Bid security shall be a
71214 bond provided by a surety company authorized to do business in this state, the equivalent in
71215 cash, or any other form satisfactory to the state.

71216 (2) When a bidder fails to comply with the requirement for bid security set forth in the
71217 invitation for bids, the bid shall be rejected unless, pursuant to rules, it is determined that the
71218 failure to comply with the security requirements is nonsubstantial.

71219 (3) After the bids are opened, they shall be irrevocable for the period specified in the
71220 invitation for bids, except as provided in Subsection ~~[63-56-401]~~ 63G-6-401(6). If a bidder is
71221 permitted to withdraw a bid before award, no action shall be taken against the bidder or the bid
71222 security.

71223 (4) (a) When issuing an invitation for a bid under this chapter, the chief procurement
71224 officer or the head of the purchasing agency responsible for carrying out a construction project
71225 may not require a person or entity who is bidding for a contract to obtain a bond of the type
71226 referred to in Subsection (1) from a specific insurance or surety company, producer, agent, or
71227 broker.

71228 (b) A person who violates Subsection (4)(a) is guilty of an infraction.

71229 Section 1452. Section **63G-6-505**, which is renumbered from Section 63-56-504 is
71230 renumbered and amended to read:

71231 ~~[63-56-504].~~ **63G-6-505. Bonds necessary when contract is awarded --**
71232 **Waiver -- Action -- Attorney fees.**

71233 (1) When a construction contract is awarded under this chapter, the contractor to

71234 whom the contract is awarded shall deliver the following bonds or security to the state, which
71235 shall become binding on the parties upon the execution of the contract:

71236 (a) a performance bond satisfactory to the state that is in an amount equal to 100% of
71237 the price specified in the contract and is executed by a surety company authorized to do
71238 business in this state or any other form satisfactory to the state; and

71239 (b) a payment bond satisfactory to the state that is in an amount equal to 100% of the
71240 price specified in the contract and is executed by a surety company authorized to do business in
71241 this state or any other form satisfactory to the state, which is for the protection of each person
71242 supplying labor, service, equipment, or material for the performance of the work provided for in
71243 the contract.

71244 (2) (a) When a construction contract is awarded under this chapter, the chief
71245 procurement officer or the head of the purchasing agency responsible for carrying out a
71246 construction project may not require a contractor to whom a contract is awarded to obtain a
71247 bond of the types referred to in Subsection (1) from a specific insurance or surety company,
71248 producer, agent, or broker.

71249 (b) A person who violates Subsection (2)(a) is guilty of an infraction.

71250 (3) Rules may provide for waiver of the requirement of a bid, performance, or payment
71251 bond for circumstances in which the state considers any or all of the bonds to be unnecessary to
71252 protect the state.

71253 (4) A person shall have a right of action on a payment bond under this section for any
71254 unpaid amount due him if:

71255 (a) ~~he~~ the person has furnished labor, service, equipment, or material for the work
71256 provided for in the contract for which the payment bond is furnished under this section; and

71257 (b) ~~he~~ the person has not been paid in full within 90 days after the last date on which
71258 ~~he~~ the person performed the labor or service or supplied the equipment or material for which
71259 the claim is made.

71260 (5) An action upon a payment bond shall be brought in a court of competent jurisdiction
71261 in any county where the construction contract was to be performed and not elsewhere. The

71262 action is barred if not commenced within one year after the last day on which the claimant
71263 performed the labor or service or supplied the equipment or material on which the claim is
71264 based. The obligee named in the bond need not be joined as a party to the action.

71265 (6) In any suit upon a payment bond, the court shall award reasonable [attorneys']
71266 attorney fees to the prevailing party, which fees shall be taxed as costs in the action.

71267 Section 1453. Section **63G-6-506**, which is renumbered from Section 63-56-505 is
71268 renumbered and amended to read:

71269 ~~[63-56-505].~~ **63G-6-506. Preliminary notice requirement.**

71270 (1) Any person furnishing labor, service, equipment, or material for which a payment
71271 bond claim may be made under this chapter shall provide preliminary notice to the designated
71272 agent as prescribed by Section 38-1-32, except that this section does not apply:

71273 (a) to a person performing labor for wages; or

71274 (b) if a notice of commencement is not filed as prescribed in Section 38-1-31 for the
71275 project or improvement for which labor, service, equipment, or material is furnished.

71276 (2) Any person who fails to provide the preliminary notice required by Subsection (1)
71277 may not make a payment bond claim under this chapter.

71278 (3) The preliminary notice required by Subsection (1) must be provided prior to
71279 commencement of any action on the payment bond.

71280 Section 1454. Section **63G-6-507**, which is renumbered from Section 63-56-506 is
71281 renumbered and amended to read:

71282 ~~[63-56-506].~~ **63G-6-507. Form of bonds -- Effect of certified copy.**

71283 The form of the bonds required by this part shall be established by rules and regulations.

71284 Any person may obtain from the state a certified copy of a bond upon payment of the cost of
71285 reproduction of the bond and postage, if any. A certified copy of a bond shall be prima facie
71286 evidence of the contents, execution, and delivery of the original.

71287 Section 1455. Section **63G-6-601**, which is renumbered from Section 63-56-601 is
71288 renumbered and amended to read:

71289 **Part 6. Contract Clauses**

71290 ~~[63-56-601].~~ 63G-6-601. **Required contract clauses -- Computation of**
71291 **price adjustments -- Use of rules and regulations.**

71292 (1) Rules and regulations shall require for state construction contracts and may permit
71293 or require for state contracts for supplies and services the inclusion of clauses providing for
71294 adjustments in prices, time of performance, or other appropriate contract provisions, and
71295 covering the following subjects:

71296 (a) the unilateral right of the state to order in writing changes in the work within the
71297 scope of the contract and changes in the time of performance of the contract that do not alter
71298 the scope of the contract work;

71299 (b) variations occurring between estimated quantities of work in a contract and actual
71300 quantities;

71301 (c) suspension of work ordered by the state; and

71302 (d) site conditions differing from those indicated in the construction contract, or
71303 ordinarily encountered, except that differing site conditions clauses required by the rules and
71304 regulations need not be included in a construction contract when the contract is negotiated,
71305 when the contractor provides the site or design, or when the parties have otherwise agreed with
71306 respect to the risk of differing site conditions.

71307 (2) Adjustments in price pursuant to clauses promulgated under Subsection (1) shall be
71308 computed in one or more of the following ways:

71309 (a) by agreement on a fixed price adjustment before commencement of the pertinent
71310 performance or as soon thereafter as practicable;

71311 (b) by unit prices specified in the contract or subsequently agreed upon;

71312 (c) by the costs attributable to the events or situations under the clauses with
71313 adjustment of profit or fee, all as specified in the contract or subsequently agreed upon;

71314 (d) in any other manner as the contracting parties may mutually agree; or

71315 (e) in the absence of agreement by the parties, by a unilateral determination by the state
71316 of the costs attributable to the events or situations under the clauses with adjustment of profit or
71317 fee, all as computed by the state in accordance with applicable sections of the rules and

71318 regulations issued under Subsection [~~63-56-415~~] 63G-6-415(1) and subject to the provisions of
71319 Part 8, Legal and Contractual Remedies.

71320 (3) A contractor shall be required to submit cost or pricing data if any adjustment in
71321 contract price is subject to the provisions of Section [~~63-56-415~~] 63G-6-415.

71322 (4) Rules and regulations shall require for state construction contracts and may permit
71323 or require for state contracts for supplies and services the inclusion of clauses providing for
71324 appropriate remedies and covering at least the following subjects:

71325 (a) liquidated damages as appropriate;

71326 (b) specified excuses for delay or nonperformance;

71327 (c) termination of the contract for default; and

71328 (d) termination of the contract in whole or in part for the convenience of the state.

71329 (5) The contract clauses promulgated under this section shall be set forth in rules and
71330 regulations. However, the chief procurement officer or the head of a purchasing agency may
71331 modify the clauses for inclusion in any particular contract. Any variations shall be supported by
71332 a written determination that describes the circumstances justifying the variations, and notice of
71333 any material variation shall be included in the invitation for bids or request for proposals.

71334 Section 1456. Section **63G-6-602**, which is renumbered from Section 63-56-602 is
71335 renumbered and amended to read:

71336 [~~63-56-602~~]. **63G-6-602. Certification of change order.**

71337 Under a construction contract, any change order which increases the contract amount
71338 shall be subject to prior written certification that the change order is within the determined
71339 project or contract budget. The certification shall be made by the fiscal officer of the entity
71340 responsible for funding the project or the contract or other official responsible for monitoring
71341 and reporting upon the status of the costs of the total project or contract budget. If the
71342 certification discloses a resulting increase in the total project or contract budget, the
71343 procurement officer shall not execute or make the change order unless sufficient funds are
71344 available or the scope of the project or contract is adjusted to permit the degree of completion
71345 feasible within the total project or contract budget as it existed prior to the change order under

71346 consideration. However, with respect to the validity, as to the contractor, of any executed
71347 change order upon which the contractor has reasonably relied, it shall be presumed that there
71348 has been compliance with the provisions of this section.

71349 Section 1457. Section **63G-6-701**, which is renumbered from Section 63-56-701 is
71350 renumbered and amended to read:

71351 **Part 7. Architect-Engineer Services**

71352 ~~[63-56-701]~~. **63G-6-701. Policy regarding architect-engineer services.**

71353 It is the policy of this state to publicly announce all requirements for architect-engineer
71354 services and to negotiate contracts for architect-engineer services on the basis of demonstrated
71355 competence and qualification for the type of services required, and at fair and reasonable prices.
71356 Architect-engineer services shall be procured as provided in this part except as authorized by
71357 Sections ~~[63-56-409]~~ 63G-6-409 through ~~[63-56-411]~~ 63G-6-411. This part does not affect
71358 the authority of, and does not apply to procedures undertaken by, a public procurement unit to
71359 obtain the services of architects or engineers in the capacity of employees of such unit.

71360 Section 1458. Section **63G-6-702**, which is renumbered from Section 63-56-702 is
71361 renumbered and amended to read:

71362 ~~[63-56-702]~~. **63G-6-702. Selection committee for architect-engineer**
71363 **services.**

71364 In the procurement of architect-engineer services, the chief procurement officer or the
71365 head of a purchasing agency shall encourage firms engaged in the lawful practice of their
71366 profession to submit annually a statement of qualifications and performance data. The Building
71367 Board shall be the selection committee for architect-engineer services contracts under its
71368 authority. Selection committees for architect-engineer services contracts not under the authority
71369 of the Building Board shall be established in accordance with rules and regulations promulgated
71370 by the policy board. Selection committees shall evaluate current statements of qualifications and
71371 performance data on file with the state, together with those that may be submitted by other
71372 firms in response to the announcement of the proposed contract. Selection committees shall
71373 consider no less than three firms and then shall select therefrom, based upon criteria established

71374 and published by the selection committees, no less than three of the firms considered to be the
71375 most highly qualified to provide the services required.

71376 Section 1459. Section **63G-6-703**, which is renumbered from Section 63-56-703 is
71377 renumbered and amended to read:

71378 ~~[63-56-703].~~ **63G-6-703. Selection as part of design-build or lease.**

71379 Notwithstanding any other provision of this chapter, architect-engineer services may be
71380 procured under Title 63A, Chapter 5, State Building Board - Division of Facilities Construction
71381 and Management, as part of the services obtained in a design-build contract or as part of the
71382 services obtained in a lease contract for real property, provided that the qualifications of those
71383 providing the architect-engineer services are part of the consideration in the selection process.

71384 Section 1460. Section **63G-6-704**, which is renumbered from Section 63-56-704 is
71385 renumbered and amended to read:

71386 ~~[63-56-704].~~ **63G-6-704. Determination of compensation for**
71387 **architect-engineer services.**

71388 The procurement officer shall award a contract to a qualified firm at compensation
71389 which the procurement officer determines in writing to be fair and reasonable to the state. In
71390 making this decision, the procurement officer shall take into account the estimated value, the
71391 scope, and complexity, and the professional nature of the services to be rendered. Should the
71392 procurement officer be unable to agree to a satisfactory contract with the firm first selected, at a
71393 price the procurement officer determines to be fair and reasonable to the state, discussions with
71394 that firm shall be formally terminated. The procurement officer shall then undertake discussions
71395 with a second qualified firm. Failing accord with the second firm, the procurement officer shall
71396 formally terminate discussions. The procurement officer shall then undertake discussions with a
71397 third qualified firm. Should the procurement officer be unable to award a contract at a fair and
71398 reasonable price with any of the selected firms, the procurement officer shall select additional
71399 firms, and the procurement officer shall continue discussions in accordance with this part until
71400 an agreement is reached.

71401 Section 1461. Section **63G-6-705**, which is renumbered from Section 63-56-705 is

71402 renumbered and amended to read:

71403 ~~[63-56-705].~~ **63G-6-705. Restrictions on state agency procurement of**
71404 **architect-engineer services.**

71405 (1) Except as provided in Subsection (2), when a public procurement unit, in
71406 accordance with Section ~~[63-56-701]~~ 63G-6-701, elects to obtain architect or engineering
71407 services by using a competitive procurement process and has provided public notice of its
71408 competitive procurement process:

71409 (a) a higher education entity, or any part of one, may not submit a proposal in response
71410 to the public procurement unit's competitive procurement process; and

71411 (b) the public procurement unit may not award a contract to perform the architect or
71412 engineering services solicited in the competitive procurement process to a higher education
71413 entity or any part of one.

71414 (2) A public procurement unit need not comply with the requirements of Subsection (1)
71415 when the public procurement unit is procuring architect or engineer services for contracts
71416 related to research activities and technology transfer.

71417 Section 1462. Section **63G-6-801**, which is renumbered from Section 63-56-801 is
71418 renumbered and amended to read:

71419 **Part 8. Legal and Contractual Remedies**

71420 ~~[63-56-801].~~ **63G-6-801. Protest to chief procurement officer -- Time --**
71421 **Authority to resolve protest.**

71422 (1) Any actual or prospective bidder, offeror, or contractor who is aggrieved in
71423 connection with the solicitation or award of a contract may protest to the chief procurement
71424 officer or the head of a purchasing agency. A protest with respect to an invitation for bids or a
71425 request for proposals shall be submitted in writing prior to the opening of bids or the closing
71426 date for proposals, unless the aggrieved person did not know and should not have known of the
71427 facts giving rise to the protest prior to bid opening or the closing date for proposals. The
71428 protest shall be submitted in writing within five working days after the aggrieved person knows
71429 or should have known of the facts giving rise thereto.

71430 (2) The chief procurement officer, the head of a purchasing agency, or a designee of
71431 either officer shall have the authority, prior to the commencement of an action in court
71432 concerning the controversy, to settle and resolve the protest.

71433 Section 1463. Section **63G-6-802**, which is renumbered from Section 63-56-802 is
71434 renumbered and amended to read:

71435 ~~[63-56-802]~~. **63G-6-802**. **Effect of timely protest.**

71436 In the event of a timely protest under Subsection ~~[63-56-801]~~ 63G-6-801(1),
71437 ~~[63-56-810]~~ 63G-6-810(1), or ~~[63-56-815]~~ 63G-6-815(1), the state shall not proceed further
71438 with the solicitation or with the award of the contract until all administrative and judicial
71439 remedies have been exhausted or until the chief procurement officer, after consultation with the
71440 head of the using agency or the head of a purchasing agency, makes a written determination that
71441 the award of the contract without delay is necessary to protect substantial interests of the state.

71442 Section 1464. Section **63G-6-803**, which is renumbered from Section 63-56-803 is
71443 renumbered and amended to read:

71444 ~~[63-56-803]~~. **63G-6-803**. **Costs to or against protestor.**

71445 (1) When a protest is sustained administratively or upon administrative or judicial
71446 review and the protesting bidder or offeror should have been awarded the contract under the
71447 solicitation but is not, the protestor shall be entitled to the following relief as a claim against the
71448 state:

71449 (a) the reasonable costs incurred in connection with the solicitation, including bid
71450 preparation and appeal costs; and

71451 (b) any equitable relief determined to be appropriate by the reviewing administrative or
71452 judicial body.

71453 (2) When a protest is not sustained by the Procurement Appeals Board, the protestor
71454 shall reimburse the Division of Purchasing and General Services for the per diem and expenses
71455 paid by the division to witnesses or appeals board members and any additional expenses
71456 incurred by the state agency staff who have provided materials and administrative services to the
71457 board for that case.

71458 Section 1465. Section **63G-6-804**, which is renumbered from Section 63-56-804 is
71459 renumbered and amended to read:

71460 ~~[63-56-804]~~. **63G-6-804**. **Debarment from consideration for award of**
71461 **contracts -- Causes for debarment.**

71462 (1) After reasonable notice to the person involved and reasonable opportunity for that
71463 person to be heard, the chief procurement officer or the head of a purchasing agency, after
71464 consultation with the using agency and the attorney general, shall have authority to debar a
71465 person for cause from consideration for award of contracts. The debarment shall not be for a
71466 period exceeding three years. The same officer, after consultation with the using agency and the
71467 attorney general, shall have authority to suspend a person from consideration for award of
71468 contracts if there is probable cause to believe that the person has engaged in any activity which
71469 might lead to debarment. The suspension shall not be for a period exceeding three months
71470 unless an indictment has been issued for an offense which would be a cause for debarment under
71471 Subsection (2), in which case the suspension shall, at the request of the attorney general, remain
71472 in effect until after the trial of the suspended person.

71473 (2) The causes for debarment include the following:

71474 (a) conviction of a criminal offense as an incident to obtaining or attempting to obtain a
71475 public or private contract or subcontract or in the performance of such contract or subcontract;

71476 (b) conviction under state or federal statutes of embezzlement, theft, forgery, bribery,
71477 falsification or destruction of records, receiving stolen property, or any other offense indicating
71478 a lack of business integrity or business honesty which currently, seriously, and directly affects
71479 responsibility as a state contractor;

71480 (c) conviction under state or federal antitrust statutes;

71481 (d) failure without good cause to perform in accordance with the terms of the contract;

71482 or

71483 (e) any other cause the chief procurement officer, or the head of a purchasing agency
71484 determines to be so serious and compelling as to affect responsibility as a state contractor,
71485 including debarment by another governmental entity for any cause listed in rules and

71486 regulations.

71487 Section 1466. Section **63G-6-805**, which is renumbered from Section 63-56-805 is
71488 renumbered and amended to read:

71489 ~~[63-56-805]~~. **63G-6-805**. **Authority to resolve controversy between state**
71490 **and contractor.**

71491 The chief procurement officer, the head of a purchasing agency, or a designee of either
71492 officer is authorized, prior to commencement of an action in court concerning the controversy,
71493 to settle and resolve a controversy which arises between the state and a contractor under or by
71494 virtue of a contract between them. This includes, without limitation, controversies based upon
71495 breach of contract, mistakes, misrepresentation, or other cause for contract modification or
71496 rescission.

71497 Section 1467. Section **63G-6-806**, which is renumbered from Section 63-56-806 is
71498 renumbered and amended to read:

71499 ~~[63-56-806]~~. **63G-6-806**. **Decisions of chief procurement officer to be in**
71500 **writing -- Effect of no writing.**

71501 (1) The chief procurement officer, the head of a purchasing agency, or the designee of
71502 either officer shall promptly issue a written decision regarding any protest, debarment or
71503 suspension, or contract controversy if it is not settled by a mutual agreement. The decision shall
71504 state the reasons for the action taken and inform the protestor, contractor, or prospective
71505 contractor of the right to judicial or administrative review as provided in this chapter.

71506 (2) A decision shall be effective until stayed or reversed on appeal, except to the extent
71507 provided in Section ~~[63-56-802]~~ 63G-6-802. A copy of the decision under Subsection (1) shall
71508 be mailed or otherwise furnished immediately to the protestor, prospective contractor, or
71509 contractor. The decision shall be final and conclusive unless the protestor, prospective
71510 contractor, or contractor appeals administratively to the procurement appeals board in
71511 accordance with Subsection ~~[63-56-810]~~ 63G-6-810(2) or the protestor, prospective
71512 contractor, or contractor commences an action in district court in accordance with Section
71513 ~~[63-56-815]~~ 63G-6-815.

71514 (3) If the chief procurement officer, the head of a purchasing agency, or the designee of
71515 either officer does not issue the written decision regarding a contract controversy within 60
71516 calendar days after written request for a final decision, or within such longer period as may be
71517 agreed upon by the parties, then the contractor may proceed as if an adverse decision had been
71518 received.

71519 Section 1468. Section **63G-6-807**, which is renumbered from Section 63-56-807 is
71520 renumbered and amended to read:

71521 ~~[63-56-807]~~. **63G-6-807. Creation of Procurement Appeals Board.**

71522 (1) (a) A Procurement Appeals Board is created in the executive branch. The
71523 Procurement Appeals Board shall be composed of a chair and one other member, to be
71524 appointed by the governor, and a third member to be designated by the two appointed members
71525 on a case-by-case basis.

71526 (b) None of the members of the Procurement Appeals Board shall otherwise be
71527 full-time employees of the state.

71528 (c) The appointed members of the Procurement Appeals Board shall have been
71529 members in good standing of the state bar for at least five years and shall be experienced in
71530 contract or commercial matters.

71531 (d) The designated member shall possess the technical expertise and experience needed
71532 for the proper disposition of the factual issues presented by the case.

71533 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
71534 expire, the governor shall appoint each new member or reappointed member to a four-year
71535 term.

71536 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
71537 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
71538 board members are staggered so that approximately half of the board is appointed every two
71539 years.

71540 (c) The designated member shall serve for the case on which designated until the final
71541 disposition of the case.

71542 (d) Appointed members may be reappointed for succeeding terms and may continue to
71543 serve after the expiration of their terms until a successor takes office.

71544 (e) Qualified persons may be redesignated as members.

71545 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
71546 appointed for the unexpired term.

71547 (4) (a) Members shall receive no compensation or benefits for their services, but may
71548 receive per diem and expenses incurred in the performance of the member's official duties at the
71549 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

71550 (b) Members may decline to receive per diem and expenses for their service.

71551 Section 1469. Section **63G-6-808**, which is renumbered from Section 63-56-808 is
71552 renumbered and amended to read:

71553 **[63-56-808]. 63G-6-808. Rules of procedure to be adopted.**

71554 The Procurement Appeals Board shall adopt rules of procedure which, to the fullest
71555 extent possible, will provide for the expeditious resolution of controversies, including
71556 procedures to encourage agreements between the parties to a controversy prior to a hearing.
71557 The board may adopt small claims procedures for the resolution of controversies involving
71558 claims of less than \$15,000.

71559 Section 1470. Section **63G-6-809**, which is renumbered from Section 63-56-809 is
71560 renumbered and amended to read:

71561 **[63-56-809]. 63G-6-809. Decisions to be in writing.**

71562 The Procurement Appeals Board shall issue a decision in writing or take other
71563 appropriate action of each appeal submitted. A copy of any decision shall be provided to all
71564 parties and the chief procurement officer or the head of a purchasing agency.

71565 Section 1471. Section **63G-6-810**, which is renumbered from Section 63-56-810 is
71566 renumbered and amended to read:

71567 **[63-56-810]. 63G-6-810. Jurisdiction of Procurement Appeals Board.**

71568 Unless an action has been initiated previously in district courts for essentially the same
71569 cause of action, the board shall have jurisdiction to review and determine de novo:

71570 (1) any protest of a solicitation or award of a contract addressed to the board by an
71571 aggrieved actual or prospective bidder or offeror, or a contractor; and

71572 (2) any appeal by an aggrieved party from a decision rendered or considered to have
71573 been rendered pursuant to Section [~~63-56-806~~] 63G-6-806.

71574 Section 1472. Section **63G-6-811**, which is renumbered from Section 63-56-811 is
71575 renumbered and amended to read:

71576 ~~[63-56-811]~~. **63G-6-811**. **Time limits to file protest or appeal -- Effect of**
71577 **filing.**

71578 (1) For a protest under Subsection [~~63-56-810~~] 63G-6-810(1), the aggrieved person
71579 shall file a protest with the board within five working days after the aggrieved person knows or
71580 should have known of the facts and circumstances upon which the protest is based; provided,
71581 however, that a protest with respect to an invitation for bids or request for proposals shall be
71582 filed prior to the opening of bids or the closing date for proposals unless the aggrieved person
71583 did not know and should not have known of the facts giving rise to the protest prior to bid
71584 opening or the closing date for proposals.

71585 (2) For an appeal from a decision regarding a protested solicitation or award, the
71586 aggrieved person shall file an appeal within seven calendar days of receipt of a decision rendered
71587 or considered to have been rendered pursuant to Section [~~63-56-806~~] 63G-6-806.

71588 (3) For an appeal from a decision regarding a debarment, suspension, or contract
71589 controversy, the aggrieved person shall file an appeal within 60 calendar days of receipt of a
71590 decision rendered or considered to have been rendered pursuant to Section [~~63-56-806~~]
71591 63G-6-806.

71592 Section 1473. Section **63G-6-812**, which is renumbered from Section 63-56-812 is
71593 renumbered and amended to read:

71594 ~~[63-56-812]~~. **63G-6-812**. **Discontinued appeal with prejudice, except as**
71595 **authorized.**

71596 After notice of an appeal has been filed with the Procurement Appeals Board, no party
71597 may discontinue the appeal without prejudice, except as authorized by the Procurement Appeals

71598 Board.

71599 Section 1474. Section **63G-6-813**, which is renumbered from Section 63-56-813 is
71600 renumbered and amended to read:

71601 ~~[63-56-813]~~. **63G-6-813**. **Factual determination of appeals board final and**
71602 **conclusive.**

71603 (1) On any protest or appeal under Section ~~[63-56-810]~~ 63G-6-810, the Procurement
71604 Appeals Board shall promptly decide the contract controversy or whether the solicitation or
71605 award was in accordance with this chapter. Any prior determinations by administrative officials
71606 regarding protests of solicitations or awards, suspension or debarments, contract controversies,
71607 or breach of contract controversies shall not be final or conclusive.

71608 (2) A determination of an issue of fact by the Procurement Appeals Board under
71609 Subsection (1) shall be final and conclusive unless arbitrary and capricious or clearly erroneous.
71610 No determination on an issue of law shall be final or conclusive.

71611 Section 1475. Section **63G-6-814**, which is renumbered from Section 63-56-814 is
71612 renumbered and amended to read:

71613 ~~[63-56-814]~~. **63G-6-814**. **Right to appeal to Court of Appeals.**

71614 Any person receiving an adverse decision or the state may appeal a decision of the
71615 Procurement Appeals Board to the Court of Appeals. However, no appeal may be made by the
71616 state unless recommended by the chief procurement officer or the head of the purchasing agency
71617 involved, and approved by the attorney general.

71618 Section 1476. Section **63G-6-815**, which is renumbered from Section 63-56-815 is
71619 renumbered and amended to read:

71620 ~~[63-56-815]~~. **63G-6-815**. **Jurisdiction of district court.**

71621 (1) The district court shall have jurisdiction over an action, whether the action is at law
71622 or in equity, between the state and:

71623 (a) a bidder, offeror, or contractor, prospective or actual, who is aggrieved in
71624 connection with the solicitation or award of a contract;

71625 (b) a person who is subject to a suspension or debarment proceeding; and

71626 (c) a contractor, for any cause of action which arises under, or by virtue of a contract.

71627 (2) The provisions of [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Part 4, Notice of
71628 Claim Against a Governmental Entity or a Government Employee, and Section [63-30d-601]
71629 63G-7-601 do not apply to actions brought under this chapter by an aggrieved party for
71630 equitable relief or reasonable costs incurred in preparing or appealing an unsuccessful bid or
71631 offer.

71632 Section 1477. Section **63G-6-816**, which is renumbered from Section 63-56-816 is
71633 renumbered and amended to read:

71634 [~~63-56-816~~]. **63G-6-816. Effect of prior determination by agents of state.**

71635 In any judicial action under Section [~~63-56-815~~] 63G-6-815, determinations by
71636 employees, agents, or other persons appointed by the state shall be final and conclusive only as
71637 provided in Sections [~~63-56-419~~] 63G-6-419 and [~~63-56-806~~] 63G-6-806, and Subsection
71638 [~~63-56-813~~] 63G-6-813(2).

71639 Section 1478. Section **63G-6-817**, which is renumbered from Section 63-56-817 is
71640 renumbered and amended to read:

71641 [~~63-56-817~~]. **63G-6-817. Statutes of limitations.**

71642 (1) Any action under Subsection [~~63-56-815~~] 63G-6-815(1)(a) shall be initiated as
71643 follows:

71644 (a) within 20 calendar days after the aggrieved person knows or should have known of
71645 the facts giving rise to the action; provided, however, that an action with respect to an invitation
71646 for bids or request for proposals shall be initiated prior to the opening of bids or the closing date
71647 for proposals unless the aggrieved person did not know and should not have known of the facts
71648 giving rise to the action prior to bid opening or the closing date for proposals; or

71649 (b) within 14 calendar days after receipt of a final administrative decision pursuant to
71650 either Section [~~63-56-806~~] 63G-6-806 or Section [~~63-56-813~~] 63G-6-813, whichever is
71651 applicable.

71652 (2) Any action under Subsection [~~63-56-815~~] 63G-6-815(1)(b) shall be commenced
71653 within six months after receipt of a final administrative decision pursuant to Section [~~63-56-806~~]

71654 63G-6-806 or Section [~~63-56-813~~] 63G-6-813, whichever is applicable.

71655 (3) The statutory limitations on an action between private persons on a contract or for
71656 breach of contract shall apply to any action commenced pursuant to Subsection [~~63-56-815~~]
71657 63G-6-815(1)(c), except notice of appeals from the Procurement Appeals Board pursuant to
71658 Section [~~63-56-814~~] 63G-6-814 concerning actions on a contract or for breach of contract shall
71659 be filed within one year after the date of the Procurement Appeals Board decision.

71660 Section 1479. Section **63G-6-818**, which is renumbered from Section 63-56-818 is
71661 renumbered and amended to read:

71662 [~~63-56-818~~]. **63G-6-818. Effect of violation prior to award of contract.**

71663 If prior to award it is determined administratively or upon administrative or judicial
71664 review that a solicitation or proposed award of a contract is in violation of law, the solicitation
71665 or proposed award shall be cancelled or revised to comply with the law.

71666 Section 1480. Section **63G-6-819**, which is renumbered from Section 63-56-819 is
71667 renumbered and amended to read:

71668 [~~63-56-819~~]. **63G-6-819. Effect of violation after award of contract.**

71669 If after an award it is determined administratively or upon administrative or judicial
71670 review that a solicitation or award of a contract is in violation of law:

71671 (1) If the person awarded the contract has not acted fraudulently or in bad faith:

71672 (a) The contract may be ratified and affirmed if it is determined that doing so is in the
71673 best interests of the state; or

71674 (b) The contract may be terminated and the person awarded the contract shall be
71675 compensated for the actual expenses reasonably incurred under the contract prior to
71676 termination, plus a reasonable profit;

71677 (2) If the person awarded the contract has acted fraudulently or in bad faith:

71678 (a) The contract may be declared null and void; or

71679 (b) The contract may be ratified and affirmed if such action is in the best interests of the
71680 state, without prejudice to the state's rights to any appropriate damages.

71681 Section 1481. Section **63G-6-820**, which is renumbered from Section 63-56-820 is

71682 renumbered and amended to read:

71683 **[63-56-820].** **63G-6-820.** **Interest rate.**

71684 (1) Except as provided in Subsection (2), in controversies between the state and
71685 contractors under this part, interest on amounts ultimately determined to be due to a contractor
71686 or to the state are payable at the rate applicable to judgments from the date the claim arose
71687 through the date of decision or judgment, whichever is later.

71688 (2) This section does not apply to public assistance benefits programs.

71689 Section 1482. Section **63G-6-901**, which is renumbered from Section 63-56-901 is
71690 renumbered and amended to read:

71691 **Part 9. Intergovernmental Relations**

71692 **[63-56-901].** **63G-6-901.** **Agreements between public procurement units.**

71693 Under the terms agreed upon among the parties, any public procurement unit may enter
71694 into agreements with one or more other public procurement units to:

71695 (1) sponsor, conduct, or administer a cooperative agreement for the procurement or
71696 disposal of any supplies, services, or construction;

71697 (2) cooperatively use supplies or services;

71698 (3) commonly use or share warehousing facilities, capital equipment, and other
71699 facilities;

71700 (4) provide personnel; provided that the requesting public procurement unit shall pay
71701 the public procurement unit providing the personnel the direct and indirect cost of providing the
71702 personnel, in accordance with the agreement; or

71703 (5) make available informational, technical, and other services, provided that the
71704 requirements of the public procurement unit tendering the services shall have precedence over
71705 the requesting public procurement unit and that the requesting public procurement unit shall pay
71706 for the expenses of the services so provided, in accordance with the agreement.

71707 Section 1483. Section **63G-6-902**, which is renumbered from Section 63-56-902 is
71708 renumbered and amended to read:

71709 **[63-56-902].** **63G-6-902.** **Services between public procurement units.**

71710 (1) Upon request, any public procurement unit may make available to other public
71711 procurement units the following services, among others: standard forms; printed manuals;
71712 qualified products lists; source information; common use commodities listings; supplier
71713 prequalification information; supplier performance ratings; debarred and suspended bidders lists;
71714 forms for invitation for bids, requests for proposals, instructions to bidders, general contract
71715 provisions, and other contract forms; and contracts or published summaries thereof, including
71716 price and time of delivery information.

71717 (2) Any public procurement unit may provide the following technical services, among
71718 others, to other public procurement units; development of specifications; development of quality
71719 assurance test methods, including receiving, inspection, and acceptance procedures; use of
71720 testing and inspection facilities; and use of personnel training programs.

71721 (3) Public procurement units may enter into contractual arrangements and publish a
71722 schedule of fees for the services provided under Subsections (1) and (2).

71723 Section 1484. Section **63G-6-903**, which is renumbered from Section 63-56-903 is
71724 renumbered and amended to read:

71725 **[63-56-903]. 63G-6-903. Payments between public procurement units.**

71726 All payments from any public procurement unit received by a public procurement unit
71727 supplying personnel or services shall be available to the supplying public procurement unit.

71728 Section 1485. Section **63G-6-904**, which is renumbered from Section 63-56-904 is
71729 renumbered and amended to read:

71730 **[63-56-904]. 63G-6-904. Compliance by one public procurement unit**
71731 **pursuant to agreement considered compliance by others to agreement.**

71732 Where the public procurement unit administering a cooperative purchase complies with
71733 the requirements of this chapter, any public procurement unit participating in such a purchase
71734 shall be considered to have complied with this chapter. Public procurement units may not enter
71735 into a cooperative purchasing agreement for the purpose of circumventing this chapter.

71736 Section 1486. Section **63G-6-905**, which is renumbered from Section 63-56-905 is
71737 renumbered and amended to read:

71738 **[63-56-905]. 63G-6-905. Chief procurement officer to collect information**
 71739 **as to supplies, etc.**

71740 To the extent possible, the chief procurement officer may collect information concerning
 71741 the type, cost, quality, and quantity of commonly used supplies, services, or construction being
 71742 procured or used by state public procurement units and local public procurement units. The
 71743 chief procurement officer may make the information available to any public procurement unit
 71744 upon request.

71745 Section 1487. Section **63G-6-906**, which is renumbered from Section 63-56-906 is
 71746 renumbered and amended to read:

71747 **[63-56-906]. 63G-6-906. Resolving controversy arising under a**
 71748 **cooperative purchasing agreement.**

71749 Under a cooperative purchasing agreement, controversies arising between an
 71750 administering state public procurement unit and its bidders, offerors, or contractors shall be
 71751 resolved in accordance with Part 8, Legal and Contractual Remedies.

71752 Section 1488. Section **63G-6-907**, which is renumbered from Section 63-56-907 is
 71753 renumbered and amended to read:

71754 **[63-56-907]. 63G-6-907. Resolution of local public procurement**
 71755 **controversies.**

71756 Any local public procurement unit is authorized to enter into an agreement with the
 71757 State Procurement Appeals Board to resolve controversies between the local public
 71758 procurement unit and its contractors, whether or not such controversy arose from a cooperative
 71759 purchasing agreement.

71760 Section 1489. Section **63G-6-1001**, which is renumbered from Section 63-56-1001 is
 71761 renumbered and amended to read:

Part 10. Illegal Activities

71763 **[63-56-1001]. 63G-6-1001. Felony to accept emolument.**

71764 Any person acting as a procurement officer for the state of Utah or any subdivision
 71765 thereof, or who in any official capacity participates in the procurement of any supplies, services,

71766 construction, real property, or insurance for any such political units, is guilty of a felony if the
71767 person asks, receives, or offers to receive any emolument, gratuity, contribution, loan, or
71768 reward, or any promise thereof, either for the person's own use or the use or benefit of any
71769 other person or organization from any person interested in the sale of such supplies, services,
71770 construction, real property, or insurance.

71771 Section 1490. Section **63G-6-1002**, which is renumbered from Section 63-56-1002 is
71772 renumbered and amended to read:

71773 ~~[63-56-1002]~~. **63G-6-1002. Felony to offer emolument.**

71774 A person who is interested in any way in the sale of any supplies, services, construction,
71775 real property, or insurance to the state of Utah or any political subdivision thereof, is guilty of a
71776 felony if the person gives or offers to give any emolument, gratuity, contribution, loan or
71777 reward, or any promise thereof to any person acting as a procurement officer, or who in any
71778 official capacity participates in the procurement of such supplies, services, construction, real
71779 property, or insurance, whether it is given for ~~[his]~~ the person's own use or for the use or benefit
71780 of any other person or organization.

71781 Section 1491. Section **63G-7-101**, which is renumbered from Section 63-30d-101 is
71782 renumbered and amended to read:

71783 **CHAPTER 7. GOVERNMENTAL IMMUNITY ACT OF UTAH**

71784 **Part 1. General Provisions**

71785 ~~[63-30d-101]~~. **63G-7-101. Title, scope, and intent.**

71786 (1) This chapter is known as the "Governmental Immunity Act of Utah."

71787 (2) (a) The waivers and retentions of immunity found in this chapter apply to all
71788 functions of government, no matter how labeled.

71789 (b) This single, comprehensive chapter governs all claims against governmental entities
71790 or against their employees or agents arising out of the performance of the employee's duties,
71791 within the scope of employment, or under color of authority.

71792 Section 1492. Section **63G-7-102**, which is renumbered from Section 63-30d-102 is
71793 renumbered and amended to read:

71794 ~~[63-30d-102].~~ **63G-7-102. Definitions.**

71795 As used in this chapter:

71796 (1) "Claim" means any asserted demand for or cause of action for money or damages,
71797 whether arising under the common law, under state constitutional provisions, or under state
71798 statutes, against a governmental entity or against an employee in the employee's personal
71799 capacity.

71800 (2) (a) "Employee" includes:

71801 (i) a governmental entity's officers, employees, servants, trustees, or commissioners;

71802 (ii) members of a governing body;

71803 (iii) members of a government entity board;

71804 (iv) members of a government entity commission;

71805 (v) members of an advisory body, officers, and employees of a Children's Justice Center
71806 created in accordance with Section 67-5b-104;

71807 (vi) student teachers holding a letter of authorization in accordance with Sections
71808 53A-6-103 and 53A-6-104;

71809 (vii) educational aides;

71810 (viii) students engaged in providing services to members of the public in the course of
71811 an approved medical, nursing, or other professional health care clinical training program;

71812 (ix) volunteers as defined by Subsection 67-20-2(3); and

71813 (x) tutors.

71814 (b) "Employee" includes all of the positions identified in Subsection (2)(a), whether or
71815 not the individual holding that position receives compensation.

71816 (c) "Employee" does not include an independent contractor.

71817 (3) "Governmental entity" means the state and its political subdivisions as both are
71818 defined in this section.

71819 (4) (a) "Governmental function" means each activity, undertaking, or operation of a
71820 governmental entity.

71821 (b) "Governmental function" includes each activity, undertaking, or operation

71822 performed by a department, agency, employee, agent, or officer of a governmental entity.

71823 (c) "Governmental function" includes a governmental entity's failure to act.

71824 (5) "Injury" means death, injury to a person, damage to or loss of property, or any other
71825 injury that a person may suffer to ~~[his]~~ the person or estate, that would be actionable if inflicted
71826 by a private person or ~~[his]~~ the private person's agent.

71827 (6) "Personal injury" means an injury of any kind other than property damage.

71828 (7) "Political subdivision" means any county, city, town, school district, community
71829 development and renewal agency, special improvement or taxing district, local district, special
71830 service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,
71831 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

71832 (8) "Property damage" means injury to, or loss of, any right, title, estate, or interest in
71833 real or personal property.

71834 (9) "State" means the state of Utah, and includes each office, department, division,
71835 agency, authority, commission, board, institution, hospital, college, university, Children's Justice
71836 Center, or other instrumentality of the state.

71837 (10) "Willful misconduct" means the intentional doing of a wrongful act, or the
71838 wrongful failure to act, without just cause or excuse, where the actor is aware that ~~[his]~~ the
71839 actor's conduct will probably result in injury.

71840 Section 1493. Section **63G-7-201**, which is renumbered from Section 63-30d-201 is
71841 renumbered and amended to read:

Part 2. Governmental Immunity - Statement, Scope, and Effect

~~[63-30d-201]~~. **63G-7-201. Immunity of governmental entities from suit.**

71844 (1) Except as may be otherwise provided in this chapter, each governmental entity and
71845 each employee of a governmental entity are immune from suit for any injury that results from
71846 the exercise of a governmental function.

71847 (2) Notwithstanding the waiver of immunity provisions of Section ~~[63-30d-301]~~
71848 63G-7-301, a governmental entity, its officers, and its employees are immune from suit for any
71849 injury or damage resulting from the implementation of or the failure to implement measures to:

71850 (a) control the causes of epidemic and communicable diseases and other conditions
71851 significantly affecting the public health or necessary to protect the public health as set out in
71852 Title 26A, Chapter 1, Local Health Departments;

71853 (b) investigate and control suspected bioterrorism and disease as set out in Title 26,
71854 Chapter 23b, Detection of Public Health Emergencies Act; and

71855 (c) respond to a national, state, or local emergency, a public health emergency as
71856 defined in Section 26-23b-102, or a declaration by the President of the United States or other
71857 federal official requesting public health related activities.

71858 Section 1494. Section **63G-7-202**, which is renumbered from Section 63-30d-202 is
71859 renumbered and amended to read:

71860 **~~[63-30d-202].~~ 63G-7-202. Act provisions not construed as admission or**
71861 **denial of liability -- Effect of waiver of immunity -- Exclusive remedy -- Joinder of**
71862 **employee -- Limitations on personal liability.**

71863 (1) (a) Nothing contained in this chapter, unless specifically provided, may be construed
71864 as an admission or denial of liability or responsibility by or for a governmental entity or its
71865 employees.

71866 (b) If immunity from suit is waived by this chapter, consent to be sued is granted, and
71867 liability of the entity shall be determined as if the entity were a private person.

71868 (c) No cause of action or basis of liability is created by any waiver of immunity in this
71869 chapter, nor may any provision of this chapter be construed as imposing strict liability or
71870 absolute liability.

71871 (2) Nothing in this chapter may be construed as adversely affecting any immunity from
71872 suit that a governmental entity or employee may otherwise assert under state or federal law.

71873 (3) (a) Except as provided in Subsection (3)(c), an action under this chapter against a
71874 governmental entity for an injury caused by an act or omission that occurs during the
71875 performance of an employee's duties, within the scope of employment, or under color of
71876 authority is a plaintiff's exclusive remedy.

71877 (b) Judgment under this chapter against a governmental entity is a complete bar to any

71878 action by the claimant, based upon the same subject matter, against the employee whose act or
71879 omission gave rise to the claim.

71880 (c) A plaintiff may not bring or pursue any civil action or proceeding based upon the
71881 same subject matter against the employee or the estate of the employee whose act or omission
71882 gave rise to the claim, unless:

71883 (i) the employee acted or failed to act through fraud or willful misconduct;

71884 (ii) the injury or damage resulted from the employee driving a vehicle, or being in actual
71885 physical control of a vehicle:

71886 (A) with a blood alcohol content equal to or greater by weight than the established legal
71887 limit;

71888 (B) while under the influence of alcohol or any drug to a degree that rendered the
71889 person incapable of safely driving the vehicle; or

71890 (C) while under the combined influence of alcohol and any drug to a degree that
71891 rendered the person incapable of safely driving the vehicle;

71892 (iii) injury or damage resulted from the employee being physically or mentally impaired
71893 so as to be unable to reasonably perform ~~[his or her]~~ the employee's job function because of:

71894 (A) the use of alcohol;

71895 (B) the nonprescribed use of a controlled substance as defined in Section 58-37-4; or

71896 (C) the combined influence of alcohol and a nonprescribed controlled substance as
71897 defined by Section 58-37-4; or

71898 (iv) in a judicial or administrative proceeding, the employee intentionally or knowingly
71899 gave, upon a lawful oath or in any form allowed by law as a substitute for an oath, false
71900 testimony material to the issue or matter of inquiry under this section.

71901 (4) Except as permitted in Subsection (3)(c), no employee may be joined or held
71902 personally liable for acts or omissions occurring:

71903 (a) during the performance of the employee's duties;

71904 (b) within the scope of employment; or

71905 (c) under color of authority.

71906 Section 1495. Section **63G-7-203**, which is renumbered from Section 63-30d-203 is
71907 renumbered and amended to read:

71908 ~~[63-30d-203]~~. **63G-7-203. Exemptions for certain takings actions.**

71909 An action that involves takings law, as defined in Section ~~[63-90-2]~~ 63L-3-102, is not
71910 subject to the requirements of Sections ~~[63-30d-401]~~ 63G-7-401, ~~[63-30d-402]~~ 63G-7-402,
71911 ~~[63-30d-403]~~ 63G-7-403, and ~~[63-30d-601]~~ 63G-7-601.

71912 Section 1496. Section **63G-7-301**, which is renumbered from Section 63-30d-301 is
71913 renumbered and amended to read:

71914 **Part 3. Waivers of Immunity**

71915 ~~[63-30d-301]~~. **63G-7-301. Waivers of immunity -- Exceptions.**

71916 (1) (a) Immunity from suit of each governmental entity is waived as to any contractual
71917 obligation.

71918 (b) Actions arising out of contractual rights or obligations are not subject to the
71919 requirements of Sections ~~[63-30d-401]~~ 63G-7-401, ~~[63-30d-402]~~ 63G-7-402, ~~[63-30d-403]~~
71920 63G-7-403, or ~~[63-30d-601]~~ 63G-7-601.

71921 (c) The Division of Water Resources is not liable for failure to deliver water from a
71922 reservoir or associated facility authorized by Title 73, Chapter 26, Bear River Development Act,
71923 if the failure to deliver the contractual amount of water is due to drought, other natural
71924 condition, or safety condition that causes a deficiency in the amount of available water.

71925 (2) Immunity from suit of each governmental entity is waived:

71926 (a) as to any action brought to recover, obtain possession of, or quiet title to real or
71927 personal property;

71928 (b) as to any action brought to foreclose mortgages or other liens on real or personal
71929 property, to determine any adverse claim on real or personal property, or to obtain an
71930 adjudication about any mortgage or other lien that the governmental entity may have or claim
71931 on real or personal property;

71932 (c) as to any action based on the negligent destruction, damage, or loss of goods,
71933 merchandise, or other property while it is in the possession of any governmental entity or

71934 employee, if the property was seized for the purpose of forfeiture under any provision of state
71935 law;

71936 (d) subject to Subsection [~~63-30d-302~~] 63G-7-302(1), as to any action brought under
71937 the authority of Article I, Section 22, of the Utah Constitution, for the recovery of
71938 compensation from the governmental entity when the governmental entity has taken or damaged
71939 private property for public uses without just compensation;

71940 (e) subject to Subsection [~~63-30d-302~~] 63G-7-302(2), as to any action brought to
71941 recover attorney fees under Sections [~~63-2-405~~] 63G-2-405 and [~~63-2-802~~] 63G-2-802;

71942 (f) for actual damages under Title 67, Chapter 21, Utah Protection of Public Employees
71943 Act; or

71944 (g) as to any action brought to obtain relief from a land use regulation that imposes a
71945 substantial burden on the free exercise of religion under [~~Title 63, Chapter 90b~~] Title 63L,
71946 Chapter 5, Utah Religious Land Use Act.

71947 (3) (a) Except as provided in Subsection (3)(b), immunity from suit of each
71948 governmental entity is waived as to any injury caused by:

71949 (i) a defective, unsafe, or dangerous condition of any highway, road, street, alley,
71950 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

71951 (ii) any defective or dangerous condition of a public building, structure, dam, reservoir,
71952 or other public improvement.

71953 (b) Immunity from suit of each governmental entity is not waived if the injury arises out
71954 of, in connection with, or results from:

71955 (i) a latent dangerous or latent defective condition of any highway, road, street, alley,
71956 crosswalk, sidewalk, culvert, tunnel, bridge, viaduct, or other structure located on them; or

71957 (ii) a latent dangerous or latent defective condition of any public building, structure,
71958 dam, reservoir, or other public improvement.

71959 (4) Immunity from suit of each governmental entity is waived as to any injury
71960 proximately caused by a negligent act or omission of an employee committed within the scope
71961 of employment.

71962 (5) Immunity from suit of each governmental entity is not waived under Subsections (3)
71963 and (4) if the injury arises out of, in connection with, or results from:

71964 (a) the exercise or performance, or the failure to exercise or perform, a discretionary
71965 function, whether or not the discretion is abused;

71966 (b) assault, battery, false imprisonment, false arrest, malicious prosecution, intentional
71967 trespass, abuse of process, libel, slander, deceit, interference with contract rights, infliction of
71968 mental anguish, or violation of civil rights;

71969 (c) the issuance, denial, suspension, or revocation of, or by the failure or refusal to
71970 issue, deny, suspend, or revoke, any permit, license, certificate, approval, order, or similar
71971 authorization;

71972 (d) a failure to make an inspection or by making an inadequate or negligent inspection;

71973 (e) the institution or prosecution of any judicial or administrative proceeding, even if
71974 malicious or without probable cause;

71975 (f) a misrepresentation by an employee whether or not it is negligent or intentional;

71976 (g) riots, unlawful assemblies, public demonstrations, mob violence, and civil
71977 disturbances;

71978 (h) the collection of and assessment of taxes;

71979 (i) the activities of the Utah National Guard;

71980 (j) the incarceration of any person in any state prison, county or city jail, or other place
71981 of legal confinement;

71982 (k) any natural condition on publicly owned or controlled lands;

71983 (l) any condition existing in connection with an abandoned mine or mining operation;

71984 (m) any activity authorized by the School and Institutional Trust Lands Administration
71985 or the Division of Forestry, Fire, and State Lands;

71986 (n) the operation or existence of a pedestrian or equestrian trail that is along a ditch,
71987 canal, stream, or river, regardless of ownership or operation of the ditch, canal, stream, or river,
71988 if:

71989 (i) the trail is designated under a general plan adopted by a municipality under Section

71990 10-9a-401 or by a county under Section 17-27a-401;

71991 (ii) the trail right-of-way or the right-of-way where the trail is located is open to public

71992 use as evidenced by a written agreement between the owner or operator of the trail

71993 right-of-way, or of the right-of-way where the trail is located, and the municipality or county

71994 where the trail is located; and

71995 (iii) the written agreement:

71996 (A) contains a plan for operation and maintenance of the trail; and

71997 (B) provides that an owner or operator of the trail right-of-way or of the right-of-way

71998 where the trail is located has, at minimum, the same level of immunity from suit as the

71999 governmental entity in connection with or resulting from the use of the trail.

72000 (o) research or implementation of cloud management or seeding for the clearing of fog;

72001 (p) the management of flood waters, earthquakes, or natural disasters;

72002 (q) the construction, repair, or operation of flood or storm systems;

72003 (r) the operation of an emergency vehicle, while being driven in accordance with the

72004 requirements of Section [~~41-6a-208~~] 41-6a-212;

72005 (s) the activities of:

72006 (i) providing emergency medical assistance;

72007 (ii) fighting fire;

72008 (iii) regulating, mitigating, or handling hazardous materials or hazardous wastes;

72009 (iv) emergency evacuations;

72010 (v) transporting or removing injured persons to a place where emergency medical

72011 assistance can be rendered or where the person can be transported by a licensed ambulance

72012 service; or

72013 (vi) intervening during dam emergencies;

72014 (t) the exercise or performance, or the failure to exercise or perform, any function

72015 pursuant to Title 73, Chapter 10, Board of Water Resources - Division of Water Resources; or

72016 (u) unauthorized access to government records, data, or electronic information systems

72017 by any person or entity.

72018 Section 1497. Section **63G-7-302**, which is renumbered from Section 63-30d-302 is
72019 renumbered and amended to read:

72020 ~~[63-30d-302]~~. **63G-7-302. Specific remedies -- "Takings" actions --**
72021 **Government Records Access and Management Actions.**

72022 (1) In any action brought under the authority of Article I, Section 22, of the Utah
72023 Constitution for the recovery of compensation from the governmental entity when the
72024 governmental entity has taken or damaged private property for public uses without just
72025 compensation, compensation and damages shall be assessed according to the requirements of
72026 Title 78, Chapter 34, Eminent Domain.

72027 (2) (a) Notwithstanding Section ~~[63-30d-401]~~ 63G-7-401, a notice of claim for
72028 ~~[attorneys']~~ attorney fees under Subsection ~~[63-30d-301]~~ 63G-7-301(2)(e) may be filed
72029 contemporaneously with a petition for review under Section ~~[63-2-404]~~ 63G-2-404.

72030 (b) The provisions of Subsection ~~[63-30d-403]~~ 63G-7-403(1), relating to the
72031 governmental entity's response to a claim, and the provisions of ~~[63-30d-601]~~ Section
72032 63G-7-601, requiring an undertaking, do not apply to a notice of claim for ~~[attorneys']~~ attorney
72033 fees filed contemporaneously with a petition for review under Section ~~[63-2-404]~~ 63G-2-404.

72034 (c) Any other claim under this chapter that is related to a claim for ~~[attorneys']~~ attorney
72035 fees under Subsection ~~[63-30d-301]~~ 63G-7-301(2)(e) may be brought contemporaneously with
72036 the claim for attorneys' fees or in a subsequent action.

72037 Section 1498. Section **63G-7-401**, which is renumbered from Section 63-30d-401 is
72038 renumbered and amended to read:

72039 **Part 4. Notice of Claim Against a Governmental Entity or a Government Employee**
72040 ~~[63-30d-401]~~. **63G-7-401. Claim for injury -- Notice -- Contents -- Service**
72041 **-- Legal disability -- Appointment of guardian ad litem.**

72042 (1) (a) Except as provided in Subsection (1)(b), a claim arises when the statute of
72043 limitations that would apply if the claim were against a private person begins to run.

72044 (b) The statute of limitations does not begin to run until a claimant knew, or with the
72045 exercise of reasonable diligence should have known:

72046 (i) that the claimant had a claim against the governmental entity or its employee; and

72047 (ii) the identity of the governmental entity or the name of the employee.

72048 (c) The burden to prove the exercise of reasonable diligence is upon the claimant.

72049 (2) Any person having a claim against a governmental entity, or against its employee for
72050 an act or omission occurring during the performance of the employee's duties, within the scope
72051 of employment, or under color of authority shall file a written notice of claim with the entity
72052 before maintaining an action, regardless of whether or not the function giving rise to the claim is
72053 characterized as governmental.

72054 (3) (a) The notice of claim shall set forth:

72055 (i) a brief statement of the facts;

72056 (ii) the nature of the claim asserted;

72057 (iii) the damages incurred by the claimant so far as they are known; and

72058 (iv) if the claim is being pursued against a governmental employee individually as
72059 provided in Subsection [~~63-30d-202~~] 63G-7-202(3)(c), the name of the employee.

72060 (b) The notice of claim shall be:

72061 (i) signed by the person making the claim or that person's agent, attorney, parent, or
72062 legal guardian; and

72063 (ii) directed and delivered by hand or by mail according to the requirements of Section
72064 68-3-8.5 to the office of:

72065 (A) the city or town clerk, when the claim is against an incorporated city or town;

72066 (B) the county clerk, when the claim is against a county;

72067 (C) the superintendent or business administrator of the board, when the claim is against
72068 a school district or board of education;

72069 (D) the presiding officer or secretary/clerk of the board, when the claim is against a
72070 local district or special service district;

72071 (E) the attorney general, when the claim is against the State of Utah;

72072 (F) a member of the governing board, the executive director, or executive secretary,
72073 when the claim is against any other public board, commission, or body; or

72074 (G) the agent authorized by a governmental entity to receive the notice of claim by the
72075 governmental entity under Subsection (5)(e).

72076 (4) (a) If an injury that may reasonably be expected to result in a claim against a
72077 governmental entity is sustained by a claimant who is under the age of majority or mentally
72078 incompetent, that governmental entity may file a request with the court for the appointment of a
72079 guardian ad litem for the potential claimant.

72080 (b) If a guardian ad litem is appointed, the time for filing a claim under Section
72081 ~~[63-30d-402]~~ 63G-7-402 begins when the order appointing the guardian is issued.

72082 (5) (a) Each governmental entity subject to suit under this chapter shall file a statement
72083 with the Division of Corporations and Commercial Code within the Department of Commerce
72084 containing:

- 72085 (i) the name and address of the governmental entity;
- 72086 (ii) the office or agent designated to receive a notice of claim; and
- 72087 (iii) the address at which it is to be directed and delivered.

72088 (b) Each governmental entity shall update its statement as necessary to ensure that the
72089 information is accurate.

72090 (c) The Division of Corporations and Commercial Code shall develop a form for
72091 governmental entities to complete that provides the information required by Subsection (5)(a).

72092 (d) (i) Newly incorporated municipalities shall file the statement required by Subsection
72093 (5)(a) at the time that the statement of incorporation and boundaries is filed with the lieutenant
72094 governor under Section 10-1-106.

72095 (ii) Newly incorporated local districts shall file the statement required by Subsection
72096 (5)(a) at the time that the written notice is filed with the lieutenant governor under Section
72097 17B-1-215.

72098 (e) A governmental entity may, in its statement, identify an agent authorized by the
72099 entity to accept notices of claim on its behalf.

72100 (6) The Division of Corporations and Commercial Code shall:

72101 (a) maintain an index of the statements required by this section arranged both

72102 alphabetically by entity and by county of operation; and

72103 (b) make the indices available to the public both electronically and via hard copy.

72104 (7) A governmental entity may not challenge the validity of a notice of claim on the
72105 grounds that it was not directed and delivered to the proper office or agent if the error is caused
72106 by the governmental entity's failure to file or update the statement required by Subsection (5).

72107 Section 1499. Section **63G-7-402**, which is renumbered from Section 63-30d-402 is
72108 renumbered and amended to read:

72109 ~~[63-30d-402].~~ **63G-7-402. Time for filing notice of claim.**

72110 A claim against a governmental entity, or against an employee for an act or omission
72111 occurring during the performance of the employee's duties, within the scope of employment, or
72112 under color of authority, is barred unless notice of claim is filed with the person and according
72113 to the requirements of Section ~~[63-30d-401]~~ 63G-7-401 within one year after the claim arises
72114 regardless of whether or not the function giving rise to the claim is characterized as
72115 governmental.

72116 Section 1500. Section **63G-7-403**, which is renumbered from Section 63-30d-403 is
72117 renumbered and amended to read:

72118 ~~[63-30d-403].~~ **63G-7-403. Notice of claim -- Approval or denial by**
72119 **governmental entity or insurance carrier within 60 days -- Remedies for denial of claim.**

72120 (1) (a) Within 60 days of the filing of a notice of claim, the governmental entity or its
72121 insurance carrier shall inform the claimant in writing that the claim has either been approved or
72122 denied.

72123 (b) A claim is considered to be denied if, at the end of the 60-day period, the
72124 governmental entity or its insurance carrier has failed to approve or deny the claim.

72125 (2) (a) If the claim is denied, a claimant may institute an action in the district court
72126 against the governmental entity or an employee of the entity.

72127 (b) The claimant shall begin the action within one year after denial of the claim or within
72128 one year after the denial period specified in this chapter has expired, regardless of whether or
72129 not the function giving rise to the claim is characterized as governmental.

72130 Section 1501. Section **63G-7-501**, which is renumbered from Section 63-30d-501 is
72131 renumbered and amended to read:

Part 5. Legal Actions Under This Chapter - Jurisdiction and Venue

72132
72133 ~~[63-30d-501]~~. **63G-7-501. Jurisdiction of district courts over actions.**

72134 (1) The district courts have exclusive, original jurisdiction over any action brought
72135 under this chapter.

72136 (2) An action brought under this chapter may not be tried as a small claims action.

72137 Section 1502. Section **63G-7-502**, which is renumbered from Section 63-30d-502 is
72138 renumbered and amended to read:

72139 ~~[63-30d-502]~~. **63G-7-502. Venue of actions.**

72140 (1) Actions against the state may be brought in the county in which the claim arose or in
72141 Salt Lake County.

72142 (2) (a) Actions against a county may be brought in the county in which the claim arose,
72143 or in the defendant county, or, upon leave granted by a district court judge of the defendant
72144 county, in any county contiguous to the defendant county.

72145 (b) Leave may be granted ex parte.

72146 (3) Actions against all other political subdivisions, including cities and towns, shall be
72147 brought in the county in which the political subdivision is located or in the county in which the
72148 claim arose.

72149 Section 1503. Section **63G-7-601**, which is renumbered from Section 63-30d-601 is
72150 renumbered and amended to read:

**Part 6. Legal Actions Under This Chapter - Procedures,
Requirements, Damages, and Limitations on Judgments**

72151
72152
72153 ~~[63-30d-601]~~. **63G-7-601. Actions governed by Utah Rules of Civil
72154 Procedure -- Undertaking required.**

72155 (1) An action brought under this chapter shall be governed by the Utah Rules of Civil
72156 Procedure to the extent that they are consistent with this chapter.

72157 (2) At the time the action is filed, the plaintiff shall file an undertaking in a sum fixed by

72158 the court that is:

72159 (a) not less than \$300; and

72160 (b) conditioned upon payment by the plaintiff of taxable costs incurred by the
72161 governmental entity in the action if the plaintiff fails to prosecute the action or fails to recover
72162 judgment.

72163 Section 1504. Section **63G-7-602**, which is renumbered from Section 63-30d-602 is
72164 renumbered and amended to read:

72165 ~~[63-30d-602].~~ **63G-7-602. Compromise and settlement of claims.**

72166 (1) A political subdivision, after conferring with its legal officer or other legal counsel if
72167 it does not have a legal officer, may compromise and settle any action as to the damages or
72168 other relief sought.

72169 (2) The risk manager in the Department of Administrative Services may compromise
72170 and settle any action against the state for which the Risk Management Fund may be liable:

72171 (a) on the risk manager's own authority, if the amount of the settlement is \$25,000 or
72172 less;

72173 (b) with the concurrence of the attorney general or the attorney general's representative
72174 and the executive director of the Department of Administrative Services if the amount of the
72175 settlement is \$25,000.01 to \$100,000; or

72176 (c) by complying with the procedures and requirements of [~~Title 63, Chapter 38b~~] Title
72177 63G, Chapter 10, State Settlement Agreements, if the amount of the settlement is more than
72178 \$100,000.

72179 Section 1505. Section **63G-7-603**, which is renumbered from Section 63-30d-603 is
72180 renumbered and amended to read:

72181 ~~[63-30d-603].~~ **63G-7-603. Exemplary or punitive damages prohibited --**
72182 **Governmental entity exempt from execution, attachment, or garnishment.**

72183 (1) (a) A judgment may not be rendered against a governmental entity for exemplary or
72184 punitive damages.

72185 (b) If a governmental entity would be required to pay the judgment under Section

72186 [~~63-30d-902~~] 63G-7-902 or [~~63-30d-903~~] 63G-7-903, the governmental entity shall pay any
72187 judgment or portion of any judgment entered against its employee in the employee's personal
72188 capacity even if the judgment is for or includes exemplary or punitive damages.

72189 (2) Execution, attachment, or garnishment may not issue against a governmental entity.

72190 Section 1506. Section **63G-7-604**, which is renumbered from Section 63-30d-604 is
72191 renumbered and amended to read:

72192 ~~[63-30d-604].~~ **63G-7-604. Limitation of judgments against governmental**
72193 **entity or employee -- Process for adjustment of limits.**

72194 (1) (a) Except as provided in Subsection (2) and subject to Subsection (3), if a
72195 judgment for damages for personal injury against a governmental entity, or an employee whom
72196 a governmental entity has a duty to indemnify, exceeds \$583,900 for one person in any one
72197 occurrence, the court shall reduce the judgment to that amount.

72198 (b) A court may not award judgment of more than the amount in effect under
72199 Subsection (1)(a) for injury or death to one person regardless of whether or not the function
72200 giving rise to the injury is characterized as governmental.

72201 (c) Except as provided in Subsection (2) and subject to Subsection (3), if a judgment
72202 for property damage against a governmental entity, or an employee whom a governmental entity
72203 has a duty to indemnify, exceeds \$233,600 in any one occurrence, the court shall reduce the
72204 judgment to that amount, regardless of whether or not the function giving rise to the damage is
72205 characterized as governmental.

72206 (d) Subject to Subsection (3), there is a \$2,000,000 limit to the aggregate amount of
72207 individual awards that may be awarded in relation to a single occurrence.

72208 (2) The damage limits established in this section do not apply to damages awarded as
72209 compensation when a governmental entity has taken or damaged private property for public use
72210 without just compensation.

72211 (3) The limitations of judgments established in Subsection (1) shall be adjusted
72212 according to the methodology set forth in Subsection (4).

72213 (4) (a) Each even-numbered year, the risk manager shall:

72214 (i) calculate the consumer price index as provided in Sections 1(f)(4) and 1(f)(5),
 72215 Internal Revenue Code;
 72216 (ii) calculate the increase or decrease in the limitation of judgment amounts established
 72217 in this section as a percentage equal to the percentage change in the Consumer Price Index since
 72218 the previous adjustment made by the risk manager or the Legislature; and

72219 (iii) after making an increase or decrease under Subsection (4)(a)(ii), round up the
 72220 limitation of judgment amounts established in Subsection (1) to the nearest \$100.

72221 (b) Each even-numbered year, the risk manager shall make rules, which become
 72222 effective no later than July 1, that establish the new limitation of judgment amounts calculated
 72223 under Subsection (4)(a).

72224 (c) Adjustments made by the risk manager to the limitation of judgment amounts
 72225 established by this section have prospective effect only from the date the rules establishing the
 72226 new limitation of judgment take effect and those adjusted limitations of judgment apply only to
 72227 claims for injuries or losses that occur after the effective date of the rules that establish those
 72228 new limitations of judgment.

72229 Section 1507. Section **63G-7-701**, which is renumbered from Section 63-30d-701 is
 72230 renumbered and amended to read:

Part 7. Payment Process and Sources for Paying Proved

Claims Against Governmental Entities

~~[63-30d-701].~~ **63G-7-701. Payment of claim or judgment against state --**

Presentment for payment.

72235 (1) (a) Each claim, as defined by Subsection [~~63-30d-102~~] 63G-7-102(1), that is
 72236 approved by the state or any final judgment obtained against the state shall be presented for
 72237 payment to:

72238 (i) the state risk manager; or

72239 (ii) the office, agency, institution, or other instrumentality involved, if payment by that
 72240 instrumentality is otherwise permitted by law.

72241 (b) If payment of the claim is not authorized by law, the judgment or claim shall be

72242 presented to the board of examiners for action as provided in Section [~~63-6-10~~] 63G-9-301.

72243 (c) If a judgment against the state is reduced by the operation of Section [~~63-30d-604~~]
72244 63G-7-604, the claimant may submit the excess claim to the board of examiners.

72245 Section 1508. Section **63G-7-702**, which is renumbered from Section 63-30d-702 is
72246 renumbered and amended to read:

72247 [~~63-30d-702~~]. **63G-7-702. Payment of claim or judgment against political**
72248 **subdivision -- Procedure by governing body -- Payment options.**

72249 (1) (a) Each claim approved by a political subdivision or any final judgment obtained
72250 against a political subdivision shall be submitted to the governing body of the political
72251 subdivision.

72252 (b) The governing body shall pay the claim immediately from the general funds of the
72253 political subdivision unless:

72254 (i) the funds are appropriated to some other use or restricted by law or contract for
72255 other purposes; or

72256 (ii) the political subdivision opts to pay the claim or award in installments under
72257 Subsection (2).

72258 (2) If the subdivision is unable to pay the claim or award during the current fiscal year,
72259 it may pay the claim or award in not more than ten ensuing annual installments of equal size or
72260 in whatever other installments that are agreeable to the claimant.

72261 Section 1509. Section **63G-7-703**, which is renumbered from Section 63-30d-703 is
72262 renumbered and amended to read:

72263 [~~63-30d-703~~]. **63G-7-703. Reserve funds for payment of claims or purchase**
72264 **of insurance created by political subdivisions.**

72265 Any political subdivision may create and maintain a reserve fund or, may jointly with one
72266 or more other political subdivisions, make contributions to a joint reserve fund, for the purpose
72267 of:

72268 (1) making payment of claims against the cooperating subdivisions when they become
72269 payable under this chapter; or

72270 (2) for the purpose of purchasing liability insurance to protect the cooperating
72271 subdivisions from any or all risks created by this chapter.

72272 Section 1510. Section **63G-7-704**, which is renumbered from Section 63-30d-704 is
72273 renumbered and amended to read:

72274 ~~[63-30d-704].~~ **63G-7-704. Tax levy by political subdivisions for payment of**
72275 **claims, judgments, or insurance premiums.**

72276 (1) Notwithstanding any provision of law to the contrary, a political subdivision may
72277 levy an annual property tax sufficient to pay:

72278 (a) any claim, settlement, or judgment;

72279 (b) the costs to defend against any claim, settlement, or judgment; or

72280 (c) for the establishment and maintenance of a reserve fund for the payment of claims,
72281 settlements, or judgments that may be reasonably anticipated.

72282 (2) (a) The payments authorized to pay for punitive damages or to pay the premium for
72283 authorized insurance is money spent for a public purpose within the meaning of this section and
72284 Article XIII, Sec. 5, Utah Constitution, even though, as a result of the levy, the maximum levy
72285 as otherwise restricted by law is exceeded.

72286 (b) No levy under this section may exceed .0001 per dollar of taxable value of taxable
72287 property.

72288 (c) The revenues derived from this levy may not be used for any purpose other than
72289 those specified in this section.

72290 Section 1511. Section **63G-7-801**, which is renumbered from Section 63-30d-801 is
72291 renumbered and amended to read:

72292 **Part 8. Self-Insurance and Purchase of Liability Insurance by Governmental Entities**
72293 ~~[63-30d-801].~~ **63G-7-801. Insurance -- Self-insurance or purchase of**
72294 **liability insurance by governmental entity authorized -- Establishment of trust accounts**
72295 **for self-insurance.**

72296 (1) Any governmental entity within the state may self-insure, purchase commercial
72297 insurance, or self-insure and purchase excess commercial insurance in excess of the statutory

72298 limits of this chapter against:

72299 (a) any risk created or recognized by this chapter; or

72300 (b) any action for which a governmental entity or its employee may be held liable.

72301 (2) (a) In addition to any other reasonable means of self-insurance, a governmental

72302 entity may self-insure with respect to specified classes of claims by establishing a trust account.

72303 (b) In creating the trust account, the governmental entity shall ensure that:

72304 (i) the trust account is managed by an independent private trustee; and

72305 (ii) the independent private trustee has authority, with respect to claims covered by the

72306 trust, to:

72307 (A) expend both principal and earnings of the trust account solely to pay the costs of

72308 investigation, discovery, and other pretrial and litigation expenses including attorneys' fees; and

72309 (B) pay all sums for which the governmental entity may be adjudged liable or for which

72310 a compromise settlement may be agreed upon.

72311 (c) Notwithstanding any law to the contrary, the trust agreement between the

72312 governmental entity and the trustee may authorize the trustee to:

72313 (i) employ counsel to defend actions against the entity and its employees;

72314 (ii) protect and safeguard the assets of the trust;

72315 (iii) provide for claims investigation and adjustment services;

72316 (iv) employ expert witnesses and consultants; and

72317 (v) provide other services and functions that are necessary and proper to carry out the

72318 purposes of the trust.

72319 (d) The monies and interest earned on the trust fund may be invested by following the

72320 procedures and requirements of Title 51, Chapter 7, State Money Management Act, and are

72321 subject to audit by the state auditor.

72322 Section 1512. Section **63G-7-802**, which is renumbered from Section 63-30d-802 is

72323 renumbered and amended to read:

72324 ~~[63-30d-802]~~. **63G-7-802. Insurance -- Liability insurance -- Government**

72325 **vehicles operated by employees outside scope of employment.**

72326 (1) A governmental entity that owns vehicles driven by an employee of the
72327 governmental entity with the express or implied consent of the entity, but which, at the time
72328 liability is incurred as a result of an automobile accident, is not being driven and used within the
72329 course and scope of the driver's employment is, subject to Subsection (2), considered to provide
72330 the driver with the insurance coverage required by Title 41, Chapter 12a, Financial
72331 Responsibility of Motor Vehicle Owners and Operators Act.

72332 (2) The liability coverages considered provided are the minimum limits under Section
72333 31A-22-304.

72334 Section 1513. Section **63G-7-803**, which is renumbered from Section 63-30d-803 is
72335 renumbered and amended to read:

72336 **~~[63-30d-803].~~ 63G-7-803. Liability insurance -- Construction of policy not**
72337 **in compliance with act.**

72338 (1) If any insurance policy, rider, or endorsement issued after June 30, 2004 that was
72339 purchased to insure against any risk that may arise as a result of the application of this chapter
72340 contains any condition or provision not in compliance with the requirements of this chapter, that
72341 policy, rider, or endorsement is not invalid, but shall be construed and applied according to the
72342 conditions and provisions that would have applied had the policy, rider, or endorsement been in
72343 full compliance with this chapter, provided that the policy is otherwise valid.

72344 (2) If any insurance policy, rider, or endorsement issued after June 30, 1966 and before
72345 July 1, 2004 that was purchased to insure against any risk that may arise as a result of the
72346 application of this chapter contains any condition or provision not in compliance with the
72347 requirements of the chapter, that policy, rider, or endorsement is not invalid, but shall be
72348 construed and applied according to the conditions and provisions that would have applied had
72349 the policy, rider, or endorsement been in full compliance with this chapter, provided that the
72350 policy is otherwise valid.

72351 Section 1514. Section **63G-7-804**, which is renumbered from Section 63-30d-804 is
72352 renumbered and amended to read:

72353 **~~[63-30d-804].~~ 63G-7-804. Liability insurance -- Methods for purchase or**

72354 **renewal.**

72355 (1) Except as provided in Subsection (2), a contract or policy of insurance may be
72356 purchased or renewed under this chapter only upon public bid to be let to the lowest and best
72357 bidder.

72358 (2) The purchase or renewal of insurance by the state shall be conducted in accordance
72359 with the provisions of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code.

72360 Section 1515. Section **63G-7-805**, which is renumbered from Section 63-30d-805 is
72361 renumbered and amended to read:

72362 ~~[63-30d-805].~~ **63G-7-805. Liability insurance -- Insurance for employees**
72363 **authorized -- No right to indemnification or contribution from governmental agency.**

72364 (1) (a) A governmental entity may insure any or all of its employees against liability, in
72365 whole or in part, for injury or damage resulting from an act or omission occurring during the
72366 performance of an employee's duties, within the scope of employment, or under color of
72367 authority, regardless of whether or not that entity is immune from suit for that act or omission.

72368 (b) Any expenditure for that insurance is for a public purpose.

72369 (c) Under any contract or policy of insurance providing coverage on behalf of a
72370 governmental entity or employee for any liability defined by this section, regardless of the
72371 source of funding for the coverage, the insurer has no right to indemnification or contribution
72372 from the governmental entity or its employee for any loss or liability covered by the contract or
72373 policy.

72374 (2) Any surety covering a governmental entity or its employee under any faithful
72375 performance surety bond has no right to indemnification or contribution from the governmental
72376 entity or its employee for any loss covered by that bond based on any act or omission for which
72377 the governmental entity would be obligated to defend or indemnify under the provisions of
72378 Section [~~63-30d-902~~] 63G-7-902.

72379 Section 1516. Section **63G-7-901**, which is renumbered from Section 63-30d-901 is
72380 renumbered and amended to read:

72381 **Part 9. Coverage and Representation of State Entities and Employees**

72382 ~~[63-30d-901]~~. 63G-7-901. Expenses of attorney general, general counsel for
72383 state judiciary, and general counsel for the Legislature in representing the state, its
72384 branches, members, or employees.

72385 (1) (a) The Office of the Attorney General has primary responsibility to provide legal
72386 representation to the judicial, executive, and legislative branches of state government in cases
72387 where coverage under the Risk Management Fund created by Section 63A-4-201 applies.

72388 (b) When the attorney general has primary responsibility to provide legal representation
72389 to the judicial or legislative branches, the attorney general shall consult with the general counsel
72390 for the state judiciary and with the general counsel for the Legislature, to solicit their assistance
72391 in defending their respective branch, and in determining strategy and making decisions
72392 concerning the disposition of those claims.

72393 (c) Notwithstanding Subsection (1)(b), the decision for settlement of monetary claims in
72394 those cases lies with the attorney general and the state risk manager.

72395 (2) (a) If the Judicial Council, after consultation with the general counsel for the state
72396 judiciary, determines that the Office of the Attorney General cannot adequately defend the state
72397 judiciary, its members, or employees because of a conflict of interest, separation of powers
72398 concerns, or other political or legal differences, the Judicial Council may direct its general
72399 counsel to separately represent and defend it.

72400 (b) If the general counsel for the state judiciary undertakes independent legal
72401 representation of the state judiciary, its members, or employees, the general counsel shall notify
72402 the state risk manager and the attorney general in writing before undertaking that
72403 representation.

72404 (c) If the state judiciary elects to be represented by its own counsel under this section,
72405 the decision for settlement of claims against the state judiciary, its members, or employees,
72406 where Risk Management Fund coverage applies, lies with the general counsel for the state
72407 judiciary and the state risk manager.

72408 (3) (a) If the Legislative Management Committee, after consultation with the general
72409 counsel for the Legislature, determines that the Office of the Attorney General cannot

72410 adequately defend the legislative branch, its members, or employees because of a conflict of
 72411 interest, separation of powers concerns, or other political or legal differences, the Legislative
 72412 Management Committee may direct its general counsel to separately represent and defend it.

72413 (b) If the general counsel for the Legislature undertakes independent legal
 72414 representation of the Legislature, its members, or employees, the general counsel shall notify the
 72415 state risk manager and the attorney general in writing before undertaking that representation.

72416 (c) If the legislative branch elects to be represented by its own counsel under this
 72417 section, the decision for settlement of claims against the legislative branch, its members, or
 72418 employees, where Risk Management Fund coverage applies, lies with the general counsel for
 72419 the Legislature and the state risk manager.

72420 (4) (a) Notwithstanding the provisions of Section 67-5-3 or any other provision of the
 72421 Utah Code, the attorney general, the general counsel for the state judiciary, and the general
 72422 counsel for the Legislature may bill the Department of Administrative Services for all costs and
 72423 legal fees expended by their respective offices, including attorneys' and secretarial salaries, in
 72424 representing the state or any indemnified employee against any claim for which the Risk
 72425 Management Fund may be liable and in advising state agencies and employees regarding any of
 72426 those claims.

72427 (b) The risk manager shall draw funds from the Risk Management Fund for this
 72428 purpose.

72429 Section 1517. Section **63G-7-902**, which is renumbered from Section 63-30d-902 is
 72430 renumbered and amended to read:

72431 ~~[63-30d-902].~~ **63G-7-902. Defending government employee -- Request --**
 72432 **Cooperation -- Payment of judgment.**

72433 (1) Except as provided in Subsections (2) and (3), a governmental entity shall defend
 72434 any action brought against its employee arising from an act or omission occurring:

- 72435 (a) during the performance of the employee's duties;
- 72436 (b) within the scope of the employee's employment; or
- 72437 (c) under color of authority.

72438 (2) (a) Before a governmental entity may defend its employee against a claim, the
72439 employee shall make a written request to the governmental entity to defend ~~[him]~~ the employee:

72440 (i) within ten days after service of process upon ~~[him]~~ the employee; or

72441 (ii) within a longer period that would not prejudice the governmental entity in
72442 maintaining a defense on ~~[his]~~ the employee's behalf; or

72443 (iii) within a period that would not conflict with notice requirements imposed on the
72444 entity in connection with insurance carried by the entity relating to the risk involved.

72445 (b) If the employee fails to make a request, or fails to reasonably cooperate in the
72446 defense, including the making of an offer of judgment under Rule 68, Utah Rules of Civil
72447 Procedure, Offers of Judgment, the governmental entity need not defend or continue to defend
72448 the employee, nor pay any judgment, compromise, or settlement against the employee in respect
72449 to the claim.

72450 (3) The governmental entity may decline to defend, or, subject to any court rule or
72451 order, decline to continue to defend, an action against an employee if it determines:

72452 (a) that the act or omission in question did not occur:

72453 (i) during the performance of the employee's duties;

72454 (ii) within the scope of ~~[his]~~ the employee's employment; or

72455 (iii) under color of authority; or

72456 (b) that the injury or damage on which the claim was based resulted from conditions set
72457 forth in Subsection ~~[63-30d-202]~~ 63G-7-202(3)(c).

72458 (4) (a) Within ten days of receiving a written request to defend an employee, the
72459 governmental entity shall inform the employee whether or not it shall provide a defense, and, if
72460 it refuses to provide a defense, the basis for its refusal.

72461 (b) A refusal by the entity to provide a defense is not admissible for any purpose in the
72462 action in which the employee is a defendant.

72463 (5) Except as provided in Subsection (6), if a governmental entity conducts the defense
72464 of an employee, the governmental entity shall pay any judgment based upon the claim.

72465 (6) A governmental entity may conduct the defense of an employee under a reservation

72466 of rights under which the governmental entity reserves the right not to pay a judgment if any of
 72467 the conditions set forth in Subsection (3) are established.

72468 (7) (a) Nothing in this section or Section [~~63-30d-903~~] 63G-7-903 affects the obligation
 72469 of a governmental entity to provide insurance coverage according to the requirements of
 72470 Subsection 41-12a-301(3) and Section [~~63-30d-802~~] 63G-7-802.

72471 (b) When a governmental entity declines to defend, or declines to continue to defend,
 72472 an action against its employee under any of the conditions set forth in Subsection (3), it shall
 72473 still provide coverage up to the amount specified in Section 31A-22-304.

72474 Section 1518. Section **63G-7-903**, which is renumbered from Section 63-30d-903 is
 72475 renumbered and amended to read:

72476 [~~63-30d-903~~]. **63G-7-903. Recovery of judgment paid and defense costs by**
 72477 **government employee.**

72478 (1) Subject to Subsection (2), if an employee pays a judgment entered against him, or
 72479 any portion of it, that the governmental entity is required to pay under Section [~~63-30d-902~~]
 72480 63G-7-902, the employee may recover from the governmental entity the amount of the payment
 72481 and the reasonable costs incurred in the employee's defense.

72482 (2) (a) If a governmental entity does not conduct the defense of an employee against a
 72483 claim, or conducts the defense under a reservation of rights as provided in Subsection
 72484 [~~63-30d-902~~] 63G-7-902(6), the employee may recover from the governmental entity under
 72485 Subsection (1) if the employee can prove that none of the conditions set forth in Subsection
 72486 [~~63-30d-202~~] 63G-7-202(3)(c) applied.

72487 (b) The employee has the burden of proof that none of the conditions set forth in
 72488 Subsection [~~63-30d-202~~] 63G-7-202(3)(c) applied.

72489 Section 1519. Section **63G-7-904**, which is renumbered from Section 63-30d-904 is
 72490 renumbered and amended to read:

72491 [~~63-30d-904~~]. **63G-7-904. Indemnification of governmental entity by**
 72492 **employee not required.**

72493 If a governmental entity pays all or part of a judgment, compromise, or settlement based

72494 on a claim against the governmental entity or an employee, the employee is not required to
72495 indemnify the governmental entity for the payment.

72496 Section 1520. Section **63G-8-101** is enacted to read:

72497 **CHAPTER 8. IMMUNITY FOR PERSONS PERFORMING**
72498 **VOLUNTARY SERVICES ACT**

72499 **Part 1. General Provisions**

72500 **63G-8-101. Title.**

72501 This chapter is known as the "Immunity for Persons Performing Voluntary Services
72502 Act."

72503 Section 1521. Section **63G-8-102**, which is renumbered from Section 63-30b-1 is
72504 renumbered and amended to read:

72505 **[63-30b-1]. 63G-8-102. Definitions.**

72506 As used in this act:

72507 (1) "Public entity" means the state or any political subdivision of it, or any office,
72508 department, division, board, agency, commission, council, authority, institution, hospital,
72509 school, college, university, or other instrumentality of the state or any political subdivision.

72510 (2) "Compensation" means payment for services in any form whatsoever, whether per
72511 diem or otherwise, except where the payment is solely for the purpose of paying subsistence,
72512 travel, or other expenses incurred by the person performing those services.

72513 Section 1522. Section **63G-8-201**, which is renumbered from Section 63-30b-2 is
72514 renumbered and amended to read:

72515 **Part 2. Immunity for Voluntary Services**

72516 **[63-30b-2]. 63G-8-201. Voluntary services -- Immunity from liability --**
72517 **Exceptions.**

72518 Any person performing services on a voluntary basis, without compensation, under the
72519 general supervision of, and on behalf of any public entity, shall be immune from liability with
72520 respect to any decisions or actions, other than in connection with the operation of a motor
72521 vehicle, taken during the course of those services, unless it is established that such decisions or

72522 actions were grossly negligent, not made in good faith, or were made maliciously.

72523 Section 1523. Section **63G-8-202**, which is renumbered from Section 63-30b-3 is
72524 renumbered and amended to read:

72525 ~~[63-30b-3].~~ **63G-8-202. Action under Governmental Immunity Act of Utah**
72526 **permitted.**

72527 Nothing in this chapter shall preclude legal action against a public entity for any injury
72528 occurring as a result of the decisions or actions taken by a person performing services on a
72529 voluntary basis for that entity, where such action would otherwise be permitted under [~~Title 63,~~
72530 ~~Chapter 30d]~~ Title 63G, Chapter 7, Governmental Immunity Act of Utah.

72531 Section 1524. Section **63G-8-301**, which is renumbered from Section 63-30b-4 is
72532 renumbered and amended to read:

Part 3. Application

72534 ~~[63-30b-4].~~ **63G-8-301. Applicability of act.**

72535 This act shall apply to any actions or decisions taken subsequent to the effective date of
72536 this act.

72537 Section 1525. Section **63G-9-101** is enacted to read:

CHAPTER 9. BOARD OF EXAMINERS ACT

Part 1. General Provisions

72540 **63G-9-101. Title.**

72541 This chapter is known as the "Board of Examiners Act."

72542 Section 1526. Section **63G-9-201**, which is renumbered from Section 63-6-1 is
72543 renumbered and amended to read:

Part 2. Board of Examiners

72545 ~~[63-6-1].~~ **63G-9-201. Members -- Functions.**

72546 (1) As used in this chapter:

72547 (a) "Political subdivision" means any county, city, town, school district, community
72548 development and renewal agency, special improvement or taxing district, local district, special
72549 service district, an entity created by an interlocal agreement adopted under Title 11, Chapter 13,

72550 Interlocal Cooperation Act, or other governmental subdivision or public corporation.

72551 (b) "State" means the state of Utah, and includes each office, department, division,
72552 agency, authority, commission, board, institution, college, university, Children's Justice Center,
72553 or other instrumentality of the state.

72554 (2) The governor, the state auditor, and the attorney general shall constitute a Board of
72555 Examiners, with power to examine all claims against the state or a political subdivision, for the
72556 payment of which funds appropriated by the Legislature or derived from any other source are
72557 not available.

72558 (3) No claim against the state or a political subdivision, for the payment of which
72559 specifically designated funds are required to be appropriated by the Legislature shall be passed
72560 upon by the Legislature without having been considered and acted upon by the Board of
72561 Examiners.

72562 (4) The governor shall be the president, and the state auditor shall be the secretary of
72563 the board, and in the absence of either an officer pro tempore may be elected from among the
72564 members of the board.

72565 Section 1527. Section **63G-9-202**, which is renumbered from Section 63-6-1.5 is
72566 renumbered and amended to read:

72567 **[63-6-1.5]. 63G-9-202. Procedures -- Adjudicative proceedings.**

72568 The Board of Examiners shall comply with the procedures and requirements of [~~Title 63,~~
72569 ~~Chapter 46b;~~ Title 63G, Chapter 4, Administrative Procedures Act. in its adjudicative
72570 proceedings.

72571 Section 1528. Section **63G-9-203**, which is renumbered from Section 63-6-2 is
72572 renumbered and amended to read:

72573 **[63-6-2]. 63G-9-203. Meetings.**

72574 The meetings of the board shall be held upon the call of the president or any two
72575 members.

72576 Section 1529. Section **63G-9-204**, which is renumbered from Section 63-6-3 is
72577 renumbered and amended to read:

72606 ~~[63-6-10]~~. **63G-9-301**. **Audit and approval of claims -- Overexpenditure by**
72607 **agencies.**

72608 (1) (a) The Board of Examiners shall audit any claim presented to it, if the settlement of
72609 the claim is required by law.

72610 (b) If the claim is approved, the board shall transmit it to the Legislature with a
72611 statement of the reasons for the approval.

72612 (2) When an agency's line item appropriation has been overexpended and a written
72613 report is submitted to the board as required by Section ~~[63-38-10]~~ 63J-1-405, the board shall
72614 review the report and either:

72615 (a) recommend and submit to the Legislature any supplemental appropriations or
72616 corrective legislation that may be needed; or

72617 (b) recommend other internal procedures or policies that will make an overexpenditure
72618 in the future unlikely.

72619 Section 1534. Section **63G-9-302**, which is renumbered from Section 63-6-11 is
72620 renumbered and amended to read:

72621 ~~[63-6-11]~~. **63G-9-302**. **Form for presentment of claim against the state or**
72622 **political subdivision.**

72623 Any person having a claim against the state or a political subdivision, for which funds
72624 have not been provided for the payment thereof, or the settlement of which is not otherwise
72625 provided for by law, must present the same to the Board of Examiners, accompanied by a
72626 statement showing the facts constituting the claim.

72627 Section 1535. Section **63G-9-303**, which is renumbered from Section 63-6-12 is
72628 renumbered and amended to read:

72629 ~~[63-6-12]~~. **63G-9-303**. **Meeting to examine claims -- Notice of meeting.**

72630 At least 60 days preceding the meeting of each Legislature the board must hold a session
72631 for the purpose of examining the claims referred to in Section ~~[63-6-11]~~ 63G-9-302, and may
72632 adjourn from time to time until the work is completed. The board must cause notice of such
72633 meeting or meetings to be published in some newspaper at the seat of government and such

72634 other newspapers as may be determined by the board for such time as the board may prescribe.

72635 Section 1536. Section **63G-9-304**, which is renumbered from Section 63-6-13 is
72636 renumbered and amended to read:

72637 ~~[63-6-13]~~. **63G-9-304**. **Adjustment of claims -- Recommendations to**
72638 **Legislature.**

72639 (1) The board must, at the time designated, proceed to examine and adjust all claims
72640 referred to in Section ~~[63-6-11]~~ 63G-9-302, and may hear evidence in support of or against
72641 them, and shall report to the Legislature the facts and recommendations concerning them as it
72642 may think proper.

72643 (2) In making its recommendations, the board may state and use any official or personal
72644 knowledge which any member of the board may have touching such claims.

72645 (3) The board shall not pass upon or send to the Legislature any claim for which the
72646 state or a political subdivision would not otherwise be liable were it not for its sovereign
72647 immunity.

72648 (4) Notwithstanding Subsection (3), claims wherein the state or a political subdivision
72649 would be liable, were it not for its sovereign immunity, whether recommended by the board for
72650 approval or disapproval, shall be reported by the board to the Legislature with appropriate
72651 findings and recommendations as above provided.

72652 Section 1537. Section **63G-9-305**, which is renumbered from Section 63-6-14 is
72653 renumbered and amended to read:

72654 ~~[63-6-14]~~. **63G-9-305**. **Publication of abstract of claims allowed and rejected.**

72655 The board must make up its report and recommendations at least thirty days before the
72656 meeting of the Legislature; and a brief abstract of the report, showing the claims rejected, and
72657 those allowed and the amounts thereof, must be published in a newspaper published at the seat
72658 of government before the meeting of the Legislature for such time as the board may prescribe.

72659 Section 1538. Section **63G-9-306**, which is renumbered from Section 63-6-16 is
72660 renumbered and amended to read:

72661 ~~[63-6-16]~~. **63G-9-306**. **Reconsideration of rejected claims.**

72662 The board shall not entertain for a third time a demand against the state or a political
72663 subdivision once rejected by it or by the Legislature, unless the facts or reasons are presented to
72664 the board as in actions between private parties would furnish sufficient ground for granting a
72665 new trial.

72666 Section 1539. Section **63G-9-401**, which is renumbered from Section 63-6-17 is
72667 renumbered and amended to read:

72668 **Part 4. Appeal of Claim Reviews**

72669 **[63-6-17]. 63G-9-401. Appeal to Legislature.**

72670 Any person interested who is aggrieved by the disapproval of a claim by the board may
72671 appeal from its decision to the Legislature by filing with the board a notice thereof, and upon
72672 the receipt of such notice the board must transmit the demand and all the papers accompanying
72673 the same, with a statement of the evidence taken before it, to the Legislature.

72674 Section 1540. Section **63G-10-101** is enacted to read:

72675 **CHAPTER 10. STATE SETTLEMENT AGREEMENTS ACT**

72676 **Part 1. General Provisions**

72677 **63G-10-101. Title.**

72678 This chapter is known as the "State Settlement Agreements Act."

72679 Section 1541. Section **63G-10-102**, which is renumbered from Section 63-38b-101 is
72680 renumbered and amended to read:

72681 **[63-38b-101]. 63G-10-102. Definitions.**

72682 As used in this chapter:

72683 (1) (a) "Action settlement agreement" includes a stipulation, consent decree, settlement
72684 agreement, or any other legally binding document or representation that resolves a threatened or
72685 pending lawsuit between the state and another party by requiring the state to take legally
72686 binding action.

72687 (b) "Action settlement agreement" includes stipulations, consent decrees, settlement
72688 agreements, and other legally binding documents or representations resolving a dispute between
72689 the state and another party when the state is required to pay money and required to take legally

72690 binding action.

72691 (c) "Action settlement agreement" does not include:

72692 (i) the internal process established by the Department of Transportation to resolve
72693 construction contract claims;

72694 (ii) any resolution of an employment dispute or claim made by an employee of the state
72695 of Utah against the state as employer;

72696 (iii) adjudicative orders issued by the State Tax Commission, the Public Service
72697 Commission, the Labor Commission, or the Department of Workforce Services; or

72698 (iv) the settlement of disputes arising from audits, defaults, or breaches of permits,
72699 contracts of sale, easements, or leases by the School and Institutional Trust Lands
72700 Administration.

72701 (2) (a) "Agency" means each department, commission, board, council, agency,
72702 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
72703 unit, bureau, panel, or other administrative unit of the state.

72704 (b) "Agency" includes the legislative branch, the judicial branch, the attorney general's
72705 office, the State Office of Education, the Board of Regents, the institutional councils of each
72706 higher education institution, and each higher education institution.

72707 (3) (a) "Financial settlement agreement" includes a stipulation, consent decree,
72708 settlement agreement, and any other legally binding document or representation that resolves a
72709 dispute between the state and another party exclusively by requiring the payment of money from
72710 one party to the other.

72711 (b) "Financial settlement agreement" does not include:

72712 (i) agreements made under the internal process established by the Department of
72713 Transportation to resolve construction contract claims;

72714 (ii) adjudicative orders issued by the State Tax Commission, Public Service
72715 Commission, Labor Commission, or the Department of Workforce Services;

72716 (iii) the settlement of disputes arising from audits, defaults, or breaches of permits,
72717 contracts of sale, easements, or leases by the School and Institutional Trust Lands

72718 Administration; or
72719 (iv) agreements made under the internal processes established by the Division of
72720 Facilities Construction and Management or by law to resolve construction contract claims made
72721 against the state by contractors or subcontractors.

72722 (4) "Government entities" means the state and its political subdivisions.

72723 Section 1542. Section **63G-10-103**, which is renumbered from Section 63-38b-102 is
72724 renumbered and amended to read:

72725 ~~[63-38b-102]~~. **63G-10-103. Notice of voidableness of settlement agreements.**

72726 Each financial settlement agreement that might cost government entities more than
72727 \$100,000 that is executed by an agency in violation of this chapter, and each action settlement
72728 agreement that is executed by an agency in violation of this chapter, is voidable by the governor
72729 or the Legislature as provided in this chapter.

72730 Section 1543. Section **63G-10-201**, which is renumbered from Section 63-38b-201 is
72731 renumbered and amended to read:

72732 **Part 2. Financial Settlement Agreements**

72733 ~~[63-38b-201]~~. **63G-10-201. Governor to approve financial settlement**
72734 **agreements.**

72735 (1) Before legally binding the state by executing a financial settlement agreement that
72736 might cost government entities more than \$100,000 to implement, an agency shall submit the
72737 proposed financial settlement agreement to the governor for ~~[his]~~ the governor's approval or
72738 rejection.

72739 (2) The governor shall approve or reject each financial settlement agreement.

72740 (3) (a) If the governor approves the financial settlement agreement, the agency may
72741 execute the agreement.

72742 (b) If the governor rejects the financial settlement agreement, the agency may not
72743 execute the agreement.

72744 (4) If an agency executes a financial settlement agreement without obtaining the
72745 governor's approval under this section, the governor may issue an executive order declaring the

72746 settlement agreement void.

72747 Section 1544. Section **63G-10-202**, which is renumbered from Section 63-38b-202 is
72748 renumbered and amended to read:

72749 ~~[63-38b-202]~~. **63G-10-202**. **Legislative review and approval of financial**
72750 **settlement agreements.**

72751 (1) (a) Before legally binding the state by executing a financial settlement agreement
72752 that might cost government entities more than \$500,000 to implement, an agency shall:

72753 (i) submit the proposed financial settlement agreement to the governor for ~~[his]~~ the
72754 governor's approval or rejection as required by Section ~~[63-38b-201]~~ 63G-10-201; and

72755 (ii) if the governor approves the financial settlement agreement, submit the financial
72756 settlement agreement to the Legislative Management Committee for its review and
72757 recommendations.

72758 (b) The Legislative Management Committee shall review the financial settlement
72759 agreement and may:

72760 (i) recommend that the agency execute the financial settlement agreement;

72761 (ii) recommend that the agency reject the financial settlement agreement; or

72762 (iii) recommend to the governor that ~~[he]~~ the governor call a special session of the
72763 Legislature to review and approve or reject the financial settlement agreement.

72764 (2) (a) Before legally binding the state by executing a financial settlement agreement
72765 that might cost government entities more than \$1,000,000 to implement, an agency shall:

72766 (i) submit the proposed financial settlement agreement to the governor for ~~[his]~~ the
72767 governor's approval or rejection as required by Section ~~[63-38b-201]~~ 63G-10-201; and

72768 (ii) if the governor approves the financial settlement agreement, submit the financial
72769 settlement agreement to the Legislature for its approval in an annual general session or a special
72770 session.

72771 (b) (i) If the Legislature approves the financial settlement agreement, the agency may
72772 execute the agreement.

72773 (ii) If the Legislature rejects the financial settlement agreement, the agency may not

72774 execute the agreement.

72775 (c) If an agency executes a financial settlement agreement without obtaining the
72776 Legislature's approval under this Subsection (2):

72777 (i) the governor may issue an executive order declaring the settlement agreement void;

72778 or

72779 (ii) the Legislature may pass a joint resolution declaring the settlement agreement void.

72780 Section 1545. Section **63G-10-301**, which is renumbered from Section 63-38b-301 is
72781 renumbered and amended to read:

72782 **Part 3. Action Settlement Agreements**

72783 ~~[63-38b-301].~~ **63G-10-301. Cost evaluation of action settlement**

72784 **agreements.**

72785 (1) Before legally binding the state to an action settlement agreement that might cost
72786 the state a total of \$100,000 or more to implement, an agency shall estimate the cost of
72787 implementing the action settlement agreement and submit that cost estimate to the governor and
72788 the Legislative Management Committee.

72789 (2) The Legislative Management Committee may:

72790 (a) direct its staff to make an independent cost estimate of the cost of implementing the
72791 action settlement agreement; and

72792 (b) affirmatively adopt a cost estimate as the benchmark for determining which
72793 authorizations established by this part are necessary.

72794 Section 1546. Section **63G-10-302**, which is renumbered from Section 63-38b-302 is
72795 renumbered and amended to read:

72796 ~~[63-38b-302].~~ **63G-10-302. Governor to approve action settlement**

72797 **agreements.**

72798 (1) Before legally binding the state by executing an action settlement agreement that
72799 might cost government entities more than \$100,000 to implement, an agency shall submit the
72800 proposed settlement agreement to the governor for [his] the governor's approval or rejection.

72801 (2) The governor shall approve or reject each action settlement agreement.

72802 (3) (a) If the governor approves the action settlement agreement, the agency may
72803 execute the agreement.

72804 (b) If the governor rejects the action settlement agreement, the agency may not execute
72805 the agreement.

72806 (4) If an agency executes an action settlement agreement without obtaining the
72807 governor's approval under this section, the governor may issue an executive order declaring the
72808 settlement agreement void.

72809 Section 1547. Section **63G-10-303**, which is renumbered from Section 63-38b-303 is
72810 renumbered and amended to read:

72811 ~~[63-38b-303]~~. **63G-10-303**. **Legislative review and approval of action**
72812 **settlement agreements.**

72813 (1) (a) Before legally binding the state by executing an action settlement agreement that
72814 might cost government entities more than \$500,000 to implement, an agency shall:

72815 (i) submit the proposed action settlement agreement to the governor for ~~[his]~~ the
72816 governor's approval or rejection as required by Section ~~[63-38b-302]~~ 63G-10-302; and

72817 (ii) if the governor approves the action settlement agreement, submit the action
72818 settlement agreement to the Legislative Management Committee for its review and
72819 recommendations.

72820 (b) The Legislative Management Committee shall review the action settlement
72821 agreement and may:

72822 (i) recommend that the agency execute the settlement agreement;

72823 (ii) recommend that the agency reject the settlement agreement; or

72824 (iii) recommend to the governor that ~~[he]~~ the governor call a special session of the
72825 Legislature to review and approve or reject the settlement agreement.

72826 (2) (a) Before legally binding the state by executing an action settlement agreement that
72827 might cost government entities more than \$1,000,000 to implement, an agency shall:

72828 (i) submit the proposed action settlement agreement to the governor for ~~[his]~~ the
72829 governor's approval or rejection as required by Section ~~[63-38b-302]~~ 63G-10-302; and

72830 (ii) if the governor approves the action settlement agreement, submit the action
72831 settlement agreement to the Legislature for its approval in an annual general session or a special
72832 session.

72833 (b) (i) If the Legislature approves the action settlement agreement, the agency may
72834 execute the agreement.

72835 (ii) If the Legislature rejects the action settlement agreement, the agency may not
72836 execute the agreement.

72837 (c) If an agency executes an action settlement agreement without obtaining the
72838 Legislature's approval under this Subsection (2):

72839 (i) the governor may issue an executive order declaring the action settlement agreement
72840 void; or

72841 (ii) the Legislature may pass a joint resolution declaring the action settlement agreement
72842 void.

72843 Section 1548. Section **63G-10-401**, which is renumbered from Section 63-38b-401 is
72844 renumbered and amended to read:

72845 **Part 4. Condemnation and Inverse Condemnation Settlement Agreements**

72846 **~~[63-38b-401].~~ 63G-10-401. Condemnation, inverse condemnation**
72847 **settlements involving the Department of Transportation.**

72848 (1) Notwithstanding the provisions of this chapter, the Department of Transportation
72849 need not obtain the approval of the governor or the Legislature for financial or action settlement
72850 agreements that resolve condemnation or inverse condemnation cases.

72851 (2) Financial settlement agreements involving condemnation or inverse condemnation
72852 cases for \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal
72853 shall be presented to the Transportation Commission for approval or rejection.

72854 (3) (a) Financial settlement agreements involving condemnation or inverse condemnation
72855 cases for more than \$2,000,000 over the Department of Transportation's original appraisal and
72856 all action settlement agreements that resolve condemnation or inverse condemnation cases shall
72857 be presented:

72858 (i) to the Transportation Commission for approval or rejection; and
72859 (ii) if the financial or action settlement agreement is approved by the Transportation
72860 Commission, to the Legislative Management Committee.

72861 (b) The Legislative Management Committee may recommend approval or rejection of
72862 the financial or action settlement agreement.

72863 (4) (a) The Department of Transportation may not enter into a financial settlement
72864 agreement that resolves a condemnation or inverse condemnation case and requires payment of
72865 \$1,000,000 to \$2,000,000 over the Department of Transportation's original appraisal until the
72866 Transportation Commission has approved the agreement.

72867 (b) The Department of Transportation may not enter into a financial settlement
72868 agreement that resolves a condemnation or inverse condemnation case and requires payment of
72869 more than \$2,000,000 over the Department of Transportation's original appraisal or enter into
72870 an action settlement agreement that resolves a condemnation or inverse condemnation case
72871 until:

72872 (i) the Transportation Commission has approved the agreement; and

72873 (ii) the Legislative Management Committee has reviewed the agreement.

72874 Section 1549. Section **63I-1-101**, which is renumbered from Section 63-55-101 is
72875 renumbered and amended to read:

72876 **TITLE 63I. OVERSIGHT**

72877 **CHAPTER 1. LEGISLATIVE OVERSIGHT AND SUNSET ACT**

72878 **Part 1. General Provisions**

72879 ~~[63-55-101]~~. **63I-1-101. Title.**

72880 (1) This title is known as "Oversight."

72881 (2) This chapter is known as the "Legislative Oversight and Sunset Act."

72882 Section 1550. Section **63I-1-102**, which is renumbered from Section 63-55-102 is
72883 renumbered and amended to read:

72884 ~~[63-55-102]~~. **63I-1-102. Agency defined -- Periodic termination of statutes**
72885 **and agencies -- Legislative review.**

72886 (1) As used in this chapter, "agency" means any state authority, board, commission,
72887 department, division, office, or other agency, and the statute that established it.

72888 (2) The Legislature finds that the state should not regulate any area unless the
72889 regulation is necessary to protect the health, safety, and welfare of the public.

72890 (3) In order to make state government more productive and responsive to the people, it
72891 is necessary to place many of the statutes and agencies of state government under Part 2 of this
72892 chapter on a reauthorization schedule. Any statute or agency scheduled for termination under
72893 this chapter is terminated unless the Legislature through affirmative act reauthorizes its
72894 existence. The continued existence of a statute or agency subject to this chapter may not be
72895 reauthorized for a period of more than ten years.

72896 (4) It is the purpose of this chapter to terminate any statute or agency that is not
72897 meeting a clear public purpose, and to improve the ability of state government to meet and fulfill
72898 legitimate public purposes.

72899 Section 1551. Section **63I-1-103**, which is renumbered from Section 63-55-103 is
72900 renumbered and amended to read:

72901 **~~[63-55-103].~~ 63I-1-103. Guidelines for conduct of review.**

72902 (1) (a) Any statute or agency scheduled for termination may be reviewed by an interim
72903 committee at the direction of:

- 72904 (i) Legislative Management Committee;
72905 (ii) the chairs of an interim committee; or
72906 (iii) an interim committee as approved by motion and majority vote of its membership.

72907 (b) The review shall begin not later than one year before scheduled termination and end
72908 before January 1 of the year in which termination is scheduled.

72909 (2) In determining whether to reauthorize the statute or agency, the agency overseeing
72910 the statute or agency scheduled for termination shall clearly identify for the interim committee
72911 the public purpose and interest for which each statute or agency was originally created and
72912 clearly identify whether that public purpose and interest is still relevant.

72913 (3) The interim committee shall then consider:

72914 (a) the extent to which the statute or agency has operated in the public interest and any
72915 areas in which the statute or agency needs to improve its ability to operate in the public interest;

72916 (b) the extent to which existing statutes interfere with or assist the legitimate functions
72917 of the statute or agency, and any other circumstances including budgetary, resource, and
72918 personnel matters that have a bearing on the capacity of the statute or agency to serve the public
72919 interest;

72920 (c) the extent to which the public has been encouraged to participate in the adoption of
72921 the rules established in connection with the statute or agency;

72922 (d) the extent to which the statute's provisions or agency's programs and services are
72923 duplicative of those offered by other statutes or state agencies;

72924 (e) the extent to which the objectives of the statute or agency have been accomplished
72925 and their public benefit;

72926 (f) the adverse effect on the public of termination of the statute or agency; and

72927 (g) any other matter relevant to the review.

72928 (4) It is the responsibility of any agency scheduled for termination or any agency which
72929 has oversight responsibilities for a statute scheduled for termination to seek its reauthorization
72930 with the Legislature.

72931 Section 1552. Section **63I-1-104**, which is renumbered from Section 63-55-104 is
72932 renumbered and amended to read:

72933 **[63-55-104]. 63I-1-104. Terminated authority -- Winding up of affairs.**

72934 Any agency terminated under this chapter may continue in existence, if necessary to
72935 wind up its affairs, until July 1 of the year next succeeding the year of termination.

72936 Section 1553. Section **63I-1-105**, which is renumbered from Section 63-55-105 is
72937 renumbered and amended to read:

72938 **[63-55-105]. 63I-1-105. Reviewing committee -- Report of**
72939 **recommendations.**

72940 The reviewing committee shall submit a report of its recommendations, including
72941 proposed legislation and recommendations concerning the statute or agency, to the Legislature

72942 before January 1 of the year in which the agency is scheduled for termination.

72943 Section 1554. Section **63I-1-106**, which is renumbered from Section 63-55-106 is
72944 renumbered and amended to read:

72945 ~~[63-55-106]~~. **63I-1-106. Legislative reauthorization of statute or agency.**

72946 If the Legislature determines that the public interest requires the continued existence of
72947 the statute or agency, it shall reauthorize the existence of the statute or agency in this chapter.

72948 Section 1555. Section **63I-1-209**, which is renumbered from Section 63-55-209 is
72949 renumbered and amended to read:

72950 ~~[63-55-209]~~. **63I-1-209. Repeal dates, Title 9.**

72951 (1) Title 9, Chapter 1, Part 8, Commission on National and Community Service Act, is
72952 repealed July 1, 2014.

72953 (2) Title 9, Chapter 3, Part 3, Heber Valley Historic Railroad Authority, is repealed July
72954 1, 2009.

72955 (3) Title 9, Chapter 4, Part 9, Utah Housing Corporation Act, is repealed July 1, 2016.

72956 Section 1556. Section **63I-1-210**, which is renumbered from Section 63-55-210 is
72957 renumbered and amended to read:

72958 ~~[63-55-210]~~. **63I-1-210. Repeal dates, Title 10.**

72959

72960 Section 1557. Section **63I-1-213**, which is renumbered from Section 63-55-213 is
72961 renumbered and amended to read:

72962 ~~[63-55-213]~~. **63I-1-213. Repeal dates, Title 13.**

72963 Title 13, Chapter 16, Motor Fuel Marketing Act, is repealed July 1, 2012.

72964 Section 1558. Section **63I-1-219**, which is renumbered from Section 63-55-219 is
72965 renumbered and amended to read:

72966 ~~[63-55-219]~~. **63I-1-219. Repeal dates, Title 19.**

72967 (1) Title 19, Chapter 2, Air Conservation Act, is repealed July 1, 2009.

72968 (2) Title 19, Chapter 3, Radiation Control Act, is repealed July 1, 2012.

72969 (3) Title 19, Chapter 4, Safe Drinking Water Act, is repealed July 1, 2009.

- 72970 (4) Title 19, Chapter 5, Water Quality Act, is repealed July 1, 2009.
- 72971 (5) Title 19, Chapter 6, Part 1, Solid and Hazardous Waste Act, is repealed July 1,
72972 2009.
- 72973 (6) Title 19, Chapter 6, Part 3, Hazardous Substances Mitigation Act, is repealed July
72974 1, 2010.
- 72975 (7) Title 19, Chapter 6, Part 4, Underground Storage Tank Act, is repealed July 1,
72976 2008.
- 72977 (8) Title 19, Chapter 6, Part 6, Lead Acid Battery Disposal, is repealed July 1, 2016.
- 72978 (9) Title 19, Chapter 6, Part 7, Used Oil Management Act, is repealed July 1, 2009.
- 72979 (10) Title 19, Chapter 6, Part 8, Waste Tire Recycling Act, is repealed July 1, 2010.
- 72980 (11) Title 19, Chapter 6, Part 10, Mercury Switch Removal Act, is repealed July 1,
72981 2012.
- 72982 Section 1559. Section **63I-1-220**, which is renumbered from Section 63-55-220 is
72983 renumbered and amended to read:
72984 **[63-55-220]. 63I-1-220. Repeal dates, Title 20A.**
72985
- 72986 Section 1560. Section **63I-1-223**, which is renumbered from Section 63-55-223 is
72987 renumbered and amended to read:
72988 **[63-55-223]. 63I-1-223. Repeal dates, Title 23.**
72989
- 72990 Section 1561. Section **63I-1-226**, which is renumbered from Section 63-55-226 is
72991 renumbered and amended to read:
72992 **[63-55-226]. 63I-1-226. Repeal dates, Title 26.**
72993 (1) Title 26, Chapter 9f, Utah Digital Health Service Commission Act, is repealed July
72994 1, 2015.
- 72995 (2) Title 26, Chapter 23b, Detection of Public Health Emergencies Act, is repealed July
72996 1, 2009.
- 72997 (3) Title 26, Chapter 33a, Utah Health Data Authority Act, is repealed July 1, 2014.

72998 (4) Section 26-21-23, Licensing of non-Medicaid nursing care facility beds, is repealed
72999 July 1, 2009.

73000 Section 1562. Section **63I-1-230**, which is renumbered from Section 63-55-230 is
73001 renumbered and amended to read:

73002 **[63-55-230]. 63I-1-230. Repeal dates, Title 30.**

73003
73004 Section 1563. Section **63I-1-231**, which is renumbered from Section 63-55-231 is
73005 renumbered and amended to read:

73006 **[63-55-231]. 63I-1-231. Repeal dates, Title 31A.**

73007 (1) Section 31A-2-208.5, Comparison tables, is repealed July 1, 2010.

73008 (2) Section 31A-2-217, Coordination with other states, is repealed July 1, 2013.

73009 (3) Section 31A-22-315, Motor vehicle insurance reporting -- Penalty, is repealed July
73010 1, 2010.

73011 (4) Section 31A-22-625, Catastrophic coverage of mental health conditions, is repealed
73012 July 1, 2011.

73013 Section 1564. Section **63I-1-232**, which is renumbered from Section 63-55-232 is
73014 renumbered and amended to read:

73015 **[63-55-232]. 63I-1-232. Repeal dates, Title 32A.**

73016
73017 Section 1565. Section **63I-1-234**, which is renumbered from Section 63-55-234 is
73018 renumbered and amended to read:

73019 **[63-55-234]. 63I-1-234. Repeal dates, Title 34A.**

73020 (1) Section 34A-2-202.5 is repealed December 31, 2010.

73021 (2) Title 34A, Chapter 8, Utah Injured Worker Reemployment Act, is repealed July 1,
73022 2009.

73023 Section 1566. Section **63I-1-235**, which is renumbered from Section 63-55-235 is
73024 renumbered and amended to read:

73025 **[63-55-235]. 63I-1-235. Repeal dates, Title 35A.**

- 73026 (1) Title 35A, Utah Workforce Services Code, is repealed July 1, 2015.
- 73027 (2) Section 35A-3-114, the Displaced Homemaker Program, together with the
73028 provision for funding that program contained in Subsection 17-16-21(2)(b), is repealed July 1,
73029 2012.
- 73030 Section 1567. Section **63I-1-236**, which is renumbered from Section 63-55-236 is
73031 renumbered and amended to read:
73032 **[63-55-236]. 63I-1-236. Repeal dates, Title 36.**
73033 Sections 36-26-101 through 36-26-104 are repealed December 31, 2017.
- 73034 Section 1568. Section **63I-1-238**, which is renumbered from Section 63-55-238 is
73035 renumbered and amended to read:
73036 **[63-55-238]. 63I-1-238. Repeal dates, Title 38.**
73037 Section 38-1-27 and Sections 38-1-30 through 38-1-37 are repealed July 1, 2008.
- 73038 Section 1569. Section **63I-1-241**, which is renumbered from Section 63-55-241 is
73039 renumbered and amended to read:
73040 **[63-55-241]. 63I-1-241. Repeal dates, Title 41.**
73041 The following provisions of Title 41 are repealed on the following dates:
73042 (1) Title 41, Chapter 12a, Part 8, Uninsured Motorist Identification Database Program,
73043 is repealed July 1, 2010.
73044 (2) The HOV lane exception in Subsection 41-6a-702(5) is repealed December 31,
73045 2010.
- 73046 Section 1570. Section **63I-1-253**, which is renumbered from Section 63-55-253 is
73047 renumbered and amended to read:
73048 **[63-55-253]. 63I-1-253. Repeal dates, Titles 53, 53A, and 53B.**
73049 The following provisions of Title 53A are repealed on the following dates:
73050 (1) Title 53A, Chapter 1a, Part 6, Public Education Job Enhancement Program is
73051 repealed July 1, 2010.
73052 (2) Title 53A, Chapter 1a, Part 9, Voluntary Extended-day Kindergarten Program, is
73053 repealed July 1, 2011.

73054 (3) The State Instructional Materials Commission, created in Section 53A-14-101, is
73055 repealed July 1, 2011.

73056 (4) Title 53A, Chapter 20a, Public Education Revenue Bond Act, is repealed July 1,
73057 2007.

73058 (5) Section 53-3-232, Conditional licenses, is repealed July 1, 2015.

73059 Section 1571. Section **63I-1-254**, which is renumbered from Section 63-55-254 is
73060 renumbered and amended to read:

73061 **[63-55-254]. 63I-1-254. Repeal dates, Title 54.**

73062

73063 Section 1572. Section **63I-1-258**, which is renumbered from Section 63-55-258 is
73064 renumbered and amended to read:

73065 **[63-55-258]. 63I-1-258. Repeal dates, Title 58.**

73066 (1) Title 58, Chapter 9, Funeral Services Licensing Act, is repealed July 1, 2008.

73067 (2) Title 58, Chapter 13, Health Care Providers Immunity from Liability Act, is
73068 repealed July 1, 2016.

73069 (3) Title 58, Chapter 15, Health Facility Administrator Act, is repealed July 1, 2015.

73070 (4) Title 58, Chapter 20a, Environmental Health Scientist Act, is repealed July 1, 2013.

73071 (5) Title 58, Chapter 40, Recreational Therapy Practice Act, is repealed July 1, 2013.

73072 (6) Title 58, Chapter 41, Speech-language Pathology and Audiology Licensing Act, is
73073 repealed July 1, 2009.

73074 (7) Title 58, Chapter 42a, Occupational Therapy Practice Act, is repealed July 1, 2015.

73075 (8) Title 58, Chapter 46a, Hearing Instrument Specialist Licensing Act, is repealed July
73076 1, 2013.

73077 (9) Title 58, Chapter 47b, Massage Therapy Practice Act, is repealed July 1, 2014.

73078 (10) Title 58, Chapter 49, Dietitian Certification Act, is repealed July 1, 2015.

73079 (11) Title 58, Chapter 72, Acupuncture Licensing Act, is repealed July 1, 2017.

73080 Section 1573. Section **63I-1-259**, which is renumbered from Section 63-55-259 is
73081 renumbered and amended to read:

- 73082 **[63-55-259]. 63I-1-259. Repeal dates, Title 59.**
- 73083 Section 59-9-102.5 is repealed December 31, 2010.
- 73084 Section 1574. Section **63I-1-261**, which is renumbered from Section 63-55-261 is
- 73085 renumbered and amended to read:
- 73086 **[63-55-261]. 63I-1-261. Repeal dates, Title 61.**
- 73087 Title 61, Chapter 1, Utah Uniform Securities Act, is repealed July 1, 2009.
- 73088 Section 1575. Section **63I-1-262**, which is renumbered from Section 63-55-262 is
- 73089 renumbered and amended to read:
- 73090 **[63-55-262]. 63I-1-262. Repeal dates, Title 62A.**
- 73091 (1) Section 62A-5-103.1, Pilot program for provision of supported employment
- 73092 services, is repealed July 1, 2008.
- 73093 (2) Section 62A-5-103.2, Pilot program for family preservation services, is repealed
- 73094 July 1, 2009.
- 73095 Section 1576. Section **63I-1-263**, which is renumbered from Section 63-55-263 is
- 73096 renumbered and amended to read:
- 73097 **[63-55-263]. 63I-1-263. Repeal dates, Titles 63 to 63E.**
- 73098 (1) [~~Title 63, Chapter 25a, Part 3,~~] Title 63M, Chapter 7, Part 4, Sentencing
- 73099 Commission, is repealed January 1, 2012.
- 73100 (2) The Crime Victims' Reparations Board, created in Section [~~63-25a-404~~]
- 73101 63M-7-504, is repealed July 1, 2017.
- 73102 (3) The Resource Development Coordinating Committee, created in Section
- 73103 [~~63-38d-501~~] 63J-4-501, is repealed July 1, 2015.
- 73104 (4) [~~Title 63, Chapter 38f~~] Title 63M, Chapter 1, Part 4, Enterprise Zone Act, is
- 73105 repealed July 1, 2008.
- 73106 (5) (a) [~~Title 63, Chapter 38f~~] Title 63M, Chapter 1, Part 11, Recycling Market
- 73107 Development Zone Act, is repealed July 1, 2010.
- 73108 (b) Sections 59-7-610 and 59-10-1007 regarding tax credits for certain persons in
- 73109 recycling market development zones, are repealed for taxable years beginning on or after

73110 January 1, 2011.

73111 (c) Notwithstanding Subsection (5)(b), a person may not claim a tax credit under
73112 Section 59-7-610 or 59-10-1007:

73113 (i) for the purchase price of machinery or equipment described in Section 59-7-610 or
73114 59-10-1007, if the machinery or equipment is purchased on or after July 1, 2010; or

73115 (ii) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), if
73116 the expenditure is made on or after July 1, 2010.

73117 (d) Notwithstanding Subsections (5)(b) and (c), a person may carry forward a tax credit
73118 in accordance with Section 59-7-610 or 59-10-1007 if:

73119 (i) the person is entitled to a tax credit under Section 59-7-610 or 59-10-1007; and

73120 (ii) (A) for the purchase price of machinery or equipment described in Section 59-7-610
73121 or 59-10-1007, the machinery or equipment is purchased on or before June 30, 2010; or

73122 (B) for an expenditure described in Subsection 59-7-610(1)(b) or 59-10-1007(1)(b), the
73123 expenditure is made on or before June 30, 2010.

73124 (6) [~~Title 63, Chapter 47~~] Title 63M, Chapter 8, Utah Commission for Women and
73125 Families, is repealed July 1, 2011.

73126 (7) [~~Title 63, Chapter 75~~] Title 63M, Chapter 9, Families, Agencies, and Communities
73127 Together for Children and Youth At Risk Act, is repealed July 1, 2016.

73128 (8) [~~Title 63, Chapter 88~~] Title 51, Chapter 9, Part 5, Navajo Trust Fund, is repealed
73129 July 1, 2008.

73130 (9) [~~Title 63, Chapter 99~~] Title 63M, Chapter 11, Utah Commission on Aging, is
73131 repealed July 1, 2009.

73132 (10) Section 63A-4-204, authorizing the Risk Management Fund to provide coverage
73133 to any public school district that chooses to participate, is repealed July 1, 2016.

73134 (11) Section 63C-8-106, Rural residency training program, is repealed July 1, 2015.

73135 Section 1577. Section **63I-1-267**, which is renumbered from Section 63-55-267 is
73136 renumbered and amended to read:

73137 [~~63-55-267~~]. **63I-1-267**. Repeal dates, Title 67.

73138 (1) Section 67-1-15 is repealed December 31, 2017.

73139 (2) Sections 67-1a-10 and 67-1a-11 creating the Commission on Civic and Character
73140 Education and establishing its duties are repealed on July 1, 2011.

73141 Section 1578. Section **63I-1-269**, which is renumbered from Section 63-55-269 is
73142 renumbered and amended to read:

73143 **~~[63-55-269]~~. 63I-1-269. Repeal dates, Title 69.**

73144 Section 69-2-5.6, Emergency services telephone charge to fund statewide unified E-911
73145 emergency service, is repealed July 1, 2011.

73146 Section 1579. Section **63I-1-272**, which is renumbered from Section 63-55-272 is
73147 renumbered and amended to read:

73148 **~~[63-55-272]~~. 63I-1-272. Repeal dates, Title 72.**

73149

73150 Section 1580. Section **63I-1-273**, which is renumbered from Section 63-55-273 is
73151 renumbered and amended to read:

73152 **~~[63-55-273]~~. 63I-1-273. Repeal dates, Title 73.**

73153 Title 73, Chapter 27, State Water Development Commission, is repealed December 31,
73154 2008.

73155 Section 1581. Section **63I-1-277**, which is renumbered from Section 63-55-277 is
73156 renumbered and amended to read:

73157 **~~[63-55-277]~~. 63I-1-277. Repeal dates, Title 77.**

73158

73159 Section 1582. Section **63I-1-278**, which is renumbered from Section 63-55-278 is
73160 renumbered and amended to read:

73161 **~~[63-55-278]~~. 63I-1-278. Repeal dates, Title 78.**

73162 (1) The Office of the Court Administrator, created in Section 78-3-23, is repealed July
73163 1, 2008.

73164 (2) Foster care citizen review boards and steering committee, created in Title 78,
73165 Chapter 3g, is repealed July 1, 2012.

73166 (3) Alternative Dispute Resolution Act, created in Title 78, Chapter 31b, is repealed
73167 July 1, 2016.

73168 (4) Section 78-14-17, regarding medical malpractice arbitration agreements, is repealed
73169 July 1, 2009.

73170 (5) The case management program coordinator in Subsection 78-3-25(4) is repealed
73171 July 1, 2009.

73172 Section 1583. Section **63I-2-101** is enacted to read:

73173 **CHAPTER 2. REPEAL DATES BY TITLE ACT**

73174 **Part 1. General Provisions**

73175 **63I-2-101. Title.**

73176 This chapter is known as the "Repeal Dates By Title Act."

73177 Section 1584. Section **63I-2-210**, which is renumbered from Section 63-55b-110 is
73178 renumbered and amended to read:

73179 **Part 2. Repeal Dates by Title**

73180 **[63-55b-110]. 63I-2-210. Repeal dates -- Title 10.**

73181 Section 10-2-427 is repealed July 1, 2010.

73182 Section 1585. Section **63I-2-220**, which is renumbered from Section 63-55b-120 is
73183 renumbered and amended to read:

73184 **[63-55b-120]. 63I-2-220. Repeal dates, Title 20A.**

73185 Section 20A-2-107.5 is repealed July 1, 2008.

73186 Section 1586. Section **63I-2-223**, which is renumbered from Section 63-55b-123 is
73187 renumbered and amended to read:

73188 **[63-55b-123]. 63I-2-223. Repeal dates -- Title 23.**

73189
73190 Section 1587. Section **63I-2-226**, which is renumbered from Section 63-55b-126 is
73191 renumbered and amended to read:

73192 **[63-55b-126]. 63I-2-226. Repeal dates -- Title 26.**

73193 (1) Section 26-38-4 is repealed January 1, 2009.

73194 (2) Title 26, Chapter 46, Utah Health Care Workforce Financial Assistance Program, is
73195 repealed July 1, 2017.

73196 Section 1588. Section **63I-2-231**, which is renumbered from Section 63-55b-131 is
73197 renumbered and amended to read:

73198 **~~[63-55b-131]~~. 63I-2-231. Repeal dates, Title 31A.**

73199 Section 31A-23a-415 is repealed July 1, 2011.

73200 Section 1589. Section **63I-2-232**, which is renumbered from Section 63-55b-132 is
73201 renumbered and amended to read:

73202 **~~[63-55b-132]~~. 63I-2-232. Repeal dates -- Title 32A.**

73203

73204 Section 1590. Section **63I-2-234**, which is renumbered from Section 63-55b-134 is
73205 renumbered and amended to read:

73206 **~~[63-55b-134]~~. 63I-2-234. Repeal dates -- Title 34A.**

73207

73208 Section 1591. Section **63I-2-253**, which is renumbered from Section 63-55b-153 is
73209 renumbered and amended to read:

73210 **~~[63-55b-153]~~. 63I-2-253. Repeal dates -- Titles 53, 53A, and 53B.**

73211 (1) Section 53-3-210 is repealed February 1, 2007.

73212 (2) Section 53A-1-403.5 is repealed July 1, 2012.

73213 (3) Subsection 53A-1a-511(7)(c) is repealed July 1, 2007.

73214 (4) Section 53A-3-702 is repealed July 1, 2008.

73215 (5) Section 53A-6-112 is repealed July 1, 2009.

73216 (6) Section 53A-17a-152 is repealed July 1, 2010.

73217 Section 1592. Section **63I-2-254**, which is renumbered from Section 63-55b-154 is
73218 renumbered and amended to read:

73219 **~~[63-55b-154]~~. 63I-2-254. Repeal dates -- Title 54.**

73220

73221 Section 1593. Section **63I-2-258**, which is renumbered from Section 63-55b-158 is

73222 renumbered and amended to read:

73223 ~~[63-55b-158]~~. 63I-2-258. Repeal dates -- Title 58.

73224 Section 58-31b-301.6, Medication Aide Certified Pilot Program, is repealed May 15,
73225 2010.

73226 Section 1594. Section 63I-2-259, which is renumbered from Section 63-55b-159 is
73227 renumbered and amended to read:

73228 ~~[63-55b-159]~~. 63I-2-259. Repeal dates -- Title 59.

73229
73230 Section 1595. Section 63I-2-263, which is renumbered from Section 63-55b-163 is
73231 renumbered and amended to read:

73232 ~~[63-55b-163]~~. 63I-2-263. Repeal dates, Title 63 to Title 63B.

73233 (1) Section 63-38a-105 is repealed July 1, 2007.

73234 (2) Sections 63-63b-101 and 63-63b-102 are repealed on July 1, 2007.

73235 (3) Section 63B-14-101 is repealed December 31, 2008.

73236 Section 1596. Section 63I-2-264, which is renumbered from Section 63-55b-164 is
73237 renumbered and amended to read:

73238 ~~[63-55b-164]~~. 63I-2-264. Repeal dates -- Title 64.

73239
73240 Section 1597. Section 63I-2-267, which is renumbered from Section 63-55b-167 is
73241 renumbered and amended to read:

73242 ~~[63-55b-167]~~. 63I-2-267. Repeal dates -- Title 67.

73243
73244 Section 1598. Section 63I-2-272, which is renumbered from Section 63-55b-172 is
73245 renumbered and amended to read:

73246 ~~[63-55b-172]~~. 63I-2-272. Repeal dates -- Title 72.

73247 Section 72-3-113 is repealed January 1, 2020.

73248 Section 1599. Section 63I-2-276, which is renumbered from Section 63-55b-176 is
73249 renumbered and amended to read:

73250 ~~[63-55b-176]~~. 63I-2-276. **Repeal dates -- Title 76.**

73251

73252 Section 1600. Section **63I-2-277**, which is renumbered from Section 63-55b-177 is
73253 renumbered and amended to read:

73254 ~~[63-55b-177]~~. 63I-2-277. **Repeal dates, Title 77.**

73255 Section 77-2a-3.1 is repealed June 30, 2008.

73256 Section 1601. Section **63I-2-278**, which is renumbered from Section 63-55b-178 is
73257 renumbered and amended to read:

73258 ~~[63-55b-178]~~. 63I-2-278. **Repeal dates, Title 78.**

73259 (1) Section 78-9-101, Practicing law without a license, is repealed May 3, 2012.

73260 (2) Subsection 78-45-7.14(1) is repealed January 1, 2010.

73261 Section 1602. Section **63I-3-101**, which is renumbered from Section 63-54-101 is
73262 renumbered and amended to read:

CHAPTER 3. CONSTITUTIONAL REVISION COMMISSION ACT

Part 1. General Provisions

73263 ~~[63-54-101]~~. 63I-3-101. **Title.**

73264 This chapter is known as the "Constitutional Revision Commission Act."

73265 Section 1603. Section **63I-3-102**, which is renumbered from Section 63-54-102 is
73266 renumbered and amended to read:

73267 ~~[63-54-102]~~. 63I-3-102. **Definitions.**

73268 As used in this chapter, "commission" means the Utah Constitutional Revision
73269 Commission created under Section ~~[63-54-103]~~ 63I-3-201.

73270 Section 1604. Section **63I-3-201**, which is renumbered from Section 63-54-103 is
73271 renumbered and amended to read:

Part 2. Commission and Duties

73272 ~~[63-54-103]~~. 63I-3-201. **Creation -- Members -- Appointment --**

73273 **Qualifications -- Term of office -- Maximum length of service.**

73274 (1) There is created a state commission to be known as the Utah Constitutional

73278 Revision Commission, composed of 15 members.

73279 (2) (a) The speaker of the House of Representatives shall appoint three members from
73280 the House of Representatives, not more than two of whom may be from the same political
73281 party.

73282 (b) The president of the Senate shall appoint three members from the Senate, not more
73283 than two of whom may be from the same political party.

73284 (c) The governor shall appoint three members, not more than two of whom may be
73285 from the same political party.

73286 (3) (a) The nine members appointed under Subsection (2) shall select six additional
73287 members.

73288 (b) In selecting the six additional members, consideration shall be given to achieving
73289 representation from the major geographical areas of the state and to achieving as closely as
73290 possible equal bipartisan representation.

73291 (4) The term for each commission member shall be six years.

73292 (5) A commission member may not serve on the commission more than 12 consecutive
73293 years.

73294 Section 1605. Section **63I-3-202**, which is renumbered from Section 63-54-104 is
73295 renumbered and amended to read:

73296 ~~[63-54-104]~~. **63I-3-202. Vacancies -- Person filling a vacancy begins**
73297 **servicing new term.**

73298 (1) If a member appointed by the speaker of the House resigns, is unable to serve, or is
73299 no longer a member of the House of Representatives, the vacancy shall be filled by the speaker
73300 of the House, as provided in Subsection ~~[63-54-103]~~ 63I-3-201(2)(a).

73301 (2) If a member appointed by the president of the Senate resigns, is unable to serve, or
73302 is no longer a member of the Senate, the vacancy shall be filled by the president of the Senate,
73303 as provided in Subsection ~~[63-54-103]~~ 63I-3-201(2)(b).

73304 (3) If a member appointed by the governor resigns or is unable to serve, the vacancy
73305 shall be filled by the governor, as provided in Subsection ~~[63-54-103]~~ 63I-3-201(2)(c).

73306 (4) If a member appointed by the nine commission members appointed under
 73307 Subsection [~~63-54-103~~] 63I-3-201(3) resigns or is unable to serve, the vacancy shall be filled by
 73308 those nine commission members as provided in Subsection [~~63-54-103~~] 63I-3-201(3).

73309 (5) A person appointed to fill a vacancy under this section does not serve the remaining
 73310 unexpired term of the member that the person is replacing but begins serving a new term.

73311 Section 1606. Section **63I-3-203**, which is renumbered from Section 63-54-105 is
 73312 renumbered and amended to read:

73313 ~~[63-54-105]~~. **63I-3-203. Duties.**

73314 (1) Subject to Subsection (2), the Utah Constitutional Revision Commission shall:

73315 (a) conduct a comprehensive examination of the Utah Constitution, as amended, and
 73316 make recommendations to the governor and the Legislature as to specific proposed
 73317 constitutional amendments to implement the commission's recommendations for changes in the
 73318 constitution; and

73319 (b) upon request of the governor, president of the Senate, speaker of the House of
 73320 Representatives, minority leader of the Senate, minority leader of the House, or the legislative
 73321 sponsor of a resolution to amend the Utah Constitution, advise the governor and the Legislature
 73322 on any proposed constitutional amendment or revision.

73323 (2) The commission may not make a recommendation on a proposed constitutional
 73324 amendment after both houses of the Legislature have taken final action on it.

73325 (3) The commission shall select a chair and a vice chair from among its members.

73326 Section 1607. Section **63I-3-204**, which is renumbered from Section 63-54-106 is
 73327 renumbered and amended to read:

73328 ~~[63-54-106]~~. **63I-3-204. The commission may invite testimony.**

73329 In performing its duties and responsibilities, the commission may invite testimony from
 73330 the governor, state agencies, members of the Utah Legislature, and responsible members of the
 73331 public.

73332 Section 1608. Section **63I-3-205**, which is renumbered from Section 63-54-107 is
 73333 renumbered and amended to read:

73334 ~~[63-54-107]~~. **63I-3-205. Public hearings -- Purpose.**

73335 The commission may hold public hearings that it considers advisable and in locations
73336 within the state that it chooses in order to afford any interested person who is a citizen of this
73337 state an opportunity to appear and present views in respect to any subject relating to the work
73338 of the commission.

73339 Section 1609. Section **63I-3-206**, which is renumbered from Section 63-54-108 is
73340 renumbered and amended to read:

73341 ~~[63-54-108]~~. **63I-3-206. Per diem and expenses of members.**

73342 (1) (a) A member who is not a government employee may not receive compensation or
73343 benefits for the member's service, but may receive per diem and expenses incurred in the
73344 performance of the member's official duties at the rates established by the Division of Finance
73345 under Sections 63A-3-106 and 63A-3-107.

73346 (b) A member who is not a government employee may decline to receive per diem and
73347 expenses for the member's service.

73348 (2) (a) A state government officer or employee member who does not receive salary,
73349 per diem, or expenses from the member's agency for the member's service may receive per diem
73350 and expenses incurred in the performance of the member's official duties from the commission at
73351 the rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

73352 (b) A state government officer or employee member may decline to receive per diem
73353 and expenses for the member's service.

73354 (3) Each legislator on the committee shall receive compensation and expenses as
73355 provided by law and legislative rule.

73356 Section 1610. Section **63I-3-207**, which is renumbered from Section 63-54-109 is
73357 renumbered and amended to read:

73358 ~~[63-54-109]~~. **63I-3-207. Appointment of staff.**

73359 The Office of Legislative Research and General Counsel shall, in consultation with the
73360 chair and vice chair, provide staffing for the commission. The office shall employ other staff
73361 members as the commission considers desirable or necessary.

73362 Section 1611. Section **63I-4-101** is enacted to read:

73363 **CHAPTER 4. PRIVATIZATION POLICY BOARD ACT**

73364 **Part 1. General Provisions**

73365 **63I-4-101. Title.**

73366 This chapter is known as the "Privatization Policy Board Act."

73367 Section 1612. Section **63I-4-102**, which is renumbered from Section 63-55a-1 is
73368 renumbered and amended to read:

73369 **[63-55a-1]. 63I-4-102. Definitions.**

73370 (1) (a) "Agency" means a department, division, office, bureau, board, commission, or
73371 other administrative unit of the state.

73372 (b) "Agency" includes departments, divisions, offices, bureaus, boards, commissions,
73373 and other administrative units of the state's counties and municipalities.

73374 (2) "Agency head" means the chief administrative officer of an agency.

73375 (3) "Privatization" means action by a state agency to contract with the private sector or
73376 with another state agency to perform functions or services currently being performed by it.

73377 Section 1613. Section **63I-4-201**, which is renumbered from Section 63-55a-2 is
73378 renumbered and amended to read:

73379 **Part 2. Board Membership and Duties**

73380 **[63-55a-2]. 63I-4-201. Privatization Policy Board -- Created -- Membership --**
73381 **Operations -- Expenses.**

73382 (1) (a) There is created a Privatization Policy Board composed of 15 members.

73383 (b) The governor shall appoint:

73384 (i) two senators, one each from the majority and minority political parties, from names
73385 recommended by the president of the Senate;

73386 (ii) two representatives, one each from the majority and minority political parties, from
73387 names recommended by the speaker of the House;

73388 (iii) two members representing public employees, from names recommended by the
73389 largest public employees' association;

73390 (iv) one member from state management;

73391 (v) five members from the private business community;

73392 (vi) one member representing education;

73393 (vii) one member representing the Utah League of Cities and Towns from names

73394 recommended by the league; and

73395 (viii) one member representing the Utah Association of Counties from names

73396 recommended by the association.

73397 (2) (a) Except as required by Subsection (2)(b), board members shall serve four-year

73398 terms.

73399 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the

73400 time of appointment or reappointment, adjust the length of terms to ensure that the terms of

73401 board members are staggered so that approximately half of the board is appointed every two

73402 years.

73403 (3) (a) Each board member shall hold office until [~~his~~] the board member's successor

73404 has been appointed and qualified.

73405 (b) When a vacancy occurs in the membership for any reason, the replacement shall be

73406 appointed for the unexpired term.

73407 (c) Eight members of the board are a quorum for the purpose of organizing the board

73408 and conducting the business of the board.

73409 (d) The vote of a majority of members voting when a quorum is present is necessary for

73410 the board to take action.

73411 (4) (a) At the initial meeting of the board, the board shall select one of their number to

73412 serve as chair of the board.

73413 (b) The chief procurement officer or [~~his~~] the chief procurement officer's designee is the

73414 nonvoting secretary to the board and is responsible for scheduling quarterly meetings.

73415 (c) The board shall meet at least quarterly and at the call of the chair.

73416 (5) (a) (i) Members who are not government employees shall receive no compensation

73417 or benefits for their services, but may receive per diem and expenses incurred in the

73418 performance of the member’s official duties at the rates established by the Division of Finance
73419 under Sections 63A-3-106 and 63A-3-107.

73420 (ii) Members may decline to receive per diem and expenses for their service.

73421 (b) (i) State government officer and employee members who do not receive salary, per
73422 diem, or expenses from their agency for their service may receive per diem and expenses
73423 incurred in the performance of their official duties from the board at the rates established by the
73424 Division of Finance under Sections 63A-3-106 and 63A-3-107.

73425 (ii) State government officer and employee members may decline to receive per diem
73426 and expenses for their service.

73427 (c) Legislators on the committee shall receive compensation and expenses as provided
73428 by law and legislative rule.

73429 Section 1614. Section **63I-4-202**, which is renumbered from Section 63-55a-3 is
73430 renumbered and amended to read:

73431 **[63-55a-3]. 63I-4-202. Privatization Policy Board -- Duties.**

73432 (1) Except as otherwise provided in Subsection (5), the board shall:

73433 (a) review whether or not certain services performed by existing state agencies could be
73434 privatized to provide the same types and quality of services that would result in cost savings;

73435 (b) review particular requests for privatization of services and issues concerning agency
73436 competition with the private sector and determine whether privatization would be feasible and
73437 would result in cost savings and ways to eliminate any unfair competition;

73438 (c) recommend privatization to the agency head when the proposed privatization is
73439 demonstrated to provide a more cost efficient and effective manner of providing existing
73440 governmental services;

73441 (d) comply with the provisions of [~~Title 63, Chapter 46a, the~~] Title 63G, Chapter 3,
73442 Utah Administrative Rulemaking Act, in making rules establishing privatization standards,
73443 procedures, and requirements;

73444 (e) maintain communication with and access information from, other entities promoting
73445 privatization;

73446 (f) prepare an annual report that contains:
 73447 (i) information about the board's activities; and
 73448 (ii) recommendations on privatizing government services; and
 73449 (g) submit the annual report to the Legislature and the governor.
 73450 (2) In addition to filing copies of its recommendations for privatization with the relevant
 73451 agency head, the board shall file copies of its recommendations for privatization with:

73452 (a) the governor's office; and
 73453 (b) the Office of Legislative Fiscal Analyst for submission to the relevant Legislative
 73454 Appropriation Subcommittee.

73455 (3) (a) The board may appoint advisory groups to conduct studies, research, analyses,
 73456 and make reports and recommendations with respect to subjects or matters within the
 73457 jurisdiction of the board.

73458 (b) At least one member of the board shall serve on each advisory group.

73459 (4) This chapter does not preclude any agency from privatizing any service or function
 73460 independently of the board if, as part of the contract that privatizes the function, the contractor
 73461 assumes all liability to perform the privatized function.

73462 (5) The board may not exercise its authority under Subsection (1) over an agency
 73463 referred to in Subsection [~~63-55a-1~~] 63I-4-102(1)(b), unless requested by the agency.

73464 Section 1615. Section **63I-5-101**, which is renumbered from Section 63-91-101 is
 73465 renumbered and amended to read:

CHAPTER 5. UTAH INTERNAL AUDIT ACT

Part 1. General Provisions

~~[63-91-101].~~ **63I-5-101. Title.**

This chapter is known as the "Utah Internal Audit Act."

73470 Section 1616. Section **63I-5-102**, which is renumbered from Section 63-91-102 is
 73471 renumbered and amended to read:

~~[63-91-102].~~ **63I-5-102. Definitions.**

As used in this chapter:

73474 (1) "Agency head" means a cabinet officer, an elected official, an executive director, or
73475 a board or commission vested with responsibility to administer or make policy for a state
73476 agency.

73477 (2) "Agency internal audit director" or "audit director" means the person appointed by
73478 the agency head, with the approval of the audit committee if one has been established, to direct
73479 the internal audit function for the state agency.

73480 (3) "Appointing authority" means:

73481 (a) the governor, for state agencies;

73482 (b) the Judicial Council, for judicial branch agencies;

73483 (c) the Board of Regents, for higher education entities; and

73484 (d) the State Board of Education, for the State Office of Education.

73485 (4) "Audit committee" means a standing committee whose members are appointed by
73486 an appointing authority:

73487 (a) from members of the agency governing board; and

73488 (b) from individuals who do not have administrative responsibilities within the agency
73489 who have the expertise to provide effective oversight of and advice about internal audit
73490 activities and services.

73491 (5) "Audit plan" means a list of audits to be performed by the internal audit organization
73492 within a specified period of time.

73493 (6) "Agency governing board" is any board or commission that has policy making and
73494 oversight responsibility over the agency, including the authority to appoint and remove the
73495 agency director.

73496 (7) "Higher education entity" means the board of regents, the institutional councils of
73497 each higher education institution, and each higher education institution.

73498 (8) "Internal audit" means an independent appraisal activity established within a state
73499 agency as a control system to examine and evaluate the adequacy and effectiveness of other
73500 control systems within the agency.

73501 (9) "Judicial branch agency" means each administrative entity of the judicial branch.

- 73502 (10) (a) "State agency" means:
- 73503 (i) each department, commission, board, council, agency, institution, officer,
- 73504 corporation, fund, division, office, committee, authority, laboratory, library, unit, bureau, panel,
- 73505 or other administrative unit of the state; and
- 73506 (ii) each state public education entity.
- 73507 (b) "State agency" does not mean:
- 73508 (i) a legislative branch agency;
- 73509 (ii) an independent agency;
- 73510 (iii) a county, municipality, school district, local district, or special service district; or
- 73511 (iv) any administrative subdivision of a county, municipality, school district, local
- 73512 district, or special service district.

73513 Section 1617. Section **63I-5-201**, which is renumbered from Section 63-91-201 is

73514 renumbered and amended to read:

73515 **Part 2. Internal Auditing Programs**

73516 **~~[63-91-201].~~ 63I-5-201. Internal auditing programs -- State agencies.**

73517 (1) (a) The Departments of Administrative Services, Agriculture, Commerce,

73518 Community and Culture, Corrections, Workforce Services, Environmental Quality, Health,

73519 Human Services, Natural Resources, Public Safety, and Transportation; and the State Tax

73520 Commission shall conduct various types of auditing procedures as determined by the agency

73521 head or governor.

73522 (b) The governor may, by executive order, require other state agencies to establish an

73523 internal audit program.

73524 (c) An agency head may establish an internal audit program for ~~[his]~~ the agency head's

73525 agency if the agency administers programs that:

- 73526 (i) might pose a high liability risk to the state; or
- 73527 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

73528 (2) (a) The Office of the Court Administrator shall conduct various types of auditing

73529 procedures as determined by the Judicial Council, including auditing procedures for courts not

73530 of record.

73531 (b) The Judicial Council may, by rule, require other judicial agencies to establish an
73532 internal audit program.

73533 (c) An agency head within the judicial branch may establish an internal audit program
73534 for ~~his~~ the agency head's agency if the agency administers programs that:

73535 (i) might pose a high liability risk to the state; or

73536 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

73537 (3) (a) The University of Utah, Utah State University, Salt Lake Community College,
73538 Utah Valley University, and Weber State University shall conduct various types of auditing
73539 procedures as determined by the Board of Regents.

73540 (b) The Board of Regents may issue policies requiring other higher education entities or
73541 programs to establish an internal audit program.

73542 (c) An agency head within higher education may establish an internal audit program for
73543 ~~his~~ the agency head's agency if the agency administers programs that:

73544 (i) might pose a high liability risk to the state; or

73545 (ii) are essential to the health, safety, and welfare of the citizens of Utah.

73546 (4) The State Office of Education shall conduct various types of auditing procedures as
73547 determined by the State Board of Education.

73548 Section 1618. Section **63I-5-301**, which is renumbered from Section 63-91-301 is
73549 renumbered and amended to read:

73550 **Part 3. Audit Committee**

73551 ~~[63-91-301]~~. **63I-5-301. Audit committee -- Powers and duties.**

73552 (1) Each appointing authority may establish an audit committee to monitor the activities
73553 of the agency internal audit organization.

73554 (2) The appointing authority shall ensure that audit committee members have the
73555 expertise to provide effective oversight of and advice about internal audit activities and services.

73556 (3) If an audit committee has been established, the audit committee shall:

73557 (a) consent to the appointment or removal of the agency internal audit director as

73558 proposed by the agency head;

73559 (b) consent to the internal auditing policies proposed by the agency head;

73560 (c) review and approve the annual internal audit plan and budget;

73561 (d) review internal and external audit reports, follow-up reports, and quality assurance

73562 reviews of the internal audit office; and

73563 (e) periodically meet with the agency internal audit director to discuss pertinent matters,

73564 including whether there are any restrictions on the scope of audits.

73565 Section 1619. Section **63I-5-302**, which is renumbered from Section 63-91-302 is

73566 renumbered and amended to read:

73567 **[63-91-302]. 63I-5-302. Agency head -- Powers and duties.**

73568 (1) For each agency that establishes an internal audit program, the agency head shall:

73569 (a) prepare and adopt, or if an audit committee has been established, propose to the

73570 audit committee, a formal policy that defines:

73571 (i) the purpose of the agency's internal audit program;

73572 (ii) the authority and responsibility of the agency's internal auditors; and

73573 (b) ensure that the policy:

73574 (i) places no limitations on the scope of the internal audit department's work; and

73575 (ii) declares that auditors are to have no authority or responsibility for the activities they

73576 audit.

73577 (2) The agency head shall appoint or employ an agency internal audit director with the

73578 consent of the audit committee, if an audit committee has been established.

73579 (3) The agency head shall ensure that:

73580 (a) the audit director is allowed to employ a sufficient number of professional and

73581 support staff to implement an effective program of internal auditing;

73582 (b) compensation, training, job tenure, and advancement of internal auditing staff is

73583 based upon job performance;

73584 (c) the audit director and staff collectively possess the knowledge, skills, and experience

73585 essential to the practices of the profession and are proficient in applying internal auditing

73586 standards, procedures, and techniques;

73587 (d) the internal audit organization has employees who are qualified in disciplines such as
73588 accounting, business management, public administration, human resource management,
73589 economics, finance, statistics, electronic data processing, engineering, and law as needed to
73590 meet the audit responsibilities;

73591 (e) internal audit staff are free of operational and management responsibilities that
73592 would impair their ability to make independent audits of any aspects of the agency's operations;

73593 (f) the audit director and the internal audit staff have access to all personnel and any
73594 records, data, and other information of the state agency that they consider necessary to carry
73595 out their assigned duties; and

73596 (g) the agency internal audit director reports to the agency head and to the audit
73597 committee, if one has been established, and has freedom of access to the agency head to ensure
73598 that the director is responsive to the agency head's specific requests, directions, and needs.

73599 (4) The agency internal audit director may, within budgetary constraints, contract with
73600 consultants to assist with audits.

73601 (5) The agency head shall either:

73602 (a) approve the annual internal audit plan and budget prepared by the agency internal
73603 audit director; or

73604 (b) if an audit committee has been established, review the plan and budget and submit
73605 them to the audit committee for approval.

73606 Section 1620. Section **63I-5-401**, which is renumbered from Section 63-91-401 is
73607 renumbered and amended to read:

73608 **Part 4. Duties of Director**

73609 **~~[63-91-401].~~ 63I-5-401. Duties of the agency internal audit director.**

73610 (1) The agency internal audit director may:

73611 (a) furnish independent analyses, appraisals, and recommendations that may, depending
73612 upon the audit scope, identify:

73613 (i) the adequacy of the state agency's systems of internal control;

- 73614 (ii) the efficiency and effectiveness of agency management in carrying out assigned
73615 responsibilities; and
- 73616 (iii) the agency's compliance with applicable laws, rules, and regulations;
- 73617 (b) submit audit reports directly to the agency head and to the audit committee, if one
73618 has been established;
- 73619 (c) conduct internal audits of state agency programs, activities, and functions that may
73620 consist of one or more of the following objectives:
- 73621 (i) to verify the accuracy and reliability of agency records;
- 73622 (ii) to assess compliance with management policies, plans, procedures, and regulations;
- 73623 (iii) to assess compliance with applicable laws, rules, and regulations;
- 73624 (iv) to evaluate the efficient and effective use of agency resources; and
- 73625 (v) to verify the appropriate protection of agency assets;
- 73626 (d) prepare audit reports of findings;
- 73627 (e) review and evaluate internal controls over the state agency's accounting systems,
73628 administrative systems, electronic data processing systems, and all other major systems
73629 necessary to ensure the fiscal and administrative accountability of the state agency;
- 73630 (f) develop audit plans containing the information required by Subsection (2) to be
73631 based on the findings of periodic risk assessments;
- 73632 (g) upon request, make a copy of the approved audit plan available to the state auditor,
73633 legislative auditor, or other appropriate external auditor to assist in planning and coordination of
73634 any external financial, compliance, electronic data processing, or performance audit;
- 73635 (h) determine the scope and assignment of the audits;
- 73636 (i) perform an audit of a special program, activity, function, or organizational unit at the
73637 direction of the agency head;
- 73638 (j) maintain the classification of any public records consistent with [~~Title 63, Chapter 2~~]
73639 Title 63G, Chapter 2, Government Records Access and Management Act;
- 73640 (k) be subject to the same penalties as the custodian of those public records for
73641 violating [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and

73642 Management Act; and

73643 (l) identify in the audit report any abuse, illegal acts, errors and omissions, or conflicts
73644 of interest.

73645 (2) (a) The audit plan required by this section shall:

73646 (i) identify the individual audits to be conducted during each year;

73647 (ii) identify the related resources to be devoted to each of the respective audits;

73648 (iii) ensure that internal controls are reviewed periodically as determined by the agency
73649 head or the audit committee, if one has been established; and

73650 (iv) ensure that audits that evaluate the efficient and effective use of agency resources
73651 are adequately represented in the plan.

73652 (b) The agency internal audit director shall submit the audit plan to the agency head and
73653 the audit committee, if one has been established, for approval.

73654 (3) The agency internal audit director shall ensure that:

73655 (a) audits are conducted in accordance with professional auditing standards such as
73656 those published by the Institute of Internal Auditors, Inc., the American Institute of Certified
73657 Public Accountants and, when required by other law, regulation, agreement, contract, or policy,
73658 in accordance with Government Auditing Standards, issued by the Comptroller General of the
73659 United States;

73660 (b) all reports of audit findings issued by internal audit staff shall include a statement
73661 that the audit was conducted according to the appropriate standards;

73662 (c) public release of reports of audit findings comply with the conditions specified by
73663 the state laws and rules governing the state agency;

73664 (d) copies of all reports of audit findings issued by the internal audit staff are available
73665 to the Offices of the Legislative Auditor General and the State Auditor upon request; and

73666 (e) significant audit matters that cannot be appropriately addressed by the agency
73667 internal audit office are referred to either the Office of Legislative Auditor General or the Office
73668 of the State Auditor.

73669 Section 1621. Section **63J-1-101**, which is renumbered from Section 63-38-1 is

73670 renumbered and amended to read:

73671 **TITLE 63J. BUDGETING**
73672 **CHAPTER 1. BUDGETARY PROCEDURES ACT**

73673 **Part 1. General Provisions**

73674 ~~[63-38-1].~~ **63J-1-101. Title.**

73675 (1) This title is known as "Budgeting."

73676 (2) This [act shall be known and may be cited] chapter is known as the "Budgetary
73677 Procedures Act."

73678 Section 1622. Section **63J-1-103**, which is renumbered from Section 63-38-9.5 is
73679 renumbered and amended to read:

73680 ~~[63-38-9.5].~~ **63J-1-103. Agency exempt from act.**

73681 The Utah Housing Corporation is exempt from this act.

73682 Section 1623. Section **63J-1-201**, which is renumbered from Section 63-38-2 is
73683 renumbered and amended to read:

73684 **Part 2. Budget and Funds**

73685 ~~[63-38-2].~~ **63J-1-201. Governor to submit budget to Legislature -- Contents --**
73686 **Preparation -- Appropriations based on current tax laws and not to exceed estimated**
73687 **revenues.**

73688 (1) (a) The governor shall, within three days after the convening of the Legislature in
73689 the annual general session, submit a budget for the ensuing fiscal year by delivering it to the
73690 presiding officer of each house of the Legislature together with a schedule for all of the
73691 proposed appropriations of the budget, clearly itemized and classified.

73692 (b) The budget message shall include:

73693 (i) a projection of estimated revenues and expenditures for the next fiscal year; and

73694 (ii) the source of all direct, indirect, or in-kind matching funds for all federal grants or
73695 assistance programs included in the budget.

73696 (2) At least 34 days before the submission of any budget, the governor shall deliver a
73697 confidential draft copy of ~~[his]~~ the governor's proposed budget recommendations to the Office

73698 of the Legislative Fiscal Analyst.

73699 (3) (a) The budget shall contain a complete plan of proposed expenditures and
73700 estimated revenues for the next fiscal year based upon the current fiscal year state tax laws and
73701 rates.

73702 (b) The budget may be accompanied by a separate document showing proposed
73703 expenditures and estimated revenues based on changes in state tax laws or rates.

73704 (4) The budget shall be accompanied by a statement showing:

73705 (a) the revenues and expenditures for the last fiscal year;

73706 (b) the current assets, liabilities, and reserves, surplus or deficit, and the debts and funds
73707 of the state;

73708 (c) an estimate of the state's financial condition as of the beginning and the end of the
73709 period covered by the budget;

73710 (d) a complete analysis of lease with an option to purchase arrangements entered into
73711 by state agencies;

73712 (e) the recommendations for each state agency for new full-time employees for the next
73713 fiscal year; which recommendation should be provided also to the State Building Board under
73714 Subsection 63A-5-103(2);

73715 (f) any explanation the governor may desire to make as to the important features of the
73716 budget and any suggestion as to methods for the reduction of expenditures or increase of the
73717 state's revenue; and

73718 (g) the information detailing certain regulatory fee increases required by Section
73719 [~~63-38-3.2~~] 63J-1-303.

73720 (5) The budget shall include an itemized estimate of the appropriations for:

73721 (a) the Legislative Department as certified to the governor by the president of the
73722 Senate and the speaker of the House;

73723 (b) the Executive Department;

73724 (c) the Judicial Department as certified to the governor by the state court administrator;

73725 (d) payment and discharge of the principal and interest of the indebtedness of the state;

73726 (e) the salaries payable by the state under the Utah Constitution or under law for the
73727 lease agreements planned for the next fiscal year;

73728 (f) other purposes that are set forth in the Utah Constitution or under law; and

73729 (g) all other appropriations.

73730 (6) Deficits or anticipated deficits shall be included in the budget.

73731 (7) (a) (i) For the purpose of preparing and reporting the budget, the governor shall
73732 require from the proper state officials, including public and higher education officials, all heads
73733 of executive and administrative departments and state institutions, bureaus, boards,
73734 commissions, and agencies expending or supervising the expenditure of the state moneys, and
73735 all institutions applying for state moneys and appropriations, itemized estimates of revenues and
73736 expenditures.

73737 (ii) (A) The governor may also require other information under these guidelines and at
73738 times as the governor may direct.

73739 (B) These guidelines may include a requirement for program productivity and
73740 performance measures, where appropriate, with emphasis on outcome indicators.

73741 (b) The estimate for the Legislative Department as certified by the presiding officers of
73742 both houses shall be included in the budget without revision by the governor.

73743 (c) The estimate for the Judicial Department, as certified by the state court
73744 administrator, shall also be included in the budget without revision, but the governor may make
73745 separate recommendations on it.

73746 (d) The governor may require the attendance at budget meetings of representatives of
73747 public and higher education, state departments and institutions, and other institutions or
73748 individuals applying for state appropriations.

73749 (e) The governor may revise all estimates, except those relating to the Legislative
73750 Department, the Judicial Department, and those providing for the payment of principal and
73751 interest to the state debt and for the salaries and expenditures specified by the Utah Constitution
73752 or under the laws of the state.

73753 (8) The total appropriations requested for expenditures authorized by the budget may

73754 not exceed the estimated revenues from taxes, fees, and all other sources for the next ensuing
73755 fiscal year.

73756 (9) If any item of the budget as enacted is held invalid upon any ground, the invalidity
73757 does not affect the budget itself or any other item in it.

73758 (10) (a) In submitting the budgets for the Departments of Health and Human Services
73759 and the Office of the Attorney General, the governor shall consider a separate recommendation
73760 in ~~his~~ the governor's budget for funds to be contracted to:

73761 (i) local mental health authorities under Section 62A-15-110;

73762 (ii) local substance abuse authorities under Section 62A-15-110;

73763 (iii) area agencies under Section 62A-3-104.2;

73764 (iv) programs administered directly by and for operation of the Divisions of Substance
73765 Abuse and Mental Health and Aging and Adult Services;

73766 (v) local health departments under Title 26A, Chapter 1, Local Health Departments;
73767 and

73768 (vi) counties for the operation of Children's Justice Centers under Section 67-5b-102.

73769 (b) In ~~his~~ the governor's budget recommendations under Subsections (10)(a)(i), (ii),
73770 and (iii), the governor shall consider an amount sufficient to grant local health departments,
73771 local mental health authorities, local substance abuse authorities, and area agencies the same
73772 percentage increase for wages and benefits that ~~he~~ the governor includes in ~~his~~ the
73773 governor's budget for persons employed by the state.

73774 (c) If the governor does not include in ~~his~~ the governor's budget an amount sufficient
73775 to grant the increase described in Subsection (10)(b), ~~he~~ the governor shall include a message
73776 to the Legislature regarding ~~his~~ the governor's reason for not including that amount.

73777 (11) (a) In submitting the budget for the Department of Agriculture, the governor shall
73778 consider an amount sufficient to grant local conservation districts and Utah Association of
73779 Conservation District employees the same percentage increase for wages and benefits that ~~he~~
73780 the governor includes in ~~his~~ the governor's budget for persons employed by the state.

73781 (b) If the governor does not include in ~~his~~ the governor's budget an amount sufficient

73782 to grant the increase described in Subsection (11)(a), [he] the governor shall include a message
73783 to the Legislature regarding [his] the governor's reason for not including that amount.

73784 (12) (a) In submitting the budget for the Utah State Office of Rehabilitation and the
73785 Division of Services for People with Disabilities, the Division of Child and Family Services, and
73786 the Division of Juvenile Justice Services within the Department of Human Services, the
73787 governor shall consider an amount sufficient to grant employees of corporations that provide
73788 direct services under contract with those divisions, the same percentage increase for
73789 cost-of-living that [he] the governor includes in [his] the governor's budget for persons
73790 employed by the state.

73791 (b) If the governor does not include in [his] the governor's budget an amount sufficient
73792 to grant the increase described in Subsection (12)(a), [he] the governor shall include a message
73793 to the Legislature regarding [his] the governor's reason for not including that amount.

73794 (13) (a) The Families, Agencies, and Communities Together Council may propose to
73795 the governor under Subsection [~~63-75-4~~] 63M-9-201(4)(e) a budget recommendation for
73796 collaborative service delivery systems operated under Section [~~63-75-6.5~~] 63M-9-402.

73797 (b) The Legislature may, through a specific program schedule, designate funds
73798 appropriated for collaborative service delivery systems operated under Section [~~63-75-6.5~~]
73799 63M-9-402.

73800 (14) The governor shall include in [his] the governor's budget the state's portion of the
73801 budget for the Utah Communications Agency Network established in Title 63C, Chapter 7,
73802 Utah Communications Agency Network Act.

73803 (15) (a) The governor shall include a separate recommendation in the governor's budget
73804 for funds to maintain the operation and administration of the Utah Comprehensive Health
73805 Insurance Pool.

73806 (b) In making the recommendation the governor may consider:

73807 (i) actuarial analysis of growth or decline in enrollment projected over a period of at
73808 least three years;

73809 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period

73810 of at least three years;

73811 (iii) the annual Medical Care Consumer Price Index;

73812 (iv) the annual base budget for the pool established by the Commerce and Revenue
73813 Appropriations Subcommittee for each fiscal year;

73814 (v) the growth or decline in insurance premium taxes and fees collected by the tax
73815 commission and the insurance department; and

73816 (vi) the availability of surplus General Fund revenue under Section [~~63-38-2.5~~]
73817 63J-1-202 and Subsection 59-14-204(5)(b).

73818 (16) In adopting a budget for each fiscal year, the Legislature shall consider an amount
73819 sufficient to grant local health departments, local mental health authorities, local substance
73820 abuse authorities, area agencies on aging, conservation districts, and Utah Association of
73821 Conservation District employees the same percentage increase for wages and benefits that is
73822 included in the budget for persons employed by the state.

73823 (17) (a) In adopting a budget each year for the Utah Comprehensive Health Insurance
73824 Pool, the Legislature shall determine an amount that is sufficient to fund the pool for each fiscal
73825 year.

73826 (b) When making a determination under Subsection (17)(a), the Legislature shall
73827 consider factors it determines are appropriate, which may include:

73828 (i) actuarial analysis of growth or decline in enrollment projected over a period of at
73829 least three years;

73830 (ii) actuarial analysis of the medical and pharmacy claims costs projected over a period
73831 of at least three years;

73832 (iii) the annual Medical Care Consumer Price Index;

73833 (iv) the annual base budget for the pool established by the Commerce and Revenue
73834 Appropriations Subcommittee for each fiscal year;

73835 (v) the growth or decline in insurance premium taxes and fees collected by the tax
73836 commission and the insurance department from the previous fiscal year; and

73837 (vi) the availability of surplus General Fund revenue under Section [~~63-38-2.5~~]

73838 63J-1-202 and Subsection 59-14-204(5)(b).

73839 (c) The funds appropriated by the Legislature to fund the Utah Comprehensive Health
73840 Insurance Pool as determined under Subsection (17)(a):

73841 (i) shall be deposited into the enterprise fund established by Section 31A-29-120; and

73842 (ii) are restricted and are to be used to maintain the operation, administration, and
73843 management of the Utah Comprehensive Health Insurance Pool created by Section
73844 31A-29-104.

73845 (18) In considering the factors in Subsections (15)(b)(i), (ii), and (iii) and Subsections
73846 (17)(b)(i), (ii), and (iii), the governor and the Legislature may consider the actuarial data and
73847 projections prepared for the board of the Utah Comprehensive Health Insurance Pool as it
73848 develops its financial statements and projections for each fiscal year.

73849 Section 1624. Section **63J-1-202**, which is renumbered from Section 63-38-2.5 is
73850 renumbered and amended to read:

73851 ~~[63-38-2.5].~~ **63J-1-202**. **Establishing a General Fund Budget Reserve Account --**
73852 **Providing for deposits and expenditures from the account.**

73853 (1) There is created within the General Fund a restricted account to be known as the
73854 General Fund Budget Reserve Account, which is designated to receive the surplus revenue
73855 required by this section.

73856 (2) (a) (i) At the end of any fiscal year in which the Division of Finance, in conjunction
73857 with the completion of the annual audit by the state auditor, determines that there is a General
73858 Fund surplus, 25% of the surplus shall be transferred to the General Fund Budget Reserve
73859 Account, except that the amount in the combined totals of the General Fund Budget Reserve
73860 Account and the Education Budget Reserve Account created in Section ~~[63-38-2.6]~~ 63J-1-203
73861 may not exceed 6% of the total of the General Fund appropriation amount and the Uniform
73862 School Fund appropriation amount for the fiscal year in which the surplus occurred.

73863 (ii) In addition to Subsection (2)(a)(i), if a surplus exists and if, within the last ten years,
73864 the Legislature has appropriated any money from the General Fund Budget Reserve Account
73865 that has not been replaced by appropriation or as provided in this Subsection (2)(a)(ii), the

73866 Division of Finance shall, before any contingent appropriations or other transfers required by
73867 law are made, transfer up to 25% more of the surplus to the General Fund Budget Reserve
73868 Account to replace the amounts appropriated until transfers of the surplus under this Subsection
73869 (2)(a)(ii) have replaced the appropriations from the fund.

73870 (b) The amount to be transferred to the General Fund Budget Reserve Account shall be
73871 determined before any other contingency appropriation using surplus funds.

73872 (3) (a) If, at the close of any fiscal year, there appear to be insufficient monies to pay
73873 additional debt service for any bonded debt authorized by the Legislature, the Division of
73874 Finance may hold back monies from any General Fund surplus sufficient to pay the additional
73875 debt service requirements resulting from issuance of bonded debt that was authorized by the
73876 Legislature.

73877 (b) The Division of Finance may not spend the hold back amount for debt service under
73878 Subsection (3)(a) unless and until it is appropriated by the Legislature.

73879 (c) If, after calculating the amount for transfers to the General Fund Budget Reserve
73880 Account, the remaining surplus is insufficient to cover the hold back for debt service required by
73881 Subsection (3)(a), the Division of Finance shall reduce the transfer to the General Fund Budget
73882 Reserve Account by the amount necessary to cover the debt service hold back.

73883 (d) Notwithstanding Subsection (2), the Division of Finance shall hold back the General
73884 Fund balance for debt service authorized by this Subsection (3) before making any transfers to
73885 the General Fund Budget Reserve Account or any other designation or allocation of surplus.

73886 (4) (a) Any appropriation made by the Legislature from the General Fund Budget
73887 Reserve Account may only be used to cover operating deficits, state settlement agreements
73888 approved under [~~Title 63, Chapter 38b~~] Title 63G, Chapter 10, State Settlement Agreements, or
73889 retroactive tax refunds.

73890 (b) The General Fund Budget Reserve Account is available for appropriation to fund
73891 operating deficits in public education appropriations.

73892 (5) All interest generated from investments of money in the General Fund Budget
73893 Reserve Account shall be deposited into the account.

73894 Section 1625. Section **63J-1-203**, which is renumbered from Section 63-38-2.6 is
73895 renumbered and amended to read:

73896 ~~[63-38-2.6]~~. **63J-1-203. Establishing an Education Budget Reserve Account --**
73897 **Providing for deposits and expenditures from the account.**

73898 (1) There is created within the Education Fund a restricted account to be known as the
73899 Education Budget Reserve Account, which is designated to receive the surplus revenue required
73900 by this section.

73901 (2) (a) (i) At the end of any fiscal year in which the Division of Finance, in conjunction
73902 with the completion of the annual audit by the state auditor, determines that there is a surplus in
73903 the Education Fund, the Uniform School Fund or both, 25% of the cumulative surplus shall be
73904 transferred to the Education Budget Reserve Account, except that the amount in the combined
73905 totals of the Education Budget Reserve Account and the General Fund Budget Reserve
73906 Account created in Section ~~[63-38-2.5]~~ 63J-1-202 may not exceed 6% of the total combined
73907 appropriations from the Education Fund and the General Fund for the fiscal year in which the
73908 surplus occurred.

73909 (ii) In addition to Subsection (2)(a)(i), if a surplus exists and if, within the last ten years,
73910 the Legislature has appropriated any money from the Education Budget Reserve Account that
73911 has not been replaced by appropriation or as provided in this Subsection (2)(a)(ii), the Division
73912 of Finance shall, before any contingent appropriations or other transfers required by law are
73913 made, transfer up to 25% more of the surplus to the Education Budget Reserve Account to
73914 replace the amounts appropriated until transfers of the surplus under this Subsection (2)(a)(ii)
73915 have replaced the appropriations from the fund.

73916 (b) The amount to be transferred to the Education Budget Reserve Account shall be
73917 determined before any other contingency appropriation using surplus funds.

73918 (3) Any appropriation made by the Legislature from the Education Budget Reserve
73919 Account may only be used to cover operating deficits in the state's public and higher education
73920 system.

73921 (4) All interest generated from investments of money in the Education Budget Reserve

73922 Account shall be deposited into the account.

73923 Section 1626. Section **63J-1-204**, which is renumbered from Section 63-38-2.7 is
73924 renumbered and amended to read:

73925 ~~[63-38-2.7]~~. **63J-1-204. Deposits related to the Disaster Recovery Funding Act.**

73926 Beginning with the fiscal year ending June 30, 2007, at the end of each fiscal year and
73927 after the transfer of surplus General Fund revenues has been made to the General Fund Budget
73928 Reserve Account as provided in Section ~~[63-38-2.5]~~ 63J-1-202, the Division of Finance shall
73929 deposit an amount into the State Disaster Recovery Restricted Account, created in Section
73930 53-2-403, calculated by:

73931 (1) determining the amount of surplus General Fund revenues after the transfer to the
73932 General Fund Budget Reserve Account under Section ~~[63-38-2.5]~~ 63J-1-202 that is unrestricted
73933 and undesignated;

73934 (2) calculating an amount equal to the lesser of:

73935 (a) 25% of the amount determined under Subsection (1); or

73936 (b) 6% of the total of the General Fund appropriation amount and the Uniform School
73937 Fund appropriation amount for the fiscal year in which the surplus occurs; and

73938 (3) adding to the amount calculated under Subsection (2) an amount equal to the lesser
73939 of:

73940 (a) 25% more of the amount described in Subsection (1); or

73941 (b) the amount necessary to replace in accordance with this Subsection (3) any amount
73942 appropriated from the State Disaster Recovery Restricted Account within ten fiscal years before
73943 the fiscal year in which the surplus occurs if:

73944 (i) a surplus exists; and

73945 (ii) the Legislature appropriates money from the State Disaster Recovery Restricted
73946 Account that is not replaced by appropriation or as provided in this Subsection (3).

73947 Section 1627. Section **63J-1-301**, which is renumbered from Section 63-38-3 is
73948 renumbered and amended to read:

73949 **Part 3. Appropriations and Expenditures**

73950 ~~[63-38-3]~~. 63J-1-301. Appropriations governed by chapter -- Restrictions on
73951 expenditures -- Transfer of funds.

73952 (1) All moneys appropriated by the Legislature are appropriated upon the terms and
73953 conditions set forth in this chapter, and any department, agency, or institution, except the
73954 Legislature and its committees, or where specifically exempted by the appropriating act, which
73955 accepts moneys appropriated by the Legislature, does so subject to this chapter.

73956 (2) (a) In providing that certain appropriations are to be expended in accordance with a
73957 schedule or other restrictions, if any, set forth after each appropriations item, it is the intent of
73958 the Legislature to limit the amount of money to be expended from each appropriations item for
73959 certain specified purposes.

73960 (b) Each schedule:

73961 (i) is a restriction or limitation upon the expenditure of the respective appropriation
73962 made;

73963 (ii) does not itself appropriate any money; and

73964 (iii) is not itself an item of appropriation.

73965 (c) An appropriation or any surplus of any appropriation may not be diverted from any
73966 department, agency, institution, or division to any other department, agency, institution, or
73967 division.

73968 (d) The money appropriated subject to a schedule or restriction may be used only for
73969 the purposes authorized.

73970 (e) (i) If any department, agency, or institution for which money is appropriated
73971 requests the transfer of moneys appropriated to it from one purpose or function to another
73972 purpose or function within an item of appropriation, the director of the Governor's Office of
73973 Planning and Budget shall require a new work program to be submitted for the fiscal year
73974 involved setting forth the purpose and necessity for such transfer.

73975 (ii) The director and fiscal officer shall review the proposed change and submit their
73976 findings and recommendations to the governor, who may permit the transfer.

73977 (iii) The state fiscal officer shall notify the Legislature through the Office of the

73978 Legislative Fiscal Analyst of action taken by the governor.

73979 (f) Monies may not be transferred from one item of appropriation to any other item of
73980 appropriation.

73981 (3) This section does not apply to the Investigation Account of the Water Resources
73982 Construction Fund. The investigation account shall continue to be governed by Section
73983 73-10-8.

73984 Section 1628. Section **63J-1-302**, which is renumbered from Section 63-38-3.1 is
73985 renumbered and amended to read:

73986 ~~[63-38-3.1].~~ **63J-1-302. Restrictions on agency expenditures of monies --**

73987 **Lobbyists.**

73988 (1) As used in this section:

73989 (a) (i) "Agency" means each department, commission, board, council, agency,
73990 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
73991 unit, bureau, panel, or other administrative unit of the state.

73992 (ii) "Agency" includes the legislative branch, the judicial branch, the Board of Regents,
73993 the board of trustees of each higher education institution, each higher education institution, or a
73994 public education entity.

73995 (b) "Executive action" means action undertaken by the governor, including signing or
73996 vetoing legislation, and action undertaken by any official in the executive branch of government.

73997 (c) "Legislative action" means action undertaken by the Utah Legislature or any part of
73998 it.

73999 (d) "Lobbyist" means a person who is not an employee of an agency who is hired as an
74000 independent contractor by the agency to communicate with legislators or the governor for the
74001 purpose of influencing the passage, defeat, amendment, or postponement of legislative or
74002 executive action.

74003 (2) A state agency or entity to which monies are appropriated by the Legislature may
74004 not expend any monies to pay a lobbyist.

74005 Section 1629. Section **63J-1-303**, which is renumbered from Section 63-38-3.2 is

74006 renumbered and amended to read:

74007 ~~[63-38-3.2].~~ **63J-1-303. Fees -- Adoption, procedure, and approval --**

74008 **Establishing and assessing fees without legislative approval.**

74009 (1) As used in this section:

74010 (a) (i) "Agency" means each department, commission, board, council, agency,
74011 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
74012 unit, bureau, panel, or other administrative unit of the state.

74013 (ii) "Agency" does not mean the Legislature or its committees.

74014 (b) "Fee agency" means any agency that is authorized to establish regulatory fees.

74015 (c) "Fee schedule" means the complete list of regulatory fees charged by a fee agency
74016 and the amount of those fees.

74017 (d) "Regulatory fees" means fees established for licensure, registration, or certification.

74018 (2) Each fee agency shall:

74019 (a) adopt a schedule of fees assessed for services provided by the fee agency that are:

74020 (i) reasonable, fair, and reflect the cost of services provided; and

74021 (ii) established according to a cost formula determined by the director of the Governor's
74022 Office of Planning and Budget and the director of the Division of Finance in conjunction with
74023 the agency seeking to establish the regulatory fee;

74024 (b) conduct a public hearing on any proposed regulatory fee and increase or decrease
74025 the proposed regulatory fee based upon the results of the public hearing;

74026 (c) except as provided in Subsection (6), submit the fee schedule to the Legislature as
74027 part of the agency's annual appropriations request;

74028 (d) where necessary, modify the fee schedule to implement the Legislature's actions; and

74029 (e) deposit all regulatory fees collected under the fee schedule into the General Fund.

74030 (3) A fee agency may not:

74031 (a) set regulatory fees by rule; or

74032 (b) charge or collect any regulatory fee without approval by the Legislature unless the
74033 fee agency has complied with the procedures and requirements of Subsection (5).

74034 (4) The Legislature may approve, increase or decrease and approve, or reject any
74035 regulatory fee submitted to it by a fee agency.

74036 (5) (a) After the public hearing required by this section, a fee agency may establish and
74037 assess regulatory fees without legislative approval if:

74038 (i) the Legislature creates a new program that is to be funded by regulatory fees to be
74039 set by the Legislature; and

74040 (ii) the new program's effective date is before the Legislature's next annual general
74041 session; or

74042 (iii) the Division of Occupational and Professional licensing makes a special assessment
74043 against qualified beneficiaries under the Residence Lien Restriction and Lien Recovery Fund Act
74044 as provided in Subsection 38-11-206(1).

74045 (b) Each fee agency shall submit its fee schedule or special assessment amount to the
74046 Legislature for its approval at a special session, if allowed in the governor's call, or at the next
74047 annual general session of the Legislature, whichever is sooner.

74048 (c) Unless the fee schedule is approved by the Legislature, the fee agency may not
74049 collect a regulatory fee set according to this subsection after the adjournment of the annual
74050 general session following the session that established the new program.

74051 (6) (a) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
74052 obtain legislative approval for the fee increase as provided in this subsection before assessing
74053 the new regulatory fee.

74054 (b) Each fee agency that wishes to increase any regulatory fee by 5% or more shall
74055 submit to the governor as part of the agency's annual appropriation request a list that identifies:

74056 (i) the title or purpose of the regulatory fee;

74057 (ii) the present amount of the regulatory fee;

74058 (iii) the proposed new amount of the regulatory fee;

74059 (iv) the percent that the regulatory fee will have increased if the Legislature approves
74060 the higher fee; and

74061 (v) the reason for the increase in the regulatory fee.

74062 (c) (i) The governor may review and approve, modify and approve, or reject the
74063 regulatory fee increases.

74064 (ii) The governor shall transmit the list required by Subsection (6)(b), with any
74065 modifications, to the Legislative Fiscal Analyst with the governor's budget recommendations.

74066 (d) Bills approving any regulatory fee increases of 5% or more shall be filed before the
74067 beginning of the Legislature's annual general session, if possible.

74068 Section 1630. Section **63J-1-304**, which is renumbered from Section 63-38-3.3 is
74069 renumbered and amended to read:

74070 **~~[63-38-3.3].~~ 63J-1-304. Payment of fees prerequisite to service -- Exception.**

74071 (1) (a) State and county officers required by law to charge fees may not perform any
74072 official service unless the fees prescribed for that service are paid in advance.

74073 (b) When the fee is paid, the officer shall perform the services required.

74074 (c) An officer is liable upon the officer's official bond for every failure or refusal to
74075 perform an official duty when the fees are tendered.

74076 (2) (a) Except as provided in Subsection (2)(b), no fees may be charged:

74077 (i) to the officer's state, or any county or subdivision of the state;

74078 (ii) to any public officer acting for the state, county, or subdivision;

74079 (iii) in cases of habeas corpus;

74080 (iv) in criminal causes before final judgment;

74081 (v) for administering and certifying the oath of office;

74082 (vi) for swearing pensioners and their witnesses; or

74083 (vii) for filing and recording bonds of public officers.

74084 (b) Fees may be charged for payment:

74085 (i) of recording fees for assessment area recordings in compliance with Section
74086 11-42-205;

74087 (ii) of recording fees for judgments recorded in compliance with Sections 57-3-106 and
74088 78-5-119; and

74089 (iii) to the state engineer under Section 73-2-14.

74090 Section 1631. Section **63J-1-305**, which is renumbered from Section 63-38-3.4 is
74091 renumbered and amended to read:

74092 **~~[63-38-3.4].~~ 63J-1-305. Parking fees at court buildings.**

74093 (1) State-owned or leased court facilities may not charge or collect fees for parking
74094 without prior approval by the Legislature.

74095 (2) The Legislature may approve, increase, decrease and approve, or reject any parking
74096 fee submitted to it by the courts.

74097 Section 1632. Section **63J-1-306**, which is renumbered from Section 63-38-3.5 is
74098 renumbered and amended to read:

74099 **~~[63-38-3.5].~~ 63J-1-306. Internal service funds -- Governance and review.**

74100 (1) For purposes of this section:

74101 (a) "Agency" means a department, division, office, bureau, or other unit of state
74102 government, and includes any subdivision of an agency.

74103 (b) "Do not replace vehicles" means a vehicle accounted for in the Division of Fleet
74104 Operations for which charges to an agency for its use do not include amounts to cover
74105 depreciation or to accumulate assets to replace the vehicle at the end of its useful life.

74106 (c) "Internal service fund agency" means an agency that provides goods or services to
74107 other agencies of state government or to other governmental units on a capital maintenance and
74108 cost reimbursement basis, and which recovers costs through interagency billings.

74109 (d) "Revolving loan fund" means each of the revolving loan funds defined in Section
74110 63A-3-205.

74111 (2) An internal service fund agency is not subject to this section with respect to its
74112 administration of a revolving loan fund.

74113 (3) An internal service fund agency may not bill another agency for services that it
74114 provides, unless the Legislature has:

74115 (a) reviewed and approved the internal service fund agency's budget request;

74116 (b) reviewed and approved the internal service fund agency's rates, fees, and other
74117 amounts that it charges those who use its services and included those rates, fees, and amounts in

74118 an appropriation act;

74119 (c) approved the number of full-time, permanent positions of the internal service fund
74120 agency as part of the annual appropriation process; and

74121 (d) appropriated to the internal service fund agency the internal service fund's estimated
74122 revenue based upon the rates and fee structure that are the basis for the estimate.

74123 (4) (a) Except as provided in Subsection (4)(b), an internal service fund agency may not
74124 charge rates, fees, and other amounts that exceed the rates, fees, and amounts established by the
74125 Legislature in the appropriations act.

74126 (b) (i) An internal service fund agency that begins a new service or introduces a new
74127 product between annual general sessions of the Legislature may establish and charge an interim
74128 rate or amount for that service or product.

74129 (ii) The internal service fund agency shall submit that interim rate or amount to the
74130 Legislature for approval at the next annual general session.

74131 (5) The internal service fund agency budget request shall separately identify the capital
74132 needs and the related capital budget.

74133 (6) In the fiscal year that the accounting change referred to in Subsection 51-5-6(2) is
74134 implemented by the Division of Finance, the Division of Finance shall transfer equity created by
74135 that accounting change to any internal service fund agency up to the amount needed to eliminate
74136 any long-term debt and deficit working capital in the fund.

74137 (7) No new internal service fund agency may be established unless reviewed and
74138 approved by the Legislature.

74139 (8) (a) Except as provided in Subsection (8)(f), an internal service fund agency may not
74140 acquire capital assets unless legislative approval for acquisition of the assets has been included
74141 in an appropriations act for the internal service fund agency.

74142 (b) An internal service fund agency may not acquire capital assets after the transfer
74143 mandated by Subsection (6) has occurred unless the internal service fund agency has adequate
74144 working capital.

74145 (c) The internal service fund agency shall provide working capital from the following

74146 sources in the following order:

74147 (i) first, from operating revenues to the extent allowed by state rules and federal
74148 regulations;

74149 (ii) second, from long-term debt, subject to the restrictions of this section; and

74150 (iii) last, from an appropriation.

74151 (d) (i) To eliminate negative working capital, an internal service fund agency may incur
74152 long-term debt from the General Fund or Special Revenue Funds to acquire capital assets.

74153 (ii) The internal service fund agency shall repay all long-term debt borrowed from the
74154 General Fund or Special Revenue Funds by making regular payments over the useful life of the
74155 asset according to the asset's depreciation schedule.

74156 (e) (i) The Division of Finance may not allow an internal service fund agency's
74157 borrowing to exceed 90% of the net book value of the agency's capital assets as of the end of
74158 the fiscal year.

74159 (ii) If an internal service fund agency wishes to purchase authorized assets or enter into
74160 equipment leases that would increase its borrowing beyond 90% of the net book value of the
74161 agency's capital assets, the agency may purchase those assets only with monies appropriated
74162 from another fund, such as the General Fund or a special revenue fund.

74163 (f) (i) Except as provided in Subsection (8)(f)(ii), capital assets acquired through
74164 agency appropriation may not be transferred to any internal service fund agency without
74165 legislative approval.

74166 (ii) Vehicles acquired by agencies from appropriated funds or monies appropriated to
74167 agencies to be used for vehicle purchases may be transferred to the Division of Fleet Operations
74168 and, when transferred, become part of the Fleet Operations Internal Service Fund.

74169 (iii) Vehicles acquired with funding from sources other than state appropriations or
74170 acquired through the federal surplus property donation program may be transferred to the
74171 Division of Fleet Operations and, when transferred, become part of the Fleet Operations
74172 Internal Service Fund.

74173 (iv) Unless otherwise approved by the Legislature, vehicles acquired under Subsection

74174 (8)(f)(iii) shall be accounted for as "do not replace" vehicles.

74175 (9) The Division of Finance shall adopt policies and procedures related to the
74176 accounting for assets, liabilities, equity, revenues, expenditures, and transfers of internal service
74177 funds agencies.

74178 Section 1633. Section **63J-1-307**, which is renumbered from Section 63-38-3.6 is
74179 renumbered and amended to read:

74180 ~~[63-38-3.6].~~ **63J-1-307. Appropriating from restricted accounts.**

74181 (1) As used in this section, "operating deficit" means that estimated General Fund or
74182 Uniform School Fund revenues are less than budgeted for the current or next fiscal year.

74183 (2) Notwithstanding any other statute that limits the Legislature's power to appropriate
74184 from a restricted account, if the Legislature determines that an operating deficit exists, unless
74185 prohibited by federal law or court order, the Legislature may, in eliminating the deficit,
74186 appropriate monies from a restricted account into the General Fund.

74187 Section 1634. Section **63J-1-308**, which is renumbered from Section 63-38-4 is
74188 renumbered and amended to read:

74189 ~~[63-38-4].~~ **63J-1-308. Duplicate payment of claims prohibited.**

74190 No claim against the state, the payment of which is provided for, shall be duplicated, and
74191 the amount of any appropriation for the payment of any such claim shall be withheld if it is
74192 covered by any other appropriation.

74193 Section 1635. Section **63J-1-309**, which is renumbered from Section 63-38-5 is
74194 renumbered and amended to read:

74195 ~~[63-38-5].~~ **63J-1-309. Appropriations from special funds or accounts --**
74196 **Transfer by proper official only.**

74197 Whenever appropriations are made from special funds, or a fund account, the transfer
74198 of moneys from such funds, or accounts, to the General Fund or any other fund for budgetary
74199 purposes shall be made by the proper state fiscal officer.

74200 Section 1636. Section **63J-1-310**, which is renumbered from Section 63-38-6 is
74201 renumbered and amended to read:

74230 identifier established by the Department of Health to track each medical claim, which indicates
74231 the date upon which the claim is entered.

74232 (2) On or before August 31 of each fiscal year, the director of the Division of Finance
74233 shall close out to the proper fund or account all remaining unexpended and unencumbered
74234 balances of appropriations made by the Legislature, except:

74235 (a) those funds classified under Title 51, Chapter 5, Funds Consolidation Act as:

74236 (i) enterprise funds;

74237 (ii) internal service funds;

74238 (iii) trust and agency funds;

74239 (iv) capital projects funds;

74240 (v) college and university funds;

74241 (vi) debt service funds; and

74242 (vii) permanent funds;

74243 (b) appropriations made to the Legislature and its committees;

74244 (c) restricted special revenue funds, unless specifically directed to close out the fund in
74245 the fund's enabling legislation;

74246 (d) acquisition and development funds appropriated to the Division of Parks and
74247 Recreation;

74248 (e) funds encumbered to pay purchase orders issued prior to May 1 for capital
74249 equipment if delivery is expected before June 30;

74250 (f) unexpended and unencumbered balances of appropriations that meet the
74251 requirements of Section [~~63-38-8.1~~] 63J-1-402; and

74252 (g) any other appropriations excepted by statute or by an annual appropriations act.

74253 (3) (a) Liabilities and related expenses for goods and services received on or before
74254 June 30 shall be recognized as expenses due and payable from appropriations made prior to
74255 June 30.

74256 (b) The liability and related expense shall be recognized within time periods established
74257 by the Division of Finance but shall be recognized not later than August 31.

74258 (c) Liabilities and expenses not so recognized may be paid from regular departmental
74259 appropriations for the subsequent fiscal year, if these claims do not exceed unexpended and
74260 unencumbered balances of appropriations for the years in which the obligation was incurred.

74261 (d) No amounts may be transferred from an item of appropriation of any department,
74262 institution, or agency into the Capital Projects Fund or any other fund without the prior express
74263 approval of the Legislature.

74264 (4) (a) For purposes of this chapter, claims processed under the authority of Title 26,
74265 Chapter 18, Medical Assistance Act:

74266 (i) may not be considered a liability or expense to the state for budgetary purposes
74267 unless they are received by the Division of Health Care Financing within the time periods
74268 established by the Division of Finance under Subsection (3)(b); and

74269 (ii) are not subject to the requirements of Subsection (3)(c).

74270 (b) The transaction control number recorded on each claim invoice by the division is
74271 considered the date of receipt.

74272 Section 1639. Section **63J-1-402**, which is renumbered from Section 63-38-8.1 is
74273 renumbered and amended to read:

74274 ~~[63-38-8.1]~~. **63J-1-402. Nonlapsing authority.**

74275 (1) As used in this section:

74276 (a) (i) "Agency" means each department, commission, board, council, agency,
74277 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
74278 unit, bureau, panel, or other administrative unit of the state.

74279 (ii) "Agency" does not include those entities whose unappropriated and unencumbered
74280 balances are made nonlapsing by the operation of Subsection ~~[63-38-8]~~ 63J-1-401(2).

74281 (b) "Appropriation balance" means the unexpended and unencumbered balance of a line
74282 item appropriation made by the Legislature to an agency that exists at the end of a fiscal year.

74283 (c) "Nonlapsing" means that an agency's appropriation balance is not closed out to the
74284 appropriate fund at the end of a fiscal year as required by Section ~~[63-38-8]~~ 63J-1-401.

74285 (d) "One-time project" means a project or program that can be completed with the

74286 appropriation balance and includes such items as employee incentive awards and bonuses,
74287 purchase of equipment, and one-time training.

74288 (e) "One-time projects list" means:

74289 (i) a prioritized list of one-time projects, upon which an agency would like to spend any
74290 appropriation balance; and

74291 (ii) for each project, the maximum amount the agency is estimating for the project.

74292 (f) "Program" means a service provided by an agency to members of the public, other
74293 agencies, or to employees of the agency.

74294 (2) Notwithstanding the requirements of Section [~~63-38-8~~] 63J-1-401, an agency may,
74295 by following the procedures and requirements of this section, retain and expend any
74296 appropriation balance.

74297 (3) (a) Each agency that wishes to preserve any part or all of its appropriation balance
74298 as nonlapsing shall include a one-time projects list as part of the budget request that it submits
74299 to the governor and the Legislature at the annual general session of the Legislature immediately
74300 before the end of the fiscal year in which the agency may have an appropriation balance.

74301 (b) An agency may not include a proposed expenditure on its one-time projects list if:

74302 (i) the expenditure creates a new program;

74303 (ii) the expenditure enhances the level of an existing program; or

74304 (iii) the expenditure will require a legislative appropriation in the next fiscal year.

74305 (c) The governor:

74306 (i) may approve some or all of the items from an agency's one-time projects list; and

74307 (ii) shall identify and prioritize any approved one-time projects in the budget that [~~he~~]

74308 the governor submits to the Legislature.

74309 (4) The Legislature:

74310 (a) may approve some or all of the specific items from an agency's one-time projects list
74311 as authorized expenditures of an agency's appropriation balance;

74312 (b) shall identify any authorized one-time projects in the appropriate line item
74313 appropriation; and

74314 (c) may prioritize one-time projects in intent language.

74315 Section 1640. Section **63J-1-403**, which is renumbered from Section 63-38-8.2 is
74316 renumbered and amended to read:

74317 ~~[63-38-8.2]~~. **63J-1-403. Internal service funds -- End of fiscal year -- Unused**
74318 **authority for capital acquisition.**

74319 (1) An internal service fund agency's authority to acquire capital assets under
74320 Subsection ~~[63-38-3.5]~~ 63J-1-306(8)(a) shall lapse if the acquisition of the capital asset does
74321 not occur in the fiscal year in which the authorization is included in the appropriations act,
74322 unless the Legislature identifies the authority to acquire the capital asset as nonlapsing authority:

74323 (a) for a specific one-time project and a limited period of time in the Legislature's initial
74324 appropriation to the agency; or

74325 (b) in a supplemental appropriation in accordance with Subsection (2).

74326 (2) (a) An internal service fund agency's authority to acquire capital assets may be
74327 retained as nonlapsing authorization if the internal service fund agency includes a one-time
74328 project's list as part of the budget request that it submits to the governor and the Legislature at
74329 the annual general session of the Legislature immediately before the end of the fiscal year in
74330 which the agency may have unused capital acquisition authority.

74331 (b) The governor:

74332 (i) may approve some or all of the items from an agency's one-time project's list; and

74333 (ii) shall identify and prioritize any approved one-time projects in the budget that ~~[he]~~
74334 the governor submits to the Legislature.

74335 (c) The Legislature:

74336 (i) may approve some or all of the specific items from an agency's one-time project's list
74337 as an approved capital acquisition for an agency's appropriation balance;

74338 (ii) shall identify any authorized one-time projects in the appropriate line item
74339 appropriation; and

74340 (iii) may prioritize one-time projects in intent language.

74341 (3) An internal service fund agency shall submit a status report of outstanding

74342 nonlapsing authority to acquire capital assets and associated one-time projects to the Governor's
74343 Office of Planning and Budget and the Legislative Fiscal Analyst's Office with the proposed
74344 budget required by Section [~~63-38-2~~] 63J-1-201.

74345 Section 1641. Section **63J-1-404**, which is renumbered from Section 63-38-9 is
74346 renumbered and amended to read:

74347 ~~[63-38-9]~~. **63J-1-404**. **Revenue types -- Disposition of funds collected or**
74348 **credited by a state agency.**

74349 (1) (a) The revenues enumerated in this section are established as major revenue types.

74350 (b) The Division of Finance shall:

74351 (i) account for revenues in accordance with generally accepted accounting principles;

74352 and

74353 (ii) use the major revenue types in internal accounting.

74354 (c) Each agency shall:

74355 (i) use the major revenue types enumerated in this section to account for revenues;

74356 (ii) deposit revenues and other public funds received by them by following the
74357 procedures and requirements of Title 51, Chapter 7, State Money Management Act; and

74358 (iii) expend revenues and public funds as required by this chapter.

74359 (2) The major revenue types are:

74360 (a) free revenue;

74361 (b) restricted revenue;

74362 (c) dedicated credits; and

74363 (d) fixed collections.

74364 (3) (a) Free revenue includes:

74365 (i) collections that are required by law to be deposited in the General Fund, the
74366 Education Fund, the Uniform School Fund, or the Transportation Fund;

74367 (ii) collections that are not otherwise designated by law;

74368 (iii) collections that are not externally restricted; and

74369 (iv) collections that are not included in an approved work program.

- 74370 (b) Each agency shall deposit its free revenues into the appropriate fund.
- 74371 (c) An agency may expend free revenues up to the amount specifically appropriated by
74372 the Legislature.
- 74373 (d) Any free revenue funds appropriated by the Legislature to an agency that remain
74374 unexpended at the end of the fiscal year lapse to the source fund unless the Legislature provides
74375 by law that those funds are nonlapsing.
- 74376 (4) (a) Restricted revenues are collections deposited by law into a separate fund or
74377 subfund that are designated for a specific program or purpose.
- 74378 (b) Each agency shall deposit its restricted revenues into a restricted fund.
- 74379 (c) The Legislature may appropriate restricted revenues from a restricted fund for the
74380 specific purpose or program designated by law.
- 74381 (d) If the fund equity of a restricted fund is insufficient to provide the funds
74382 appropriated from it by the Legislature, the Division of Finance may reduce the appropriation to
74383 a level that ensures that the fund equity is not less than zero.
- 74384 (e) Any restricted revenue funds appropriated by the Legislature to an agency that
74385 remain unexpended at the end of the fiscal year lapse to the restricted fund unless the
74386 Legislature provides by law that those funds, or the program or line item financed by those
74387 funds, are nonlapsing.
- 74388 (5) (a) Dedicated credits and federal revenues are collections by an agency that are
74389 deposited directly into an account for expenditure on a separate line item and program.
- 74390 (b) An agency may expend dedicated credits for any purpose within the program or line
74391 item.
- 74392 (c) (i) An agency may expend dedicated credits in excess of the amount appropriated as
74393 dedicated credits by the Legislature by following the procedures contained in this Subsection
74394 (5)(c).
- 74395 (ii) The agency shall develop a new work program and the justification for the work
74396 program and submit it to the Division of Finance and the director of the Governor's Office of
74397 Planning and Budget. Except for monies deposited as dedicated credits in the Drug Stamp Tax

74398 Fund under Section 59-19-105 or line items covering tuition and federal vocational funds at
74399 institutions of higher learning, any expenditure of dedicated credits in excess of amounts
74400 appropriated as dedicated credits by the Legislature may not be used to permanently increase
74401 personnel within the agency unless approved by the Legislature.

74402 (iii) The Division of Finance and the director of the Governor's Office of Planning and
74403 Budget shall review the program and submit their findings and recommendations to the
74404 governor.

74405 (iv) The governor may authorize the agency to expend its excess dedicated credits by
74406 approving the submitted work program.

74407 (v) The state's fiscal officer shall notify the Legislature by providing notice of the
74408 governor's action to the Office of Legislative Fiscal Analyst.

74409 (d) (i) All excess dedicated credits lapse to the appropriate fund at the end of the fiscal
74410 year unless the Legislature has designated the entire program or line item that is partially or fully
74411 funded from dedicated credits as nonlapsing.

74412 (ii) The Division of Finance shall determine the appropriate fund into which the
74413 dedicated credits lapse.

74414 (6) (a) Fixed collections are collections:

74415 (i) fixed by law or by the appropriation act at a specific amount; and

74416 (ii) required by law to be deposited into a separate line item and program.

74417 (b) The Legislature may establish by law the maximum amount of fixed collections that
74418 an agency may expend.

74419 (c) If an agency receives less than the maximum amount of expendable fixed collections
74420 established by law, the agency's authority to expend is limited to the amount of fixed collections
74421 that it receives.

74422 (d) If an agency receives fixed collections greater than the maximum amount of
74423 expendable fixed collections established by law, those excess amounts lapse to the General
74424 Fund, the Education Fund, the Uniform School Fund, or the Transportation Fund as designated
74425 by the director of the Division of Finance at the end of the fiscal year.

74426 (7) (a) Unless otherwise specifically provided by law, when an agency has a program or
74427 line item that is funded by more than one major revenue type, the agency shall expend its
74428 dedicated credits and fixed collections first.

74429 (b) Unless otherwise specifically provided by law, when programs or line items are
74430 funded by more than one major revenue type and include both free revenue and restricted
74431 revenue, an agency shall expend those sources based upon a proration of the amounts
74432 appropriated from each of those major revenue types.

74433 Section 1642. Section **63J-1-405**, which is renumbered from Section 63-38-10 is
74434 renumbered and amended to read:

74435 **~~[63-38-10].~~ 63J-1-405. Overexpenditure of budget by agency -- Prorating**
74436 **budget income shortfall.**

74437 (1) In providing for appropriations, the Legislature intends that expenditures of
74438 departments, agencies, and institutions of state government be kept within revenues available
74439 for such expenditures.

74440 (2) (a) The Legislature also intends that line items of appropriation not be
74441 overexpended.

74442 (b) If an agency's line item is overexpended at the close of a fiscal year:

74443 (i) the director of the Division of Finance may make payments from the line item to
74444 vendors for goods or services that were received on or before June 30; and

74445 (ii) the director of the Division of Finance shall immediately reduce the agency's line
74446 item budget in the current year by the amount of the overexpenditure.

74447 (c) Each agency with an overexpended line item shall produce a written report
74448 explaining the reasons for the overexpenditure and shall present the report to the Board of
74449 Examiners as required by Section ~~[63-6-10]~~ 63G-9-301.

74450 (3) If the total of all revenues accruing in any given fiscal year to the General Fund, or
74451 any other major fund type, collections, or dedicated credits, from which appropriations are
74452 made, are not sufficient to cover the appropriations made for that period, the governor shall
74453 reduce the budgetary allotments and transfer of funds by the amount of the deficiency.

74454 (4) (a) No department may receive any advance allotment, or allotments in excess of
74455 regular monthly allotments, that cannot be covered by anticipated revenue within the work
74456 program of the fiscal year, unless the governor allocates moneys from ~~[his]~~ the governor's
74457 emergency appropriations.

74458 (b) All allocations made from the governor's emergency appropriations shall be reported
74459 to the budget subcommittee of the Legislative Management Committee by notifying the Office
74460 of the Legislative Fiscal Analyst at least 15 days before the effective date of the allocation.

74461 (c) Emergency appropriations shall be allocated only to support activities having
74462 existing legislative approval and appropriation, and may not be allocated to any activity or
74463 function rejected directly or indirectly by the Legislature.

74464 Section 1643. Section **63J-1-406**, which is renumbered from Section 63-38-11 is
74465 renumbered and amended to read:

74466 ~~[63-38-11]~~. **63J-1-406. Director of finance to exercise accounting control --**
74467 **Work programs -- Allotments and expenditures.**

74468 (1) The director of finance shall exercise accounting control over all state departments,
74469 institutions, and agencies other than the Legislature and legislative committees.

74470 (2) (a) The director shall require the head of each department to submit, by May 15 of
74471 each year, a work program for the next fiscal year.

74472 (b) The director may require any department to submit a work program for any other
74473 period.

74474 (3) The work program shall include appropriations and all other funds from any source
74475 made available to the department for its operation and maintenance for the period and program
74476 authorized by the appropriation act.

74477 (4) The director of finance shall, upon request from the governor, revise, alter,
74478 decrease, or change work programs.

74479 (5) Notwithstanding the requirements of ~~[Title 63, Chapter 38a]~~ Title 63J, Chapter 2,
74480 Revenue Procedures and Control Act, the aggregate of the work program changes may not
74481 exceed the total appropriations or other funds from any source that are available to the

74482 department line item for the fiscal year in question.

74483 (6) The director of finance shall transmit a copy of the changes when approved by the
74484 governor to the head of the department concerned and also a copy to the legislative analyst.

74485 (7) Upon request, review, and approval by the governor, the director of finance shall
74486 permit all expenditures to be made from the appropriations or other funds from any source on
74487 the basis of those work programs.

74488 (8) (a) Except as provided by Subsection (8)(c), the director shall, through statistical
74489 sampling methods or other means, examine and approve or disapprove all requisitions and
74490 requests for proposed expenditures of the departments.

74491 (b) No requisitions of any of the departments shall be allowed nor shall any obligation
74492 be created without the approval and the certification of the director.

74493 (c) Notwithstanding the requirements of Subsection (8)(a), the director need only
74494 certify the availability of funds when the requisitions or proposed expenditures are for the
74495 judicial branch or to pay the salaries or compensation of officers fixed by law.

74496 Section 1644. Section **63J-1-407**, which is renumbered from Section 63-38-11.5 is
74497 renumbered and amended to read:

74498 **[63-38-11.5]. 63J-1-407. Reduction in federal funds -- Agencies to reduce**
74499 **budgets.**

74500 (1) In any fiscal year in which federal grants to be received by state agencies,
74501 departments, divisions, or institutions are reduced below the level estimated in the
74502 appropriations acts for that year, the programs supported by those grants must be reduced
74503 commensurate with the amount of the federal reduction unless the Legislature appropriates state
74504 funds to offset the loss in federal funding.

74505 (2) This program modification shall be reported to the Legislature through the
74506 Executive Appropriations Committee and the Office of the Legislative Fiscal Analyst.

74507 Section 1645. Section **63J-1-408**, which is renumbered from Section 63-38-12 is
74508 renumbered and amended to read:

74509 **[63-38-12]. 63J-1-408. Uniform School Fund -- Appropriations.**

74510 Appropriations made from the General Fund to the Uniform School Fund to assist in
74511 financing the state's portion of the minimum school program as provided by law, shall be
74512 conditioned upon available revenue.

74513 If revenues to the General Fund are not sufficient to permit transfers to the Uniform
74514 School Fund as provided by appropriation, the state fiscal officers, with the approval of the
74515 governor, shall withhold such transfers during the fiscal period, as in their judgment the
74516 available revenues justify, after other appropriations made by law have been provided for, and
74517 after any modifications in department and agency work program and allotments have been
74518 made; and provided further, that transfers to the Uniform School Fund shall be made at such
74519 times as required to equalize the property levy for each fiscal year.

74520 Section 1646. Section **63J-1-409**, which is renumbered from Section 63-38-13 is
74521 renumbered and amended to read:

74522 **~~[63-38-13]~~. 63J-1-409. Conditions on appropriations binding.**

74523 Any and all conditions as may be attached to items of appropriation made by the
74524 appropriations act not inconsistent with law shall be binding upon the recipient of any such
74525 appropriation.

74526 Section 1647. Section **63J-1-501**, which is renumbered from Section 63-38-14 is
74527 renumbered and amended to read:

74528 **Part 5. Budget Review**

74529 **~~[63-38-14]~~. 63J-1-501. Request for in-depth budget review of agency or
74530 program -- Form of budget submitted.**

74531 The Legislative Management Committee, upon recommendation of an appropriations
74532 subcommittee of the Legislature, may request of the governor for any designated fiscal year, an
74533 in-depth budget review of any state department, agency, institution or program. When
74534 responding to a request for an in-depth budget review, the governor shall submit for the
74535 department, agency, institution or program for the fiscal year indicated a budget prepared in
74536 accordance with Section ~~[63-38-15]~~ 63J-1-502 and using the format and procedures developed
74537 by the director of the Governor's Office of Planning and Budget in cooperation with the

74538 legislative fiscal analyst. This format shall be constructed to assist the analyst and the
74539 Legislature in reviewing the justification for selected departments, agencies, and institutions or
74540 any of their programs and activities.

74541 Section 1648. Section **63J-1-502**, which is renumbered from Section 63-38-15 is
74542 renumbered and amended to read:

74543 **~~[63-38-15].~~ 63J-1-502. Purpose of review -- Information submitted.**

74544 The purpose of an in-depth budget review is to determine whether each department,
74545 agency, institution or program warrants continuation of its current level of expenditure or at a
74546 different level, or if it should be terminated. The budget for a state department, agency,
74547 institution or program subject to an in-depth budget review shall be a detailed plan in which
74548 programs and activities within programs are organized and budgeted after analysis and
74549 evaluation are made of all proposed expenditures. In the presentation of the budget of a
74550 department, agency, institution or program subject to in-depth budget review, the governor
74551 shall include the following:

74552 (1) a statement of agency and program objectives, effectiveness measures, and program
74553 size indicators;

74554 (2) alternative funding levels for each program with effectiveness measures and
74555 program size indicators detailed for each alternative funding level. Alternative funding levels
74556 shall be determined as percentages of the appropriations level authorized by the Legislature for
74557 the current fiscal year. The percentages shall be determined for each in-depth budget review by
74558 the director of the Governor's Office of Planning and Budget in consultation with the legislative
74559 fiscal analyst;

74560 (3) a priority ranking of all programs and activities in successively increasing levels of
74561 performance and funding;

74562 (4) other budgetary information requested by the legislative fiscal analyst; and

74563 (5) a statement containing further recommendations of the governor as appropriate.

74564 Section 1649. Section **63J-1-503**, which is renumbered from Section 63-38-16 is
74565 renumbered and amended to read:

74566 ~~[63-38-16].~~ **63J-1-503.** Selection of activities for review -- Coordination with
74567 **audits.**

74568 The legislative auditor general shall consult with the Legislative Management Committee
74569 to determine the programs or activities to audit which will best assist the executive branch in
74570 preparing the in-depth budget and the Legislature in reviewing the in-depth budget for funding.
74571 The scope of the audits shall be determined by the legislative auditor general based upon need,
74572 manpower considerations and other audit priorities. It is the intent of the Legislature that the
74573 legislative fiscal analyst and the legislative auditor general coordinate the in-depth budget
74574 reviews insofar as possible with the audits performed by the legislative auditor general.

74575 Section 1650. Section **63J-2-101**, which is renumbered from Section 63-38a-101 is
74576 renumbered and amended to read:

74577 **CHAPTER 2. REVENUE PROCEDURES AND CONTROL ACT**

74578 **Part 1. General Provisions**

74579 ~~[63-38a-101].~~ **63J-2-101.** Title.

74580 This chapter ~~[shall be]~~ is known as the "Revenue Procedures and Control Act."

74581 Section 1651. Section **63J-2-102**, which is renumbered from Section 63-38a-102 is
74582 renumbered and amended to read:

74583 ~~[63-38a-102].~~ **63J-2-102.** Definitions.

74584 As used in this chapter:

74585 (1) (a) "Agency" means each department, commission, board, council, agency,
74586 institution, officer, corporation, fund, division, office, committee, authority, laboratory, library,
74587 unit, bureau, panel, or other administrative unit of the state.

74588 (b) "Agency" does not include the legislative branch, the board of regents, the Utah
74589 Higher Education Assistance Authority, the board of trustees of each higher education
74590 institution, each higher education institution and its associated branches, centers, divisions,
74591 institutes, foundations, hospitals, colleges, schools, or departments, a public education entity, or
74592 an independent agency.

74593 (2) (a) "Dedicated credits revenues" means revenues from collections by an agency that

74594 are deposited directly into an account for expenditure on a separate line item and program.

74595 (b) "Dedicated credits" does not mean:

74596 (i) federal revenues and the related pass through or the related state match paid by one
74597 agency to another;

74598 (ii) revenues that are not deposited in governmental funds;

74599 (iii) revenues from any contracts; and

74600 (iv) revenues received by the Attorney General's Office from billings for professional
74601 services.

74602 (3) "Fees" means revenue collected by an agency for performing a service or providing
74603 a function that the agency deposits or accounts for as dedicated credits or fixed collections.

74604 (4) (a) "Fixed collections revenues" means revenue from collections:

74605 (i) fixed by law or by the appropriation act at a specific amount; and

74606 (ii) required by law to be deposited into a separate line item and program.

74607 (b) "Fixed collections" does not mean:

74608 (i) federal revenues and the related pass through or the related state match paid by one
74609 agency to another;

74610 (ii) revenues that are not deposited in governmental funds;

74611 (iii) revenues from any contracts; and

74612 (iv) revenues received by the Attorney General's Office from billings for professional
74613 services.

74614 (5) (a) "Governmental fund" means funds used to account for the acquisition, use, and
74615 balances of expendable financial resources and related liabilities using a measurement focus that
74616 emphasizes the flow of financial resources.

74617 (b) "Governmental fund" does not include internal service funds, enterprise funds,
74618 capital projects funds, debt service funds, or trust and agency funds as established in Section
74619 51-5-4.

74620 (6) "Independent agency" means the Utah State Retirement Office, the Utah Housing
74621 Corporation, and the Workers' Compensation Fund.

74622 (7) "Program" means the function or service provided by an agency for which the
74623 agency collects fees.

74624 (8) "Revenue types" means the categories established by the Division of Finance under
74625 the authority of this chapter that classify revenue according to the purpose for which it is
74626 collected.

74627 Section 1652. Section **63J-2-201**, which is renumbered from Section 63-38a-103 is
74628 renumbered and amended to read:

74629 **Part 2. Procedures**

74630 ~~[63-38a-103].~~ **63J-2-201. Accounting for fee revenues.**

74631 (1) The Division of Finance shall:

74632 (a) establish revenue types;

74633 (b) develop a computerized master file of revenue types containing, for each revenue
74634 type:

74635 (i) the definition of each revenue type;

74636 (ii) if available, a historical record of the amount collected for the revenue type for each
74637 of the five years;

74638 (iii) the agency that collected the revenue;

74639 (iv) the program, organization, and fund into which the revenue was originally recorded
74640 each year;

74641 (v) a general description of the function where the largest portion of the revenue was
74642 spent each year;

74643 (vi) the specific legal authority that authorizes the agency to collect the revenue;

74644 (vii) the rates charged to the individuals or entities that pay the revenue;

74645 (viii) the general methodology used to determine the rate charged to individuals or
74646 entities that pay the revenue;

74647 (ix) for dedicated credits revenues and fixed collections revenues, the revenue estimate
74648 used by the agency to prepare their budget;

74649 (x) the amount appropriated as dedicated credits revenues and fixed collections

74650 revenues in the annual appropriation act; and

74651 (xi) for revenues other than dedicated credits revenues and fixed collections revenues,
74652 an estimate of the amount of revenue, if available or reasonably calculable; and

74653 (c) make the computerized file available to the Budget Office and the Office of
74654 Legislative Fiscal Analyst upon request.

74655 (2) Each agency shall provide the Division of Finance with the information required by
74656 this section.

74657 Section 1653. Section **63J-2-202**, which is renumbered from Section 63-38a-104 is
74658 renumbered and amended to read:

74659 ~~[63-38a-104]~~. **63J-2-202**. **Disposition of revenues.**

74660 (1) (a) Each agency shall include in its annual budget request estimates of dedicated
74661 credits revenues and fixed collections revenues that are identified by, collected for, or set by the
74662 agency.

74663 (b) If the Legislature or the Division of Finance establishes a new revenue type by law,
74664 the agency shall include that new revenue type in its budget request for the next fiscal year.

74665 (c) (i) Except as provided in Subsection (1)(c)(ii), if any agency fails to include the
74666 estimates of a revenue type in its annual budget request, the Division of Finance shall deposit
74667 the monies collected in that revenue type into the General Fund or other appropriate fund as
74668 free or restricted revenue.

74669 (ii) The Division of Finance may not deposit the monies collected from a revenue type
74670 not included in an agency's annual budget request into the General Fund or other appropriate
74671 fund if the agency did not include the estimates of the revenue type in its annual budget request
74672 because the Legislature had not yet established or authorized the new revenue type by law.

74673 (2) (a) (i) Except as provided in Subsection (2)(b), each agency that receives dedicated
74674 credits and fixed collections revenues greater than the amount appropriated to them by the
74675 Legislature in the annual appropriations act may expend the excess up to 25% of the amount
74676 appropriated if the expenditure is authorized by an amended work program approved as
74677 provided in Section ~~[63-38-11]~~ 63J-1-406. However, except for monies deposited as dedicated

74678 credits in the Illegal Drug Stamp Tax Fund under Section 59-19-105 or line items covering
74679 tuition and federal vocational funds at institutions of higher learning, any expenditure of
74680 dedicated credits in excess of amounts appropriated by the Legislature may not be used to
74681 permanently increase personnel within the agency unless approved by the Legislature.

74682 (ii) The Division of Finance shall deposit the balance of that excess into the General
74683 Fund or other appropriate fund as free or restricted revenue.

74684 (b) Notwithstanding the requirements of Subsection (2)(a), when an agency's dedicated
74685 credits and fixed collections revenues represent over 90% of the budget of the program for
74686 which they are collected, the agency may expend 100% of the excess of the amount
74687 appropriated if the expenditure is authorized by an amended work program approved as
74688 provided in Section [~~63-38-11~~] 63J-1-406.

74689 Section 1654. Section **63J-3-101**, which is renumbered from Section 63-38c-101 is
74690 renumbered and amended to read:

74691 **CHAPTER 3. STATE APPROPRIATIONS AND TAX LIMITATION ACT**

74692 **Part 1. General Provisions**

74693 ~~[63-38c-101]~~. **63J-3-101. Title.**

74694 This chapter is known as the "State Appropriations and Tax Limitation Act."

74695 Section 1655. Section **63J-3-102**, which is renumbered from Section 63-38c-102 is
74696 renumbered and amended to read:

74697 ~~[63-38c-102]~~. **63J-3-102. Purpose of chapter -- Limitations on state
74698 mandated property tax, state appropriations, and state debt.**

74699 (1) (a) It is the purpose of this chapter to:

74700 (i) place a limitation on the state mandated property tax rate under Title 53A, Chapter
74701 17a, Minimum School Program Act;

74702 (ii) place limitations on state government appropriations based upon the combined
74703 changes in population and inflation; and

74704 (iii) place a limitation on the state's outstanding general obligation debt.

74705 (b) The limitations imposed by this chapter are in addition to limitations on tax levies,

74706 rates, and revenues otherwise provided for by law.

74707 (2) (a) This chapter may not be construed as requiring the state to collect the full
74708 amount of tax revenues permitted to be appropriated by this chapter.

74709 (b) This chapter's purpose is to provide a ceiling, not a floor, limitation on the
74710 appropriations of state government.

74711 (3) The recommendations and budget analysis prepared by the Governor's Office of
74712 Planning and Budget and the Office of the Legislative Fiscal Analyst, as required by Title 36,
74713 Chapter 12, Legislative Organization, shall be in strict compliance with the limitations imposed
74714 under this chapter.

74715 Section 1656. Section **63J-3-103**, which is renumbered from Section 63-38c-103 is
74716 renumbered and amended to read:

74717 ~~[63-38c-103]~~. **63J-3-103. Definitions.**

74718 As used in this chapter:

74719 (1) (a) "Appropriations" means actual unrestricted capital and operating appropriations
74720 from unrestricted General Fund sources and from non-Uniform School Fund income tax
74721 revenues as presented in the governor's executive budgets.

74722 (b) Appropriations includes appropriations that are contingent upon available surpluses
74723 in the General Fund.

74724 (c) "Appropriations" does not mean:

74725 (i) debt service expenditures;

74726 (ii) emergency expenditures;

74727 (iii) expenditures from all other fund or subfund sources presented in the executive
74728 budgets;

74729 (iv) transfers or appropriations from the Education Fund to the Uniform School Fund;

74730 (v) transfers into, or appropriations made to, the General Fund Budget Reserve

74731 Account established in Section ~~[63-38-2.5]~~ 63J-1-202;

74732 (vi) transfers into, or appropriations made to, the Education Budget Reserve Account
74733 established in Section ~~[63-38-2.6]~~ 63J-1-203;

- 74734 (vii) transfers in accordance with Section [~~63-38-2.7~~] 63J-1-204 into, or appropriations
74735 made to the State Disaster Recovery Restricted Account created in Section 53-2-403;
- 74736 (viii) monies appropriated to fund the total one-time project costs for the construction
74737 of capital developments as defined in Section 63A-5-104;
- 74738 (ix) transfers or deposits into or appropriations made to the Centennial Highway Fund
74739 Restricted Account created by Section 72-2-118;
- 74740 (x) transfers or deposits into or appropriations made to the Transportation Investment
74741 Fund of 2005 created by Section 72-2-124; or
- 74742 (xi) transfers or deposits into or appropriations made to:
- 74743 (A) the Department of Transportation from any source; or
- 74744 (B) any transportation-related account or fund from any source.
- 74745 (2) "Base year real per capita appropriations" means the result obtained for the state by
74746 dividing the fiscal year 1985 actual appropriations of the state less debt monies by:
- 74747 (a) the state's July 1, 1983 population; and
- 74748 (b) the fiscal year 1983 inflation index divided by 100.
- 74749 (3) "Calendar year" means the time period beginning on January 1 of any given year and
74750 ending on December 31 of the same year.
- 74751 (4) "Fiscal emergency" means an extraordinary occurrence requiring immediate
74752 expenditures and includes the settlement under Chapter 4, Laws of Utah 1988, Fourth Special
74753 Session.
- 74754 (5) "Fiscal year" means the time period beginning on July 1 of any given year and
74755 ending on June 30 of the subsequent year.
- 74756 (6) "Fiscal year 1985 actual base year appropriations" means fiscal year 1985 actual
74757 capital and operations appropriations from General Fund and non-Uniform School Fund income
74758 tax revenue sources, less debt monies.
- 74759 (7) "Inflation index" means the change in the general price level of goods and services
74760 as measured by the Gross National Product Implicit Price Deflator of the Bureau of Economic
74761 Analysis, U.S. Department of Commerce calculated as provided in Section [~~63-38c-202~~]

74762 63J-3-202.

74763 (8) (a) "Maximum allowable appropriations limit" means the appropriations that could
74764 be, or could have been, spent in any given year under the limitations of this chapter.

74765 (b) "Maximum allowable appropriations limit" does not mean actual appropriations
74766 spent or actual expenditures.

74767 (9) "Most recent fiscal year's inflation index" means the fiscal year inflation index two
74768 fiscal years previous to the fiscal year for which the maximum allowable inflation and population
74769 appropriations limit is being computed under this chapter.

74770 (10) "Most recent fiscal year's population" means the fiscal year population two fiscal
74771 years previous to the fiscal year for which the maximum allowable inflation and population
74772 appropriations limit is being computed under this chapter.

74773 (11) "Population" means the number of residents of the state as of July 1 of each year as
74774 calculated by the Governor's Office of Planning and Budget according to the procedures and
74775 requirements of Section [~~63-38c-202~~] 63J-3-202.

74776 (12) "Revenues" means the revenues of the state from every tax, penalty, receipt, and
74777 other monetary exaction and interest connected with it that are recorded as unrestricted revenue
74778 of the General Fund and from non-Uniform School Fund income tax revenues, except as
74779 specifically exempted by this chapter.

74780 (13) "Security" means any bond, note, warrant, or other evidence of indebtedness,
74781 whether or not the bond, note, warrant, or other evidence of indebtedness is or constitutes an
74782 "indebtedness" within the meaning of any provision of the constitution or laws of this state.

74783 Section 1657. Section **63J-3-201**, which is renumbered from Section 63-38c-201 is
74784 renumbered and amended to read:

74785 **Part 2. Appropriations Limit**

74786 [~~63-38c-201~~]. **63J-3-201. Appropriations limit -- Formula.**

74787 (1) There is established a state appropriations limit for each fiscal year beginning after
74788 June 30, 1988.

74789 (2) For each of these fiscal years, the annual legislative appropriations for this state, its

74790 agencies, departments, and institutions may not exceed that sum determined by applying the
74791 formula $B * P * (I/100)$ in which:

74792 (a) "B" equals the base year real per capita appropriations for the state, its agencies,
74793 departments, and institutions;

74794 (b) "P" equals the most recent fiscal year's population; and

74795 (c) "I" equals the most recent fiscal year's inflation index adjusted to reflect fiscal year
74796 1989 as having an index value of 100.

74797 (3) The revenues specified in Section [~~63-38c-205~~] 63J-3-205 are not subject to the
74798 limitation in this section.

74799 Section 1658. Section **63J-3-202**, which is renumbered from Section 63-38c-202 is
74800 renumbered and amended to read:

74801 [~~63-38c-202~~]. **63J-3-202. Computing formula elements.**

74802 (1) For purposes of calculating fiscal year inflation indexes for the previous fiscal year,
74803 the Governor's Office of Planning and Budget shall use:

74804 (a) the actual quarterly data released by the U.S. Department of Commerce as of
74805 January 31 of each year; and

74806 (b) the most recent U.S. Bureau of Census population estimates as of January 31 of
74807 each year.

74808 (2) (a) For purposes of computing the inflation index, the Governor's Office of Planning
74809 and Budget shall:

74810 (i) assign the bureau's 1982 calendar year inflation index value of 100 to fiscal year
74811 1989 for purposes of computing fiscal year index values;

74812 (ii) compute all subsequent fiscal year inflation indexes after having assigned the fiscal
74813 year 1989 inflation index a value of 100; and

74814 (iii) use the quarterly index values published by the Bureau of Economic Analysis, U.S.
74815 Department of Commerce, to compute fiscal year index values.

74816 (b) If the bureau changes its calendar base year, appropriate adjustments are to be made
74817 in this chapter to accommodate those changes.

74818 (3) (a) For purposes of computing the most recent fiscal year's population, the
74819 Governor's Office of Planning and Budget shall convert the April 1 decennial census estimate to
74820 a July 1 estimate, unless otherwise estimated by the Bureau of Census.

74821 (b) If the bureau changes the state's July 1, 1983 base year population after it conducts
74822 the 1990 Census, appropriate adjustments shall be made in this chapter to accommodate those
74823 changes.

74824 Section 1659. Section **63J-3-203**, which is renumbered from Section 63-38c-203 is
74825 renumbered and amended to read:

74826 ~~[63-38c-203]~~. **63J-3-203. Program and service adjustments to the**
74827 **limitation -- Funding level.**

74828 (1) If the state transfers partial or total responsibility of a program or service to another
74829 unit of government, the appropriations limitations shall be decreased by the amount of the
74830 transfer.

74831 (2) If the state accepts partial or total responsibility for a program or service from
74832 another unit of government, the appropriations limit shall be increased by the amount of the
74833 transfer.

74834 (3) If funding exempted under this chapter for a program or service administered by the
74835 state is reduced or eliminated and the Legislature elects to fund the program or service with tax
74836 revenue, the appropriations limitations shall be increased by the amount the Legislature elects to
74837 fund.

74838 (4) If the state transfers the funding source of a program or service from taxes to user
74839 charges or other exempted revenue sources specified in this chapter, the maximum allowable
74840 appropriations limitations shall be decreased by the amount of the transfer.

74841 (5) If the Legislature transfers the funding source of a program or service from user
74842 charges or other exempted revenue sources as specified in this chapter to tax revenues,
74843 appropriations limitations shall be increased by the amount of the transfer.

74844 (6) If the state transfers revenues from sources exempt under this chapter to funds
74845 containing revenues from nonexempt sources, the revenues transferred shall be part of and

74846 subject to the appropriations limits of this chapter.

74847 Section 1660. Section **63J-3-204**, which is renumbered from Section 63-38c-204 is
74848 renumbered and amended to read:

74849 ~~[63-38c-204]~~. **63J-3-204. Exceptions to limitation -- Fiscal emergency --**
74850 **Requirements -- Limits modified or exceeded by vote of the people.**

74851 (1) (a) The limits as provided in this chapter may be exceeded if a fiscal emergency is
74852 declared.

74853 (b) A fiscal emergency for the state shall be declared by the governor and confirmed by
74854 more than two-thirds of both houses of the Legislature.

74855 (2) (a) Funding for fiscal emergencies may not be included in the appropriations base
74856 for computing the maximum allowable appropriations in subsequent years.

74857 (b) Fiscal emergency appropriations shall remain separate from appropriations subject
74858 to limits imposed by this chapter and shall be assigned expiration dates.

74859 (3) Any limit in this chapter may be exceeded or modified by a majority vote of the
74860 people in a statewide election.

74861 Section 1661. Section **63J-3-205**, which is renumbered from Section 63-38c-205 is
74862 renumbered and amended to read:

74863 ~~[63-38c-205]~~. **63J-3-205. Monies excluded from the limitation.**

74864 Monies from the following sources are excluded from the revenues appropriated and
74865 used in determining a limitation:

74866 (1) monies received from the government of the United States including federal mineral
74867 lease payments;

74868 (2) monies received by the state from another unit of government, except the proceeds
74869 of taxes, fees, or penalties imposed by the state and collected by the other unit of government;

74870 (3) monies derived from the issuance of, or to pay interest, principal, or redemption
74871 premiums on, any security;

74872 (4) monies received from the sale of fixed assets or gains on fixed asset transfers;

74873 (5) the proceeds of contracts, grants, gifts, donations, and bequests made to the state

74874 for a purpose specified by the contractor or donor;

74875 (6) user charges derived by the state from the sale of a product or service pledged or
74876 legally available to repay any security or for which the quantity of the product or level of service
74877 provided to a user is at the discretion of the user; and

74878 (7) monies raised to meet fiscal emergencies.

74879 Section 1662. Section **63J-3-301**, which is renumbered from Section 63-38c-301 is
74880 renumbered and amended to read:

74881 **Part 3. State Auditor's Responsibilities**

74882 ~~[63-38c-301]~~. **63J-3-301. State auditor's responsibilities with respect to the**
74883 **limitation -- Correction of deficiencies.**

74884 The state auditor shall notify the state through the appropriate officer or officers of
74885 necessary corrective action if upon audit or examination of the results of an independent audit
74886 or a budget document of the state, the state auditor determines that:

74887 (1) funds have been improperly accounted or budgeted for in order to avoid the
74888 limitations imposed by this chapter;

74889 (2) funds have been improperly exempted from the limitations as provided in this
74890 chapter;

74891 (3) general government functions have been improperly financed by user or service
74892 charges; or

74893 (4) the limitations imposed by this chapter have been exceeded.

74894 Section 1663. Section **63J-3-401**, which is renumbered from Section 63-38c-401 is
74895 renumbered and amended to read:

74896 **Part 4. Property Tax Limitation**

74897 ~~[63-38c-401]~~. **63J-3-401. State mandated property tax limitation -- Vote**
74898 **requirement needed to exceed limitation.**

74899 The state mandated property tax rate in Title 53A, Chapter 17a, Minimum School
74900 Program Act, as of July 1, 1989, may not be increased without more than a two-thirds vote of
74901 both houses of the Legislature.

74902 Section 1664. Section **63J-3-402**, which is renumbered from Section 63-38c-402 is
74903 renumbered and amended to read:

74904 ~~[63-38c-402]~~. **63J-3-402. Debt limitation -- Vote requirement needed to**
74905 **exceed limitation -- Exceptions.**

74906 (1) (a) Except as provided in Subsection (1)(b), the outstanding general obligation debt
74907 of the state may not exceed 45% of the maximum allowable appropriations limit unless
74908 approved by more than a two-thirds vote of both houses of the Legislature.

74909 (b) Notwithstanding the limitation contained in Subsection (1)(a), debt issued under the
74910 authority of the following parts or sections is not subject to the debt limitation established by
74911 this section:

74912 (i) Title 63B, Chapter 6, Part 2, 1997 Highway General Obligation Bond Authorization;

74913 (ii) Title 63B, Chapter 6, Part 3, 1997 Highway Bond Anticipation Note Authorization;

74914 (iii) Title 63B, Chapter 7, Part 2, 1998 Highway General Obligation Bond

74915 Authorization;

74916 (iv) Title 63B, Chapter 7, Part 3, 1998 Highway Bond Anticipation Note Authorization;

74917 (v) Title 63B, Chapter 8, Part 2, 1999 Highway General Obligation Bond

74918 Authorization;

74919 (vi) Title 63B, Chapter 8, Part 3, 1999 Highway Bond Anticipation Note Authorization;

74920 (vii) Title 63B, Chapter 9, Part 2, 2000 Highway General Obligation Bond;

74921 (viii) Title 63B, Chapter 10, Part 1, 2001 Highway General Obligation Bond;

74922 (ix) Title 63B, Chapter 10, Part 2, 2001 Highway General Obligation Bond Anticipation

74923 Notes;

74924 (x) Title 63B, Chapter 11, Part 5, 2002 Highway General Obligation Bond for Salt

74925 Lake County;

74926 (xi) Title 63B, Chapter 11, Part 6, 2002 Highway General Obligation Bond Anticipation

74927 Notes for Salt Lake County Authorization;

74928 (xii) Section 63B-13-102;

74929 (xiii) Section 63B-16-101; and

74930 (xiv) Section 63B-16-102.

74931 (2) This section does not apply if contractual rights will be impaired.

74932 Section 1665. Section **63J-4-101**, which is renumbered from Section 63-38d-101 is

74933 renumbered and amended to read:

74934 **CHAPTER 4. GOVERNOR'S OFFICE OF PLANNING AND BUDGET**

74935 **Part 1. General Provisions**

74936 ~~[63-38d-101]~~. **63J-4-101. Title.**

74937 This chapter is known as the "Governor's Office of Planning and Budget."

74938 Section 1666. Section **63J-4-102**, which is renumbered from Section 63-38d-102 is

74939 renumbered and amended to read:

74940 ~~[63-38d-102]~~. **63J-4-102. Definitions.**

74941 As used in this chapter:

74942 (1) "Committee" means the Resource Development Coordinating Committee created by
74943 this chapter.

74944 (2) "Director" means the chief administrative officer of the Governor's Office of
74945 Planning and Budget appointed as provided in this chapter.

74946 (3) "Office" means the Governor's Office of Planning and Budget created by this
74947 chapter.

74948 (4) "Political subdivision" means a county, municipality, local district, special service
74949 district, school district, interlocal cooperation agreement entity, or any administrative subunit of
74950 them.

74951 (5) "State planning coordinator" means the person appointed as planning coordinator as
74952 provided in this chapter.

74953 Section 1667. Section **63J-4-201**, which is renumbered from Section 63-38d-201 is

74954 renumbered and amended to read:

74955 **Part 2. Creation - Appointments**

74956 ~~[63-38d-201]~~. **63J-4-201. Creation.**

74957 There is created within the governor's office the Governor's Office of Planning and

74958 Budget to be administered by a director.

74959 Section 1668. Section **63J-4-202**, which is renumbered from Section 63-38d-202 is
74960 renumbered and amended to read:

74961 ~~[63-38d-202]~~. **63J-4-202**. **Appointment of director, state planning**
74962 **coordinator.**

74963 (1) (a) The governor shall appoint, to serve at the governor's pleasure:

74964 (i) a director of the Governor's Office of Planning and Budget; and

74965 (ii) a state planning coordinator.

74966 (b) The state planning coordinator is considered part of the office for purposes of
74967 administration.

74968 (2) The governor shall establish the director's salary within the salary range fixed by the
74969 Legislature in Title 67, Chapter 22, State Officer Compensation.

74970 Section 1669. Section **63J-4-301**, which is renumbered from Section 63-38d-301 is
74971 renumbered and amended to read:

74972 **Part 3. Budget Duties**

74973 ~~[63-38d-301]~~. **63J-4-301**. **Budget duties of the director and office.**

74974 (1) The director and the office shall:

74975 (a) comply with the procedures and requirements of [~~Title 63, Chapter 38~~] Title 63J,
74976 Chapter 1, Budgetary Procedures Act;

74977 (b) under the direct supervision of the governor, assist the governor in the preparation
74978 of the governor's budget recommendations;

74979 (c) advise the governor with regard to approval or revision of agency work programs as
74980 specified in Section [~~63-38-11~~] 63J-1-406; and

74981 (d) perform other duties and responsibilities as assigned by the governor.

74982 (2) (a) The director of the Governor's Office of Planning and Budget or the director's
74983 designee is the Federal Assistance Management Officer.

74984 (b) In acting as the Federal Assistance Management Officer, the director or designee
74985 shall:

74986 (i) study the administration and effect of federal assistance programs in the state and
74987 advise the governor and the Legislature, through the Office of Legislative Fiscal Analyst and the
74988 Executive Appropriations Committee, of alternative recommended methods and procedures for
74989 the administration of these programs;

74990 (ii) assist in the coordination of federal assistance programs that involve or are
74991 administered by more than one state agency; and

74992 (iii) analyze and advise on applications for new federal assistance programs submitted to
74993 the governor for approval as required by Chapter 38e, Federal Funds Procedures.

74994 Section 1670. Section **63J-4-401**, which is renumbered from Section 63-38d-401 is
74995 renumbered and amended to read:

74996 **Part 4. Planning**

74997 ~~[63-38d-401]~~. **63J-4-401. Planning duties of the planning coordinator and**
74998 **office.**

74999 (1) The state planning coordinator shall:

75000 (a) act as the governor's adviser on state, regional, metropolitan, and local
75001 governmental planning matters relating to public improvements and land use;

75002 (b) counsel with the authorized representatives of the Department of Transportation,
75003 the State Building Board, the Department of Health, the Department of Workforce Services, the
75004 Labor Commission, the Department of Natural Resources, the School and Institutional Trust
75005 Lands Administration, and other proper persons concerning all state planning matters;

75006 (c) when designated to do so by the governor, receive funds made available to Utah by
75007 the federal government;

75008 (d) receive and review plans of the various state agencies and political subdivisions
75009 relating to public improvements and programs;

75010 (e) when conflicts occur between the plans and proposals of state agencies, prepare
75011 specific recommendations for the resolution of the conflicts and submit the recommendations to
75012 the governor for a decision resolving the conflict;

75013 (f) when conflicts occur between the plans and proposals of a state agency and a

75014 political subdivision or between two or more political subdivisions, advise these entities of the
75015 conflict and make specific recommendations for the resolution of the conflict;

75016 (g) act as the governor's planning agent in planning public improvements and land use
75017 and, in this capacity, undertake special studies and investigations;

75018 (h) provide information and cooperate with the Legislature or any of its committees in
75019 conducting planning studies;

75020 (i) cooperate and exchange information with federal agencies and local, metropolitan,
75021 or regional agencies as necessary to assist with federal, state, regional, metropolitan, and local
75022 programs; and

75023 (j) make recommendations to the governor that the planning coordinator considers
75024 advisable for the proper development and coordination of plans for state government and
75025 political subdivisions.

75026 (2) The state planning coordinator may:

75027 (a) perform regional and state planning and assist state government planning agencies in
75028 performing state planning;

75029 (b) provide planning assistance to Indian tribes regarding planning for Indian
75030 reservations; and

75031 (c) assist city, county, metropolitan, and regional planning agencies in performing local,
75032 metropolitan, and regional planning, provided that the state planning coordinator and ~~his~~ the
75033 state planning coordinator's agents and designees recognize and promote the plans, policies,
75034 programs, processes, and desired outcomes of each planning agency whenever possible.

75035 (3) When preparing or assisting in the preparation of plans, policies, programs, or
75036 processes related to the management or use of federal lands or natural resources on federal
75037 lands in Utah, the state planning coordinator shall:

75038 (a) incorporate the plans, policies, programs, processes, and desired outcomes of the
75039 counties where the federal lands or natural resources are located, to the maximum extent
75040 consistent with state and federal law, provided that this requirement shall not be interpreted to
75041 infringe upon the authority of the governor;

75042 (b) identify inconsistencies or conflicts between the plans, policies, programs,
75043 processes, and desired outcomes prepared under Subsection (3)(a) and the plans, programs,
75044 processes, and desired outcomes of local government as early in the preparation process as
75045 possible, and seek resolution of the inconsistencies through meetings or other conflict resolution
75046 mechanisms involving the necessary and immediate parties to the inconsistency or conflict;

75047 (c) present to the governor the nature and scope of any inconsistency or other conflict
75048 that is not resolved under the procedures in Subsection (3)(b) for the governor's decision about
75049 the position of the state concerning the inconsistency or conflict;

75050 (d) develop, research, and use factual information, legal analysis, and statements of
75051 desired future condition for the state, or subregion of the state, as necessary to support the
75052 plans, policies, programs, processes, and desired outcomes of the state and the counties where
75053 the federal lands or natural resources are located;

75054 (e) establish and coordinate agreements between the state and federal land management
75055 agencies, federal natural resource management agencies, and federal natural resource regulatory
75056 agencies to facilitate state and local participation in the development, revision, and
75057 implementation of land use plans, guidelines, regulations, other instructional memoranda, or
75058 similar documents proposed or promulgated for lands and natural resources administered by
75059 federal agencies; and

75060 (f) work in conjunction with political subdivisions to establish agreements with federal
75061 land management agencies, federal natural resource management agencies, and federal natural
75062 resource regulatory agencies to provide a process for state and local participation in the
75063 preparation of, or coordinated state and local response to, environmental impact analysis
75064 documents and similar documents prepared pursuant to law by state or federal agencies.

75065 (4) The state planning coordinator shall comply with the requirements of Subsection
75066 63C-4-102(7) before submitting any comments on a draft environmental impact statement or on
75067 an environmental assessment for a proposed land management plan.

75068 (5) The state planning coordinator shall cooperate with and work in conjunction with
75069 appropriate state agencies and political subdivisions to develop policies, plans, programs,

75070 processes, and desired outcomes authorized by this section by coordinating the development of
75071 positions:

75072 (a) through the Resource Development Coordinating Committee;

75073 (b) in conjunction with local government officials concerning general local government
75074 plans;

75075 (c) by soliciting public comment through the Resource Development Coordinating
75076 Committee; and

75077 (d) by working with the Public Lands Policy Coordinating Office.

75078 (6) The state planning coordinator shall recognize and promote the following principles
75079 when preparing any policies, plans, programs, processes, or desired outcomes relating to federal
75080 lands and natural resources on federal lands pursuant to this section:

75081 (a) (i) the citizens of the state are best served by applying multiple-use and
75082 sustained-yield principles in public land use planning and management; and

75083 (ii) multiple-use and sustained-yield management means that federal agencies should
75084 develop and implement management plans and make other resource-use decisions that:

75085 (A) achieve and maintain in perpetuity a high-level annual or regular periodic output of
75086 mineral and various renewable resources from public lands;

75087 (B) support valid existing transportation, mineral, and grazing privileges at the highest
75088 reasonably sustainable levels;

75089 (C) support the specific plans, programs, processes, and policies of state agencies and
75090 local governments;

75091 (D) are designed to produce and provide the desired vegetation for the watersheds,
75092 timber, food, fiber, livestock forage, and wildlife forage, and minerals that are necessary to meet
75093 present needs and future economic growth and community expansion without permanent
75094 impairment of the productivity of the land;

75095 (E) meet the recreational needs and the personal and business-related transportation
75096 needs of the citizens of the state by providing access throughout the state;

75097 (F) meet the recreational needs of the citizens of the state;

- 75098 (G) meet the needs of wildlife;
- 75099 (H) provide for the preservation of cultural resources, both historical and
- 75100 archaeological;
- 75101 (I) meet the needs of economic development;
- 75102 (J) meet the needs of community development; and
- 75103 (K) provide for the protection of water rights;
- 75104 (b) managing public lands for "wilderness characteristics" circumvents the statutory
- 75105 wilderness process and is inconsistent with the multiple-use and sustained-yield management
- 75106 standard that applies to all Bureau of Land Management and U.S. Forest Service lands that are
- 75107 not wilderness areas or wilderness study areas;
- 75108 (c) all waters of the state are:
- 75109 (i) owned exclusively by the state in trust for its citizens;
- 75110 (ii) are subject to appropriation for beneficial use; and
- 75111 (iii) are essential to the future prosperity of the state and the quality of life within the
- 75112 state;
- 75113 (d) the state has the right to develop and use its entitlement to interstate rivers;
- 75114 (e) all water rights desired by the federal government must be obtained through the
- 75115 state water appropriation system;
- 75116 (f) land management and resource-use decisions which affect federal lands should give
- 75117 priority to and support the purposes of the compact between the state and the United States
- 75118 related to school and institutional trust lands;
- 75119 (g) development of the solid, fluid, and gaseous mineral resources of the state is an
- 75120 important part of the economy of the state, and of local regions within the state;
- 75121 (h) the state should foster and support industries that take advantage of the state's
- 75122 outstanding opportunities for outdoor recreation;
- 75123 (i) wildlife constitutes an important resource and provides recreational and economic
- 75124 opportunities for the state's citizens;
- 75125 (j) proper stewardship of the land and natural resources is necessary to ensure the

75126 health of the watersheds, timber, forage, and wildlife resources to provide for a continuous
75127 supply of resources for the people of the state and the people of the local communities who
75128 depend on these resources for a sustainable economy;

75129 (k) forests, rangelands, timber, and other vegetative resources:

75130 (i) provide forage for livestock;

75131 (ii) provide forage and habitat for wildlife;

75132 (iii) provide resources for the state's timber and logging industries;

75133 (iv) contribute to the state's economic stability and growth; and

75134 (v) are important for a wide variety of recreational pursuits;

75135 (l) management programs and initiatives that improve watersheds, forests, and increase
75136 forage for the mutual benefit of wildlife species and livestock, logging, and other agricultural
75137 industries by utilizing proven techniques and tools are vital to the state's economy and the
75138 quality of life in Utah; and

75139 (m) (i) land management plans, programs, and initiatives should provide that the
75140 amount of domestic livestock forage, expressed in animal unit months, for permitted, active use
75141 as well as the wildlife forage included in that amount, be no less than the maximum number of
75142 animal unit months sustainable by range conditions in grazing allotments and districts, based on
75143 an on-the-ground and scientific analysis;

75144 (ii) the state opposes the relinquishment or retirement of grazing animal unit months in
75145 favor of conservation, wildlife, and other uses;

75146 (iii) (A) the state favors the best management practices that are jointly sponsored by
75147 cattlemen's, sportsmen's, and wildlife management groups such as chaining, logging, seeding,
75148 burning, and other direct soil and vegetation prescriptions that are demonstrated to restore
75149 forest and rangeland health, increase forage, and improve watersheds in grazing districts and
75150 allotments for the mutual benefit of domestic livestock and wildlife;

75151 (B) when practices described in Subsection (6)(m)(iii)(A) increase a grazing allotment's
75152 forage beyond the total permitted forage use that was allocated to that allotment in the last
75153 federal land use plan or allotment management plan still in existence as of January 1, 2005, a

75154 reasonable and fair portion of the increase in forage beyond the previously allocated total
75155 permitted use should be allocated to wildlife as recommended by a joint, evenly balanced
75156 committee of livestock and wildlife representatives that is appointed and constituted by the
75157 governor for that purpose;

75158 (C) the state favors quickly and effectively adjusting wildlife population goals and
75159 population census numbers in response to variations in the amount of available forage caused by
75160 drought or other climatic adjustments, and state agencies responsible for managing wildlife
75161 population goals and population census numbers will give due regard to both the needs of the
75162 livestock industry and the need to prevent the decline of species to a point where listing under
75163 the terms of the Endangered Species Act when making such adjustments;

75164 (iv) the state opposes the transfer of grazing animal unit months to wildlife for
75165 supposed reasons of rangeland health;

75166 (v) reductions in domestic livestock animal unit months must be temporary and
75167 scientifically based upon rangeland conditions;

75168 (vi) policies, plans, programs, initiatives, resource management plans, and forest plans
75169 may not allow the placement of grazing animal unit months in a suspended use category unless
75170 there is a rational and scientific determination that the condition of the rangeland allotment or
75171 district in question will not sustain the animal unit months sought to be placed in suspended use;

75172 (vii) any grazing animal unit months that are placed in a suspended use category should
75173 be returned to active use when range conditions improve;

75174 (viii) policies, plans, programs, and initiatives related to vegetation management should
75175 recognize and uphold the preference for domestic grazing over alternate forage uses in
75176 established grazing districts while upholding management practices that optimize and expand
75177 forage for grazing and wildlife in conjunction with state wildlife management plans and
75178 programs in order to provide maximum available forage for all uses; and

75179 (ix) in established grazing districts, animal unit months that have been reduced due to
75180 rangeland health concerns should be restored to livestock when rangeland conditions improve,
75181 and should not be converted to wildlife use.

75182 (7) The state planning coordinator shall recognize and promote the following findings in
75183 the preparation of any policies, plans, programs, processes, or desired outcomes relating to
75184 federal lands and natural resources on federal lands under this section:

75185 (a) as a coholder of R.S. 2477 rights-of-way with the counties, the state supports its
75186 recognition by the federal government and the public use of R.S. 2477 rights-of-way and urges
75187 the federal government to fully recognize the rights-of-way and their use by the public as
75188 expeditiously as possible;

75189 (b) it is the policy of the state to use reasonable administrative and legal measures to
75190 protect and preserve valid existing rights-of-way granted by Congress under R.S. 2477, and to
75191 support and work in conjunction with counties to redress cases where R.S. 2477 rights-of-way
75192 are not recognized or are impaired; and

75193 (c) transportation and access routes to and across federal lands, including all
75194 rights-of-way vested under R.S. 2477, are vital to the state's economy and to the quality of life
75195 in the state, and must provide, at a minimum, a network of roads throughout the resource
75196 planning area that provides for:

75197 (i) movement of people, goods, and services across public lands;

75198 (ii) reasonable access to a broad range of resources and opportunities throughout the
75199 resource planning area, including:

75200 (A) livestock operations and improvements;

75201 (B) solid, fluid, and gaseous mineral operations;

75202 (C) recreational opportunities and operations, including motorized and nonmotorized
75203 recreation;

75204 (D) search and rescue needs;

75205 (E) public safety needs; and

75206 (F) access for transportation of wood products to market;

75207 (iii) access to federal lands for people with disabilities and the elderly; and

75208 (iv) access to state lands and school and institutional trust lands to accomplish the
75209 purposes of those lands.

75210 (8) The state planning coordinator shall recognize and promote the following findings in
75211 the preparation of any plans, policies, programs, processes, or desired outcomes relating to
75212 federal lands and natural resources on federal lands pursuant to this section:

75213 (a) the state's support for the addition of a river segment to the National Wild and
75214 Scenic Rivers System, 16 U.S.C. Sec. 1271 et seq., will be withheld until:

75215 (i) it is clearly demonstrated that water is present and flowing at all times;

75216 (ii) it is clearly demonstrated that the required water-related value is considered
75217 outstandingly remarkable within a region of comparison consisting of one of the three
75218 physiographic provinces in the state, and that the rationale and justification for the conclusions
75219 are disclosed;

75220 (iii) it is clearly demonstrated that the inclusion of each river segment is consistent with
75221 the plans and policies of the state and the county or counties where the river segment is located
75222 as those plans and policies are developed according to Subsection (3);

75223 (iv) the effects of the addition upon the local and state economies, agricultural and
75224 industrial operations and interests, outdoor recreation, water rights, water quality, water
75225 resource planning, and access to and across river corridors in both upstream and downstream
75226 directions from the proposed river segment have been evaluated in detail by the relevant federal
75227 agency;

75228 (v) it is clearly demonstrated that the provisions and terms of the process for review of
75229 potential additions have been applied in a consistent manner by all federal agencies;

75230 (vi) the rationale and justification for the proposed addition, including a comparison
75231 with protections offered by other management tools, is clearly analyzed within the multiple-use
75232 mandate, and the results disclosed;

75233 (vii) it is clearly demonstrated that the federal agency with management authority over
75234 the river segment, and which is proposing the segment for inclusion in the National Wild and
75235 Scenic River System will not use the actual or proposed designation as a basis to impose
75236 management standards outside of the federal land management plan;

75237 (viii) it is clearly demonstrated that the terms and conditions of the federal land and

75238 resource management plan containing a recommendation for inclusion in the National Wild and
75239 Scenic River System:

75240 (A) evaluates all eligible river segments in the resource planning area completely and
75241 fully for suitability for inclusion in the National Wild and Scenic River System;

75242 (B) does not suspend or terminate any studies for inclusion in the National Wild and
75243 Scenic River System at the eligibility phase;

75244 (C) fully disclaims any interest in water rights for the recommended segment as a result
75245 of the adoption of the plan; and

75246 (D) fully disclaims the use of the recommendation for inclusion in the National Wild and
75247 Scenic River System as a reason or rationale for an evaluation of impacts by proposals for
75248 projects upstream, downstream, or within the recommended segment;

75249 (ix) it is clearly demonstrated that the agency with management authority over the river
75250 segment commits not to use an actual or proposed designation as a basis to impose Visual
75251 Resource Management Class I or II management prescriptions that do not comply with the
75252 provisions of Subsection (8)(t); and

75253 (x) it is clearly demonstrated that including the river segment and the terms and
75254 conditions for managing the river segment as part of the National Wild and Scenic River System
75255 will not prevent, reduce, impair, or otherwise interfere with:

75256 (A) the state and its citizens' enjoyment of complete and exclusive water rights in and to
75257 the rivers of the state as determined by the laws of the state; or

75258 (B) local, state, regional, or interstate water compacts to which the state or any county
75259 is a party;

75260 (b) the conclusions of all studies related to potential additions to the National Wild and
75261 Scenic River System, 16 U.S.C. Sec. 1271 et seq., are submitted to the state for review and
75262 action by the Legislature and governor, and the results, in support of or in opposition to, are
75263 included in any planning documents or other proposals for addition and are forwarded to the
75264 United States Congress;

75265 (c) the state's support for designation of an Area of Critical Environmental Concern

75266 (ACEC), as defined in 43 U.S.C. Sec. 1702, within federal land management plans will be
75267 withheld until:

75268 (i) it is clearly demonstrated that the proposed area satisfies all the definitional
75269 requirements of the Federal Land Policy and Management Act of 1976, 43 U.S.C. Sec. 1702(a);

75270 (ii) it is clearly demonstrated that the area proposed for designation as an ACEC is
75271 limited in geographic size and that the proposed management prescriptions are limited in scope
75272 to the minimum necessary to specifically protect and prevent irreparable damage to the relevant
75273 and important values identified, or limited in geographic size and management prescriptions to
75274 the minimum required to specifically protect human life or safety from natural hazards;

75275 (iii) it is clearly demonstrated that the proposed area is limited only to areas that are
75276 already developed or used or to areas where no development is required;

75277 (iv) it is clearly demonstrated that the proposed area contains relevant and important
75278 historic, cultural or scenic values, fish or wildlife resources, or natural processes which are
75279 unique or substantially significant on a regional basis, or contain natural hazards which
75280 significantly threaten human life or safety;

75281 (v) the federal agency has analyzed regional values, resources, processes, or hazards for
75282 irreparable damage and its potential causes resulting from potential actions which are consistent
75283 with the multiple-use, sustained-yield principles, and the analysis describes the rationale for any
75284 special management attention required to protect, or prevent irreparable damage to the values,
75285 resources, processes, or hazards;

75286 (vi) it is clearly demonstrated that the proposed designation is consistent with the plans
75287 and policies of the state and of the county where the proposed designation is located as those
75288 plans and policies are developed according to Subsection (3);

75289 (vii) it is clearly demonstrated that the proposed ACEC designation will not be applied
75290 redundantly over existing protections provided by other state and federal laws for federal lands
75291 or resources on federal lands, and that the federal statutory requirement for special management
75292 attention for a proposed ACEC will discuss and justify any management requirements needed in
75293 addition to those specified by the other state and federal laws;

75294 (viii) the difference between special management attention required for an ACEC and
75295 normal multiple-use management has been identified and justified, and that any determination of
75296 irreparable damage has been analyzed and justified for short and long-term horizons;

75297 (ix) it is clearly demonstrated that the proposed designation:

75298 (A) is not a substitute for a wilderness suitability recommendation;

75299 (B) is not a substitute for managing areas inventoried for wilderness characteristics after
75300 1993 under the BLM interim management plan for valid wilderness study areas; and

75301 (C) it is not an excuse or justification to apply de facto wilderness management
75302 standards; and

75303 (x) the conclusions of all studies are submitted to the state, as a cooperating agency, for
75304 review, and the results, in support of or in opposition to, are included in all planning documents;

75305 (d) sufficient federal lands are made available for government-to-government exchanges
75306 of school and institutional trust lands and federal lands without regard for a
75307 resource-to-resource correspondence between the surface or mineral characteristics of the
75308 offered trust lands and the offered federal lands;

75309 (e) federal agencies should support government-to-government exchanges of land with
75310 the state based on a fair process of valuation which meets the fiduciary obligations of both the
75311 state and federal governments toward trust lands management, and which assures that revenue
75312 authorized by federal statute to the state from mineral or timber production, present or future, is
75313 not diminished in any manner during valuation, negotiation, or implementation processes;

75314 (f) agricultural and grazing lands should continue to produce the food and fiber needed
75315 by the citizens of the state and the nation, and the rural character and open landscape of rural
75316 Utah should be preserved through a healthy and active agricultural and grazing industry,
75317 consistent with private property rights and state fiduciary duties;

75318 (g) the resources of the forests and rangelands of the state should be integrated as part
75319 of viable, robust, and sustainable state and local economies, and available forage should be
75320 evaluated for the full complement of herbivores the rangelands can support in a sustainable
75321 manner, and forests should contain a diversity of timber species, and disease or insect

75322 infestations in forests should be controlled using logging or other best management practices;
75323 (h) the state opposes any additional evaluation of national forest service lands as
75324 "roadless" or "unroaded" beyond the forest service's second roadless area review evaluation and
75325 opposes efforts by agencies to specially manage those areas in a way that:
75326 (i) closes or declassifies existing roads unless multiple side by side roads exist running
75327 to the same destination and state and local governments consent to close or declassify the extra
75328 roads;
75329 (ii) permanently bars travel on existing roads;
75330 (iii) excludes or diminishes traditional multiple-use activities, including grazing and
75331 proper forest harvesting;
75332 (iv) interferes with the enjoyment and use of valid, existing rights, including water
75333 rights, local transportation plan rights, R.S. 2477 rights, grazing allotment rights, and mineral
75334 leasing rights; or
75335 (v) prohibits development of additional roads reasonably necessary to pursue traditional
75336 multiple-use activities;
75337 (i) the state's support for any forest plan revision or amendment will be withheld until
75338 the appropriate plan revision or plan amendment clearly demonstrates that:
75339 (i) established roads are not referred to as unclassified roads or a similar classification;
75340 (ii) lands in the vicinity of established roads are managed under the multiple-use,
75341 sustained-yield management standard; and
75342 (iii) no roadless or unroaded evaluations or inventories are recognized or upheld beyond
75343 those that were recognized or upheld in the forest service's second roadless area review
75344 evaluation;
75345 (j) the state's support for any recommendations made under the statutory requirement to
75346 examine the wilderness option during the revision of land and resource management plans by
75347 the U.S. Forest Service will be withheld until it is clearly demonstrated that:
75348 (i) the duly adopted transportation plans of the state and county or counties within the
75349 planning area are fully and completely incorporated into the baseline inventory of information

75350 from which plan provisions are derived;

75351 (ii) valid state or local roads and rights-of-way are recognized and not impaired in any
75352 way by the recommendations;

75353 (iii) the development of mineral resources by underground mining is not affected by the
75354 recommendations;

75355 (iv) the need for additional administrative or public roads necessary for the full use of
75356 the various multiple-uses, including recreation, mineral exploration and development, forest
75357 health activities, and grazing operations is not unduly affected by the recommendations;

75358 (v) analysis and full disclosure is made concerning the balance of multiple-use
75359 management in the proposed areas, and that the analysis compares the full benefit of
75360 multiple-use management to the recreational, forest health, and economic needs of the state and
75361 the counties to the benefits of the requirements of wilderness management; and

75362 (vi) the conclusions of all studies related to the requirement to examine the wilderness
75363 option are submitted to the state for review and action by the Legislature and governor, and the
75364 results, in support of or in opposition to, are included in any planning documents or other
75365 proposals that are forwarded to the United States Congress;

75366 (k) the invasion of noxious weeds and undesirable invasive plant species into the state
75367 should be reversed, their presence eliminated, and their return prevented;

75368 (l) management and resource-use decisions by federal land management and regulatory
75369 agencies concerning the vegetative resources within the state should reflect serious
75370 consideration of the proper optimization of the yield of water within the watersheds of the state;

75371 (m) (i) it is the policy of the state that:

75372 (A) mineral and energy production and environmental protection are not mutually
75373 exclusive;

75374 (B) it is technically feasible to permit appropriate access to mineral and energy
75375 resources while preserving nonmineral and nonenergy resources;

75376 (C) resource management planning should seriously consider all available mineral and
75377 energy resources;

75378 (D) the development of the solid, fluid, and gaseous mineral resources of the state and
75379 the renewable resources of the state should be encouraged;

75380 (E) the waste of fluid and gaseous minerals within developed areas should be
75381 prohibited; and

75382 (F) requirements to mitigate or reclaim mineral development projects should be based
75383 on credible evidence of significant impacts to natural or cultural resources;

75384 (ii) the state's support for mineral development provisions within federal land
75385 management plans will be withheld until the appropriate land management plan environmental
75386 impact statement clearly demonstrates:

75387 (A) that the authorized planning agency has:

75388 (I) considered and evaluated the mineral and energy potential in all areas of the planning
75389 area as if the areas were open to mineral development under standard lease agreements; and

75390 (II) evaluated any management plan prescription for its impact on the area's baseline
75391 mineral and energy potential;

75392 (B) that the development provisions do not unduly restrict access to public lands for
75393 energy exploration and development;

75394 (C) that the authorized planning agency has supported any closure of additional areas to
75395 mineral leasing and development or any increase of acres subject to no surface occupancy
75396 restrictions by adhering to:

75397 (I) the relevant provisions of the Federal Land Policy and Management Act of 1976, 43
75398 U.S.C. Sec. 1701 et seq.;

75399 (II) other controlling mineral development laws; and

75400 (III) the controlling withdrawal and reporting procedures set forth in the Federal Land
75401 Policy and Management Act of 1976, 43 U.S.C. Sec. 1701 et seq.;

75402 (D) that the authorized planning agency evaluated whether to repeal any moratorium
75403 that may exist on the issuance of additional mining patents and oil and gas leases;

75404 (E) that the authorized planning agency analyzed all proposed mineral lease stipulations
75405 and considered adopting the least restrictive necessary to protect against damage to other

75406 significant resource values;

75407 (F) that the authorized planning agency evaluated mineral lease restrictions to determine
75408 whether to waive, modify, or make exceptions to the restrictions on the basis that they are no
75409 longer necessary or effective;

75410 (G) that the authorized federal agency analyzed all areas proposed for no surface
75411 occupancy restrictions, and that the analysis evaluated:

75412 (I) whether directional drilling is economically feasible and ecologically necessary for
75413 each proposed no surface occupancy area;

75414 (II) whether the directional drilling feasibility analysis, or analysis of other management
75415 prescriptions, demonstrates that the proposed no surface occupancy prescription, in effect,
75416 sterilizes the mineral and energy resources beneath the area; and

75417 (III) whether, if the minerals are effectively sterilized, the area must be reported as
75418 withdrawn under the provisions of the Federal Land Policy and Management Act; and

75419 (H) that the authorized planning agency has evaluated all directional drilling
75420 requirements in no surface occupancy areas to determine whether directional drilling is feasible
75421 from an economic, ecological, and engineering standpoint;

75422 (n) motorized, human, and animal-powered outdoor recreation should be integrated
75423 into a fair and balanced allocation of resources within the historical and cultural framework of
75424 multiple-uses in rural Utah, and outdoor recreation should be supported as part of a balanced
75425 plan of state and local economic support and growth;

75426 (o) off-highway vehicles should be used responsibly, the management of off-highway
75427 vehicles should be uniform across all jurisdictions, and laws related to the use of off-highway
75428 vehicles should be uniformly applied across all jurisdictions;

75429 (p) (i) rights-of-way granted and vested under the provisions of R.S. 2477 should be
75430 preserved and acknowledged;

75431 (ii) land use management plans, programs, and initiatives should be consistent with both
75432 state and county transportation plans developed according to Subsection (3) in order to provide
75433 a network of roads throughout the planning area that provides for:

- 75434 (A) movement of people, goods, and services across public lands;
- 75435 (B) reasonable access to a broad range of resources and opportunities throughout the
- 75436 planning area, including access to livestock, water, and minerals;
- 75437 (C) economic and business needs;
- 75438 (D) public safety;
- 75439 (E) search and rescue;
- 75440 (F) access for people with disabilities and the elderly;
- 75441 (G) access to state lands; and
- 75442 (H) recreational opportunities;
- 75443 (q) transportation and access provisions for all other existing routes, roads, and trails
- 75444 across federal, state, and school trust lands within the state should be determined and identified,
- 75445 and agreements should be executed and implemented, as necessary to fully authorize and
- 75446 determine responsibility for maintenance of all routes, roads, and trails;
- 75447 (r) the reasonable development of new routes and trails for motorized, human, and
- 75448 animal-powered recreation should be implemented;
- 75449 (s) (i) forests, rangelands, and watersheds, in a healthy condition, are necessary and
- 75450 beneficial for wildlife, livestock grazing, and other multiple-uses;
- 75451 (ii) management programs and initiatives that are implemented to increase forage for
- 75452 the mutual benefit of the agricultural industry, livestock operations, and wildlife species should
- 75453 utilize all proven techniques and tools;
- 75454 (iii) the continued viability of livestock operations and the livestock industry should be
- 75455 supported on the federal lands within the state by management of the lands and forage
- 75456 resources, by the proper optimization of animal unit months for livestock, in accordance with
- 75457 the multiple-use provisions of the Federal Land Policy and Management Act of 1976, 43 U.S.C.
- 75458 1701 et seq., the provisions of the Taylor Grazing Act of 1934, 43 U.S.C. 315 et seq., and the
- 75459 provisions of the Public Rangelands Improvement Act of 1978, 43 U.S.C. 1901 et seq.;
- 75460 (iv) provisions for predator control initiatives or programs under the direction of state
- 75461 and local authorities should be implemented; and

75462 (v) resource-use and management decisions by federal land management and regulatory
75463 agencies should support state-sponsored initiatives or programs designed to stabilize wildlife
75464 populations that may be experiencing a scientifically demonstrated decline in those populations;
75465 and

75466 (t) management and resource use decisions by federal land management and regulatory
75467 agencies concerning the scenic resources of the state must balance the protection of scenery
75468 with the full management requirements of the other authorized uses of the land under
75469 multiple-use management, and should carefully consider using Visual Resource Management
75470 Class I protection only for areas of inventoried Class A scenery or equivalent.

75471 (9) Nothing contained in this section may be construed to restrict or supersede the
75472 planning powers conferred upon state departments, agencies, instrumentalities, or advisory
75473 councils of the state or the planning powers conferred upon political subdivisions by any other
75474 existing law.

75475 (10) Nothing in this section may be construed to affect any lands withdrawn from the
75476 public domain for military purposes, which are administered by the United States Army, Air
75477 Force, or Navy.

75478 Section 1671. Section **63J-4-501**, which is renumbered from Section 63-38d-501 is
75479 renumbered and amended to read:

75480 **Part 5. Resource Development Coordinating Committee**

75481 **~~[63-38d-501]~~. 63J-4-501. Creation.**

75482 There is created the Resource Development Coordinating Committee within the
75483 Governor's Office of Planning and Budget to:

75484 (1) assist the state planning coordinator in fulfilling the responsibilities of reviewing and
75485 coordinating technical and policy actions that may affect the physical resources of the state; and

75486 (2) facilitate the exchange of information on those actions among state agencies and
75487 other levels of government.

75488 Section 1672. Section **63J-4-502**, which is renumbered from Section 63-38d-502 is
75489 renumbered and amended to read:

75490 ~~[63-38d-502].~~ 63J-4-502. **Membership -- Terms -- Chair -- Expenses.**

75491 (1) The Resource Development Coordinating Committee shall consist of the following
75492 25 members:

75493 (a) the state science advisor;

75494 (b) a representative from the Department of Agriculture and Food appointed by the
75495 executive director;

75496 (c) a representative from the Department of Community and Culture appointed by the
75497 executive director;

75498 (d) a representative from the Department of Environmental Quality appointed by the
75499 executive director;

75500 (e) a representative from the Department of Natural Resources appointed by the
75501 executive director;

75502 (f) a representative from the Department of Transportation appointed by the executive
75503 director;

75504 (g) a representative from the Governor's Office of Economic Development appointed by
75505 the director;

75506 (h) a representative from the Division of Housing and Community Development
75507 appointed by the director;

75508 (i) a representative from the Division of State History appointed by the director;

75509 (j) a representative from the Division of Air Quality appointed by the director;

75510 (k) a representative from the Division of Drinking Water appointed by the director;

75511 (l) a representative from the Division of Environmental Response and Remediation
75512 appointed by the director;

75513 (m) a representative from the Division of Radiation appointed by the director;

75514 (n) a representative from the Division of Solid and Hazardous Waste appointed by the
75515 director;

75516 (o) a representative from the Division of Water Quality appointed by the director;

75517 (p) a representative from the Division of Oil, Gas, and Mining appointed by the

75518 director;

75519 (q) a representative from the Division of Parks and Recreation appointed by the

75520 director;

75521 (r) a representative from the Division of Forestry, Fire and State Lands appointed by

75522 the director;

75523 (s) a representative from the Utah Geological Survey appointed by the director;

75524 (t) a representative from the Division of Water Resources appointed by the director;

75525 (u) a representative from the Division of Water Rights appointed by the director;

75526 (v) a representative from the Division of Wildlife Resources appointed by the director;

75527 (w) a representative from the School and Institutional Trust Lands Administration

75528 appointed by the director;

75529 (x) a representative from the Division of Facilities Construction and Management

75530 appointed by the director; and

75531 (y) a representative from the Division of Homeland Security appointed by the director.

75532 (2) (a) As particular issues require, the committee may, by majority vote of the

75533 members present, and with the concurrence of the state planning coordinator, appoint additional

75534 temporary members to serve as ex officio voting members.

75535 (b) Those ex officio members may discuss and vote on the issue or issues for which they

75536 were appointed.

75537 (3) A chair shall be selected by a majority vote of committee members with the

75538 concurrence of the state planning coordinator.

75539 (4) (a) (i) Members who are not government employees shall receive no compensation

75540 or benefits for their services, but may receive per diem and expenses incurred in the

75541 performance of the member's official duties at the rates established by the Division of Finance

75542 under Sections 63A-3-106 and 63A-3-107.

75543 (ii) Members may decline to receive per diem and expenses for their service.

75544 (b) (i) State government officer and employee members who do not receive salary, per

75545 diem, or expenses from their agency for their service may receive per diem and expenses

75546 incurred in the performance of their official duties from the council at the rates established by
75547 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

75548 (ii) State government officer and employee members may decline to receive per diem
75549 and expenses for their service.

75550 Section 1673. Section **63J-4-503**, which is renumbered from Section 63-38d-503 is
75551 renumbered and amended to read:

75552 ~~**63-38d-503.**~~ **63J-4-503. Planning coordinator responsibilities.**

75553 The state planning coordinator shall:

75554 (1) administer this part;

75555 (2) subject to the direction and approval of the governor, take necessary action for its
75556 implementation; and

75557 (3) inform political subdivision representatives, in advance, of all committee meetings.

75558 Section 1674. Section **63J-4-504**, which is renumbered from Section 63-38d-504 is
75559 renumbered and amended to read:

75560 ~~**63-38d-504.**~~ **63J-4-504. Duties.**

75561 (1) The committee shall assist the state planning coordinator:

75562 (a) in the review of:

75563 (i) proposed state actions affecting physical resources;

75564 (ii) federal and federally assisted actions for which state review is provided by federal
75565 law, regulation, or policy; and

75566 (iii) proposed federal regulations and policies pertaining to natural resource issues; and

75567 (b) in the development and implementation of a procedure that will expedite the review
75568 of proposed energy and industrial facilities that require permits to be issued by more than one
75569 state agency.

75570 (2) The state planning coordinator shall review and forward the comments and
75571 recommendations of the committee to:

75572 (a) the governor;

75573 (b) the initiating state agency, in the case of a proposed state action; and

75574 (c) the Office of Legislative Research and General Counsel.

75575 Section 1675. Section **63J-4-505**, which is renumbered from Section 63-38d-505 is
75576 renumbered and amended to read:

75577 ~~[63-38d-505]~~. **63J-4-505. Powers of state agencies and local governments**
75578 **not limited.**

75579 This part does not limit powers conferred upon state departments, agencies, or
75580 instrumentalities of the state or political subdivisions by existing law.

75581 Section 1676. Section **63J-4-601**, which is renumbered from Section 63-38d-601 is
75582 renumbered and amended to read:

75583 **Part 6. Public Lands Policy Coordination**

75584 ~~[63-38d-601]~~. **63J-4-601. Definitions.**

75585 As used in this part:

- 75586 (1) "Coordinator" means the public lands policy coordinator appointed in this part.
- 75587 (2) "Council" means the Public Lands Policy Coordinating Council created by this part.
- 75588 (3) "Office" means the Public Lands Policy Coordinating Office created by this part.
- 75589 (4) "Political subdivision" means a county, municipality, local district, special service
75590 district, school district, interlocal cooperation agreement entity, or any administrative subunit of
75591 them.

75592 (5) "State planning coordinator" means the person appointed under Subsection
75593 ~~[63-38d-202]~~ 63J-4-202(1)(a)(ii).

75594 Section 1677. Section **63J-4-602**, which is renumbered from Section 63-38d-602 is
75595 renumbered and amended to read:

75596 ~~[63-38d-602]~~. **63J-4-602. Public Lands Policy Coordinating Office --**
75597 **Coordinator -- Appointment -- Qualifications -- Compensation.**

75598 (1) There is created within state government the Public Lands Policy Coordinating
75599 Office. The office shall be administered by a public lands policy coordinator.

75600 (2) The coordinator shall be appointed by the governor with the consent of the Senate
75601 and shall serve at the pleasure of the governor.

75602 (3) The coordinator shall have demonstrated the necessary administrative and
75603 professional ability through education and experience to efficiently and effectively manage the
75604 office's affairs.

75605 (4) The coordinator and employees of the office shall receive compensation as provided
75606 in Title 67, Chapter 19, Utah State Personnel Management Act.

75607 Section 1678. Section **63J-4-603**, which is renumbered from Section 63-38d-603 is
75608 renumbered and amended to read:

75609 ~~[63-38d-603]~~. **63J-4-603. Powers and duties of coordinator and office.**

75610 (1) The coordinator and the office shall:

75611 (a) assist the state planning coordinator in fulfilling the duties outlined in Section
75612 ~~[63-38d-401]~~ 63J-4-401 as those duties relate to the development of public lands policies by:

75613 (i) developing cooperative contracts and agreements between the state, political
75614 subdivisions, and agencies of the federal government for involvement in the development of
75615 public lands policies;

75616 (ii) producing research, documents, maps, studies, analysis, or other information that
75617 supports the state's participation in the development of public lands policy;

75618 (iii) preparing comments to ensure that the positions of the state and political
75619 subdivisions are considered in the development of public lands policy;

75620 (iv) partnering with state agencies and political subdivisions in an effort to:

75621 (A) prepare coordinated public lands policies;

75622 (B) develop consistency reviews and responses to public lands policies;

75623 (C) develop management plans that relate to public lands policies; and

75624 (D) develop and maintain a statewide land use plan that is based on cooperation and in
75625 conjunction with political subdivisions; and

75626 (v) providing other information or services related to public lands policies as requested
75627 by the state planning coordinator; and

75628 (b) facilitate and coordinate the exchange of information, comments, and
75629 recommendations on public lands policies between and among:

- 75630 (i) state agencies;
- 75631 (ii) political subdivisions;
- 75632 (iii) the Rural Development Program created under Section [~~63-38f-1602~~]
- 75633 63M-1-1602;
- 75634 (iv) the Resource Development Coordinating Committee created under Section
- 75635 [~~63-38d-501~~] 63J-4-501;
- 75636 (v) School and Institutional Trust Lands Administration created under Section
- 75637 53C-1-201;
- 75638 (vi) the committee created under Section 63F-1-508 to award grants to counties to
- 75639 inventory and map R.S. 2477 rights-of-way, associated structures, and other features; and
- 75640 (vii) the Constitutional Defense Council created under Section 63C-4-101;
- 75641 (c) perform the duties established in Title 9, Chapter 8, Part 3, Antiquities, and Title 9,
- 75642 Chapter 8, Part 4, Historic Sites; and
- 75643 (d) consistent with other statutory duties, encourage agencies to responsibly preserve
- 75644 archaeological resources.
- 75645 (2) In providing assistance to the state planning coordinator under Subsection (1)(a),
- 75646 the coordinator and office shall take into consideration the:
- 75647 (a) findings provided under Subsections [~~63-38d-401~~] 63J-4-401(6) and (7); and
- 75648 (b) recommendations of the council.
- 75649 Section 1679. Section **63J-4-604**, which is renumbered from Section 63-38d-604 is
- 75650 renumbered and amended to read:
- 75651 ~~[63-38d-604]~~. **63J-4-604. Public Lands Policy Coordinating Council --**
- 75652 **Creation -- Membership -- Funding.**
- 75653 (1) There is created the Public Lands Policy Coordinating Council composed of the
- 75654 following seven members:
- 75655 (a) one individual, appointed by the governor, who shall serve as chair of the council;
- 75656 (b) one member of the Senate appointed by the president of the Senate;
- 75657 (c) one member of the House of Representatives appointed by the speaker of the House

75658 of Representatives;

75659 (d) two individuals appointed by the Utah Association of Counties; and

75660 (e) the executive director of the Department of Natural Resources and the director of
75661 the School and Institutional Trust Lands Administration as ex officio, nonvoting members.

75662 (2) Members shall be appointed for four-year terms.

75663 (3) When a vacancy occurs in the membership for any reason, the replacement shall be
75664 appointed for the unexpired term in the same manner as the original appointment.

75665 (4) (a) (i) State government officer and employee members who do not receive salary,
75666 per diem, or expenses from their agency for their service may receive per diem and expenses
75667 incurred in the performance of their official duties from the council at the rates established by
75668 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

75669 (ii) State government officer and employee members may decline to receive per diem
75670 and expenses for their service.

75671 (b) (i) Local government members who do not receive salary, per diem, or expenses
75672 from the entity that they represent for their service may receive per diem and expenses incurred
75673 in the performance of their official duties at the rates established by the Division of Finance
75674 under Sections 63A-3-106 and 63A-3-107.

75675 (ii) Local government members may decline to receive per diem and expenses for their
75676 service.

75677 (c) Legislators on the committee shall receive compensation and expenses as provided
75678 by law and legislative rule.

75679 (5) The council shall be funded from the Constitutional Defense Restricted Account
75680 created in Section 63C-4-103.

75681 Section 1680. Section **63J-4-605**, which is renumbered from Section 63-38d-605 is
75682 renumbered and amended to read:

75683 ~~[63-38d-605]~~. **63J-4-605. Council duties.**

75684 The council shall provide advice and recommendations on the development of public
75685 lands policies to the:

- 75686 (1) Public Lands Policy Coordinating office;
- 75687 (2) state planning coordinator; and
- 75688 (3) governor.

75689 Section 1681. Section **63J-5-101** is enacted to read:

75690 **CHAPTER 5. FEDERAL FUNDS PROCEDURES ACT**

75691 **Part 1. General Provisions**

75692 **63J-5-101. Title.**

75693 This chapter is known as the "Federal Funds Procedures Act."

75694 Section 1682. Section **63J-5-102**, which is renumbered from Section 63-38e-101 is
75695 renumbered and amended to read:

75696 ~~**[63-38e-101].**~~ **63J-5-102. Definitions.**

75697 (1) As used in this chapter:

75698 (a) (i) "Agency" means a department, division, committee, commission, council, court,
75699 or other administrative subunit of the state.

75700 (ii) "Agency" includes executive branch entities and judicial branch entities.

75701 (iii) "Agency" does not mean higher education institutions or political subdivisions.

75702 (b) (i) "Federal funds" means cash or other monies received from the United States
75703 government or from other individuals or entities for or on behalf of the United States and
75704 deposited with the state treasurer or any agency of the state.

75705 (ii) "Federal funds" includes federal assistance and federal assistance programs,
75706 however described.

75707 (iii) "Federal funds" does not include monies received from the United States
75708 government to reimburse the state for monies expended by the state.

75709 (c) "Federal funds reauthorization" means the formal submission from an agency to the
75710 federal government:

75711 (i) applying for or seeking reauthorization of federal funds; or

75712 (ii) applying for or seeking reauthorization to participate in a federal program that will
75713 result in federal funds being transferred to an agency.

- 75714 (d) "Federal funds request summary" means a document detailing:
- 75715 (i) the amount of money that is being requested or is available to be received by the
- 75716 state from the federal government for each federal funds reauthorization or new federal funds
- 75717 request;
- 75718 (ii) those federal funds reauthorizations and new federal funds requests that are included
- 75719 as part of the agency's proposed budget for the fiscal year, and the amount of those requests;
- 75720 (iii) the amount of new state monies, if any, that will be required to receive the federal
- 75721 funds or participate in the federal program;
- 75722 (iv) the number of additional permanent full-time employees, additional permanent
- 75723 part-time employees, or combination of additional permanent full-time employees and additional
- 75724 permanent part-time employees, if any, that the state estimates are needed in order to receive
- 75725 the federal funds or participate in the federal program; and
- 75726 (v) any requirements that the state must meet as a condition for receiving the federal
- 75727 funds or participating in the federal program.
- 75728 (e) "Federal maintenance of effort requirements" means any matching, level of effort, or
- 75729 earmarking requirements, as defined in Office of Management and Budget Circular A-133,
- 75730 Compliance Requirement G, that are imposed on an agency as a condition of receiving federal
- 75731 funds.
- 75732 (f) "New federal funds" means:
- 75733 (i) federal assistance or other federal funds that are available from the federal
- 75734 government and that the state is not currently receiving;
- 75735 (ii) a federal assistance program or other federal program in which the state is not
- 75736 currently participating;
- 75737 (iii) each federal funds reauthorization that would require the state, as a condition for
- 75738 receiving the federal funds, to:
- 75739 (A) add additional permanent full-time employees, permanent part-time employees, or
- 75740 combination of additional permanent full-time employees and permanent part-time employees;
- 75741 (B) increase the amount of state matching funds required to receive the federal funds or

75742 participate in the federal program; or

75743 (C) comply with new requirements in order to receive the federal funds or participate in
75744 the federal program.

75745 (g) "New federal funds request" means the formal submission from an agency to the
75746 federal government:

75747 (i) applying for or otherwise seeking to obtain new federal funds;

75748 (ii) applying for or seeking to participate in a new federal program that will result in
75749 federal funds being transferred to an agency.

75750 (h) (i) "New state monies" means monies, whether specifically appropriated by the
75751 legislature or not, that the federal government requires Utah to expend as a condition for
75752 receiving the federal funds or participating in the federal program.

75753 (ii) "New state monies" includes monies expended to meet federal maintenance of effort
75754 requirements.

75755 (i) "Pass-through federal funds" means federal funds provided to an agency that are
75756 distributed to local governments or private entities without being used by the agency.

75757 (j) "State" means the state of Utah and all of its agencies, and any administrative
75758 subunits of those agencies.

75759 (2) When this chapter describes an employee as a "permanent full-time employee" or a
75760 "permanent part-time employee," it is not intended to, and may not be construed to, affect the
75761 employee's status as an at-will employee.

75762 Section 1683. Section **63J-5-103**, which is renumbered from Section 63-38e-102 is
75763 renumbered and amended to read:

75764 ~~[63-38e-102]~~. **63J-5-103. Scope and applicability of chapter.**

75765 (1) Except as provided in Subsection (2), and except as otherwise provided by a statute
75766 superseding provisions of this chapter by explicit reference to this chapter, the provisions of this
75767 chapter apply to each agency and govern each federal funds request.

75768 (2) This chapter does not govern federal funds requests for:

75769 (a) the Medical Assistance Program, commonly known as Medicaid;

- 75770 (b) the Children's Health Insurance Program;
- 75771 (c) the Women, Infant, and Children program;
- 75772 (d) the Temporary Assistance to Needy Families program;
- 75773 (e) Social Security Act monies;
- 75774 (f) the Substance Abuse Prevention and Treatment program;
- 75775 (g) Child Care Block grants;
- 75776 (h) Food Stamp Administration and Training monies;
- 75777 (i) Unemployment Insurance Operations monies;
- 75778 (j) Federal Highway Administration monies;
- 75779 (k) the Utah National Guard; or
- 75780 (l) pass-through federal funds.

75781 (3) The governor need not seek legislative review or approval of federal funds received
75782 by the state when the governor has declared a state of emergency and the federal funds are
75783 received to assist disaster victims under Subsection [~~63-5a-3~~] 63K-4-201(2).

75784 Section 1684. Section **63J-5-201**, which is renumbered from Section 63-38e-201 is
75785 renumbered and amended to read:

Part 2. Federal Funds Review and Approval

75787 [~~63-38e-201~~]. **63J-5-201. Legislative Appropriation Subcommittees to**
75788 **review certain federal funds reauthorizations -- Executive Appropriations review --**
75789 **Legislative approval.**

75790 (1) The Governor's Office of Planning and Budget shall annually prepare and submit a
75791 federal funds request summary for each agency to the Legislative Fiscal Analyst at the same
75792 time the governor submits the confidential draft budget under Section [~~63-38-2~~] 63J-1-201.

75793 (2) (a) The Legislative Fiscal Analyst shall submit a federal funds request summary for
75794 each agency to the legislative appropriations subcommittee responsible for that agency's budget
75795 for review during each annual general session.

75796 (b) Each legislative appropriations subcommittee shall review the federal funds request
75797 summary and may:

75798 (i) recommend that the agency accept the federal funds or participate in the federal
75799 program for the fiscal year under consideration; or

75800 (ii) recommend that the agency not accept the federal funds or not participate in the
75801 federal program for the fiscal year under consideration.

75802 (3) The Legislative Executive Appropriations Committee shall:

75803 (a) review each subcommittee's recommendation;

75804 (b) determine whether or not the agency should be authorized to accept the federal
75805 funds or participate in the federal program; and

75806 (c) direct the Legislative Fiscal Analyst to include those federal funds and federal
75807 programs that the committee approves in the annual appropriations act for approval by the
75808 Legislature.

75809 Section 1685. Section **63J-5-202**, which is renumbered from Section 63-38e-202 is
75810 renumbered and amended to read:

75811 ~~[63-38e-202]~~. **63J-5-202. Governor to approve certain new federal funds**
75812 **requests.**

75813 (1) (a) Before obligating the state to accept or receive new federal funds or to
75814 participate in a new federal program, and no later than three months after submitting a new
75815 federal funds request, and, where possible, before formally submitting the new federal funds
75816 request, an executive branch agency shall submit a federal funds request summary to the
75817 governor or the governor's designee for approval or rejection when:

75818 (i) the state will receive total payments of \$1,000,000 or less per year if the new federal
75819 funds request is approved;

75820 (ii) receipt of the new federal funds will require no additional permanent full-time
75821 employees, permanent part-time employees, or combination of additional permanent full-time
75822 employees and permanent part-time employees; and

75823 (iii) no new state monies will be required to match the new federal funds or to
75824 implement the new federal program for which the grant is issued.

75825 (b) The Governor's Office of Planning and Budget shall report each new federal funds

75826 request that is approved by the governor or the governor's designee and each new federal funds
75827 request granted by the federal government to:

- 75828 (i) the Legislature's Executive Appropriations Committee;
- 75829 (ii) the Office of the Legislative Fiscal Analyst; and
- 75830 (iii) the Office of Legislative Research and General Counsel.

75831 (2) The governor or the governor's designee shall approve or reject each new federal
75832 funds request submitted under the authority of this section.

75833 (3) (a) If the governor or the governor's designee approves the new federal funds
75834 request, the executive branch agency may accept the new federal funds or participate in the new
75835 federal program.

75836 (b) If the governor or the governor's designee rejects the new federal funds request, the
75837 executive branch agency may not accept the new federal funds or participate in the new federal
75838 program.

75839 (4) If an executive branch agency fails to obtain the governor's or the governor's
75840 designee's approval under this section, the governor may require the agency to:

- 75841 (a) withdraw the new federal funds request;
- 75842 (b) return the federal funds;
- 75843 (c) withdraw from the federal program; or
- 75844 (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).

75845 Section 1686. Section **63J-5-203**, which is renumbered from Section 63-38e-203 is
75846 renumbered and amended to read:

75847 ~~**[63-38e-203]**~~. **63J-5-203**. **Judicial council to approve certain new federal**
75848 **funds requests.**

75849 (1) (a) Before obligating the state to accept or receive new federal funds or to
75850 participate in a new federal program, and no later than three months after submitting a new
75851 federal funds request, and, where possible, before formally submitting the new federal funds
75852 request, a judicial branch agency shall submit a federal funds request summary to the Judicial
75853 Council for its approval or rejection when:

75854 (i) the state will receive total payments of \$1,000,000 or less per year if the new federal
75855 funds request is approved;

75856 (ii) receipt of the new federal funds will require no additional permanent full-time
75857 employees, additional permanent part-time employees, or combination of additional permanent
75858 full-time employees and permanent part-time employees; and

75859 (iii) no new state monies will be required to match the new federal funds or to
75860 implement the new federal program for which the grant is issued.

75861 (b) The Judicial Council shall report each new federal funds request that is approved by
75862 it and each new federal funds request granted by the federal government to:

75863 (i) the Legislature's Executive Appropriations Committee;

75864 (ii) the Office of the Legislative Fiscal Analyst; and

75865 (iii) the Office of Legislative Research and General Counsel.

75866 (2) The Judicial Council shall approve or reject each new federal funds request
75867 submitted to it under the authority of this section.

75868 (3) (a) If the Judicial Council approves the new federal funds request, the judicial
75869 branch agency may accept the new federal funds or participate in the new federal program.

75870 (b) If the Judicial Council rejects the new federal funds request, the judicial branch
75871 agency may not accept the new federal funds or participate in the new federal program.

75872 (4) If a judicial branch agency fails to obtain the Judicial Council's approval under this
75873 section, the Judicial Council may require the agency to:

75874 (a) withdraw the new federal funds request;

75875 (b) return the federal funds;

75876 (c) withdraw from the federal program; or

75877 (d) any combination of Subsections (4)(a), (4)(b), and (4)(c).

75878 Section 1687. Section **63J-5-204**, which is renumbered from Section 63-38e-204 is
75879 renumbered and amended to read:

75880 ~~[63-38e-204]~~. **63J-5-204**. **Legislative review and approval of certain new**
75881 **federal funds requests.**

- 75882 (1) As used in this section:
- 75883 (a) "High impact federal funds request" means a new federal funds request that will or
75884 could:
- 75885 (i) result in the state receiving total payments of \$10,000,000 or more per year from the
75886 federal government;
- 75887 (ii) require the state to add 11 or more permanent full-time employees, 11 or more
75888 permanent part-time employees, or combination of permanent full-time and permanent part-time
75889 employees equal to 11 or more in order to receive the new federal funds or participate in the
75890 new federal program; or
- 75891 (iii) require the state to expend more than \$1,000,000 of new state monies in a fiscal
75892 year in order to receive or administer the new federal funds or participate in the new federal
75893 program.
- 75894 (b) "Medium impact federal funds request" means a new federal funds request that will
75895 or could:
- 75896 (i) result in the state receiving total payments of more than \$1,000,000 but less than
75897 \$10,000,000 per year from the federal government;
- 75898 (ii) require the state to add more than zero but less than 11 permanent full-time
75899 employees, more than zero but less than 11 permanent part-time employees, or a combination of
75900 permanent full-time employees and permanent part-time employees equal to more than zero but
75901 less than 11 in order to receive or administer the new federal funds or participate in the new
75902 federal program; or
- 75903 (iii) require the state to expend \$1 to \$1,000,000 of new state monies in a fiscal year in
75904 order to receive or administer the new federal funds or participate in the new federal program.
- 75905 (2) (a) Before obligating the state to accept or receive new federal funds or to
75906 participate in a new federal program under a medium impact federal funds request, and no later
75907 than three months after submitting a medium impact federal funds request, and, where possible,
75908 before formally submitting the medium impact federal funds request, an agency shall:
- 75909 (i) submit the federal funds request summary to the governor or the Judicial Council, as

75910 appropriate, for approval or rejection; and

75911 (ii) if the governor or Judicial Council approves the new federal funds request, submit
75912 the federal funds request summary to the Legislative Executive Appropriations Committee for
75913 its review and recommendations.

75914 (b) The Legislative Executive Appropriations Committee shall review the federal funds
75915 request summary and may:

75916 (i) recommend that the agency accept the new federal funds;

75917 (ii) recommend that the agency not accept the new federal funds; or

75918 (iii) recommend to the governor that the governor call a special session of the
75919 Legislature to review and approve or reject the acceptance of the new federal funds.

75920 (3) (a) Before obligating the state to accept or receive new federal funds or to
75921 participate in a new federal program under a high impact federal funds request, and no later than
75922 three months after submitting a high impact federal funds request, and, where possible, before
75923 formally submitting the high impact federal funds request, an agency shall:

75924 (i) submit the federal funds request summary to the governor or Judicial Council, as
75925 appropriate, for approval or rejection; and

75926 (ii) if the governor or Judicial Council approves the new federal funds request, submit
75927 the federal funds request summary to the Legislature for its approval or rejection in an annual
75928 general session or a special session.

75929 (b) (i) If the Legislature approves the new federal funds request, the agency may accept
75930 the new federal funds or participate in the new federal program.

75931 (ii) If the Legislature fails to approve the new federal funds request, the agency may not
75932 accept the new federal funds or participate in the new federal program.

75933 (c) If an agency fails to obtain the Legislature's approval under this Subsection (3):

75934 (i) the governor or Judicial Council, as appropriate, may require the agency to withdraw
75935 the new federal funds request or refuse or return the new federal funds;

75936 (ii) the Legislature may, if federal law allows, opt out or decline to participate in the
75937 new federal program or decline to receive the new federal funds; or

75938 (iii) the Legislature may reduce the agency's General Fund appropriation in an amount
75939 less than, equal to, or greater than the amount of federal funds received by the agency.

75940 Section 1688. Section **63J-6-101** is enacted to read:

75941 **CHAPTER 6. TAX ANTICIPATION NOTES ACT**

75942 **Part 1. General Provisions**

75943 **63J-6-101. Title.**

75944 This chapter is known as the "Tax Anticipation Notes Act."

75945 Section 1689. Section **63J-6-201**, which is renumbered from Section 63-61-1 is
75946 renumbered and amended to read:

75947 **Part 2. Procedures**

75948 **~~[63-61-1].~~ 63J-6-201. Borrowing authorized -- Limitation -- Issuance of notes**
75949 **-- Maximum term.**

75950 The state treasurer may borrow money for the state in anticipation of (a) income or
75951 revenue from taxes, whether the taxes are specific, ad valorem, excise, sales, income, franchise,
75952 or fees for the current fiscal year, or that portion of the taxes not collected or previously
75953 anticipated at the time of borrowing, and (b) other non-tax revenues of the state, in a principal
75954 sum not greater than 75% of such income or revenue which the director of the Division of
75955 Finance certifies to the state treasurer are to be reasonably anticipated to be collected during the
75956 current fiscal year. Each loan shall be evidenced by the issuance and sale of tax and revenue
75957 anticipation notes of the state, for fixed periods not to exceed 12 months or the end of the
75958 current fiscal year, whichever is sooner.

75959 Section 1690. Section **63J-6-202**, which is renumbered from Section 63-61-2 is
75960 renumbered and amended to read:

75961 **~~[63-61-2].~~ 63J-6-202. Issuance -- Financing plan required -- Contents -- Order**
75962 **setting terms of notes -- Recitations in notes -- Report of sales -- Disposition of proceeds.**

75963 (1) If the state treasurer considers it to be in the best interests of the state to issue tax
75964 and revenue anticipation notes under Section ~~[63-61-1]~~ 63J-6-201, the state treasurer shall issue
75965 the notes in accordance with this chapter.

75966 (2) (a) Prior to the issuance and sale of any tax or revenue anticipation note to other
75967 than a state fund or account, the state treasurer shall prepare a written plan of financing which
75968 shall be filed with the governor. The plan of financing shall provide for the terms and conditions
75969 under which the notes will be issued, sold, and delivered, the taxes or revenues to be
75970 anticipated, the maximum amount of notes which may be outstanding at any one time under the
75971 plan of financing, the sources of payment of the notes issued pursuant to the plan of financing,
75972 and all other details relating to the issuance, sale, and delivery of the notes. The sources of
75973 payment of the notes issued pursuant to the plan of financing may include the proceeds of sale
75974 of notes issued to refund outstanding tax or revenue anticipation notes and to pay accrued
75975 interest on them.

75976 (b) The plan of financing shall specify the rates of interest, if any, on the notes or a
75977 method, formula, or index pursuant to which the interest rates on the notes may be determined
75978 during the time the notes are outstanding.

75979 (c) The state treasurer may include in the plan of financing the terms and conditions of
75980 arrangements entered into by the state treasurer on behalf of the state with financial and other
75981 institutions for letters of credit, standby letters of credit, reimbursement agreements, and
75982 remarketing, indexing, and tender agent agreements to secure the tax anticipation notes,
75983 including payment from any legally available source of fees, charges, or other amounts coming
75984 due under the agreements entered into by the treasurer.

75985 (3) The interest, form, manner of execution, payment, manner of sale, prices at, above,
75986 or below face value, and all details of issuance of the notes shall be set forth in an order of the
75987 state treasurer. The order and the details set forth in the order shall conform with any
75988 applicable plan of financing and with this chapter.

75989 (4) Each note shall recite that it is a valid obligation of the state and that the faith and
75990 credit of the state are pledged for the payment of the principal of and interest on the note from
75991 the revenues of the fiscal year in which the note is issued in accordance with its terms and the
75992 constitution and laws of Utah.

75993 (5) Immediately upon the completion of any sale, the state treasurer shall make a

75994 verified return of the sale to the state auditor, specifying the amount of notes sold, the persons
75995 to whom the notes were sold, and the price, terms, and conditions of the sale. Immediately
75996 upon the sale of any notes, the state treasurer shall credit the proceeds of sale, other than
75997 accrued interest, to the General Fund.

75998 Section 1691. Section **63J-6-203**, which is renumbered from Section 63-61-3 is
75999 renumbered and amended to read:

76000 **~~63-61-3~~. 63J-6-203. Redemption fund -- Creation -- Sources -- Use --**
76001 **Investment -- Income.**

76002 (1) There is created a special fund to be known as the "Tax and Revenue Anticipation
76003 Note Redemption Fund," referred to in this chapter as the "redemption fund." When any notes
76004 have been issued in anticipation of income or revenue under this chapter, not less than two days
76005 before the principal and interest on the notes comes due, income or revenue realized from the
76006 tax or nontax sources specified in the approved plan of financing to be anticipated or from any
76007 other source or sources of monies legally available for such purpose shall be placed in the
76008 redemption fund so that the amount in the redemption fund is sufficient to pay the principal
76009 amount of all notes outstanding, together with interest on them.

76010 (2) The money in the redemption fund is appropriated solely for the payment of the
76011 principal of and interest on the notes issued under this chapter. The payment of the principal
76012 and interest on the notes issued under this chapter is not limited solely to the income and
76013 revenues from the specific tax or nontax sources in anticipation of which the notes were issued.
76014 Accrued interest received upon the sale of the notes shall be deposited by the state treasurer in
76015 the redemption fund.

76016 (3) The state treasurer may invest all money in the redemption fund in accordance with
76017 Title 51, Chapter 7, State Money Management Act of 1974, maturing at a time which will
76018 permit payment of the principal of and interest on the notes in a timely manner when due. The
76019 state treasurer may covenant with the purchasers of the notes as to the manner of holding
76020 money in the redemption fund, the investment of money in the redemption fund, and the
76021 disposition of any investment income therefrom by retaining investment income in the

76022 redemption fund to be used to pay principal of and interest on notes when due or by paying the
76023 investment income to the state treasurer for deposit into the General Fund. If there is sufficient
76024 money in the redemption fund to pay all principal of and interest on all outstanding notes
76025 payable therefrom, all investment income on it shall be paid to the state treasurer for deposit
76026 into the General Fund.

76027 Section 1692. Section **63J-6-204**, which is renumbered from Section 63-61-4 is
76028 renumbered and amended to read:

76029 ~~[63-61-4].~~ **63J-6-204. Expenses of notes paid from proceeds.**

76030 All expenses incident to the issuance of tax and revenue anticipation notes under this
76031 chapter shall be paid from the proceeds of sale of the notes credited to the General Fund.

76032 Section 1693. Section **63K-1-101**, which is renumbered from Section 63-5b-101 is
76033 renumbered and amended to read:

76034 **TITLE 63K. EMERGENCY MANAGEMENT**

76035 **CHAPTER 1. EMERGENCY INTERIM SUCCESSION ACT**

76036 **Part 1. General Provisions**

76037 ~~[63-5b-101].~~ **63K-1-101. Title.**

76038 (1) This title is known as "Emergency Management."

76039 (2) This chapter is known as the "Emergency Interim Succession Act."

76040 Section 1694. Section **63K-1-102**, which is renumbered from Section 63-5b-102 is
76041 renumbered and amended to read:

76042 ~~[63-5b-102].~~ **63K-1-102. Definitions.**

76043 (1) (a) "Absent" means:

76044 (i) not physically present or not able to be communicated with for 48 hours; or

76045 (ii) for local government officers, as defined by local ordinances.

76046 (b) "Absent" does not include a person who can be communicated with via telephone,
76047 radio, or telecommunications.

76048 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action
76049 against the United States of America or this state.

76050 (3) "Department" means the Department of Administrative Services, the Department of
76051 Agriculture and Food, the Alcoholic Beverage Control Commission, the Department of
76052 Commerce, the Department of Community and Culture, the Department of Corrections, the
76053 Department of Environmental Quality, the Department of Financial Institutions, the Department
76054 of Health, the Department of Human Resource Management, the Department of Workforce
76055 Services, the Labor Commission, the National Guard, the Department of Insurance, the
76056 Department of Natural Resources, the Department of Public Safety, the Public Service
76057 Commission, the Department of Human Services, the State Tax Commission, the Department of
76058 Technology Services, the Department of Transportation, any other major administrative
76059 subdivisions of state government, the State Board of Education, the State Board of Regents, the
76060 Utah Housing Corporation, the Workers' Compensation Fund, the State Retirement Board, and
76061 each institution of higher education within the system of higher education.

76062 (4) "Disaster" means a situation causing, or threatening to cause, widespread damage,
76063 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
76064 natural phenomenon, or technological hazard.

76065 (5) "Division" means the Division of Homeland Security established in Title 53, Chapter
76066 2, Part 1, Homeland Security Act.

76067 (6) "Emergency interim successor" means a person designated by this chapter to
76068 exercise the powers and discharge the duties of an office when the person legally exercising the
76069 powers and duties of the office is unavailable.

76070 (7) "Executive director" means the person with ultimate responsibility for managing and
76071 overseeing the operations of each department, however denominated.

76072 (8) "Internal disturbance" means a riot, prison break, disruptive terrorism, or strike.

76073 (9) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,
76074 avalanche, forest or range fire, drought, epidemic, or other catastrophic event.

76075 (10) (a) "Office" includes all state and local offices, the powers and duties of which are
76076 defined by constitution, statutes, charters, optional plans, ordinances, articles, or by-laws.

76077 (b) "Office" does not include the office of governor or the legislative or judicial offices.

76078 (11) "Place of governance" means the physical location where the powers of an office
76079 are being exercised.

76080 (12) "Political subdivision" includes counties, cities, towns, townships, districts,
76081 authorities, and other public corporations and entities whether organized and existing under
76082 charter or general law.

76083 (13) "Political subdivision officer" means a person holding an office in a political
76084 subdivision.

76085 (14) "State officer" means the attorney general, the state treasurer, the state auditor,
76086 and the executive director of each department.

76087 (15) "Technological hazard" means any hazardous materials accident, mine accident,
76088 train derailment, air crash, radiation incident, pollution, structural fire, or explosion.

76089 (16) "Unavailable" means:

76090 (a) absent from the place of governance during a disaster that seriously disrupts normal
76091 governmental operations, whether or not that absence or inability would give rise to a vacancy
76092 under existing constitutional or statutory provisions; or

76093 (b) as otherwise defined by local ordinance.

76094 Section 1695. Section **63K-1-201**, which is renumbered from Section 63-5b-201 is
76095 renumbered and amended to read:

76096 **Part 2. Executive Branch Succession**

76097 **~~[63-5b-201].~~ 63K-1-201. Emergency interim successor to office of**
76098 **governor.**

76099 (1) If the governor is unavailable, and if the lieutenant governor, president of the
76100 Senate, and the speaker of the House of Representatives are unavailable to exercise the powers
76101 and duties of the office of governor, the attorney general, state auditor, or state treasurer shall,
76102 in the order named, exercise the powers and duties of the office of governor until:

76103 (a) the governor, lieutenant governor, president of the Senate, or speaker of the House
76104 of Representatives becomes available; or

76105 (b) a new governor is elected and qualified.

76106 (2) Notwithstanding the provisions of Subsection (1), no emergency interim successor
76107 to the lieutenant governor, president of the Senate, speaker of the House of Representatives,
76108 attorney general, state auditor, or state treasurer may serve as governor.

76109 Section 1696. Section **63K-1-202**, which is renumbered from Section 63-5b-202 is
76110 renumbered and amended to read:

76111 ~~[63-5b-202]~~. **63K-1-202. Emergency interim successors for state officers.**

76112 (1) By July 1 of each year, each state officer shall:

76113 (a) designate three qualified emergency interim successors from within ~~[his]~~ the state
76114 officer's department who meet the constitutional qualifications for the office, if any;

76115 (b) specify their order of succession;

76116 (c) provide a list of those designated successors to the division; and

76117 (d) notify emergency interim successors within 30 days of designation.

76118 (2) (a) If any state officer is unavailable following a disaster, and if ~~[his]~~ the state
76119 officer's deputy, if any, is also unavailable, a designated emergency interim successor shall
76120 exercise the powers and duties of the office according to the order of succession specified by
76121 the state officer.

76122 (b) An emergency interim successor other than the attorney general, state auditor, or
76123 state treasurer shall exercise the state officer's powers and duties only until:

76124 (i) the person exercising the powers and duties of the office of governor appoints a
76125 successor to fill the vacancy;

76126 (ii) a permanent successor is appointed or elected and qualified as provided by law; or

76127 (iii) the state officer, ~~[his]~~ the state officer's deputy, or an emergency interim successor
76128 earlier in the order of succession becomes available to exercise or resume the exercise of the
76129 powers and duties of the office.

76130 (c) An emergency interim successor of the attorney general, state auditor, or state
76131 treasurer shall exercise the powers and duties of those offices only until:

76132 (i) a permanent successor is appointed or elected and qualified as provided by law; or

76133 (ii) the attorney general, state auditor, or state treasurer, their deputy, or an emergency

76134 interim successor earlier in the order of succession becomes available to exercise or resume the
76135 exercise of the powers and duties of the office.

76136 Section 1697. Section **63K-1-301**, which is renumbered from Section 63-5b-301 is
76137 renumbered and amended to read:

76138 **Part 3. Legislative and Judicial Branch Succession**

76139 ~~[63-5b-301].~~ **63K-1-301. Division to consult with legislative and judicial**
76140 **branch.**

76141 The Division of Homeland Security may consult with the Legislative Management
76142 Committee, the Judicial Council, and legislative and judicial staff offices to assist them in
76143 preparing emergency succession plans and procedures.

76144 Section 1698. Section **63K-1-302**, which is renumbered from Section 63-5b-302 is
76145 renumbered and amended to read:

76146 ~~[63-5b-302].~~ **63K-1-302. Place of legislative session.**

76147 (1) (a) If the governor or ~~[his]~~ the governor's interim successor declares a state of
76148 emergency, the governor shall call the Legislature into session as soon as practicable.

76149 (b) Each legislator shall proceed to the place of session as expeditiously as practicable.

76150 (2) If the governor or ~~[his]~~ the governor's interim successor declares a state of
76151 emergency or finds that a state of emergency is imminent, and the governor or the interim
76152 successor determines that the prescribed place of session is unsafe, ~~[he]~~ the governor may
76153 change the place of session to any place in Utah that ~~[he]~~ the governor considers safe and
76154 convenient.

76155 Section 1699. Section **63K-1-401**, which is renumbered from Section 63-5b-401 is
76156 renumbered and amended to read:

76157 **Part 4. Local Succession**

76158 ~~[63-5b-401].~~ **63K-1-401. Emergency interim successors for local officers.**

76159 (1) By July 1 of each year, each political subdivision officer shall:

76160 (a) designate three emergency interim successors;

76161 (b) specify their order of succession; and

- 76162 (c) provide a list of those designated successors to the division.
- 76163 (2) In the event that a political subdivision does not designate emergency interim
- 76164 successors as required under Subsection (1), the order of succession shall be as follows:
- 76165 (a) the chief executive officer of the political subdivision;
- 76166 (b) the chief deputy executive officer of the political subdivision;
- 76167 (c) the chair of the legislative body of the political subdivision; and
- 76168 (d) the chief law enforcement officer of the political subdivision.
- 76169 (3) (a) Notwithstanding any other provision of law:
- 76170 (i) if any political subdivision officer or ~~his~~ the political subdivision officer's legal
- 76171 deputy, if any, is unavailable, a designated emergency interim successor shall exercise the
- 76172 powers and duties of the office according to the order of succession specified by the political
- 76173 subdivision officer; or
- 76174 (ii) counties may provide by ordinance that one member of the county legislative body
- 76175 may act as the county legislative body if the other members are absent.
- 76176 (b) An emergency interim successor shall exercise the powers and duties of the office
- 76177 only until:
- 76178 (i) the vacancy is filled in accordance with the constitution or statutes; or
- 76179 (ii) the political subdivision officer, ~~his~~ the political subdivision officer's deputy, or an
- 76180 emergency interim successor earlier in the order of succession becomes available to exercise the
- 76181 powers and duties of the office.
- 76182 (4) The legislative bodies of each political subdivision may enact resolutions or
- 76183 ordinances consistent with this chapter and also provide for emergency interim successors to
- 76184 officers of the political subdivision not governed by this section.

76185 Section 1700. Section **63K-1-501**, which is renumbered from Section 63-5b-501 is

76186 renumbered and amended to read:

Part 5. Succession Process

~~63-5b-501~~. **63K-1-501. Formalities of taking office.**

- 76189 (1) At the time that they are appointed as emergency interim successors or special

76190 emergency judges, emergency interim successors and special emergency judges shall sign
76191 prospectively whatever oath is required to enable them to exercise the powers and duties of the
76192 office to which they may succeed.

76193 (2) Notwithstanding any other provision of law, no person is required to comply with
76194 any other provision of law relative to taking office as a prerequisite to the exercise of the
76195 powers or discharge of the duties of an office to which ~~he~~ the person succeeds.

76196 Section 1701. Section **63K-1-502**, which is renumbered from Section 63-5b-502 is
76197 renumbered and amended to read:

76198 ~~[63-5b-502]~~. **63K-1-502. Period in which authority may be exercised.**

76199 (1) Persons authorized to act as governor, emergency interim successors, and special
76200 emergency judges shall exercise the powers and duties of the office to which they succeed only
76201 when a disaster has occurred.

76202 (2) (a) Emergency interim successors serve for 30 days after the date the governor or
76203 the governor's emergency successor calls the Legislature into special session, unless the
76204 unavailability of the elected official ends or an emergency interim successor earlier in the order
76205 of succession becomes available before expiration of the 30-day period.

76206 (b) Notwithstanding the provisions of Subsection (2)(a), if the emergency interim
76207 successor is serving for a legislator who is killed or resigns, the emergency interim successor
76208 shall serve until the legislator's legal replacement is sworn in.

76209 (3) The Legislature, by concurrent resolution, may:

76210 (a) terminate the authority of any or all emergency interim successors and special
76211 emergency judges to exercise the powers and duties of their office at any time; and

76212 (b) extend the time during which any or all emergency interim successors and special
76213 emergency judges may exercise the powers and duties of their office.

76214 Section 1702. Section **63K-1-503**, which is renumbered from Section 63-5b-503 is
76215 renumbered and amended to read:

76216 ~~[63-5b-503]~~. **63K-1-503. Removal of designees.**

76217 Until the persons designated as emergency interim successors or special emergency

76218 judges succeed to the exercise of the powers and duties of an office, they shall serve as
76219 emergency interim successors or special emergency judges at the pleasure of the designating
76220 authority and may be removed and replaced by the designating authority at any time, with or
76221 without cause.

76222 Section 1703. Section **63K-1-504**, which is renumbered from Section 63-5b-504 is
76223 renumbered and amended to read:

76224 ~~[63-5b-504].~~ **63K-1-504. Disputes.**

76225 Except for factual disputes concerning the office of governor, the governor shall
76226 adjudicate any dispute concerning a question of fact arising under this chapter concerning a
76227 state officer. ~~[His]~~ The governor's decision is final.

76228 Section 1704. Section **63K-1-601**, which is renumbered from Section 63-5b-601 is
76229 renumbered and amended to read:

76230 **Part 6. Emergency Seat of Government**

76231 ~~[63-5b-601].~~ **63K-1-601. Governor to declare location of emergency seat**
76232 **of government.**

76233 (1) Whenever, due to an emergency resulting from the effects of a disaster, it becomes
76234 imprudent, inexpedient, or impossible to conduct the affairs of the state government in Salt
76235 Lake City, Utah, the governor shall:

76236 (a) by proclamation, declare an emergency temporary location for the seat of
76237 government in Utah; and

76238 (b) take whatever action and issue whatever orders are necessary for an orderly
76239 transition of the affairs of the state government to that emergency temporary location.

76240 (2) That emergency temporary location shall remain as the seat of government until the
76241 Legislature establishes a new location by law, or until the emergency is declared to be ended by
76242 the governor and the seat of government is returned to its normal location.

76243 (3) Local governments may provide, by ordinance, for temporary emergency locations
76244 for the seat of government.

76245 Section 1705. Section **63K-1-602**, which is renumbered from Section 63-5b-602 is

76246 renumbered and amended to read:

76247 ~~[63-5b-602]~~. **63K-1-602. Official acts at emergency seat of government --**
76248 **Validity.**

76249 During the time when the seat of government remains at an emergency location, all
76250 official acts required by law to be performed at the seat of government by any officer, agency,
76251 department, or authority of this state or local government, including the convening and meeting
76252 of the Legislature in regular, extraordinary, or emergency session, shall be as valid and binding
76253 as when performed at the normal location of the seat of government.

76254 Section 1706. Section **63K-2-101** is enacted to read:

76255 **CHAPTER 2. ENERGY EMERGENCY POWERS OF THE GOVERNOR ACT**

76256 **Part 1. General Provisions**

76257 **63K-2-101. Title.**

76258 This chapter is known as the "Energy Emergency Powers of the Governor Act."

76259 Section 1707. Section **63K-2-102**, which is renumbered from Section 63-53a-2 is
76260 renumbered and amended to read:

76261 ~~[63-53a-2]~~. **63K-2-102. Legislative findings and purpose.**

76262 (1) The Legislature finds that the lack of energy resources and other energy resource
76263 emergencies may threaten the availability of essential services and transportation and the
76264 operation of the economy, jeopardizing the peace, health, safety, and welfare of the people of
76265 this state.

76266 (2) The Legislature further finds that it is necessary to provide an orderly procedure for
76267 anticipating and responding to energy resource shortages and disruptions and to grant, under
76268 conditions prescribed in this act, emergency powers to the governor to order involuntary
76269 curtailments in the use of energy resources.

76270 (3) The Legislature further finds and declares that it is the policy of this state to assist
76271 the United States in effective management and control of such factors and situations as
76272 contribute to an emergency affecting or likely to affect this state; to cooperate with other states
76273 in matters related to an emergency affecting or likely to affect this state; to meet extraordinary

76274 conditions in this state arising out of the crisis by taking such steps as are necessary and
76275 appropriate; and generally to protect the peace, health, safety, and welfare of the people of this
76276 state.

76277 Section 1708. Section **63K-2-103**, which is renumbered from Section 63-53a-1 is
76278 renumbered and amended to read:

76279 **~~[63-53a-1].~~ 63K-2-103. "Energy resources" defined.**

76280 As used in this act, "energy resources" includes electricity, natural gas, gasoline and
76281 middle distillates, coal, wood fuels, geothermal sources, radioactive materials, and any other
76282 resource yielding energy.

76283 Section 1709. Section **63K-2-201**, which is renumbered from Section 63-53a-3 is
76284 renumbered and amended to read:

Part 2. Energy Emergency Powers

76285 **~~[63-53a-3].~~ 63K-2-201. Information-gathering powers -- Subpoena power --**
76286 **Coordination with other regulatory authorities.**

76287 (1) On a continuing basis the governor may obtain all necessary information from energy
76288 resource producers, manufacturers, suppliers, and consumers doing business within, and from
76289 political subdivisions in, this state as necessary to determine whether shortages or an emergency
76290 will require energy resource conservation measures. This information may include, but shall not
76291 be limited to:

- 76292 (a) sales volumes;
- 76293 (b) forecasts of energy resource requirements;
- 76294 (c) from manufacturers, suppliers, and consumers, an inventory of energy resources;
- 76295 and

76296 (d) local distribution patterns of the information described in Subsections (1)(a), (1)(b),
76297 and (1)(c).

76298 (2) In obtaining information at any time from energy resource producers,
76299 manufacturers, suppliers, or consumers under Subsection (1)(c) and in obtaining any other
76300 information under Subsection (1) during a state of emergency proclaimed, the governor may
76301

76302 subpoena witnesses, material and relevant books, papers, accounts, records, and memoranda,
76303 administer oaths, and cause the depositions of persons residing within or without the state to be
76304 taken in the manner prescribed for depositions in civil actions in district courts, to obtain
76305 information relevant to energy resources that are the subject of the proclaimed emergency.

76306 (3) In obtaining information under this section the governor shall:

76307 (a) seek to avoid eliciting information already furnished by a person or political
76308 subdivision in this state to a federal, state, or local regulatory authority that is available for ~~his~~
76309 the governor's study; and

76310 (b) cause reporting procedures, including forms, to conform to existing requirements of
76311 federal, state, and local regulatory authorities wherever possible.

76312 Section 1710. Section **63K-2-202**, which is renumbered from Section 63-53a-4 is
76313 renumbered and amended to read:

76314 ~~[63-53a-4]~~. **63K-2-202. Confidential nature of information preserved -- Relief**
76315 **from subpoena -- Unauthorized disclosure as misdemeanor -- Removal from office.**

76316 (1) Information furnished pursuant to Section ~~[63-53a-3]~~ 63K-2-201 and designated by
76317 that person as confidential shall be maintained as confidential by the governor and any person
76318 who obtains information which ~~he~~ the person knows to be confidential under this act. The
76319 governor shall not make known in any manner any particulars of such information to persons
76320 other than those specified in Subsection (4). No subpoena or judicial order may be issued
76321 compelling the governor or any other person to divulge or make known such confidential
76322 information, except when relevant to a prosecution for violation of Subsection (5).

76323 (2) Nothing in this section shall prohibit the use of confidential information to prepare
76324 statistics or other general data for publication, so presented as to prevent identification of
76325 particular persons.

76326 (3) Any person who is served with a subpoena to give testimony orally or in writing, or
76327 to produce books, papers, correspondence, memoranda, agreements, or other documents or
76328 records pursuant to this act may apply to any district court of this state for protection against
76329 abuse or hardship in the manner provided by law.

76330 (4) References to the governor in this section include the governor and any other
76331 individuals designated for this purpose in writing by the governor.

76332 (5) Any person who wilfully discloses confidential information in violation of this
76333 section is guilty of a class A misdemeanor and, in addition, may be subject to removal from
76334 office or immediate dismissal from public employment.

76335 Section 1711. Section **63K-2-203**, which is renumbered from Section 63-53a-5 is
76336 renumbered and amended to read:

76337 **[63-53a-5]. 63K-2-203. Curtailment of energy use -- Standby priorities --**
76338 **Restriction on involuntary curtailment.**

76339 In consultation with appropriate federal and state officials and officials of political
76340 subdivisions in this state, the governor shall cause to be established, and revised as appropriate,
76341 standby priorities for curtailment in the use of energy resources. Involuntary curtailments,
76342 however, may be ordered only by means of executive orders issued pursuant to this act.

76343 Section 1712. Section **63K-2-204**, which is renumbered from Section 63-53a-6 is
76344 renumbered and amended to read:

76345 **[63-53a-6]. 63K-2-204. Proclamation of emergency -- Effective period --**
76346 **Extension of renewal by Legislature.**

76347 (1) (a) The governor may issue a proclamation declaring that a state of emergency
76348 exists with regard to one or more energy resources if the governor determines that an existing
76349 or imminent severe disruption or impending shortage in the supply of one or more energy
76350 resources, in this state or elsewhere:

76351 (i) threatens:

76352 (A) the availability of essential services or transportation; or

76353 (B) the operation of the economy; and

76354 (ii) because of the threats described in Subsection (1)(a)(i), jeopardizes the peace,
76355 health, safety, and welfare of the people of this state.

76356 (b) The proclamation declaring a state of emergency described in Subsection (1)(a) shall
76357 state with specificity the nature of the disruption or shortage in an energy resource.

76358 (c) (i) Within seven calendar days of the day on which the governor issues a
76359 proclamation declaring a state of emergency under this section, the Legislative Management
76360 Committee shall:

- 76361 (A) review the proclamation; and
- 76362 (B) advise the governor on the proclamation.

76363 (ii) The failure of the Legislative Management Committee to meet as required by
76364 Subsection (1)(c)(i) does not affect the validity of the proclamation declaring a state of
76365 emergency.

76366 (2) (a) A proclamation issued under this section, and any order or rule issued as a result
76367 of the proclamation shall continue in effect until 60 days from the date of the proclamation of
76368 the state of emergency unless the governor rescinds the proclamation and declares the
76369 emergency ended prior to the expiration of this 60-day period.

76370 (b) A proclamation issued within 30 days of the expiration of a prior proclamation for
76371 the same emergency shall be considered a renewal or extension subject to Subsection (3).

76372 (3) A proclamation may be renewed or extended only by joint resolution of the
76373 Legislature.

76374 Section 1713. Section **63K-2-205**, which is renumbered from Section 63-53a-7 is
76375 renumbered and amended to read:

76376 ~~[63-53a-7]~~. **63K-2-205. Curtailment, adjustment and allocation of energy use**
76377 **by executive orders -- Limitations and considerations in issuance and application.**

76378 (1) Upon issuance of a proclamation pursuant to Section ~~[63-53a-6]~~ 63K-2-204, the
76379 governor in addition may by executive order:

76380 (a) require reduction in energy resource usage and the application of conservation,
76381 prevention of waste, and the salvaging of energy resources and the materials, services, and
76382 facilities derived therefrom or dependent thereon, by state agencies and political subdivisions in
76383 this state;

76384 (b) direct the establishment by state agencies and political subdivisions in this state of
76385 programs necessary to implement and comply with federal energy conservation programs where

76386 these programs have not theretofore been so established, including, but not limited to, allocation
76387 or rationing of energy resources and the distribution of the state's discretionary allotments;

76388 (c) require involuntary curtailments, adjustments, or allocations in the supply and
76389 consumption of energy resources applicable to all suppliers and consumers including, but not
76390 limited to, specification of the times and manner in which these resources are supplied or
76391 consumed; or

76392 (d) prescribe and direct activities promoting the conservation, prevention of waste, and
76393 salvage of energy resources and the materials, services, and facilities derived therefrom or
76394 dependent thereon, including, but not limited to, the modification of transportation routes and
76395 schedules, or the suspension of weight limits or other restrictions from the transportation of
76396 energy resources, to the extent permissible under federal law and regulations.

76397 (2) Any restrictions, curtailments, adjustments, or allocations pursuant to Subsection
76398 (1) shall:

76399 (a) be ordered and continue only so long as demonstrably necessary for the maintenance
76400 of essential services or transportation, or the continued operation of the economy but no longer
76401 than the duration of the proclamation;

76402 (b) be applied as uniformly as practicable within each class of suppliers and consumers
76403 and without discrimination within a class; and

76404 (c) give due consideration to the needs of commercial, retail, professional, and service
76405 establishments whose normal function is to supply goods or services or both of an essential
76406 nature, including, but not limited to, food, lodging, fuel, or medical care facilities during times
76407 of the day other than conventional daytime working hours.

76408 Section 1714. Section **63K-2-206**, which is renumbered from Section 63-53a-10 is
76409 renumbered and amended to read:

76410 **[63-53a-10]. 63K-2-206. Other emergency powers of governor unaffected.**

76411 The powers vested in the governor under this act shall be in addition to, and not in lieu
76412 of, any other emergency powers otherwise constitutionally or statutorily vested in the governor.

76413 Section 1715. Section **63K-2-301**, which is renumbered from Section 63-53a-8 is

76414 renumbered and amended to read:

76415 **Part 3. Implementation and Orders**

76416 **[63-53a-8]. 63K-2-301. Existing agencies to be used in implementation.**

76417 The governor shall use, to the extent practicable, existing state boards, commissions, or
76418 agencies or officers or employees for the purpose of carrying out the provisions of this act.

76419 Section 1716. Section **63K-2-302**, which is renumbered from Section 63-53a-9 is
76420 renumbered and amended to read:

76421 **[63-53a-9]. 63K-2-302. Enforcement of orders and rules.**

76422 The governor may apply to any district court for appropriate equitable relief against any
76423 person violating or failing to carry out the provisions of this act or any order or rule issued
76424 pursuant to this act.

76425 Section 1717. Section **63K-2-303**, which is renumbered from Section 63-53a-11 is
76426 renumbered and amended to read:

76427 **[63-53a-11]. 63K-2-303. Rules and regulations -- Approval by**
76428 **Legislature.**

76429 The board, commission, or agency designated by the governor for carrying out the
76430 provisions of this act is authorized to promulgate such rules and regulations as are necessary for
76431 effective administration of this act with approval of the Legislature.

76432 Section 1718. Section **63K-3-101** is enacted to read:

76433 **CHAPTER 3. EMERGENCY MANAGEMENT ACT**

76434 **Part 1. General Provisions**

76435 **63K-3-101. Title.**

76436 This chapter is known as the "Emergency Management Act."

76437 Section 1719. Section **63K-3-102**, which is renumbered from Section 63-5-2 is
76438 renumbered and amended to read:

76439 **[63-5-2]. 63K-3-102. Definitions.**

76440 As used in this chapter:

76441 (1) "Disaster" means a situation causing, or threatening to cause, widespread damage,

76442 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
76443 natural phenomena or technological hazard.

76444 (2) "Attack" means a nuclear, conventional, biological, or chemical warfare action
76445 against the United States of America or this state.

76446 (3) "Internal disturbance" means a riot, prison break, disruptive terrorism or strike.

76447 (4) "Natural phenomena" means any earthquake, tornado, storm, flood, landslide,
76448 avalanche, forest or range fire, drought, or epidemic.

76449 (5) "Technological hazard" means any hazardous materials accident, mine accident,
76450 train derailment, air crash, radiation incident, pollution, structural fire or explosion.

76451 Section 1720. Section **63K-3-201**, which is renumbered from Section 63-5-4 is
76452 renumbered and amended to read:

76453 **Part 2. Advisory Counsel**

76454 **~~[63-5-4].~~ 63K-3-201. Disaster Emergency Advisory Council created --**

76455 **Function -- Composition -- Expenses.**

76456 (1) A Disaster Emergency Advisory Council is created to provide advice to the
76457 governor on matters relating to state government emergency disaster response and recovery
76458 actions and activities.

76459 (2) The council shall meet at the call of the governor.

76460 (3) The Disaster Emergency Advisory Council comprises the:

76461 (a) lieutenant governor;

76462 (b) attorney general;

76463 (c) president of the Senate;

76464 (d) speaker of the House of Representatives;

76465 (e) heads of the following state agencies:

76466 (i) Public Safety;

76467 (ii) Division of Homeland Security;

76468 (iii) Building Board; and

76469 (iv) Governor's Office of Planning and Budget;

- 76470 (f) executive directors of the following departments:
- 76471 (i) Transportation;
- 76472 (ii) Human Services;
- 76473 (iii) Health;
- 76474 (iv) Environmental Quality;
- 76475 (v) Community and Economic Development; and
- 76476 (vi) Natural Resources;
- 76477 (g) representative of the National Guard appointed by the governor with the consent of
- 76478 the Senate;
- 76479 (h) commissioner of agriculture and food;
- 76480 (i) state planning coordinator; and
- 76481 (j) representatives from two statewide, nongovernmental service organizations
- 76482 appointed by the governor with the consent of the Senate.
- 76483 (4) The commissioner of Public Safety shall serve as the chair of the council.
- 76484 (5) (a) (i) State government officer and employee members who do not receive salary,
- 76485 per diem, or expenses from their agency for their service may receive per diem and expenses
- 76486 incurred in the performance of their official duties from the council at the rates established by
- 76487 the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 76488 (ii) State government officer and employee members may decline to receive per diem
- 76489 and expenses for their service.
- 76490 (b) Legislators on the committee shall receive compensation and expenses as provided
- 76491 by law and legislative rule.

76492 Section 1721. Section **63K-3-301**, which is renumbered from Section 63-5-5 is

76493 renumbered and amended to read:

76494 **Part 3. Hazardous Chemical Emergency Response Commission**

76495 **[63-5-5]. 63K-3-301. Hazardous Chemical Emergency Response Commission**

76496 **-- Allocation of responsibilities -- Local planning committees -- Specified federal law**

76497 **considered law of state -- Application to federal agencies and facilities.**

76498 (1) (a) The commissioner of the Department of Public Safety and the executive director
76499 of the Department of Environmental Quality, or their respective designees, are designated as the
76500 state's Hazardous Chemical Emergency Response Commission for purposes of carrying out all
76501 requirements of the federal Emergency Planning and Community Right To Know Act of 1986.

76502 (b) (i) State government officer and employee members who do not receive salary, per
76503 diem, or expenses from their agency for their service may receive per diem and expenses
76504 incurred in the performance of their official duties from the commission at the rates established
76505 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

76506 (ii) State government officer and employee members may decline to receive per diem
76507 and expenses for their service.

76508 (2) The Department of Public Safety has primary responsibility for all emergency
76509 planning activities under the federal Emergency Planning and Community Right To Know Act
76510 of 1986, and shall prepare policy and procedure and make rules necessary for implementation of
76511 that act in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
76512 Rulemaking Act.

76513 (3) The Department of Environmental Quality has primary responsibility for receiving,
76514 processing, and managing hazardous chemical information and notifications under the federal
76515 Emergency Planning and Community Right To Know Act of 1986, including preparation of
76516 policy and procedure, and promulgation of rules necessary for implementation of that act.
76517 Funding for this program must be from the appropriation acts.

76518 (4) The Department of Public Safety and the Department of Environmental Quality shall
76519 enter into an interagency agreement providing for exchange of information and coordination of
76520 their respective duties and responsibilities under this section.

76521 (5) (a) The Hazardous Chemical Emergency Response Commission shall appoint a local
76522 planning committee for each local planning district that it establishes, as required by the federal
76523 Emergency Planning and Community Right To Know Act of 1986, and to the extent possible,
76524 shall use an existing local governmental organization as the local planning committee.

76525 (b) (i) Local government members who do not receive salary, per diem, or expenses

76526 from the entity that they represent for their service may receive per diem and expenses incurred
76527 in the performance of their official duties at the rates established by the Division of Finance
76528 under Sections 63A-3-106 and 63A-3-107.

76529 (ii) Local government members may decline to receive per diem and expenses for their
76530 service.

76531 (6) Requirements of the federal Emergency Planning and Community Right To Know
76532 Act of 1986 pertaining to notification and submission of information are the law of this state,
76533 and apply equally to federal agencies, departments, installations, and facilities located in this
76534 state, as well as to other facilities that are subject to that act.

76535 Section 1722. Section **63K-4-101** is enacted to read:

76536 **CHAPTER 4. DISASTER RESPONSE AND RECOVERY ACT**

76537 **Part 1. General Provisions**

76538 **63K-4-101. Title.**

76539 This chapter is known as the "Disaster Response and Recovery Act."

76540 Section 1723. Section **63K-4-102**, which is renumbered from Section 63-5a-1 is
76541 renumbered and amended to read:

76542 **[63-5a-1]. 63K-4-102. Legislative findings -- Purpose -- Short title.**

76543 (1) The legislature finds that existing and increasing threats of the occurrence of
76544 destructive disasters resulting from attack, internal disturbance, natural phenomenon or
76545 technological hazard could greatly affect the health, safety and welfare of the people of this
76546 state, and it is therefore necessary to grant to the governor of this state and its political
76547 subdivisions special emergency disaster authority.

76548 (2) It is the purpose of this act to assist the governor of this state and its political
76549 subdivisions to effectively provide emergency disaster response and recovery assistance in order
76550 to protect the lives and property of the people. This act shall be known and cited as the
76551 "Disaster Response and Recovery Act."

76552 Section 1724. Section **63K-4-103**, which is renumbered from Section 63-5a-2 is
76553 renumbered and amended to read:

76554 ~~[63-5a-2].~~ 63K-4-103. **Definitions.**

76555 (1) "Attack" means a nuclear, conventional, biological, or chemical warfare action
76556 against the United States of America or this state.

76557 (2) "Chief executive officer" means:

76558 (a) for a municipality:

76559 (i) the mayor for a municipality operating under all forms of municipal government
76560 except the council-manager form of government; or

76561 (ii) the city manager for a municipality operating under the council-manager form of
76562 government; or

76563 (b) for a county:

76564 (i) the chair of the county commission for a county operating under the county
76565 commission or expanded county commission form of government;

76566 (ii) the county executive officer for a county operating under the county-executive
76567 council form of government; or

76568 (iii) the county manager for a county operating under the council-manager form of
76569 government.

76570 (3) "Disaster" means a situation causing, or threatening to cause, widespread damage,
76571 social disruption, or injury or loss of life or property resulting from attack, internal disturbance,
76572 natural phenomenon or technological hazard.

76573 (4) "Internal disturbance" means a riot, prison break, disruptive terrorism or strike.

76574 (5) "Local emergency" means a condition in any political subdivision of the state which
76575 requires that emergency assistance be provided by the affected political subdivision to save lives
76576 and protect property within its jurisdiction in response to a disaster, or to avoid or reduce the
76577 threat of a disaster.

76578 (6) "Natural phenomenon" means any earthquake, tornado, storm, flood, landslide,
76579 avalanche, forest or range fire, drought, or epidemic.

76580 (7) "Political subdivision" means municipality or county.

76581 (8) "State of emergency" means a condition in any part of this state which requires state

76582 government emergency assistance to supplement the local efforts of the affected political
76583 subdivision to save lives and to protect property, public health, welfare, and safety in the event
76584 of a disaster or to avoid or reduce the threat of a disaster.

76585 (9) "Technological hazard" means any hazardous materials accident, mine accident,
76586 train derailment, truck wreck, air crash, radiation incident, pollution, structural fire or explosion.

76587 Section 1725. Section **63K-4-201**, which is renumbered from Section 63-5a-3 is
76588 renumbered and amended to read:

76589 **Part 2. States of Emergency**

76590 **[63-5a-3]. 63K-4-201. Authority of governor -- Federal assistance -- Fraud in**
76591 **application for financial assistance -- Penalty.**

76592 (1) In addition to any other authorities conferred upon the governor, the governor
76593 during the declared state of emergency is authorized and empowered to:

76594 (a) utilize all available resources of state government as reasonably necessary to cope
76595 with a "state of emergency";

76596 (b) employ measures and give direction to state and local officers and agencies which
76597 are reasonable and necessary for the purpose of securing compliance with the provisions of this
76598 act and with orders, rules and regulations made pursuant to this act;

76599 (c) recommend and advise the evacuation of all or part of the population from any
76600 stricken or threatened area within the state if necessary for the preservation of life;

76601 (d) recommend routes, modes of transportation, and destination in connection with
76602 evacuation;

76603 (e) in connection with evacuation suspend or limit the sale, dispensing, or transportation
76604 of alcoholic beverages, explosives, and combustibles, not to include the lawful bearing of arms;

76605 (f) control ingress and egress to and from a disaster area, the movement of persons
76606 within the area, and recommend the occupancy or evacuation of premises in a disaster area;

76607 (g) clear or remove from publicly or privately owned land or water through the use of
76608 state departments or agencies, debris or wreckage which may threaten public health, public
76609 safety, or private property as hereinafter provided:

76610 (i) whenever the governor provides for clearance of debris or wreckage pursuant to this
76611 subsection, employees of the designated state agencies are authorized to enter upon private land
76612 or waters and perform any tasks necessary for the removal or clearance operation;

76613 (ii) authority under this subsection shall not be exercised unless the affected political
76614 subdivision, corporation, organization or individual shall first present an unconditional
76615 authorization for removal of such debris or wreckage from private property and agree to
76616 indemnify the state government against any claim arising from such removal;

76617 (h) recommend to the legislature additional action [~~he~~] the governor deems necessary to
76618 carry out the provisions of this act.

76619 (2) When the governor has proclaimed a "state of emergency" under this act and when
76620 the president of the United States, at the request of the governor, has declared an "emergency"
76621 or a "major disaster" to exist in this state, the governor is authorized:

76622 (a) to enter into agreement with any agency of the United States for temporary housing
76623 units to be occupied by disaster victims and to make such units available to any political
76624 subdivision of this state;

76625 (b) to assist any political subdivision of this state to acquire sites and utilities necessary
76626 for such temporary housing by passing through any funds made available to the governor by an
76627 agency of the United States for this purpose;

76628 (c) to temporarily suspend or modify by proclamation, during the period of the
76629 emergency, any public health, safety, zoning, transportation or other requirement of the law or
76630 regulation within this state if such action is essential to provide temporary housing for disaster
76631 victims;

76632 (d) upon determination that a political subdivision of the state will suffer a substantial
76633 loss of tax and other revenues because of a disaster and the political subdivision so affected has
76634 demonstrated a need for financial assistance to perform its governmental functions, in
76635 accordance with the provisions of the Utah Constitution, Article XIV, Sections 3 and 4, and
76636 Section 10-8-6, to apply to the federal government for a loan on behalf of the political
76637 subdivision, and to receive and disburse the proceeds to the applicant political subdivision. No

76638 application amount shall exceed 25% of the annual operating budget of the applicant political
76639 subdivision for the fiscal year in which the disaster occurs;

76640 (e) to accept funds from the federal government and make grants to any political
76641 subdivision for the purpose of removing debris or wreckage from publicly owned land or water;

76642 (f) upon determination that financial assistance is essential to meet disaster related
76643 expenses of individuals or families adversely affected by a disaster which cannot be sufficiently
76644 met from other means of assistance, to apply for, accept and expend a grant by the federal
76645 government to fund such financial assistance, subject to the terms and conditions imposed upon
76646 the grant.

76647 (3) Any person who fraudulently or willfully makes a misstatement of fact in connection
76648 with an application for financial assistance under this section shall, upon conviction of each
76649 offense, be subject to a fine of not more than \$5,000 or imprisonment for not more than one
76650 year, or both.

76651 Section 1726. Section **63K-4-202**, which is renumbered from Section 63-5a-4 is
76652 renumbered and amended to read:

76653 ~~[63-5a-4].~~ **63K-4-202. Authority of chief executive officers of political**
76654 **subdivisions -- Ordering of evacuations.**

76655 (1) (a) In order to protect life and property when a state of emergency or local
76656 emergency has been declared, the chief executive officer of each political subdivision of the
76657 state is authorized to:

76658 (i) carry out, in the chief executive officer's jurisdiction, the measures as may be ordered
76659 by the governor under this chapter; and

76660 (ii) take any additional measures the chief executive officer may consider necessary,
76661 subject to the limitations and provisions of this chapter.

76662 (b) The chief executive officer may not take an action that is inconsistent with any
76663 order, rule, regulation, or action of the governor.

76664 (2) When a state of emergency or local emergency is declared, the authority of the chief
76665 executive officer includes:

76666 (a) utilizing all available resources of the political subdivision as reasonably necessary to
76667 manage a state of emergency or local emergency;

76668 (b) employing measures and giving direction to local officers and agencies which are
76669 reasonable and necessary for the purpose of securing compliance with the provisions of this
76670 chapter and with orders, rules, and regulations made under this chapter;

76671 (c) if necessary for the preservation of life, issuing an order for the evacuation of all or
76672 part of the population from any stricken or threatened area within the political subdivision;

76673 (d) recommending routes, modes of transportation, and destinations in relation to an
76674 evacuation;

76675 (e) suspending or limiting the sale, dispensing, or transportation of alcoholic beverages,
76676 explosives, and combustibles in relation to an evacuation, except that the chief executive officer
76677 may not restrict the lawful bearing of arms;

76678 (f) controlling ingress and egress to and from a disaster area, controlling the movement
76679 of persons within a disaster area, and ordering the occupancy or evacuation of premises in a
76680 disaster area;

76681 (g) clearing or removing debris or wreckage that may threaten public health, public
76682 safety, or private property from publicly or privately owned land or waters, except that where
76683 there is no immediate threat to public health or safety, the chief executive officer shall not
76684 exercise this authority in relation to privately owned land or waters unless:

76685 (i) the owner authorizes the employees of designated local agencies to enter upon the
76686 private land or waters to perform any tasks necessary for the removal or clearance; and

76687 (ii) the owner provides an unconditional authorization for removal of the debris or
76688 wreckage and agrees to indemnify the local and state government against any claim arising from
76689 the removal; and

76690 (h) invoking the provisions of any mutual aid agreement entered into by the political
76691 subdivision.

76692 (3) (a) If the chief executive is unavailable to issue an order for evacuation under
76693 Subsection (2)(c), the chief law enforcement officer having jurisdiction for the area may issue an

76694 urgent order for evacuation, for a period not to exceed 36 hours, if the order is necessary for
76695 the preservation of life.

76696 (b) The chief executive officer may ratify, modify, or revoke the chief law enforcement
76697 officer's order.

76698 (4) Notice of an order or the ratification, modification, or revocation of an order issued
76699 under this section shall be:

76700 (a) given to the persons within the jurisdiction by the most effective and reasonable
76701 means available; and

76702 (b) filed in accordance with Subsection [~~63-5a-7~~] 63K-4-401(1).

76703 Section 1727. Section **63K-4-203**, which is renumbered from Section 63-5a-5 is
76704 renumbered and amended to read:

76705 [~~63-5a-5~~]. **63K-4-203. State of emergency -- Declaration -- Termination --**
76706 **Commander-in-chief of military forces.**

76707 (1) A "state of emergency" may be declared by proclamation of the governor after a
76708 proclamation of local emergency as provided under Section [~~63-5a-6~~] 63K-4-301 if the
76709 governor finds a disaster has occurred or the occurrence or threat of a disaster is imminent in
76710 any area of the state in which state government assistance is required to supplement the
76711 response and recovery efforts of the affected political subdivision or political subdivisions. The
76712 "state of emergency" shall continue until the governor finds the threat or danger has passed or
76713 the disaster reduced to the extent that emergency conditions no longer exist. No "state of
76714 emergency" may continue for longer than 30 days unless extended by joint resolution of the
76715 Legislature, which may also terminate a "state of emergency" by joint resolution at any time.
76716 The governor shall issue an executive order or proclamation ending the "state of emergency" on
76717 receipt of the Legislature's resolution. All executive orders or proclamations issued under this
76718 subsection shall state:

76719 (a) the nature of the "state of emergency";

76720 (b) the area or areas threatened;

76721 (c) the conditions creating such an emergency or those conditions allowing termination

76722 of the "state of emergency."

76723 (2) During the continuance of any "state of emergency" the governor is
76724 commander-in-chief of the military forces of the state in accordance with the provisions of
76725 Article VII, Section 4, of the Constitution of Utah, and Title 39, Chapter 1.

76726 Section 1728. Section **63K-4-301**, which is renumbered from Section 63-5a-6 is
76727 renumbered and amended to read:

76728 **Part 3. Local Emergencies**

76729 **[~~63-5a-6~~]. 63K-4-301. Local emergency -- Declarations.**

76730 (1) (a) A local emergency may be declared by proclamation of the chief executive
76731 officer of a political subdivision.

76732 (b) A local emergency shall not be continued or renewed for a period in excess of 30
76733 days except by or with the consent of the governing body of the political subdivision.

76734 (c) Any order or proclamation declaring, continuing, or terminating a local emergency
76735 shall be filed promptly with the office of the clerk of the affected political subdivision.

76736 (2) A declaration of a local emergency:

76737 (a) constitutes an official recognition that a disaster situation exists within the affected
76738 political subdivision;

76739 (b) provides a legal basis for requesting and obtaining state or federal government
76740 disaster assistance;

76741 (c) activates the response and recovery aspects of any and all applicable local disaster
76742 emergency plans; and

76743 (d) authorizes the furnishing of aid and assistance in relation to the proclamation.

76744 (3) A local emergency proclamation issued under this section shall state:

76745 (a) the nature of the local emergency;

76746 (b) the area or areas that are affected or threatened; and

76747 (c) the conditions which caused the emergency.

76748 Section 1729. Section **63K-4-401**, which is renumbered from Section 63-5a-7 is
76749 renumbered and amended to read:

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Part 4. Powers and Orders

**[~~63-5a-7~~]. 63K-4-401. Orders, rules, and regulations having force of law --
Filing requirements -- Suspension of state agency rules.**

(1) All orders, rules, and regulations promulgated by the governor, a political subdivision, or other agency authorized by this act to make orders, rules, and regulations, not in conflict with existing laws except as specifically provided herein, shall have the full force and effect of law during the state of emergency, when a copy of the order, rule, or regulation is filed with:

- (a) the Division of Administrative Rules, if issued by the governor or a state agency; or
- (b) the office of the clerk of the political subdivision, if issued by the chief executive officer of a political subdivision of the state or agency of the state.

(2) The governor may suspend the provisions of any order, rule, or regulation of any state agency, if the strict compliance with the provisions of the order, rule, or regulation would substantially prevent, hinder, or delay necessary action in coping with the emergency or disaster.

Section 1730. Section **63K-4-402**, which is renumbered from Section 63-5a-8 is renumbered and amended to read:

[~~63-5a-8~~]. 63K-4-402. Acquisition of property for public use -- Compensation of owners.

(1) (a) Upon proclamation of a state of emergency, the governor may purchase or lease public or private property for public use including:

- (i) food and medical supplies;
- (ii) clothing;
- (iii) shelter;
- (iv) means of transportation;
- (v) fuels;
- (vi) oils; or
- (vii) buildings or lands.

(b) The governor may not purchase private home storage nor privately owned arms.

76778 (2) (a) The governor may use property purchased under authority of this section for any
76779 purpose to meet the needs of an emergency, including its use to relieve want, distress, and
76780 disease.

76781 (b) Any property used by the governor to meet the needs of an emergency is a public
76782 use.

76783 (3) (a) The governor shall compensate the owner of property taken or used under
76784 authority of this section by complying with the procedures established in Title 78, Chapter 34,
76785 Eminent Domain.

76786 (b) The governor shall pay for those purchases or leases from the funds available to the
76787 Division of Homeland Security under:

76788 (i) this chapter; or

76789 (ii) Title 53, Chapter 2, Part 4, Disaster Recovery Funding Act, to the extent provided
76790 for in that chapter.

76791 (4) Nothing in this section applies to or authorizes compensation for the destruction or
76792 damage of standing timber or other property in order to provide a fire break or to the release of
76793 waters or the breach of impoundments in order to reduce pressure or other danger from actual
76794 or threatened flood.

76795 Section 1731. Section **63K-4-403**, which is renumbered from Section 63-5a-9 is
76796 renumbered and amended to read:

76797 **~~[63-5a-9].~~ 63K-4-403. Interstate agreements authorized -- Termination --**
76798 **Mutual-aid compacts between subdivisions.**

76799 (1) The governor is authorized to execute an interstate agreement or compact on behalf
76800 of this state with any other state or states only consistent with the powers herein granted
76801 concerning matters relating to a disaster affecting or likely to affect this state.

76802 (2) The agreement or compact shall continue in force and remain binding on each party
76803 state until the Legislature or the governor of such party state takes action to withdraw
76804 therefrom. Such action shall not be effective until 30 days after notice thereof has been sent by
76805 the governor of such party state desiring to withdraw to the governors of all other party states.

76806 (3) Political subdivisions are authorized to enter into mutual-aid compacts with other
76807 political subdivisions within the state of Utah concerning matters involving cooperative disaster
76808 response and recovery assistance support, consistent with this act.

76809 Section 1732. Section **63K-4-404**, which is renumbered from Section 63-5a-11 is
76810 renumbered and amended to read:

76811 **[63-5a-11]. 63K-4-404. Authority additional to other emergency authority.**

76812 The special disaster emergency authority vested in the governor and political
76813 subdivisions of the state pursuant to this act shall be in addition to, and not in lieu of, any other
76814 emergency authority otherwise constitutionally or statutorily vested in the governor and political
76815 subdivisions of the state.

76816 Section 1733. Section **63L-1-101** is enacted to read:

76817 **TITLE 63L. LANDS**
76818 **CHAPTER 1. FEDERAL JURISDICTION**

76819 **Part 1. General Provisions**

76820 **63L-1-101. Title.**

76821 (1) This title is known as "Lands."

76822 (2) This chapter is known as "Federal Jurisdiction."

76823 Section 1734. Section **63L-1-201**, which is renumbered from Section 63-8-1 is
76824 renumbered and amended to read:

76825 **Part 2. Federal and State Jurisdiction**

76826 **[63-8-1]. 63L-1-201. Jurisdiction over land acquired by United States --**
76827 **Reservations by state -- Duration of jurisdiction.**

76828 Jurisdiction is hereby ceded to the United States in, to and over any and all lands or
76829 territory within this state which have heretofore been acquired by the United States by purchase,
76830 condemnation or otherwise for military or naval purposes and for forts, magazines, arsenals,
76831 dockyards and other needful buildings of every kind whenever authorized by Act of Congress,
76832 and in, to and over any and all lands or territory within this state now held by the United States
76833 under lease, use permit, or reserved from the public domain for any of the purposes aforesaid;

76834 this state, however, reserving the right to execute its process, both criminal and civil, within
76835 such territory. The jurisdiction so ceded shall continue so long as the United States shall own,
76836 hold or reserve land for any of the aforesaid purposes, or in connection therewith, and no
76837 longer.

76838 Section 1735. Section **63L-1-202**, which is renumbered from Section 63-8-2 is
76839 renumbered and amended to read:

76840 **~~[63-8-2]~~. 63L-1-202. Governor to execute conveyances.**

76841 The governor is hereby authorized and empowered to execute all proper conveyances in
76842 the cession herein granted, upon request of the United States or the proper officers thereof,
76843 whenever any land shall have been acquired, leased, used, or reserved from the public domain
76844 for such purposes.

76845 Section 1736. Section **63L-1-203**, which is renumbered from Section 63-8-3 is
76846 renumbered and amended to read:

76847 **~~[63-8-3]~~. 63L-1-203. Jurisdiction over certain military reservations ceded --**
76848 **Reservation.**

76849 Jurisdiction is ceded to the United States in and over all lands comprised within the
76850 limits of the military reservations of Fort Douglas and Fort Duchesne in this state, to continue
76851 so long as the United States shall hold and own the same for military purposes or in connection
76852 therewith, and no longer; reserving, however, to this state the right to serve all civil process and
76853 such criminal process as may lawfully issue under the authority of this state against persons
76854 charged with crimes against the laws of this state committed within or without said reservations.

76855 Section 1737. Section **63L-1-204**, which is renumbered from Section 63-8-4 is
76856 renumbered and amended to read:

76857 **~~[63-8-4]~~. 63L-1-204. Concurrent jurisdiction with United States -- Taxation**
76858 **of businesses on federal lands.**

76859 (1) The state of Utah retains concurrent jurisdiction, both civil and criminal, with the
76860 United States over all lands affected by this act.

76861 (2) The state and all of its political subdivisions also reserve the right to impose taxes

76862 on individuals, partnerships, corporations, associations, and all other business entities doing
76863 business on the lands affected by this chapter in respect to such business or on any property of
76864 these entities situated on these lands.

76865 Section 1738. Section **63L-1-205**, which is renumbered from Section 63-8-5 is
76866 renumbered and amended to read:

76867 **[63-8-5]. 63L-1-205. Concurrent jurisdiction over certain minor violations at**
76868 **Dugway Proving Ground.**

76869 The state of Utah hereby cedes to the United States, retaining also the same to itself,
76870 concurrent jurisdiction over class B and C misdemeanors and traffic violations no more serious
76871 than a class B misdemeanor within the following described boundaries in the Counties of Tooele
76872 and Juab, State of Utah, in the Salt Lake Meridian:

76873 BEGINNING at the NE corner of Section 1, T8S, R9W;

76874 1. Thence, South along the Range line between R8W and R9W, 9 miles and 2.57 chains
76875 to the SE corner of Section 13, T9S, R9W;

76876 2. Thence, West, along the South line of Sections 13, 14, 15 and 16, T9S, R9W, 4
76877 miles to the NE corner of Section 20, T9S, R9W;

76878 3. Thence, South, along the East line of said Section 20 to the SE corner of said
76879 Section 20;

76880 4. Thence, Southwesterly in a straight line to the Southwest corner of Section 31,
76881 T10S, R10W;

76882 5. Thence, continuing Southwesterly along said line to a point in Section 1, T11S,
76883 R11W, said point bears 0.7 mile along said Southwesterly line from the SW corner of said
76884 Section 31;

76885 6. Thence, Northwesterly, in a straight line from said point, to the SW corner of Section
76886 34, T9S, R11W;

76887 7. Thence, North along the West line of said Section 34 to the NW corner of said
76888 Section 34;

76889 8. Thence, West along the South line of Sections 28 and 29, T9S, R11W, to the SE

- 76890 corner of Section 30, T9S, R11W;
- 76891 9. Thence, Northwest in a straight line to the NE corner of Section 23, T9S, R12W;
- 76892 10. Thence, West along the North line of Sections 23, 22, and projected Sections 21,
76893 20 and 19 to the Range line between R12W and R13W;
- 76894 11. Thence, South along said Range line to the South line of T10S;
- 76895 12. Thence, West along last said Township line to the Range line common to R16W
76896 and R17W;
- 76897 13. Thence, North along last said Range line to the West quarter corner of Section 6,
76898 T10S, R16W;
- 76899 14. Thence, East along the East-West centerline of said Section 6 to the North-South
76900 centerline of said Section 6;
- 76901 15. Thence, North along said North-South centerline to the North quarter corner of
76902 said Section 6;
- 76903 16. Thence, East along the North line of said Section 6 to the NE corner of said Section
76904 6;
- 76905 17. Thence, North along the East line of Section 31, T9S, R16W, to the NE corner of
76906 the SE 1/4 SE 1/4 of said Section 31;
- 76907 18. Thence, West along the North line of the S 1/2 S 1/2 of last said Section 31, T9S,
76908 R16W, to the West line of said Section 31;
- 76909 19. Thence, North along said West line to the East-West line of last said Section 31;
- 76910 20. Thence, East along said East-West line to the SE corner of the SW 1/4 NW 1/4 of
76911 last said Section 31;
- 76912 21. Thence, North along the East line of said SW 1/4 NW 1/4 to the NE corner of SW
76913 1/4 NW 1/4 of last said Section 31;
- 76914 22. Thence, West along the North line of said SW 1/4 NW 1/4 to the NW corner of
76915 said SW 1/4 NW 1/4 of last said Section 31, said corner also being on the Range line common
76916 to R16W and R17W;
- 76917 23. Thence, North along last said Range line to the NW corner of Section 6, T6S,

- 76918 R16W;
- 76919 24. Thence, East along the North line of T6S to the NE corner of Section 1, T6S,
- 76920 R13W;
- 76921 25. Thence, North along the West line of R13W to the NW corner of Section 6, T6S,
- 76922 R12W;
- 76923 26. Thence, East along the North line of T6S to the NE corner of Section 1, T6S,
- 76924 R12W;
- 76925 27. Thence, North along the Range line between R11W and R12W, 5 miles and 37.68
- 76926 chains to the closing corner of T5S, R11W and T5S, R12W, said corner bears East 10.97 chains
- 76927 from the standard corner of T4S, R11W and T4S, R12W;
- 76928 28. Thence, East along the Township line common to T4S and T5S, 6 miles and 74.49
- 76929 chains to the divide crest of the Cedar Mountain Range;
- 76930 29. Thence, Southeasterly, along or near the crest of the Cedar Mountain Range
- 76931 through T5S, R10W, T6S, R10W, and T6S, R9W, the following courses:
- 76932 30. Thence, S 1° 29' W, 69.63 chains;
- 76933 31. Thence, S 4° 18' E, 94.83 chains;
- 76934 32. Thence, S 5° 21' E, 87.44 chains;
- 76935 33. Thence, S 63° 27' E, 26.60 chains;
- 76936 34. Thence, S 17° 15' E, 70.51 chains;
- 76937 35. Thence, S 55° 37' E, 132.09 chains;
- 76938 36. Thence, S 56° 22' E, 108.71 chains;
- 76939 37. Thence, S 24° 31' E, 20.92 chains; to a point which bears West, 125.29 chains from
- 76940 the SW corner of T5S, R9W;
- 76941 38. Thence, S 28° 06' E, 70.05 chains;
- 76942 39. Thence, S 69° 15' E, 26.73 chains;
- 76943 40. Thence, S 41° 32' E, 55.35 chains;
- 76944 41. Thence, N 89° 19' E, 30.79 chains;
- 76945 42. Thence, S 25° 40' E, 36.19 chains;

- 76946 43. Thence, N 66° 24' E, 56.38 chains;
- 76947 44. Thence, S 63° 17' E, 76.05 chains;
- 76948 45. Thence, S 38° 48' E, 29.84 chains;
- 76949 46. Thence, S 82° 20' E, 71.44 chains;
- 76950 47. Thence, S 35° 07' E, 32.82 chains;
- 76951 48. Thence, S 36° 24' W, 18.77 chains;
- 76952 49. Thence, S 01° 41' W, 61.73 chains;
- 76953 50. Thence, N 65° 19' E, 25.68 chains;
- 76954 51. Thence, S 52° 59' E, 41.19 chains;
- 76955 52. Thence, N 85° 57' E, 44.22 chains;
- 76956 53. Thence, S 58° 52' E, 69.09 chains;
- 76957 54. Thence, S 82° 14' E, 46.21 chains;
- 76958 55. Thence, S 26° 06' E, 74.82 chains;
- 76959 56. Thence, S 88° 42' E, 14.59 chains to a point on the Range line common to R8W
- 76960 and R9W, said point bears South 12.78 chains from the NW corner of Section 31, T6S, R8W;
- 76961 57. Thence, leaving the Cedar Mountain Crest, South along said Range line common to
- 76962 R8W and R9W, 68.85 chains to the SW corner of T6S, R8W;
- 76963 58. Thence, East along the Township line between Ts. 6 and 7 S., 4 miles, 9.5 chains,
- 76964 to the closing corner of Sections 2 and 3, T7S, R8W;
- 76965 59. Thence, South, along Section line, 3 miles, 73.37 chains, to the corner of Sections
- 76966 22, 23, 26 and 27, T7S, R8W;
- 76967 60. Thence, West, along Section lines, 4 miles 0.45 chains, to the closing corner of
- 76968 Sections 19 and 30, on the West boundary of T7S, R8W;
- 76969 61. Thence, South, along the Range lines between Rs. 8 and 9 W, 1 mile 37.14 chains
- 76970 to the Northeast corner of T8S, R9W, and the POINT OF BEGINNING.
- 76971 TOGETHER with all that land in Section 36, T10S, R11W lying Southwesterly of the
- 76972 line described in Course No. 6 of this description.
- 76973 EXCEPTING THEREFROM: NW 1/4 of Section 9, T8S, R13W; and the NE 1/4 SW

76974 1/4 of Section 30, T10S, R16W.

76975 The operative provisions of this section also apply to the property within the following
76976 described boundaries:

76977 Township 6 South, Range 4 West, Salt Lake Meridian, Section 4, S 1/2; Section 5, Lots
76978 3 and 4, S 1/2 NW 1/4 and S 1/2; Sections 6 to 9, inclusive; Section 15, W 1/2; Sections 16 to
76979 21, inclusive; Section 22, W 1/2; Section 27, W 1/2; Sections 28 to 30.

76980 Township 6 South, Range 5 West, Salt Lake Meridian, Sections 1 to 3, inclusive;
76981 Sections 11 to 14, inclusive; Sections 23 to 26, inclusive; those portions of Sections 4, 9, 10,
76982 15, 22, and 27 lying East of the Union Pacific Railroad Right-of-Way, and situated within the
76983 boundary of the Deseret Chemical Depot (formerly St. John Ordnance Depot) County of
76984 Tooele, State of Utah, which lands were withdrawn from all forms of appropriation under the
76985 public land laws, including the mining and mineral leasing laws and reserved for use by the
76986 Department of Army (formerly War Department) as an Ordnance Storage Depot by the Public
76987 Land Order No. 15 dated July 21, 1942, and Public Land Order No. 66 dated November 30,
76988 1942; and which are within the Rush Valley Unit of the Bonneville Grazing District No. 2,
76989 Utah.

76990 Section 1739. Section **63L-1-206**, which is renumbered from Section 63-8-6 is
76991 renumbered and amended to read:

76992 **[63-8-6]. 63L-1-206. Concurrent jurisdiction.**

76993 The state of Utah hereby accepts from the United States concurrent jurisdiction, both
76994 civil and criminal, with the United States over the following described boundaries in the county
76995 of Weber, state of Utah, in the Salt Lake Meridian:

76996 (1) As described more particularly in Subsection (2), a part of Section 7 in Township 6
76997 North, Range 1 West and a part of Section 12 in Township 6 North, Range 2 West.

76998 (2) Beginning at a point South 0 degrees 46 minutes 27 seconds West 1540.37 feet and
76999 North 89 degrees 03 minutes 15 seconds West 258.80 feet and North 3 degrees 57 minutes 30
77000 seconds West 10,877.85 feet and North 86 degrees 11 minutes 50 seconds East 80.74 feet and
77001 North 3 degrees 52 minutes 20 seconds West 655.22 feet from the Northeast corner of the

77002 Northwest Quarter of Section 19 in said Township 6 North, Range 1 West; said point also being
77003 North 89 degrees 03 minutes 15 seconds West 253.25 feet and North 3 degrees 57 minutes 30
77004 seconds West 10,945.10 feet and North 86 degrees 11 minutes 50 seconds East 80.74 feet and
77005 North 3 degrees 52 minutes 20 seconds West 655.22 feet from the Ogden City survey
77006 monument at the intersection of the monument line of 12th Street and the East line of the
77007 Northwest Quarter of said Section 19; said point also being North 86 degrees 11 minutes 50
77008 seconds East and North 3 degrees 52 minutes 20 seconds West 655.22 from the Southwest
77009 corner of the Ogden City property (parcel 11-023-0029):

77010 (a) thence South 86 degrees 03 minutes 22 seconds West 2398.03 feet more or less
77011 along an existing fenceline separating properties used by Defense Depot Ogden and the U. S.
77012 Army Reserve to a point on the East line of 1200 West Street;

77013 (b) thence North 1 degree 16 minutes 15 seconds East 66.27 feet along said East line of
77014 1200 West Street;

77015 (c) thence North 86 degrees 03 minutes 22 seconds East 2392.09 feet more or less to a
77016 point on the West line of the Weber-Ogden Fairgrounds Complex; and

77017 (d) thence South 3 degrees 52 minutes 20 seconds East 66.00 feet along said West line
77018 of the Weber-Ogden Fairgrounds Complex to the point of beginning.

77019 Section 1740. Section **63L-1-207**, which is renumbered from Section 63-8-7 is
77020 renumbered and amended to read:

77021 ~~[63-8-7]~~. **63L-1-207. Concurrent jurisdiction -- Utah Test and Training**
77022 **Range.**

77023 The state of Utah cedes to the United States, retaining also the same to itself, concurrent
77024 jurisdiction within the following described boundaries in the county of Tooele, state of Utah, in
77025 the Salt Lake Base and Meridian, to continue so long as the United States owns, holds, or
77026 reserves the land for military purposes or in connection with military purposes, and no longer:

77027 (1) Township 2 North, Range 15 West, all of:

77028 (a) Section 16;

77029 (b) Section 32;

- 77030 (c) Section 36; and
- 77031 (d) Section 2, Lots 1-4, S 1/2 N 1/2, S 1/2;
- 77032 (2) Township 2 South, Range 14 West, all of:
- 77033 (a) Section 32; and
- 77034 (b) Section 36;
- 77035 (3) Township 2 South, Range 15 West, all of:
- 77036 (a) Section 36; and
- 77037 (b) Section 32, W 1/2;
- 77038 (4) Township 3 South, Range 15 West, all of:
- 77039 (a) Section 16;
- 77040 (b) Section 32;
- 77041 (c) Section 36; and
- 77042 (d) Section 2, Lots 1-4, S 1/2 N 1/2, S 1/2;
- 77043 (5) Township 2 South, Range 16 West, all of:
- 77044 (a) Section 32; and
- 77045 (b) Section 36;
- 77046 (6) Township 2 South, Range 17 West, all of:
- 77047 (a) Section 32; and
- 77048 (b) Section 36;
- 77049 (7) Township 2 South, Range 18 West, all of Section 36;
- 77050 (8) Township 3 South, Range 18 West, all of:
- 77051 (a) Section 16;
- 77052 (b) Section 32;
- 77053 (c) Section 36; and
- 77054 (d) Section 2, Lots 1-4, S 1/2 N 1/2, S 1/2;
- 77055 (9) Township 3 South, Range 19 West, all of:
- 77056 (a) Section 16;
- 77057 (b) Section 32;

- 77058 (c) Section 36; and
- 77059 (d) Section 2, Lots 1-4, S 1/2 N 1/2, S 1/2; and
- 77060 (10) Township 4 South, Range 19 West, all of:
- 77061 (a) Section 16;
- 77062 (b) Section 32;
- 77063 (c) Section 36; and
- 77064 (d) Section 2, Lots 1-4, S 1/2 N 1/2, S 1/2.

77065 Section 1741. Section **63L-2-101** is enacted to read:

**CHAPTER 2. TRANSFER OF STATE LANDS TO
UNITED STATES GOVERNMENT ACT**

Part 1. General Provisions

63L-2-101. Title.

77070 This chapter is known as the "Transfer of State Lands to United States Government
77071 Act."

77072 Section 1742. Section **63L-2-201**, which is renumbered from Section 63-34b-101 is
77073 renumbered and amended to read:

Part 2. Procedures for Acquisition of Property

77074 **[63-34b-101].** **63L-2-201. Federal government acquisition of real property**
77075 **in the state.**

77076 (1) As used in this section:

77077 (a) "Agency" is defined in Section [~~63-38b-101~~] 63G-10-102.

77078 (b) "Agency" includes:

77079 (i) the School and Institutional Trust Lands Administration created in Section
77080 53C-1-201; and

77081 (ii) the School and Institutional Trust Lands Board of Trustees created in Section
77082 53C-1-202.

77083 (2) (a) Before legally binding the state by executing an agreement to sell or transfer to
77084 the United States government 10,000 or more acres of any state lands or school and
77085

77086 institutional trust lands, an agency shall submit the agreement or proposal:

77087 (i) to the Legislature for its approval or rejection; or

77088 (ii) in the interim, to the Legislative Management Committee for review of the
77089 agreement or proposal.

77090 (b) The Legislative Management Committee may:

77091 (i) recommend that the agency execute the agreement or proposal;

77092 (ii) recommend that the agency reject the agreement or proposal; or

77093 (iii) recommend to the governor that ~~he~~ the governor call a special session of the
77094 Legislature to review and approve or reject the agreement or proposal.

77095 (3) Before legally binding the state by executing an agreement to sell or transfer to the
77096 United States government less than 10,000 acres of any state lands or school and institutional
77097 trust lands, an agency shall report to the Natural Resources, Agriculture, and Environment
77098 Interim Committee.

77099 (4) Notwithstanding Subsections (2) and (3), the Legislature approves all conveyances
77100 of school trust lands to the United States government made for the purpose of completing the
77101 Red Cliffs Desert Reserve in Washington County.

77102 Section 1743. Section **63L-3-101**, which is renumbered from Section 63-90-1 is
77103 renumbered and amended to read:

77104 **CHAPTER 3. PRIVATE PROPERTY PROTECTION ACT**

77105 **Part 1. General Provisions**

77106 ~~[63-90-1].~~ **63L-3-101. Title.**

77107 This chapter ~~shall be~~ is known as the "Private Property Protection Act."

77108 Section 1744. Section **63L-3-102**, which is renumbered from Section 63-90-2 is
77109 renumbered and amended to read:

77110 ~~[63-90-2].~~ **63L-3-102. Definitions.**

77111 As used in this chapter:

77112 (1) "Constitutional taking" or "taking" means a governmental action that results in a
77113 taking of private property so that compensation to the owner of the property is required by:

77114 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or
77115 (b) Utah Constitution Article I, Section 22.
77116 (2) (a) "Governmental action" or "action" means:
77117 (i) proposed rules and emergency rules by a state agency that if adopted and enforced
77118 may limit the use of private property unless:
77119 (A) its provisions are in accordance with applicable state or federal statutes; and
77120 (B) the agency has adopted and implemented the guidelines required by Section
77121 ~~[63-90-3]~~ 63L-3-201;
77122 (ii) proposed or implemented licensing or permitting conditions, requirements, or
77123 limitations to the use of private property unless:
77124 (A) its provisions are in accordance with applicable state or federal statutes, rules, or
77125 regulations; and
77126 (B) the agency has adopted and implemented the guidelines required by Section
77127 ~~[63-90-3]~~ 63L-3-201;
77128 (iii) required dedications or exactions from owners of private property; or
77129 (iv) statutes and rules.
77130 (b) "Governmental action" or "action" does not mean:
77131 (i) activity in which the power of eminent domain is exercised formally;
77132 (ii) repealing rules discontinuing governmental programs or amending rules in a manner
77133 that lessens interference with the use of private property;
77134 (iii) law enforcement activity involving seizure or forfeiture of private property for
77135 violations of law or as evidence in criminal proceedings;
77136 (iv) school and institutional trust land management activities and disposal of land and
77137 interests in land conducted pursuant to Title 53C, Schools and Institutional Trust Lands
77138 Management Act;
77139 (v) orders and enforcement actions that are issued by a state agency in accordance with
77140 ~~[Title 63, Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, and applicable
77141 federal or state statutes; or

77142 (vi) orders and enforcement actions that are issued by a court of law in accordance with
77143 applicable federal or state statutes.

77144 (3) "Private property" means any school or institutional trust lands and any real or
77145 personal property in this state that is protected by:

77146 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States; or

77147 (b) Utah Constitution Article I, Section 22.

77148 (4) (a) "State agency" means an officer or administrative unit of the executive branch of
77149 state government that is authorized by law to adopt rules.

77150 (b) "State agency" does not include the legislative or judicial branches of state
77151 government.

77152 (5) "Takings law" means the provisions of the federal and state constitutions, the case
77153 law interpreting those provisions, and any relevant statutory provisions that require a
77154 governmental unit to compensate a private property owner for a constitutional taking.

77155 Section 1745. Section **63L-3-201**, which is renumbered from Section 63-90-3 is
77156 renumbered and amended to read:

77157 **Part 2. Requirements for State Agencies**

77158 **[63-90-3]. 63L-3-201. State agencies to adopt guidelines.**

77159 (1) Each state agency shall adopt guidelines to assist them in the identification of
77160 actions that have constitutional taking implications.

77161 (2) In creating the guidelines, the state agency shall take into consideration recent court
77162 rulings on the taking of private property.

77163 (3) Each state agency shall complete the guidelines on or before January 1, 1999, and
77164 review and update the guidelines annually to maintain consistency with court rulings.

77165 Section 1746. Section **63L-3-202**, which is renumbered from Section 63-90-4 is
77166 renumbered and amended to read:

77167 **[63-90-4]. 63L-3-202. Agency actions.**

77168 (1) Using the guidelines prepared under Section [~~63-90-3~~] 63L-3-201, each state
77169 agency shall:

- 77170 (a) determine whether an action has constitutional taking implications; and
- 77171 (b) prepare an assessment of constitutional taking implications that includes an analysis
- 77172 of the following:
- 77173 (i) the likelihood that the action may result in a constitutional taking, including a
- 77174 description of how the taking affects the use or value of private property;
- 77175 (ii) alternatives to the proposed action that may:
- 77176 (A) fulfill the government's legal obligations of the state agency;
- 77177 (B) reduce the impact on the private property owner; and
- 77178 (C) reduce the risk of a constitutional taking; and
- 77179 (iii) an estimate of financial cost to the state for compensation and the source of
- 77180 payment within the agency's budget if a constitutional taking is determined.
- 77181 (2) In addition to the guidelines prepared under Section [~~63-90-3~~] 63L-3-201, each
- 77182 state agency shall adhere, to the extent permitted by law, to the following criteria if
- 77183 implementing or enforcing actions that have constitutional taking implications:
- 77184 (a) If an agency requires a person to obtain a permit for a specific use of private
- 77185 property, any conditions imposed on issuing the permit shall directly relate to the purpose for
- 77186 which the permit is issued and shall substantially advance that purpose.
- 77187 (b) Any restriction imposed on the use of private property shall be proportionate to the
- 77188 extent the use contributes to the overall problem that the restriction is to redress.
- 77189 (c) If an action involves a permitting process or any other decision-making process that
- 77190 will interfere with, or otherwise prohibit, the use of private property pending the completion of
- 77191 the process, the duration of the process shall be kept to the minimum necessary.
- 77192 (d) Before taking an action restricting private property use for the protection of public
- 77193 health or safety, the state agency, in internal deliberative documents, shall:
- 77194 (i) clearly identify, with as much specificity as possible, the public health or safety risk
- 77195 created by the private property use;
- 77196 (ii) establish that the action substantially advances the purpose of protecting public
- 77197 health and safety against the specifically identified risk;

77198 (iii) establish, to the extent possible, that the restrictions imposed on the private
77199 property are proportionate to the extent the use contributes to the overall risk; and

77200 (iv) estimate, to the extent possible, the potential cost to the government if a court
77201 determines that the action constitutes a constitutional taking.

77202 (3) If there is an immediate threat to health and safety that constitutes an emergency
77203 and requires an immediate response, the analysis required by Paragraph (2)(b) of this section
77204 may be made when the response is completed.

77205 (4) Before the state agency implements an action that has constitutional taking
77206 implications, the state agency shall submit a copy of the assessment of constitutional taking
77207 implications to the governor and the Legislative Management Committee.

77208 Section 1747. Section **63L-4-101** is enacted to read:

77209 **CHAPTER 4. CONSTITUTIONAL TAKINGS ISSUES ACT**

77210 **Part 1. General Provisions**

77211 **63L-4-101. Title.**

77212 This chapter is known as the "Constitutional Takings Issues Act."

77213 Section 1748. Section **63L-4-102**, which is renumbered from Section 63-90a-1 is
77214 renumbered and amended to read:

77215 **[63-90a-1]. 63L-4-102. Definitions.**

77216 As used in this chapter:

77217 (1) "Constitutional taking issues" means actions involving the physical taking or
77218 exaction of private real property by a political subdivision that might require compensation to a
77219 private real property owner because of:

77220 (a) the Fifth or Fourteenth Amendment of the Constitution of the United States;

77221 (b) Article I, Section 22 of the Utah Constitution; or

77222 (c) any recent court rulings governing the physical taking or exaction of private real
77223 property by a government entity.

77224 (2) "Political subdivision" means a county, municipality, local district, special service
77225 district, school district, or other local government entity.

77226 Section 1749. Section **63L-4-103**, which is renumbered from Section 63-90a-2 is
77227 renumbered and amended to read:

77228 **[63-90a-2]. 63L-4-103. Applicability of chapter.**

77229 This chapter does not apply when a political subdivision formally exercises its power of
77230 eminent domain.

77231 Section 1750. Section **63L-4-201**, which is renumbered from Section 63-90a-3 is
77232 renumbered and amended to read:

77233 **Part 2. Requirements for Political Subdivisions**

77234 **[63-90a-3]. 63L-4-201. Political subdivisions to adopt guidelines.**

77235 (1) Each political subdivision shall enact an ordinance establishing guidelines to assist
77236 them in identifying actions involving the physical taking or exaction of private real property that
77237 may have constitutional taking issues.

77238 (2) Each political subdivision shall consider the guidelines required by this section when
77239 taking any action that might result in the physical taking or exaction of private real property.

77240 (3) (a) The guidelines adopted under the authority of this section are advisory.

77241 (b) A court may not impose liability upon a political subdivision for failure to comply
77242 with the guidelines required by this section.

77243 (c) The guidelines neither expand nor limit the scope of any political subdivision's
77244 liability for a constitutional taking.

77245 Section 1751. Section **63L-4-301**, which is renumbered from Section 63-90a-4 is
77246 renumbered and amended to read:

77247 **Part 3. Appeals**

77248 **[63-90a-4]. 63L-4-301. Appeals of decisions.**

77249 (1) Each political subdivision shall enact an ordinance that:

77250 (a) establishes a procedure for review of actions that may have constitutional taking
77251 issues; and

77252 (b) meets the requirements of this section.

77253 (2) (a) (i) Any owner of private property whose interest in the property is subject to a

77254 physical taking or exaction by a political subdivision may appeal the political subdivision's
77255 decision within 30 days after the decision is made.

77256 (ii) The legislative body of the political subdivision, or an individual or body designated
77257 by them, shall hear and approve or reject the appeal within 14 days after it is submitted.

77258 (iii) If the legislative body of the political subdivision fails to hear and decide the appeal
77259 within 14 days, the decision is presumed to be approved.

77260 (b) The private property owner need not file the appeal authorized by this section
77261 before bringing an action in any court to adjudicate claims that are eligible for appeal.

77262 (c) A property owner's failure to appeal the action of a political subdivision does not
77263 constitute, and may not be interpreted as constituting, a failure to exhaust available
77264 administrative remedies or as a bar to bringing legal action.

77265 Section 1752. Section **63L-5-101**, which is renumbered from Section 63-90b-101 is
77266 renumbered and amended to read:

77267 **CHAPTER 5. UTAH RELIGIOUS LAND USE ACT**

77268 **Part 1. General Provisions**

77269 ~~[63-90b-101]~~. **63L-5-101. Title.**

77270 This chapter is known as the "Utah Religious Land Use Act."

77271 Section 1753. Section **63L-5-102**, which is renumbered from Section 63-90b-102 is
77272 renumbered and amended to read:

77273 ~~[63-90b-102]~~. **63L-5-102. Definitions.**

77274 As used in this chapter:

77275 (1) "Free exercise of religion" means an act or refusal to act that is substantially
77276 motivated by sincere religious belief, whether or not the act or refusal is compulsory or central
77277 to a larger system of religious belief, and includes the use, building, or conversion of real
77278 property for the purpose of religious exercise.

77279 (2) "Government entity" means the state, a county, a municipality, a higher education
77280 institution, a local district, a special service district, any other political subdivision of the state,
77281 or any administrative subunit of any of them.

77282 (3) "Land use regulation" means any state or local law or ordinance, whether statutory
77283 or otherwise, that limits or restricts a person's use or development of land or a structure affixed
77284 to land.

77285 (4) "Person" means any individual, partnership, corporation, or other legal entity that
77286 owns an interest in real property.

77287 Section 1754. Section **63L-5-201**, which is renumbered from Section 63-90b-201 is
77288 renumbered and amended to read:

77289 **Part 2. Legal Standard**

77290 ~~[63-90b-201]~~. **63L-5-201. Protection of land use as religious exercise.**

77291 (1) Except as provided in Subsection (2), a government entity may not impose or
77292 implement a land use regulation in a manner that imposes a substantial burden on a person's free
77293 exercise of religion.

77294 (2) A government entity may impose or implement a land use regulation in a manner
77295 that imposes a substantial burden on a person's free exercise of religion if the government can
77296 establish that the imposition of the burden on that person:

77297 (a) is in furtherance of a compelling governmental interest; and

77298 (b) is the least restrictive means of furthering that compelling governmental interest.

77299 (3) A government entity that meets the requirements of Subsection (2) need not
77300 separately prove that the remedy and penalty provisions of the land use regulation are the least
77301 restrictive means to ensure compliance or to punish the failure to comply.

77302 (4) This act shall not impair the ability of local government to impose costs and fees
77303 reasonably necessary to mitigate the off-site impacts of development.

77304 Section 1755. Section **63L-5-301**, which is renumbered from Section 63-90b-301 is
77305 renumbered and amended to read:

77306 **Part 3. Remedies and Procedures**

77307 ~~[63-90b-301]~~. **63L-5-301. Remedies.**

77308 (1) A person whose free exercise of religion has been substantially burdened by a
77309 government entity in violation of Section ~~[63-90b-201]~~ 63L-5-201 may bring an action in the

77310 district court of the county where the largest portion of the property subject to the land use
77311 regulation is located.

77312 (2) Any person who asserts a claim or defense against a government entity under this
77313 chapter may request:

77314 (a) declaratory relief;

77315 (b) temporary or permanent injunctive relief to prevent the threatened or continued
77316 violation; or

77317 (c) a combination of declaratory and injunctive relief.

77318 (3) A person may not bring an action under this chapter against an individual, other than
77319 an action against an individual acting in the individual's official capacity as an officer of a
77320 government entity.

77321 Section 1756. Section **63L-5-302**, which is renumbered from Section 63-90b-302 is
77322 renumbered and amended to read:

77323 ~~[63-90b-302]~~. **63L-5-302. Notice of claim -- Government's right to**
77324 **accommodate.**

77325 (1) A person may not bring an action under Section ~~[63-90b-301]~~ 63L-5-301 unless, 60
77326 days before bringing the action, the person sends written notice of the intent to bring an action.

77327 (2) The notice shall be addressed to the government entity imposing the land use
77328 regulation, and shall be prepared and delivered according to the requirements of Subsection
77329 ~~[63-30d-401]~~ 63G-7-401(3).

77330 (3) Mailing of the notice required by Subsection (1) tolls the limitation period for
77331 bringing an action under this chapter for a period of 75 days, starting on the day the notice was
77332 mailed.

77333 (4) Notwithstanding Subsection (1), a person may bring an action under Section
77334 ~~[63-90b-301]~~ 63L-5-301 before the expiration of the 60-day notice period if:

77335 (a) the imposition of a substantial burden on the person's free exercise of religion by the
77336 land use regulation is imminent; and

77337 (b) the person was not informed of and did not otherwise have knowledge of the land

77338 use regulation in time to reasonably provide 60 days notice.

77339 (5) (a) A government entity provided with the notice required by Subsection (2) may
77340 remedy the substantial burden on the person's free exercise of religion:

77341 (i) before the expiration of the 60-day notice period; or

77342 (ii) in the case of an action properly brought according to Subsection (4), before the
77343 adjudication of a court hearing on the action.

77344 (b) Nothing in this section prevents a government entity from providing a remedy after
77345 these time periods.

77346 (6) The court may not award compensatory damages, attorney's fees, costs, or other
77347 expenses to a person if the substantial burden has been cured by a remedy implemented by the
77348 government entity according to Subsection (5)(a).

77349 Section 1757. Section **63L-5-401**, which is renumbered from Section 63-90b-401 is
77350 renumbered and amended to read:

77351 **Part 4. Application**

77352 ~~[63-90b-401]~~. **63L-5-401. Burden on exercise of religion as defense.**

77353 A person whose free exercise of religion has been substantially burdened in violation of
77354 this chapter may assert that violation as a defense in a judicial or administrative proceeding
77355 without regard to whether the proceeding is brought in the name of the state or by any other
77356 person.

77357 Section 1758. Section **63L-5-402**, which is renumbered from Section 63-90b-402 is
77358 renumbered and amended to read:

77359 ~~[63-90b-402]~~. **63L-5-402. Establishment clause unaffected.**

77360 (1) This chapter does not authorize government to burden a person's free exercise of
77361 religion.

77362 (2) The protection of religious freedom afforded by this chapter is in addition to the
77363 protections provided under federal law and the constitutions of Utah and the United States.

77364 (3) Nothing in this chapter may be construed to affect, interpret, or in any way address
77365 that portion of the First Amendment to the United States Constitution prohibiting laws

77366 respecting an establishment of religion.

77367 Section 1759. Section **63L-5-403**, which is renumbered from Section 63-90b-403 is
77368 renumbered and amended to read:

77369 ~~[63-90b-403]~~. **63L-5-403**. **Application to certain cases.**

77370 This chapter does not affect and is not intended to affect the authority of government
77371 entities to adopt or apply land use regulations that do not involve the free exercise of religion.

77372 Section 1760. Section **63M-1-101**, which is renumbered from Section 63-38f-101 is
77373 renumbered and amended to read:

77374 **TITLE 63M. GOVERNOR'S PROGRAMS**

77375 **CHAPTER 1. GOVERNOR'S OFFICE OF ECONOMIC DEVELOPMENT**

77376 **Part 1. General Provisions**

77377 ~~[63-38f-101]~~. **63M-1-101**. **Title.**

77378 (1) This title is known as "Governor's Programs."

77379 (2) This chapter is known as the "Governor's Office of Economic Development."

77380 Section 1761. Section **63M-1-102**, which is renumbered from Section 63-38f-102 is
77381 renumbered and amended to read:

77382 ~~[63-38f-102]~~. **63M-1-102**. **Definitions.**

77383 As used in this chapter:

77384 (1) "Board" means the Board of Business and Economic Development.

77385 (2) "Director" means the director of the office.

77386 (3) "Office" means the Governor's Office of Economic Development.

77387 Section 1762. Section **63M-1-201**, which is renumbered from Section 63-38f-201 is
77388 renumbered and amended to read:

77389 **Part 2. Organization and Duties of the Governor's Office of Economic Development**

77390 ~~[63-38f-201]~~. **63M-1-201**. **Creation of office.**

77391 (1) There is created the Governor's Office of Economic Development.

77392 (2) The office shall:

77393 (a) be responsible for economic development within the state;

- 77394 (b) perform economic development planning for the state;
- 77395 (c) administer and coordinate all state or federal grant programs which are, or become
- 77396 available, for economic development;
- 77397 (d) administer any other programs over which the office is given administrative
- 77398 supervision by the governor;
- 77399 (e) annually submit a report to the Legislature by October 1; and
- 77400 (f) perform any other duties as provided by the Legislature.

77401 (3) The office may solicit and accept contributions of moneys, services, and facilities
77402 from any other source, public or private, but may not use the moneys for publicizing the
77403 exclusive interest of the donor.

77404 (4) Moneys received under Subsection (3) shall be deposited in the General Fund as
77405 dedicated credits of the office.

77406 Section 1763. Section **63M-1-202**, which is renumbered from Section 63-38f-202 is
77407 renumbered and amended to read:

77408 ~~[63-38f-202].~~ **63M-1-202. Director of office -- Appointment -- Removal --**
77409 **Compensation.**

77410 (1) The office shall be administered, directed, controlled, organized, and managed by a
77411 director appointed by the governor.

77412 (2) The director serves at the pleasure of the governor.

77413 (3) The salary of the director shall be established by the governor within the salary
77414 range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

77415 Section 1764. Section **63M-1-203**, which is renumbered from Section 63-38f-203 is
77416 renumbered and amended to read:

77417 ~~[63-38f-203].~~ **63M-1-203. Powers and duties of director.**

77418 (1) The director, with the approval of the governor, may:

77419 (a) by following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,
77420 Chapter 5, Federal Funds Procedures, seek federal grants, loans, or participation in federal
77421 programs;

77422 (b) enter into lawful contracts or agreements with other states, any chamber of
77423 commerce organization, and any service club; and

77424 (c) annually prepare and submit to the governor a budget of the office's financial
77425 requirements.

77426 (2) If any federal program requires the expenditure of state funds as a condition to
77427 participation by the state in any fund, property, or service, with the governor's approval, the
77428 director shall expend whatever funds are necessary out of the money provided by the
77429 Legislature for the use of the office.

77430 Section 1765. Section **63M-1-204**, which is renumbered from Section 63-38f-204 is
77431 renumbered and amended to read:

77432 ~~[63-38f-204].~~ **63M-1-204. Organization of office -- Jurisdiction of director.**

77433 (1) Unless otherwise expressly provided by statute, the director may organize the office
77434 in any fashion considered appropriate, including the appointment of deputy directors of the
77435 office.

77436 (2) The director may make consolidations of personnel and service functions to
77437 effectuate efficiency and economy within the office.

77438 Section 1766. Section **63M-1-205**, which is renumbered from Section 63-38f-205 is
77439 renumbered and amended to read:

77440 ~~[63-38f-205].~~ **63M-1-205. Interface with Public Service Commission.**

77441 (1) The director or the director's designee shall:

77442 (a) become generally informed of significant rate cases and policy proceedings before
77443 the Public Service Commission; and

77444 (b) monitor and study the potential economic development impact of these proceedings
77445 before the Public Service Commission.

77446 (2) In the discretion of the director or the director's designee, the office may appear in
77447 any proceeding before the Public Service Commission to testify, advise, or present argument
77448 regarding the economic development impact of any matter that is the subject of the proceeding.

77449 Section 1767. Section **63M-1-301**, which is renumbered from Section 63-38f-301 is

77450 renumbered and amended to read:

77451 **Part 3. Board of Business and Economic Development**

77452 ~~[63-38f-301].~~ **63M-1-301. Board of Business and Economic Development.**

77453 There is created within the office the Board of Business and Economic Development
77454 which shall advise the office.

77455 Section 1768. Section **63M-1-302**, which is renumbered from Section 63-38f-302 is
77456 renumbered and amended to read:

77457 ~~[63-38f-302].~~ **63M-1-302. Members -- Meetings -- Expenses.**

77458 (1) (a) The board shall consist of 15 members appointed by the governor to four-year
77459 terms of office with the consent of the Senate.

77460 (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the
77461 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
77462 board members are staggered so that approximately half of the board is appointed every two
77463 years.

77464 (c) The members may not serve more than two full consecutive terms except where the
77465 governor determines that an additional term is in the best interest of the state.

77466 (2) Not more than eight members of the board may be from one political party.

77467 (3) The members shall be representative of all areas of the state.

77468 (4) When a vacancy occurs in the membership for any reason, the replacement shall be
77469 appointed for the unexpired term.

77470 (5) Eight members of the board constitute a quorum for conducting board business and
77471 exercising board power.

77472 (6) The governor shall select one of the board members as its chair.

77473 (7) (a) Members shall receive no compensation or benefits for their services, but may
77474 receive per diem and expenses incurred in the performance of the member's official duties at the
77475 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

77476 (b) Members may decline to receive per diem and expenses for their service.

77477 Section 1769. Section **63M-1-303**, which is renumbered from Section 63-38f-303 is

77478 renumbered and amended to read:

77479 ~~[63-38f-303]~~. **63M-1-303. Board duties and powers.**

77480 (1) The board shall:

77481 (a) promote and encourage the economic, commercial, financial, industrial, agricultural,
77482 and civic welfare of the state;

77483 (b) do all lawful acts for the development, attraction, and retention of businesses,
77484 industries, and commerce within the state;

77485 (c) promote and encourage the expansion and retention of businesses, industries, and
77486 commerce located in the state;

77487 (d) support the efforts of local government and regional nonprofit economic
77488 development organizations to encourage expansion or retention of businesses, industries, and
77489 commerce located in the state;

77490 (e) do other acts not specifically enumerated in this chapter, if the acts are for the
77491 betterment of the economy of the state;

77492 (f) work in conjunction with companies and individuals located or doing business within
77493 the state to secure favorable rates, fares, tolls, charges, and classification for transportation of
77494 persons or property by:

77495 (i) railroad;

77496 (ii) motor carrier; or

77497 (iii) other common carriers;

77498 (g) recommend policies, priorities, and objectives to the office regarding the assistance,
77499 retention, or recruitment of business, industries, and commerce in the state; and

77500 (h) recommend how any money or program administered by the office or its divisions
77501 for the assistance, retention, or recruitment of businesses, industries, and commerce in the state
77502 shall be administered, so that the money or program is equitably available to all areas of the
77503 state unless federal or state law requires or authorizes the geographic location of a recipient of
77504 the money or program to be considered in the distribution of the money or administration of the
77505 program.

77506 (2) The board may:
77507 (a) in furtherance of the authority granted under Subsection (1)(f), appear as a party
77508 litigant on behalf of individuals or companies located or doing business within the state in
77509 proceedings before regulatory commissions of the state, other states, or the federal government
77510 having jurisdiction over such matters; and

77511 (b) make, amend, or repeal rules for the conduct of its business consistent with this part
77512 and in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
77513 Rulemaking Act.

77514 Section 1770. Section **63M-1-304**, which is renumbered from Section 63-38f-304 is
77515 renumbered and amended to read:

77516 ~~[63-38f-304].~~ **63M-1-304. Governor's Office of Economic Development --**
77517 **Powers and duties of office -- Consulting with board on funds or services provided by**
77518 **office.**

77519 (1) For the purposes of this section:

77520 (a) "National recruitment" means the recruitment to the state of business, industry, or
77521 commerce if, at the time of the recruitment, the business, industry, or commerce is principally
77522 located in the United States.

77523 (b) "Private entity" means a private person, corporation, company, or organization.

77524 (2) (a) The office shall obtain the advice of the board prior to an imposition of or
77525 change to a policy, priority, or objective under which the office operates.

77526 (b) Subsection (2)(a) does not apply to the routine administration by the office of funds
77527 or services related to assistance, retention, or recruitment of business, industry, or commerce in
77528 this state.

77529 (3) The office shall:

77530 (a) be the industrial promotion authority of the state;

77531 (b) promote and encourage the economic, commercial, financial, industrial, agricultural,
77532 and civic welfare of the state;

77533 (c) do all lawful acts to create, develop, attract, and retain business, industry, and

77534 commerce within the state; and

77535 (d) do other acts that enhance the economy of the state.

77536 (4) The office may:

77537 (a) enter into contracts or agreements with, or make grants to, public or private entities,
77538 including municipalities, in the furtherance of its duties where the contracts or agreements are
77539 not in violation of the Constitution or statutes of the state; and

77540 (b) receive and expend funds available from any source, public or private, in any manner
77541 and for any lawful purpose in the best interest of the state in the discharge of their obligations
77542 under this part.

77543 (5) The director or the director's designee shall consult with the board at each meeting
77544 of the board regarding the administration by the office of funds or services related to assistance,
77545 retention, or recruitment of business, industry, or commerce in the state.

77546 Section 1771. Section **63M-1-401**, which is renumbered from Section 63-38f-401 is
77547 renumbered and amended to read:

77548 **Part 4. Enterprise Zone Act**

77549 ~~[63-38f-401]~~. **63M-1-401. Title.**

77550 This part is known as the "Enterprise Zone Act."

77551 Section 1772. Section **63M-1-402**, which is renumbered from Section 63-38f-402 is
77552 renumbered and amended to read:

77553 ~~[63-38f-402]~~. **63M-1-402. Definitions.**

77554 As used in this part:

77555 (1) "Business entity" means an entity:

77556 (a) including a claimant, estate, or trust; and

77557 (b) under which business is conducted or transacted.

77558 (2) (a) "Claimant" means a resident or nonresident person that has:

77559 (i) Utah taxable income as defined in Section 59-7-101; or

77560 (ii) state taxable income under Title 59, Chapter 10, Part 1, Determination and
77561 Reporting of Tax Liability or Information.

- 77562 (b) "Claimant" does not include an estate or trust.
- 77563 (3) "County applicant" means the governing authority of a county that meets the
77564 requirements for designation as an enterprise zone under Section [~~63-38f-404~~] 63M-1-404.
- 77565 (4) "Estate" means a nonresident estate or a resident estate that has state taxable
77566 income under Title 59, Chapter 10, Part 2, Trusts and Estates.
- 77567 (5) "Municipal applicant" means the governing authority of a city or town that meets
77568 the requirements for designation as an enterprise zone under Section [~~63-38f-404~~] 63M-1-404.
- 77569 (6) "Nonrefundable tax credit" or "tax credit" means a tax credit that a claimant, estate,
77570 or trust may:
- 77571 (a) claim:
- 77572 (i) as provided by statute; and
- 77573 (ii) in an amount that does not exceed the claimant's, estate's, or trust's tax liability for a
77574 taxable year under:
- 77575 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
- 77576 (B) Title 59, Chapter 10, Individual Income Tax Act; and
- 77577 (b) carry forward or carry back:
- 77578 (i) if allowed by statute; and
- 77579 (ii) to the extent that the amount of the tax credit exceeds the claimant's, estate's, or
77580 trust's tax liability for a taxable year under:
- 77581 (A) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or
- 77582 (B) Title 59, Chapter 10, Individual Income Tax Act.
- 77583 (7) "Tax incentives" or "tax benefits" means the nonrefundable tax credits described in
77584 Section [~~63-38f-413~~] 63M-1-413.
- 77585 (8) "Trust" means a nonresident trust or a resident trust that has state taxable income
77586 under Title 59, Chapter 10, Part 2, Trusts and Estates.
- 77587 Section 1773. Section **63M-1-403**, which is renumbered from Section 63-38f-403 is
77588 renumbered and amended to read:
- 77589 [~~63-38f-403~~]. **63M-1-403. Powers of the office.**

77590 The office shall:

77591 (1) monitor the implementation and operation of this part and conduct a continuing
77592 evaluation of the progress made in the enterprise zones;

77593 (2) evaluate an application from a county applicant or a municipal applicant to be
77594 designated an enterprise zone and determine if the applicant qualifies for that designation;

77595 (3) provide technical assistance to county applicants and municipal applicants in
77596 developing applications for designation as enterprise zones;

77597 (4) assist county applicants and municipal applicants designated as enterprise zones in
77598 obtaining assistance from the federal government and agencies of the state;

77599 (5) assist a qualified business in obtaining the benefits of an incentive or inducement
77600 program authorized by this part; and

77601 (6) prepare an annual evaluation based, in part, on data provided by the State Tax
77602 Commission:

77603 (a) evaluating the effectiveness of the program and any suggestions for legislation; and

77604 (b) that is available upon request to the governor and to the Revenue and Taxation
77605 Interim Committee of the Legislature by November 1 of each year.

77606 Section 1774. Section **63M-1-404**, which is renumbered from Section 63-38f-404 is
77607 renumbered and amended to read:

77608 ~~[63-38f-404]~~. **63M-1-404. Criteria for designation of enterprise zones --**
77609 **Application.**

77610 (1) A county applicant seeking designation as an enterprise zone shall file an application
77611 with the office that, in addition to complying with other requirements of this part:

77612 (a) verifies that the entire county is not located in a metropolitan statistical area that is
77613 entirely located within Utah, except that this requirement does not apply to a third, fourth, fifth,
77614 or sixth class county as classified under Section 17-50-501;

77615 (b) verifies that the county has a population of 50,000 or less; and

77616 (c) provides clear evidence of the need for development in the county.

77617 (2) A municipal applicant seeking designation as an enterprise zone shall file an

77618 application with the office that, in addition to complying with other requirements of this part:
77619 (a) verifies that the municipality is a city of the fifth class or a town;
77620 (b) verifies that the municipality is within a county that has a population of 50,000 or
77621 less; and
77622 (c) provides clear evidence of the need for development in the municipality.
77623 (3) An application filed under Subsection (1) or (2) shall be in a form and in accordance
77624 with procedures approved by the office, and shall include the following information:
77625 (a) a plan developed by the county applicant or municipal applicant that identifies local
77626 contributions meeting the requirements of Section [~~63-38f-405~~] 63M-1-405;
77627 (b) the county applicant or municipal applicant has a development plan that outlines:
77628 (i) the types of investment and development within the zone that the county applicant or
77629 municipal applicant expects to take place if the incentives specified in this part are provided;
77630 (ii) the specific investment or development reasonably expected to take place;
77631 (iii) any commitments obtained from businesses;
77632 (iv) the projected number of jobs that will be created and the anticipated wage level of
77633 those jobs;
77634 (v) any proposed emphasis on the type of jobs created, including any affirmative action
77635 plans; and
77636 (vi) a copy of the county applicant's or municipal applicant's economic development
77637 plan to demonstrate coordination between the zone and overall county or municipal goals;
77638 (c) the county applicant's or municipal applicant's proposed means of assessing the
77639 effectiveness of the development plan or other programs to be implemented within the zone
77640 once they have been implemented;
77641 (d) any additional information required by the office; and
77642 (e) any additional information the county applicant or municipal applicant considers
77643 relevant to its designation as an enterprise zone.
77644 Section 1775. Section **63M-1-405**, which is renumbered from Section 63-38f-405 is
77645 renumbered and amended to read:

77646 ~~[63-38f-405]~~. **63M-1-405. Qualifying local contributions.**

77647 (1) An area may be designated as an enterprise zone only if the county applicant or
77648 municipal applicant agrees to make a qualifying local contribution.

77649 (2) The qualifying local contribution may vary depending on available resources, and
77650 may include such elements as:

77651 (a) simplified procedures for obtaining permits;

77652 (b) dedication of available government grants;

77653 (c) dedication of training funds;

77654 (d) waiver of business license fees;

77655 (e) infrastructure improvements;

77656 (f) private contributions;

77657 (g) utility rate concessions;

77658 (h) small business incubator programs; or

77659 (i) management assistance programs.

77660 Section 1776. Section **63M-1-406**, which is renumbered from Section 63-38f-406 is
77661 renumbered and amended to read:

77662 ~~[63-38f-406]~~. **63M-1-406. Eligibility review.**

77663 (1) (a) The office shall review and evaluate the applications submitted under Section
77664 ~~[63-38f-404]~~ 63M-1-404 and shall determine whether each county applicant or municipal
77665 applicant is eligible for designation as an enterprise zone.

77666 (b) In determining whether a county applicant or municipal applicant is eligible, if
77667 unemployment, income, population, or other necessary data are not available for the county
77668 applicant or municipal applicant from the federal departments of labor or commerce or a state
77669 agency, the office may rely upon other data submitted by the applicant, if the office determines
77670 that it is statistically reliable or accurate.

77671 (2) (a) The office shall designate enterprise zones.

77672 (b) The office shall consider and evaluate an application using the following criteria:

77673 (i) the pervasiveness of poverty, unemployment, and general distress in the proposed

- 77674 zone;
- 77675 (ii) the extent of chronic abandonment, deterioration, or reduction in value of
77676 commercial, industrial, or residential structures in the proposed zone, and the extent of property
77677 tax arrearages in the proposed zone;
- 77678 (iii) the potential for new investment and economic development in the proposed zone;
- 77679 (iv) the county applicant's or municipal applicant's proposed use of other state and
77680 federal development funds or programs to increase the probability of new investment and
77681 development occurring;
- 77682 (v) the extent to which the projected development in the zone will provide employment
77683 to residents of the county and particularly individuals who are unemployed or who are
77684 economically disadvantaged;
- 77685 (vi) the degree to which the county applicant's or municipal applicant's application
77686 promotes innovative solutions to economic development problems and demonstrates local
77687 initiative; and
- 77688 (vii) other relevant factors that the office specifies in its recommendation.

77689 Section 1777. Section **63M-1-407**, which is renumbered from Section 63-38f-407 is
77690 renumbered and amended to read:

77691 ~~[63-38f-407]~~. **63M-1-407. Quarterly consideration.**

77692 The office shall consider designating enterprise zones quarterly.

77693 Section 1778. Section **63M-1-408**, which is renumbered from Section 63-38f-408 is
77694 renumbered and amended to read:

77695 ~~[63-38f-408]~~. **63M-1-408. Duration of designation.**

77696 Each enterprise zone has a duration of five years, at the end of which the county may
77697 reapply for the designation.

77698 Section 1779. Section **63M-1-409**, which is renumbered from Section 63-38f-409 is
77699 renumbered and amended to read:

77700 ~~[63-38f-409]~~. **63M-1-409. Contingent designations.**

77701 (1) The office may accept applications for, and may at any time grant, a contingent

77702 designation of any county as an enterprise zone for purposes of seeking a designation of the
77703 county as a federally designated zone.

77704 (2) This designation does not entitle a business operating in that county to the tax
77705 incentives under this part.

77706 Section 1780. Section **63M-1-410**, which is renumbered from Section 63-38f-410 is
77707 renumbered and amended to read:

77708 ~~[63-38f-410]~~. **63M-1-410. Revocation of designations.**

77709 (1) The office may revoke the designation of an enterprise zone, if no businesses utilize
77710 the tax incentives during any calendar year.

77711 (2) Prior to that action, the office shall conduct a public hearing to determine reasons
77712 for inactivity and explore possible alternative actions.

77713 Section 1781. Section **63M-1-411**, which is renumbered from Section 63-38f-411 is
77714 renumbered and amended to read:

77715 ~~[63-38f-411]~~. **63M-1-411. Disqualifying transfers.**

77716 Except in counties of the first or second class, tax incentives provided by this part are
77717 not available to companies that close or permanently curtail operations in another part of the
77718 state in connection with a transfer of any part of its business operations to an enterprise zone, if
77719 the closure or permanent curtailment is reasonably expected to diminish employment in that part
77720 of the state.

77721 Section 1782. Section **63M-1-412**, which is renumbered from Section 63-38f-412 is
77722 renumbered and amended to read:

77723 ~~[63-38f-412]~~. **63M-1-412. Business entities qualifying for tax incentives.**

77724 The tax incentives described in this part are available only to a business entity for which
77725 at least 51% of the employees employed at facilities of the business entity located in the
77726 enterprise zone are individuals who, at the time of employment, reside in the county in which
77727 the enterprise zone is located.

77728 Section 1783. Section **63M-1-413**, which is renumbered from Section 63-38f-413 is
77729 renumbered and amended to read:

77730 ~~[63-38f-413]~~. 63M-1-413. State tax credits.

77731 (1) Subject to the limitations of Subsections (2) through (4), the following
77732 nonrefundable tax credits against a tax under Title 59, Chapter 7, Corporate Franchise and
77733 Income Taxes, or Title 59, Chapter 10, Individual Income Tax Act, are applicable in an
77734 enterprise zone:

77735 (a) a tax credit of \$750 may be claimed by a business entity for each new full-time
77736 position filled for not less than six months during a given tax year;

77737 (b) an additional \$500 tax credit may be claimed if the new position pays at least 125%
77738 of:

77739 (i) the county average monthly nonagricultural payroll wage for the respective industry
77740 as determined by the Department of Workforce Services; or

77741 (ii) if the county average monthly nonagricultural payroll wage is not available for the
77742 respective industry, the total average monthly nonagricultural payroll wage in the respective
77743 county where the enterprise zone is located;

77744 (c) an additional tax credit of \$750 may be claimed if the new position is in a business
77745 entity that adds value to agricultural commodities through manufacturing or processing;

77746 (d) an additional tax credit of \$200 may be claimed for two consecutive years for each
77747 new employee who is insured under an employer-sponsored health insurance program if the
77748 employer pays at least 50% of the premium cost for two consecutive years;

77749 (e) a tax credit of 50% of the value of a cash contribution to a private nonprofit
77750 corporation, except that the credit claimed may not exceed \$100,000:

77751 (i) that is exempt from federal income taxation under Section 501(c)(3), Internal
77752 Revenue Code;

77753 (ii) whose primary purpose is community and economic development; and

77754 (iii) that has been accredited by the board of directors of the Utah Rural Development
77755 Council;

77756 (f) a tax credit of 25% of the first \$200,000 spent on rehabilitating a building in the
77757 enterprise zone that has been vacant for two years or more; and

77758 (g) an annual investment tax credit of 10% of the first \$250,000 in investment, and 5%
77759 of the next \$1,000,000 qualifying investment in plant, equipment, or other depreciable property.

77760 (2) (a) Subject to the limitations of Subsection (2)(b), a business entity claiming a tax
77761 credit under Subsections (1)(a) through (d) may claim the tax credit for 30 full-time employee
77762 positions or less in each of its taxable years.

77763 (b) A business entity that received a tax credit for its full-time employee positions under
77764 Subsections (1)(a) through (d) may claim an additional tax credit for a full-time employee
77765 position under Subsections (1)(a) through (d) if:

77766 (i) the business entity creates a new full-time employee position;

77767 (ii) the total number of full-time employee positions at the business entity is greater than
77768 the number of full-time employee positions previously claimed by the business entity under
77769 Subsections (1)(a) through (d); and

77770 (iii) the total number of tax credits the business entity has claimed for its current taxable
77771 year, including the new full-time employee position for which the claimant, estate, or trust that
77772 is a business entity is claiming a tax credit, is less than or equal to 30.

77773 (c) A business entity existing in an enterprise zone on the date of its designation shall
77774 calculate the number of full-time positions based on the average number of employees reported
77775 to the Department of Workforce Services.

77776 (d) Construction jobs are not eligible for the tax credits under Subsections (1)(a)
77777 through (d).

77778 (3) If the amount of a tax credit under this section exceeds a business entity's tax
77779 liability under this chapter for a taxable year, the amount of the tax credit exceeding the liability
77780 may be carried forward for a period that does not exceed the next three taxable years.

77781 (4) (a) If a business entity is located in a county that met the requirements of
77782 Subsections [~~63-38f-404~~] 63M-1-404(1)(b) and (c) but did not qualify as an enterprise zone
77783 prior to January 1, 1998, because the county was located in a metropolitan statistical area in
77784 more than one state, the business entity:

77785 (i) shall qualify for tax credits for a taxable year beginning on or after January 1, 1997,

77786 but beginning before December 31, 1997;

77787 (ii) may claim a tax credit as described in Subsection (4)(a) in a taxable year beginning
77788 on or after January 1, 1997, but beginning before December 31, 1997; and

77789 (iii) may qualify for tax credits for any taxable year beginning on or after January 1,
77790 1998, if the county is designated as an enterprise zone in accordance with this part.

77791 (b) If a business entity claims a tax credit under Subsection (4)(a)(ii), the business
77792 entity:

77793 (i) may claim the tax credit by filing for the taxable year beginning on or after January 1,
77794 1997, but beginning before December 31, 1997:

77795 (A) a return under Title 59, Chapter 7, Corporate Franchise and Income Taxes;

77796 (B) an amended return under Title 59, Chapter 7, Corporate Franchise and Income
77797 Taxes;

77798 (C) a return under Title 59, Chapter 10, Individual Income Tax Act; or

77799 (D) an amended return under Title 59, Chapter 10, Individual Income Tax Act; and

77800 (ii) may carry forward the tax credit to a taxable year beginning on or after January 1,
77801 1998, in accordance with Subsection (3).

77802 (5) The tax credits under Subsections (1)(a) through (g) may not be claimed by a
77803 business entity engaged in retail trade or by a public utilities business.

77804 (6) A business entity may not claim or carry forward a tax credit available under this
77805 part for a taxable year during which the business entity has claimed the targeted business income
77806 tax credit available under Section [~~63-38f-503~~] 63M-1-504.

77807 Section 1784. Section **63M-1-414**, which is renumbered from Section 63-38f-414 is
77808 renumbered and amended to read:

77809 [~~63-38f-414~~]. **63M-1-414. Annual report.**

77810 (1) Each county applicant or municipal applicant designated as an enterprise zone shall
77811 annually report to the office regarding the economic activity that has occurred in the zone
77812 following the designation.

77813 (2) This information shall include:

- 77814 (a) the number of jobs created in the zone;
- 77815 (b) the number of economically disadvantaged individuals receiving public job training
- 77816 assistance in the zone;
- 77817 (c) the average wage level of the jobs created;
- 77818 (d) descriptions of any affirmative action programs undertaken by the county applicant
- 77819 or municipal applicant in connection with the enterprise zone;
- 77820 (e) the amount of the county applicant's or municipal applicant's local contribution; and
- 77821 (f) the number of businesses qualifying for, or directly benefiting from, the local
- 77822 contribution.

77823 Section 1785. Section **63M-1-415**, which is renumbered from Section 63-38f-415 is

77824 renumbered and amended to read:

77825 ~~[63-38f-415]~~. **63M-1-415. Indian tribes -- Application.**

- 77826 (1) For purposes of this section:
- 77827 (a) "Indian reservation" is as defined in Section 9-9-210.
- 77828 (b) "Indian tribe" is as defined in Subsection 9-9-402(4).
- 77829 (c) "Tribal applicant" means the governing authority of a tribe that meets the
- 77830 requirements for designation as an enterprise zone under Subsection (3).
- 77831 (2) Indian tribes may apply for designation of an area within an Indian reservation as an
- 77832 enterprise zone.
- 77833 (3) The tribal applicant shall follow the application procedure for a municipal applicant
- 77834 in this part except for the population requirement in Subsections ~~[63-38f-404]~~ 63M-1-404(2)(a)
- 77835 and (b).

77836 Section 1786. Section **63M-1-416**, which is renumbered from Section 63-38f-416 is

77837 renumbered and amended to read:

77838 ~~[63-38f-416]~~. **63M-1-416. Technology-based service contracts within**

77839 **enterprise zones.**

- 77840 (1) For purposes of this section:
- 77841 (a) "Smart site enterprise" means a technology-based entity located within an enterprise

77842 zone that is eligible to receive financial support under the office's smart site program.

77843 (b) "Smart site program" means a program of the office dedicated to the development
77844 of technology-based industry in rural Utah in which services that might otherwise be performed
77845 by state agencies are outsourced to a smart site enterprise.

77846 (c) "State agency" means the:

77847 (i) Department of Commerce;

77848 (ii) Department of Workforce Services;

77849 (iii) Department of Transportation;

77850 (iv) Department of Health;

77851 (v) Department of Administrative Services;

77852 (vi) Department of Public Safety;

77853 (vii) Utah State Tax Commission; and

77854 (viii) Governor's Office of Economic Development.

77855 (d) "Technology-based contract" means a contract between a state agency and a smart
77856 site enterprise for the smart site enterprise to provide the following services:

77857 (i) software development and computer programming;

77858 (ii) website design;

77859 (iii) systems integration;

77860 (iv) AutoCad/GIS mapping;

77861 (v) help desk support, customer relationship management, and telephone or Internet
77862 surveys;

77863 (vi) computer graphics, animation, or illustration;

77864 (vii) medical billing, coding, transcription, and related medical informatics services;

77865 (viii) data entry, data conversion, and imaging;

77866 (ix) information technology training and e-learning;

77867 (x) network development, management, service, and support;

77868 (xi) telecommunications technologies;

77869 (xii) database development and applications;

77870 (xiii) multimedia and digital technologies, including DVD;

77871 (xiv) technical writing;

77872 (xv) insurance and benefits administration;

77873 (xvi) data warehousing and storage or web hosting;

77874 (xvii) billing services; and

77875 (xviii) information technology consulting.

77876 (2) The office has the following responsibilities for the smart site program authorized
77877 under this section:

77878 (a) to provide market incentives identified in Subsection (4) to eligible state agencies
77879 and provide technical assistance as appropriate;

77880 (b) to administer funding and initiate interagency transfers consistent with the
77881 provisions of this section;

77882 (c) to provide state agencies with a listing of smart site enterprises;

77883 (d) to designate a smart site program director and notify state agencies of the
77884 designation; and

77885 (e) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
77886 Administrative Rulemaking Act, make rules necessary to administer this section.

77887 (3) A state agency has the following responsibilities if participating in the smart site
77888 program offered under this section:

77889 (a) to enter into a memorandum of understanding with the office indicating the steps the
77890 agency shall take to encourage smart site enterprises to submit bids for technology-based
77891 contracts; and

77892 (b) to submit to the office by no later than July 30, an accounting of all
77893 technology-based contracts awarded to smart site enterprises by the agency in the prior fiscal
77894 year.

77895 (4) (a) A state agency is eligible for an interagency transfer from the office for up to
77896 10% of all technology-based contracts awarded to a smart site enterprise under the office's
77897 smart site program.

77898 (b) The office shall determine the amount of the interagency transfer as follows:

77899 (i) if the total number of requests for interagency transfers under the program does not
77900 exceed the legislative appropriation for the fiscal year, each eligible agency shall receive a full
77901 10% transfer; or

77902 (ii) if the total number of requests for interagency transfers under the program exceeds
77903 the appropriation for the fiscal year, the office shall prorate the amount of each transfer based
77904 on the respective percentage of all technology-based contracts submitted to the office by all
77905 eligible state agencies.

77906 (c) (i) After determining the amount of each agency's interagency transfer as required
77907 under Subsection (4)(b), the office shall transfer the amount to each agency's budget.

77908 (ii) The office shall make the transfer no later than August 15 to supplement the
77909 agency's budget for the fiscal year beginning just prior to the interagency transfer.

77910 (iii) An agency may use the interagency transfer it receives under this Subsection (4)(c)
77911 for any purpose related to the agency's mission or its duties and responsibilities, including the
77912 payment of incentives and award bonuses for participating in the smart site program.

77913 (d) Funding for the interagency transfer under Subsection (4)(c) shall come from the
77914 prior fiscal year appropriation to the office.

77915 (e) The appropriation to fund this section is nonlapsing to provide for the distribution
77916 process outlined in this Subsection (4).

77917 Section 1787. Section **63M-1-501**, which is renumbered from Section 63-38f-501 is
77918 renumbered and amended to read:

77919 **Part 5. Targeted Business Income Tax Credits Within an Enterprise Zone**

77920 **~~[63-38f-501]~~. 63M-1-501. Definitions.**

77921 As used in this part:

77922 (1) "Allocated cap amount" means the total amount of the targeted business income tax
77923 credit that a business applicant is allowed to claim for a taxable year that represents a pro rata
77924 share of the total amount of \$300,000 for each fiscal year allowed under Subsection
77925 ~~[63-38f-503]~~ 63M-1-504(2).

- 77926 (2) "Business applicant" means a business that:
- 77927 (a) is a:
- 77928 (i) claimant;
- 77929 (ii) estate; or
- 77930 (iii) trust; and
- 77931 (b) meets the criteria established in Section [~~63-38f-502~~] 63M-1-503.
- 77932 (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or
- 77933 nonresident person.
- 77934 (b) "Claimant" does not include an estate or trust.
- 77935 (4) "Community investment project" means a project that includes one or more of the
- 77936 following criteria in addition to the normal operations of the business applicant:
- 77937 (a) substantial new employment;
- 77938 (b) new capital development; or
- 77939 (c) a combination of both Subsections (4)(a) and (b).
- 77940 (5) "Community investment project period" means the total number of years that the
- 77941 office determines a business applicant is eligible for a targeted business income tax credit for
- 77942 each community investment project.
- 77943 (6) "Enterprise zone" means an area within a county or municipality that has been
- 77944 designated as an enterprise zone by the office under Part 4, Enterprise Zone Act.
- 77945 (7) "Estate" means a nonresident estate or a resident estate.
- 77946 (8) "Local zone administrator" means a person:
- 77947 (a) designated by the governing authority of the county or municipal applicant as the
- 77948 local zone administrator in an enterprise zone application; and
- 77949 (b) approved by the office as the local zone administrator.
- 77950 (9) "Refundable tax credit" or "tax credit" means a tax credit that a claimant, estate, or
- 77951 trust may claim:
- 77952 (a) as provided by statute; and
- 77953 (b) regardless of whether, for the taxable year for which the claimant, estate, or trust

77954 claims the tax credit, the claimant, estate, or trust has a tax liability under:

77955 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

77956 (ii) Title 59, Chapter 10, Individual Income Tax Act.

77957 (10) "Targeted business income tax credit" means a refundable tax credit available

77958 under Section [~~63-38f-503~~] 63M-1-504.

77959 (11) "Targeted business income tax credit eligibility form" means a document provided

77960 annually to the business applicant by the office that complies with the requirements of

77961 Subsection [~~63-38f-503~~] 63M-1-504(8).

77962 (12) "Trust" means a nonresident trust or a resident trust.

77963 Section 1788. Section **63M-1-502**, which is renumbered from Section 63-38f-501.5 is

77964 renumbered and amended to read:

77965 [~~63-38f-501.5~~]. **63M-1-502. Rulemaking authority.**

77966 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative

77967 Rulemaking Act, and for purposes of this section, the office shall make rules:

77968 (1) to determine what constitutes:

77969 (a) substantial new employment;

77970 (b) new capital development; and

77971 (c) a project; and

77972 (2) to establish a formula for determining the allocated cap amount for each business

77973 applicant.

77974 Section 1789. Section **63M-1-503**, which is renumbered from Section 63-38f-502 is

77975 renumbered and amended to read:

77976 [~~63-38f-502~~]. **63M-1-503. Application for targeted business income tax**

77977 **credits.**

77978 (1) (a) For taxable years beginning on or after January 1, 2002, a business applicant

77979 may elect to claim a targeted business income tax credit available under Section [~~63-38f-503~~]

77980 63M-1-504 if the business applicant:

77981 (i) is located in:

- 77982 (A) an enterprise zone; and
- 77983 (B) a county with:
- 77984 (I) a population of less than 25,000; and
- 77985 (II) an unemployment rate that for six months or more of each calendar year is at least
- 77986 one percentage point higher than the state average;
- 77987 (ii) meets the requirements of Section [~~63-38f-412~~] 63M-1-412;
- 77988 (iii) provides:
- 77989 (A) a community investment project within the enterprise zone; and
- 77990 (B) a portion of the community investment project during each taxable year for which
- 77991 the business applicant claims the targeted business tax incentive; and
- 77992 (iv) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 77993 Administrative Rulemaking Act, is not engaged in the following, as defined by the State Tax
- 77994 Commission by rule:
- 77995 (A) construction;
- 77996 (B) retail trade; or
- 77997 (C) public utility activities.
- 77998 (b) For a taxable year for which a business applicant claims a targeted business income
- 77999 tax credit available under this part, the business applicant may not claim or carry forward a tax
- 78000 credit available under Section [~~63-38f-413~~] 63M-1-413, 59-7-610, or 59-10-1007.
- 78001 (2) (a) A business applicant seeking to claim a targeted business income tax credit
- 78002 under this part shall file an application as provided in Subsection (2)(b) with the local zone
- 78003 administrator by no later than June 1 of the year in which the business applicant is seeking to
- 78004 claim a targeted business income tax credit.
- 78005 (b) The application described in Subsection (2)(a) shall include:
- 78006 (i) any documentation required by the local zone administrator to demonstrate that the
- 78007 business applicant meets the requirements of Subsection (1);
- 78008 (ii) a plan developed by the business applicant that outlines:
- 78009 (A) if the community investment project includes substantial new employment, the

78010 projected number and anticipated wage level of the jobs that the business applicant plans to
78011 create as the basis for qualifying for a targeted business income tax credit;

78012 (B) if the community investment project includes new capital development, a
78013 description of the capital development the business applicant plans to make as the basis for
78014 qualifying for a targeted business income tax credit; and

78015 (C) a description of how the business applicant's plan coordinates with:

78016 (I) the goals of the enterprise zone in which the business applicant is providing a
78017 community investment project; and

78018 (II) the overall economic development goals of the county or municipality in which the
78019 business applicant is providing a community investment project; and

78020 (iii) any additional information required by the local zone administrator.

78021 (3) (a) The local zone administrator shall:

78022 (i) evaluate an application filed under Subsection (2); and

78023 (ii) determine whether the business applicant is eligible for a targeted business income
78024 tax credit.

78025 (b) If the local zone administrator determines that the business applicant is eligible for a
78026 targeted business income tax credit, the local zone administrator shall:

78027 (i) certify that the business applicant is eligible for the targeted business income tax
78028 credit;

78029 (ii) structure the targeted business income tax credit for the business applicant in
78030 accordance with Section [~~63-38f-503~~] 63M-1-504; and

78031 (iii) monitor a business applicant to ensure compliance with this section.

78032 (4) A local zone administrator shall report to the office by no later than June 30 of each
78033 year:

78034 (a) (i) any application approved by the local zone administrator during the last fiscal
78035 year; and

78036 (ii) the information established in Subsections [~~63-38f-503~~] 63M-1-504(4)(a) through
78037 (d) for each new business applicant; and

78038 (b) (i) the status of any existing business applicants that the local zone administrator
78039 monitors; and

78040 (ii) any information required by the office to determine the status of an existing business
78041 applicant.

78042 (5) (a) By July 15 of each year, the department shall notify the local zone administrator
78043 of the allocated cap amount that each business applicant that the local zone administrator
78044 monitors is eligible to claim.

78045 (b) By September 15 of each year, the local zone administrator shall notify, in writing,
78046 each business applicant that the local zone administrator monitors of the allocated cap amount
78047 determined by the office under Subsection (5)(a) that the business applicant is eligible to claim
78048 for a taxable year.

78049 Section 1790. Section **63M-1-504**, which is renumbered from Section 63-38f-503 is
78050 renumbered and amended to read:

78051 ~~[63-38f-503]~~. **63M-1-504**. **Targeted business income tax credit structure --**
78052 **Duties of the local zone administrator -- Duties of the State Tax Commission.**

78053 (1) For taxable years beginning on or after January 1, 2002, a business applicant that is
78054 certified under Subsection ~~[63-38f-502]~~ 63M-1-503(3) and issued a targeted business tax credit
78055 eligibility form by the office under Subsection (8) may claim a refundable tax credit:

78056 (a) against the business applicant's tax liability under:

78057 (i) Title 59, Chapter 7, Corporate Franchise and Income Taxes; or

78058 (ii) Title 59, Chapter 10, Individual Income Tax Act; and

78059 (b) subject to requirements and limitations provided by this part.

78060 (2) The total amount of the targeted business income tax credits allowed under this part
78061 for all business applicants may not exceed \$300,000 in any fiscal year.

78062 (3) (a) A targeted business income tax credit allowed under this part for each
78063 community investment project provided by a business applicant may not:

78064 (i) be claimed by a business applicant for more than seven consecutive taxable years
78065 from the date the business applicant first qualifies for a targeted business income tax credit on

78066 the basis of a community investment project;

78067 (ii) be carried forward or carried back;

78068 (iii) exceed \$100,000 in total amount for the community investment project period

78069 during which the business applicant is eligible to claim a targeted business income tax credit; or

78070 (iv) exceed in any year that the targeted business income tax credit is claimed the lesser

78071 of:

78072 (A) 50% of the maximum amount allowed by the local zone administrator; or

78073 (B) the allocated cap amount determined by the office under Subsection [~~63-38f-502~~

78074 63M-1-503(5).

78075 (b) A business applicant may apply to the local zone administrator to claim a targeted

78076 business income tax credit allowed under this part for each community investment project

78077 provided by the business applicant as the basis for its eligibility for a targeted business income

78078 tax credit.

78079 (4) Subject to other provisions of this section, the local zone administrator shall

78080 establish for each business applicant that qualifies for a targeted business income tax credit:

78081 (a) criteria for maintaining eligibility for the targeted business income tax credit that are

78082 reasonably related to the community investment project that is the basis for the business

78083 applicant's targeted business income tax credit;

78084 (b) the maximum amount of the targeted business income tax credit the business

78085 applicant is allowed for the community investment project period;

78086 (c) the time period over which the total amount of the targeted business income tax

78087 credit may be claimed;

78088 (d) the maximum amount of the targeted business income tax credit that the business

78089 applicant will be allowed to claim each year; and

78090 (e) requirements for a business applicant to report to the local zone administrator

78091 specifying:

78092 (i) the frequency of the business applicant's reports to the local zone administrator,

78093 which shall be made at least quarterly; and

78094 (ii) the information needed by the local zone administrator to monitor the business
78095 applicant's compliance with this Subsection (4) or Section [~~63-38f-502~~] 63M-1-503 that shall be
78096 included in the report.

78097 (5) In accordance with Subsection (4)(e), a business applicant allowed a targeted
78098 business income tax credit under this part shall report to the local zone administrator.

78099 (6) The amount of a targeted business income tax credit that a business applicant is
78100 allowed to claim for a taxable year shall be reduced by 25% for each quarter in which the office
78101 or the local zone administrator determines that the business applicant has failed to comply with
78102 a requirement of Subsection (3) or Section [~~63-38f-502~~] 63M-1-503.

78103 (7) The office or local zone administrator may audit a business applicant to ensure:

78104 (a) eligibility for a targeted business income tax credit; or

78105 (b) compliance with Subsection (3) or Section [~~63-38f-502~~] 63M-1-503.

78106 (8) The office shall issue a targeted business income tax credit eligibility form in a form
78107 jointly developed by the State Tax Commission and the office no later than 30 days after the last
78108 day of the business applicant's taxable year showing:

78109 (a) the maximum amount of the targeted business income tax credit that the business
78110 applicant is eligible for that taxable year;

78111 (b) any reductions in the maximum amount of the targeted business income tax credit
78112 because of failure to comply with a requirement of Subsection (3) or Section [~~63-38f-502~~]
78113 63M-1-503;

78114 (c) the allocated cap amount that the business applicant may claim for that taxable year;
78115 and

78116 (d) the actual amount of the targeted business income tax credit that the business
78117 applicant may claim for that taxable year.

78118 (9) (a) A business applicant shall retain the targeted business income tax credit
78119 eligibility form provided by the office under this Subsection (9).

78120 (b) The State Tax Commission may audit a business applicant to ensure:

78121 (i) eligibility for a targeted business income tax credit; or

78122 (ii) compliance with Subsection (3) or Section [~~63-38f-502~~] 63M-1-503.

78123 Section 1791. Section **63M-1-601**, which is renumbered from Section 63-38f-601 is
78124 renumbered and amended to read:

Part 6. State Advisory Council on Science and Technology

~~[63-38f-601]~~. **63M-1-601. Purpose.**

78127 The purpose of this part is to establish an advisory council on science and technology to
78128 assist in the development of programs, communication, and use of science and technology in
78129 governmental organizations in the state.

78130 Section 1792. Section **63M-1-602**, which is renumbered from Section 63-38f-602 is
78131 renumbered and amended to read:

~~[63-38f-602]~~. **63M-1-602. Definition of terms.**

As used in this part:

(1) "Adviser" means the state science adviser appointed under this part.

(2) "Council" means the State Advisory Council on Science and Technology created
78136 under this part.

(3) "Director" means the governor's director for economic development.

78138 Section 1793. Section **63M-1-603**, which is renumbered from Section 63-38f-603 is
78139 renumbered and amended to read:

~~[63-38f-603]~~. **63M-1-603. Creation.**

78141 There is created the State Advisory Council on Science and Technology within the
78142 Governor's Office of Economic Development, which shall perform the functions and duties
78143 provided in this part.

78144 Section 1794. Section **63M-1-604**, which is renumbered from Section 63-38f-604 is
78145 renumbered and amended to read:

~~[63-38f-604]~~. **63M-1-604. Members -- Appointment -- Terms --
78147 Qualifications -- Vacancies -- Chair and vice chair -- Executive secretary -- Executive
78148 committee -- Quorum -- Expenses.**

(1) The council comprises the following nonvoting members or their designees:

- 78150 (a) the adviser;
- 78151 (b) the executive director of the Department of Natural Resources;
- 78152 (c) the executive director of the Department of Community and Culture;
- 78153 (d) the executive director of the Department of Health;
- 78154 (e) the executive director of the Department of Environmental Quality;
- 78155 (f) the commissioner of agriculture and food;
- 78156 (g) the commissioner of higher education;
- 78157 (h) the state planning coordinator; and
- 78158 (i) the executive director of the Department of Transportation.
- 78159 (2) The governor may appoint other voting members, not to exceed 12.
- 78160 (3) (a) Except as required by Subsection (3)(b), as terms of current council members
- 78161 expire, the governor shall appoint each new member or reappointed member to a four-year
- 78162 term.
- 78163 (b) Notwithstanding the requirements of Subsection (3)(a), the governor shall, at the
- 78164 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
- 78165 council members are staggered so that approximately half of the council is appointed every two
- 78166 years.
- 78167 (4) The governor shall consider all institutions of higher education in the state in the
- 78168 appointment of council members.
- 78169 (5) The voting members of the council shall be experienced or knowledgeable in the
- 78170 application of science and technology to business, industry, or public problems and have
- 78171 demonstrated their interest in and ability to contribute to the accomplishment of the purposes of
- 78172 this part.
- 78173 (6) When a vacancy occurs in the membership for any reason, the replacement shall be
- 78174 appointed for the unexpired term.
- 78175 (7) (a) Each year the council shall select from its membership a chair and a vice chair.
- 78176 (b) The chair and vice chair shall hold office for one year or until a successor is
- 78177 appointed and qualified.

78178 (8) The adviser serves as executive secretary of the council.

78179 (9) An executive committee shall be established consisting of the chair, vice chair, and
78180 the adviser.

78181 (10) (a) In order to conduct business matters of the council at regularly convened
78182 meetings, a quorum consisting of a simple majority of the total voting membership of the
78183 council is required.

78184 (b) All matters of business affecting public policy require not less than a simple majority
78185 of affirmative votes of the total membership.

78186 (11) (a) (i) Members who are not government employees shall receive no compensation
78187 or benefits for their services, but may receive per diem and expenses incurred in the
78188 performance of the member's official duties at the rates established by the Division of Finance
78189 under Sections 63A-3-106 and 63A-3-107.

78190 (ii) Members may decline to receive per diem and expenses for their service.

78191 (b) (i) State government officer and employee members who do not receive salary, per
78192 diem, or expenses from their agency for their service may receive per diem and expenses
78193 incurred in the performance of their official duties from the council at the rates established by
78194 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

78195 (ii) State government officer and employee members may decline to receive per diem
78196 and expenses for their service.

78197 (c) (i) Higher education members who do not receive salary, per diem, or expenses
78198 from the entity that they represent for their service may receive per diem and expenses incurred
78199 in the performance of their official duties from the committee at the rates established by the
78200 Division of Finance under Sections 63A-3-106 and 63A-3-107.

78201 (ii) Higher education members may decline to receive per diem and expenses for their
78202 service.

78203 Section 1795. Section **63M-1-605**, which is renumbered from Section 63-38f-605 is
78204 renumbered and amended to read:

78205 **[63-38f-605]. 63M-1-605. Duties and powers.**

- 78206 (1) The council shall:
- 78207 (a) encourage the use of science and technology in the administration of state and local
- 78208 government;
- 78209 (b) develop programs whereby state agencies and the several public and private
- 78210 institutions of higher education and technical colleges within the state may assist business and
- 78211 industry in the utilization of science and technology;
- 78212 (c) further communication between agencies of federal, state, and local government
- 78213 who wish to utilize science and technology;
- 78214 (d) develop programs of cooperation on matters of science and technology between:
- 78215 (i) state and local government agencies;
- 78216 (ii) the several public and private institutions of higher education and technical colleges
- 78217 within the state; and
- 78218 (iii) business and industry within the state; or
- 78219 (iv) between any combination of these;
- 78220 (e) provide a means whereby government, business, industry, and higher education may
- 78221 be represented in the formulation and implementation of state policies and programs on matters
- 78222 of science and technology;
- 78223 (f) review, catalog, and compile the research and development uses by the state
- 78224 universities of the revenue derived from mineral lease funds on state and federal lands;
- 78225 (g) provide to the Legislature an annual report on the expenditure and utilization of
- 78226 these mineral lease funds;
- 78227 (h) make recommendations to the Legislature on the further uses of these mineral lease
- 78228 funds in order to stimulate research and development directed toward the more effective
- 78229 utilization of the state's natural resources; and
- 78230 (i) prepare and lodge an annual report with the governor and with the Legislature.
- 78231 (2) The council may:
- 78232 (a) in accordance with [~~Title 63, Chapter 40, Federal Assistance Management Program~~]
- 78233 Title 63J, Chapter 5, Federal Funds Procedures, apply for, receive, and disburse funds,

78234 contributions, or grants from whatever source for the purposes set forth in this part;

78235 (b) employ, compensate, and prescribe the duties and powers of those individuals,
78236 subject to the provisions of this part relating to the adviser, necessary to execute the duties and
78237 powers of the council; and

78238 (c) enter into contracts for the purposes of this part.

78239 Section 1796. Section **63M-1-606**, which is renumbered from Section 63-38f-606 is
78240 renumbered and amended to read:

78241 **[63-38f-606]. 63M-1-606. Adviser -- Duties and powers.**

78242 (1) The adviser shall be appointed by the governor.

78243 (2) The adviser shall be experienced or knowledgeable in the application of science and
78244 technology to business, industry, or public problems and shall have demonstrated interest in or
78245 ability to contribute to the accomplishment of the purposes of this part.

78246 (3) The adviser shall be compensated pursuant to the wage and salary classification plan
78247 for appointed officers of the state currently in effect.

78248 (4) (a) The adviser shall have those duties and powers the council assigns.

78249 (b) The adviser, with the advice of the council, may enter into contracts and agreements
78250 and may incur expenses necessary to fulfill the purposes of this part.

78251 (5) The adviser shall be administratively responsible to the director of the office.

78252 Section 1797. Section **63M-1-607**, which is renumbered from Section 63-38f-607 is
78253 renumbered and amended to read:

78254 **[63-38f-607]. 63M-1-607. Request for information.**

78255 All departments, divisions, boards, commissions, agencies, institutions, and all other
78256 instrumentalities of the state shall, upon request of the council, provide the council with any
78257 information that these instrumentalities have concerning research in science and technology.

78258 Section 1798. Section **63M-1-608**, which is renumbered from Section 63-38f-608 is
78259 renumbered and amended to read:

78260 **[63-38f-608]. 63M-1-608. Science education program.**

78261 (1) (a) There is established an informal science and technology education program

78262 within the Governor's Office of Economic Development.

78263 (b) The state science advisor shall act as the executive director of the program.

78264 (c) The State Advisory Council on Science and Technology shall advise the program,
78265 including:

78266 (i) approving all monies expended by the science and technology education program;

78267 (ii) approving all operations of the program; and

78268 (iii) making policies and procedures to govern the program.

78269 (2) The program may:

78270 (a) provide informal science and technology-based education to elementary and
78271 secondary students;

78272 (b) expose public education students to college level science and technology disciplines;

78273 (c) administer a science and technology camp program; and

78274 (d) provide other informal promotion of science and technology education in this state,
78275 including the direct sponsorship of science fairs and science olympiads.

78276 (3) The science and technology camp program described under Subsection (2)(c) shall
78277 be:

78278 (a) provided exclusively for elementary and secondary students and their teachers;

78279 (b) established as a grant program for camp providers; and

78280 (c) administered based upon annual requests for proposals, a documented review
78281 process, and grant awards.

78282 Section 1799. Section **63M-1-701**, which is renumbered from Section 63-38f-702 is
78283 renumbered and amended to read:

78284 **Part 7. Centers for Excellence**

78285 **[63-38f-702]. 63M-1-701. Title.**

78286 This part is known as the "Centers of Excellence Act."

78287 Section 1800. Section **63M-1-702**, which is renumbered from Section 63-38f-701 is
78288 renumbered and amended to read:

78289 **[63-38f-701]. 63M-1-702. Purpose.**

78290 (1) (a) The Legislature recognizes that the growth of new industry and expansion of
78291 existing industry requires a strong technology base, new ideas, concepts, innovations, and
78292 prototypes.

78293 (b) These generally come from strong research colleges and universities.

78294 (c) Technical research in Utah's colleges and universities should be enhanced and
78295 expanded, particularly in those areas targeted by the state for economic development.

78296 (d) Most states are enhancing their research base by direct funding, usually on a
78297 matching basis.

78298 (e) The purpose of this part is to catalyze and enhance the growth of these technologies
78299 by encouraging interdisciplinary research activities in targeted areas and by facilitating the
78300 transition of these technologies out of the university environment into industry where the
78301 technologies can be used to enhance job creation.

78302 (f) The Legislature recognizes that one source of funding is in matching state funds with
78303 federal funds and industrial support to provide the needed new technologies.

78304 (2) The Legislature recommends that the governor consider the allocation of economic
78305 development funds for Centers of Excellence to be matched by industry and federal grants on at
78306 least a two-for-one basis for colleges and universities in the state that offer any doctoral
78307 degrees.

78308 (3) (a) The Legislature recommends that the funds be allocated on a competitive basis
78309 to the various colleges and universities in the state and to companies working in partnership
78310 with colleges and universities to commercialize their technologies.

78311 (b) The funds made available should be used to support interdisciplinary research in
78312 specialized Centers of Excellence in technologies that are considered to have potential for
78313 economic development in this state and to help transition these technologies out of the colleges
78314 and universities into industry.

78315 Section 1801. Section **63M-1-703**, which is renumbered from Section 63-38f-703 is
78316 renumbered and amended to read:

78317 ~~[63-38f-703].~~ **63M-1-703. Definitions.**

78318 As used in this part:

78319 (1) "Business team consultant" means an experienced technology executive,
78320 entrepreneur, or business person who:

78321 (a) is recruited by the office through a request for proposal process to work directly
78322 with a college or university in the Centers for Excellence program; and

78323 (b) works with the institution to facilitate the transition of its technology into industry
78324 by assisting the institution in developing strategies, including spin out strategies when
78325 appropriate, and go-to-market plans, and identifying and working with potential customers and
78326 partners.

78327 (2) "Centers of excellence" means university-based, federal and industry-supported,
78328 cooperative research and development programs.

78329 (3) "Direct license" means the licensing between a company and a Utah college or
78330 university of technology developed at the college or university for the intent of commercializing
78331 the technology or facilitating its transition into industry.

78332 (4) "Licensee" means:

78333 (a) a company that executes or is in the process of executing a direct license; or

78334 (b) a sublicensee of the technology from a direct license.

78335 Section 1802. Section **63M-1-704**, which is renumbered from Section 63-38f-704 is
78336 renumbered and amended to read:

78337 ~~[63-38f-704].~~ **63M-1-704. Administration -- Grants.**

78338 (1) The Governor's Office of Economic Development shall administer this part.

78339 (2) (a) The office may award Centers of Excellence grants to the various colleges,
78340 universities, and licensees in the state for the purposes of this part.

78341 (b) The governor's Office of Economic Development shall develop a process to
78342 determine whether a college or university that receives a grant under this part must return the
78343 grant proceeds or a portion of the grant proceeds if the technology that is developed with the
78344 grant proceeds is licensed to a licensee that:

78345 (i) does not maintain a manufacturing or service location in the state from which the

78346 licensee or a sublicensee exploits the technology; or

78347 (ii) initially maintains a manufacturing or service location in the state from which the
78348 licensee or a sublicensee exploits the technology, but within five years after issuance of the
78349 license the licensee or sublicensee transfers the manufacturing or service location for the
78350 technology to a location out of the state.

78351 (c) A repayment by a college or university of grant proceeds or a portion of the grant
78352 proceeds shall come only from the proceeds of the license established between the licensee and
78353 the college or university.

78354 (d) (i) A licensee that receives a grant under this part shall return the grant proceeds or
78355 a portion of the grant proceeds to the office if the licensee:

78356 (A) does not maintain a manufacturing or service location in the state from which the
78357 licensee exploits the technology; or

78358 (B) initially maintains a manufacturing or service location in the state from which the
78359 licensee exploits the technology, but within five years after issuance of the grant the licensee
78360 transfers the manufacturing or service location for the technology to an out of state location.

78361 (ii) A repayment by a licensee that receives a grant shall come only from the proceeds
78362 of the license to that licensee.

78363 (iii) A repayment by a licensee shall be prorated based only on the number of full years
78364 the licensee operated in the state from the date of the awarded grant.

78365 (3) (a) Funding allocations shall be made by the office with the advice of the State
78366 Advisory Council for Science and Technology and the board.

78367 (b) Each proposal shall receive the best available outside review.

78368 (4) (a) In considering each proposal, the office shall weigh technical merit, the level of
78369 matching funds from private and federal sources, and the potential for job creation and
78370 economic development.

78371 (b) Proposals or consortia that combine and coordinate related research at two or more
78372 colleges and universities shall be encouraged.

78373 (5) The State Advisory Council on Science and Technology shall review the activities

78374 and progress of grant recipients on a regular basis and assist the office in preparing an annual
78375 report on the accomplishments and direction of the Centers of Excellence Program.

78376 Section 1803. Section **63M-1-705**, which is renumbered from Section 63-38f-705 is
78377 renumbered and amended to read:

78378 ~~[63-38f-705]~~. **63M-1-705. Business team consultants.**

78379 (1) The office may enter into work agreements with business team consultants through
78380 a request for proposal process to participate in the Centers for Excellence program.

78381 (2) Under a work agreement, a business team consultant shall assist a college or
78382 university in facilitating the transition of its technology into industry.

78383 Section 1804. Section **63M-1-801**, which is renumbered from Section 63-38f-801 is
78384 renumbered and amended to read:

78385 **Part 8. Shared Foreign Sales Corporations**

78386 ~~[63-38f-801]~~. **63M-1-801. Creation of shared foreign sales corporations.**

78387 The office may create one or more shared foreign sales corporations, qualifying as such
78388 under Section 927(g), Internal Revenue Code of 1986, and may name directors or managers of
78389 these corporations at its discretion.

78390 Section 1805. Section **63M-1-802**, which is renumbered from Section 63-38f-802 is
78391 renumbered and amended to read:

78392 ~~[63-38f-802]~~. **63M-1-802. Management fees.**

78393 (1) All expenses incurred in establishing and maintaining shared foreign sales
78394 corporations shall be initially paid for by the office but shall be reimbursed to the office by the
78395 participants in each shared foreign sales corporation created under Section ~~[63-38f-801]~~
78396 63M-1-801 on a pro rata basis determined by the office.

78397 (2) The office may charge the participants management fees that are reasonable to
78398 maintain and manage each of the shared foreign sales corporations.

78399 (3) All monies obtained by the office in excess of office expenditures in connection with
78400 the management of shared foreign sales corporations may be used at the discretion of the office
78401 for the office's other activities in promoting exporting.

78402 (4) The fees collected and the expenditures made shall be reported to the Legislature
78403 each year.

78404 Section 1806. Section **63M-1-901**, which is renumbered from Section 63-38f-901 is
78405 renumbered and amended to read:

78406 **Part 9. Industrial Assistance Fund**

78407 ~~[63-38f-901].~~ **63M-1-901. Purpose statement.**

78408 The Legislature finds and declares that the fostering and development of industry in
78409 Utah is a state public purpose necessary to assure the welfare of its citizens, the growth of its
78410 economy, and adequate employment for its citizens.

78411 Section 1807. Section **63M-1-902**, which is renumbered from Section 63-38f-902 is
78412 renumbered and amended to read:

78413 ~~[63-38f-902].~~ **63M-1-902. Definitions.**

78414 As used in this part:

78415 (1) "Administrator" means the director or the director's designee.

78416 (2) "Board" means the Board of Business and Economic Development.

78417 (3) "Company creating an economic impediment" means a company that discourages
78418 economic development within a reasonable radius of its location because of:

78419 (a) odors;

78420 (b) noise;

78421 (c) pollution;

78422 (d) health hazards; or

78423 (e) other activities similar to those described in Subsections (3)(a) through (d).

78424 (4) "Economic opportunities" means unique business situations or community
78425 circumstances which lend themselves to the furtherance of the economic interests of the state by
78426 providing a catalyst or stimulus to the growth or retention, or both, of commerce and industry
78427 in the state.

78428 (5) "Economically disadvantaged rural area" means a geographic area designated by the
78429 board under Section ~~[63-38f-909]~~ **63M-1-910.**

78430 (6) "Fund" means the restricted account known as the Industrial Assistance Fund
78431 created in Section [~~63-38f-903~~] 63M-1-903.

78432 (7) "Replacement company" means a company locating its business or part of its
78433 business in a location vacated by a company creating an economic impediment.

78434 (8) "Targeted industry" means an industry or group of industries targeted by the board
78435 under Section [~~63-38f-909~~] 63M-1-910, for economic development in the state.

78436 Section 1808. Section **63M-1-903**, which is renumbered from Section 63-38f-903 is
78437 renumbered and amended to read:

78438 **[~~63-38f-903~~]. 63M-1-903. Industrial Assistance Fund created.**

78439 (1) There is created within the General Fund a restricted account known as the
78440 Industrial Assistance Fund of which:

78441 (a) up to 50% shall be used in economically disadvantaged rural areas; and

78442 (b) up to 20% may be used to take timely advantage of economic opportunities as they
78443 arise.

78444 (2) The fund shall be administered by the administrator under the policy direction of the
78445 board.

78446 (3) The administrator may hire appropriate support staff.

78447 (4) The cost of administering the fund shall be paid from monies in the fund.

78448 (5) Interest accrued from investment of monies in the fund shall remain in the fund.

78449 Section 1809. Section **63M-1-904**, which is renumbered from Section 63-38f-903.5 is
78450 renumbered and amended to read:

78451 **[~~63-38f-903.5~~]. 63M-1-904. Rural Fast Track Program -- Creation --**

78452 **Funding -- Qualifications for program participation -- Awards -- Reports.**

78453 (1) (a) There is created the Rural Fast Track Program, hereafter referred to in this
78454 section as "the program."

78455 (b) The program is a funded component of the economically disadvantaged rural areas
78456 designation in Subsection [~~63-38f-903~~] 63M-1-903(1)(a).

78457 (2) The purpose of the program is to provide an efficient way for small companies in

78458 rural Utah to receive incentives for creating high paying jobs in the rural areas of the state and
78459 to further promote business and economic development in rural Utah.

78460 (3) (a) Twenty percent of the money in the Industrial Assistance Fund at the beginning
78461 of each fiscal year shall be used to fund the program.

78462 (b) The 20% referred to in Subsection (3)(a) is not in addition to but is a part of the up
78463 to 50% designation for economically disadvantaged rural areas referred to in Subsection
78464 [~~63-38f-903~~] 63M-1-903(1)(a).

78465 (c) If any of the 20% allocation referred to in Subsection (3)(a) has not been used in the
78466 program by the end of the third quarter of each fiscal year, that money may be used for any
78467 other loan, grant, or assistance program offered through the Industrial Assistance Fund during
78468 the fiscal year.

78469 (4) (a) To qualify for participation in the program a company shall:

78470 (i) complete and file with the office an application for participation in the program,
78471 signed by an officer of the company;

78472 (ii) be located and conduct its business operations in a county in the state that has:

78473 (A) a population of less than 30,000; and

78474 (B) an average household income of less than \$60,000 as reflected in the most recently
78475 available data collected and reported by the United States Census Bureau;

78476 (iii) have been in business in the state for at least two years; and

78477 (iv) have at least two employees.

78478 (b) (i) Office staff shall verify an applicant's qualifications under Subsection (4)(a).

78479 (ii) The application must be approved by the administrator in order for a company to
78480 receive an incentive or other assistance under this section.

78481 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
78482 Administrative Rulemaking Act, the administrator may make rules governing:

78483 (i) the content of the application form referred to in Subsection (4)(a)(i);

78484 (ii) who qualifies as an employee under Subsection (4)(a)(iv); and

78485 (iii) the verification procedure referred to in Subsection (4)(b).

78486 (5) (a) The administrator shall make incentive cash awards to small companies under
78487 this section based on the following criteria:

78488 (i) \$1,000 for each new incremental job that pays over 110% of the county's average
78489 annual wage;

78490 (ii) \$1,250 for each incremental job that pays over 115% of the county's average annual
78491 wage; and

78492 (iii) \$1,500 for each incremental job that pays over 125% of the county's average annual
78493 wage.

78494 (b) The administrator shall make a cash award under Subsection (5)(a) when a new
78495 incremental job has been in place for at least 12 months.

78496 (c) The creation of a new incremental job by a company is based on the number of
78497 employees at the company during the previous 24 months.

78498 (d) (i) A small company may also apply for grants, loans, or other financial assistance
78499 under the program to help develop its business in rural Utah and may receive up to \$50,000
78500 under the program if approved by the administrator.

78501 (ii) The board must approve a distribution that exceeds the \$50,000 cap under
78502 Subsection (5)(d)(i).

78503 (6) The administrator shall make a quarterly report to the board of the awards made by
78504 the administrator under this section and an annual report to the Legislative Workforce Services
78505 and Community and Economic Development Interim Committee as to the awards and their
78506 impact on economic development in the state's rural areas.

78507 Section 1810. Section **63M-1-905**, which is renumbered from Section 63-38f-904 is
78508 renumbered and amended to read:

78509 ~~[63-38f-904].~~ **63M-1-905. Loans, grants, and assistance -- Repayment --**
78510 **Earned credits.**

78511 (1) (a) A company that qualifies under Section ~~[63-38f-905]~~ 63M-1-906 may receive
78512 loans, grants, or other financial assistance from the fund for expenses related to establishment,
78513 relocation, or development of industry in Utah.

78514 (b) A company creating an economic impediment that qualifies under Section
78515 [~~63-38f-907~~] 63M-1-908 may in accordance with this part receive loans, grants, or other
78516 financial assistance from the fund for the expenses of the company creating an economic
78517 impediment related to:

78518 (i) relocation to a rural area in Utah of the company creating an economic impediment;
78519 and

78520 (ii) the siting of a replacement company.

78521 (c) An entity offering an economic opportunity that qualifies under Section
78522 [~~63-38f-908~~] 63M-1-909 may:

78523 (i) receive loans, grants, or other financial assistance from the fund for expenses related
78524 to the establishment, relocation, retention, or development of industry in the state; and

78525 (ii) include infrastructure or other economic development precursor activities that act as
78526 a catalyst and stimulus for economic activity likely to lead to the maintenance or enlargement of
78527 the state's tax base.

78528 (2) (a) Subject to Subsection (2)(b), the administrator has authority to determine the
78529 structure, amount, and nature of any loan, grant, or other financial assistance from the fund.

78530 (b) Loans made under Subsection (2)(a) shall be structured so the intended repayment
78531 or return to the state, including cash or credit, equals at least the amount of the assistance
78532 together with an annual interest charge as negotiated by the administrator.

78533 (c) Payments resulting from grants awarded from the fund shall be made only after the
78534 administrator has determined that the company has satisfied the conditions upon which the
78535 payment or earned credit was based.

78536 (3) (a) (i) Except as provided in Subsection (3)(b), the administrator may provide for a
78537 system of earned credits that may be used to support grant payments or in lieu of cash
78538 repayment of a fund loan obligation.

78539 (ii) The value of the credits described in Subsection (3)(a)(i) shall be based on factors
78540 determined by the administrator, including:

78541 (A) the number of Utah jobs created;

78542 (B) the increased economic activity in Utah; or
78543 (C) other events and activities that occur as a result of the fund assistance.
78544 (b) (i) The administrator shall provide for a system of credits to be used to support
78545 grant payments or in lieu of cash repayment of a fund loan when loans are made to a company
78546 creating an economic impediment.
78547 (ii) The value of the credits described in Subsection (3)(b)(i) shall be based on factors
78548 determined by the administrator, including:
78549 (A) the number of Utah jobs created;
78550 (B) the increased economic activity in Utah; or
78551 (C) other events and activities that occur as a result of the fund assistance.
78552 (4) (a) A cash loan repayment or other cash recovery from a company receiving
78553 assistance under this section, including interest, shall be deposited into the fund.
78554 (b) The administrator and the Division of Finance shall determine the manner of
78555 recognizing and accounting for the earned credits used in lieu of loan repayments or to support
78556 grant payments as provided in Subsection (3).
78557 (5) (a) At the end of each fiscal year, the unrestricted, undesignated General Fund
78558 balance after the transfers of surplus of General Fund revenues described in this Subsection
78559 (5)(a) shall be earmarked to the Industrial Assistance Fund in an amount equal to any credit that
78560 has accrued under this part. The earmark required by this Subsection (5)(a) shall be made after
78561 the transfer of surplus General Fund revenues is made:
78562 (i) to the General Fund Budget Reserve Account as provided in Section [~~63-38-2.5~~]
78563 63J-1-202; and
78564 (ii) beginning with the fiscal year ending June 30, 2007, as provided in Section
78565 [~~63-38-2.7~~] 63J-1-204.
78566 (b) These credit amounts may not be used for purposes of the fund as provided in this
78567 part until appropriated by the Legislature.
78568 Section 1811. Section **63M-1-906**, which is renumbered from Section 63-38f-905 is
78569 renumbered and amended to read:

78570 ~~[63-38f-905]~~. 63M-1-906. Qualification for assistance.

78571 (1) Except as provided in Section ~~[63-38f-907]~~ 63M-1-908 or ~~[Section 63-38f-908]~~
 78572 63M-1-909, the administrator shall determine which industries, companies, and individuals
 78573 qualify to receive monies from the fund. Except as provided by Subsection (2), to qualify for
 78574 financial assistance from the fund, an applicant shall:

78575 (a) demonstrate to the satisfaction of the administrator that the applicant will expend
 78576 funds in Utah with employees, vendors, subcontractors, or other businesses in an amount
 78577 proportional with monies provided from the fund at a minimum ratio of 2 to 1 per year or other
 78578 more stringent requirements as established from time to time by the board for a minimum period
 78579 of five years beginning with the date the loan or grant was approved;

78580 (b) demonstrate to the satisfaction of the administrator the applicant's ability to sustain
 78581 economic activity in the state sufficient to repay, by means of cash or appropriate credits, the
 78582 loan provided by the fund; and

78583 (c) satisfy other criteria the administrator considers appropriate.

78584 (2) (a) The administrator may exempt an applicant from the requirements of Subsection
 78585 (1)(a) or (b) if:

78586 (i) the financial assistance is provided to an applicant for the purpose of locating all or
 78587 any portion of its operations to an economically disadvantaged rural area;

78588 (ii) the applicant is part of a targeted industry;

78589 (iii) the applicant is a quasi-public corporation organized under Title 16, Chapter 6a,
 78590 Utah Revised Nonprofit Corporation Act, or Title 63E, Chapter 2, Independent Corporations
 78591 Act, and its operations, as demonstrated to the satisfaction of the administrator, will provide
 78592 significant economic stimulus to the growth of commerce and industry in the state; or

78593 (iv) the applicant is an entity offering an economic opportunity under Section
 78594 ~~[63-38f-908]~~ 63M-1-909.

78595 (b) The administrator may not exempt the applicant from the requirement under
 78596 Subsection ~~[63-38f-904]~~ 63M-1-905(2)(b) that the loan be structured so that the repayment or
 78597 return to the state equals at least the amount of the assistance together with an annual interest

78598 charge.

78599 (3) The administrator shall:

78600 (a) for applicants not described in Subsection (2)(a):

78601 (i) make findings as to whether or not each applicant has satisfied each of the conditions
78602 set forth in Subsection (1); and

78603 (ii) monitor the continued compliance by each applicant with each of the conditions set
78604 forth in Subsection (1) for five years;

78605 (b) for applicants described in Subsection (2)(a), make findings as to whether the
78606 economic activities of each applicant has resulted in the creation of new jobs on a per capita
78607 basis in the economically disadvantaged rural area or targeted industry in which the applicant is
78608 located;

78609 (c) monitor the compliance by each applicant with the provisions of any contract or
78610 agreement entered into between the applicant and the state as provided in Section [~~63-38f-906~~]
78611 63M-1-907; and

78612 (d) make funding decisions based upon appropriate findings and compliance.

78613 Section 1812. Section **63M-1-907**, which is renumbered from Section 63-38f-906 is
78614 renumbered and amended to read:

78615 ~~[63-38f-906]~~. **63M-1-907. Agreements.**

78616 The administrator shall enter into agreements with each successful applicant that have
78617 specific terms and conditions for each loan or assistance, including:

78618 (1) repayment schedules;

78619 (2) interest rates;

78620 (3) specific economic activity required to qualify for the loan or assistance or for
78621 repayment credits;

78622 (4) collateral or security, if any; and

78623 (5) other terms and conditions considered appropriate by the administrator.

78624 Section 1813. Section **63M-1-908**, which is renumbered from Section 63-38f-907 is
78625 renumbered and amended to read:

78626 ~~[63-38f-907]~~. 63M-1-908. **Financial assistance to companies that create**
78627 **economic impediments.**

78628 (1) (a) The administrator may provide monies from the fund to a company creating an
78629 economic impediment if that company:

- 78630 (i) applies to the administrator;
- 78631 (ii) relocates to a rural area in Utah; and
- 78632 (iii) meets the qualifications of Subsection (1)(b).

78633 (b) Except as provided by Subsection (2), to qualify for financial assistance from the
78634 fund, a company creating an economic impediment shall:

78635 (i) demonstrate to the satisfaction of the administrator that the company creating an
78636 economic impediment, its replacement company, or in the aggregate the company creating the
78637 economic impediment and its replacement company:

78638 (A) will expend funds in Utah with employees, vendors, subcontractors, or other
78639 businesses in an amount proportional with monies provided from the fund at a minimum ratio of
78640 2 to 1 per year or other more stringent requirements as established from time to time by the
78641 board for a minimum period of five years beginning with the date the loan or grant was
78642 approved; and

78643 (B) can sustain economic activity in the state sufficient to repay, by means of cash or
78644 appropriate credits, the loan provided by the fund; and

78645 (ii) satisfy other criteria the administrator considers appropriate.

78646 (2) (a) The administrator may exempt a company creating an economic impediment
78647 from the requirements of Subsection (1)(b)(i)(A) if:

78648 (i) the financial assistance is provided to a company creating an economic impediment
78649 for the purpose of locating all or any portion of its operations to an economically disadvantaged
78650 rural area; or

78651 (ii) its replacement company is part of a targeted industry.

78652 (b) The administrator may not exempt a company creating an economic impediment
78653 from the requirement under Subsection ~~[63-38f-904]~~ 63M-1-905(2)(b) that the loan be

78654 structured so that the repayment or return to the state equals at least the amount of the
78655 assistance together with an annual interest charge.

78656 (3) The administrator shall:

78657 (a) make findings as to whether or not a company creating an economic impediment, its
78658 replacement company, or both, have satisfied each of the conditions set forth in Subsection (1);

78659 (b) monitor the compliance by a company creating an economic impediment, its
78660 replacement company, or both, with:

78661 (i) each of the conditions set forth in Subsection (1); and

78662 (ii) any contract or agreement under Section [~~63-38f-906~~] 63M-1-907 entered into
78663 between:

78664 (A) the company creating an economic impediment; and

78665 (B) the state; and

78666 (c) make funding decisions based upon appropriate findings and compliance.

78667 Section 1814. Section **63M-1-909**, which is renumbered from Section 63-38f-908 is
78668 renumbered and amended to read:

78669 [~~63-38f-908~~]. **63M-1-909. Financial assistance to entities offering economic**
78670 **opportunities.**

78671 (1) Subject to the duties and powers of the board under Section [~~63-38f-303~~]
78672 63M-1-303, the administrator may provide monies from the fund to an entity offering an
78673 economic opportunity if that entity:

78674 (a) applies to the administrator; and

78675 (b) meets the qualifications of Subsection (2).

78676 (2) The applicant shall:

78677 (a) demonstrate to the satisfaction of the administrator the nature of the economic
78678 opportunity and the related benefit to the economic well-being of the state by providing
78679 evidence documenting the logical and compelling linkage, either direct or indirect, between the
78680 expenditure of monies necessitated by the economic opportunity and the likelihood that the
78681 state's tax base will be maintained or enlarged;

78682 (b) demonstrate how the funding request will act in concert with other state, federal, or
78683 local agencies to achieve the economic benefit;

78684 (c) demonstrate how the funding request will act in concert with free market principles;

78685 (d) satisfy other criteria the administrator considers appropriate; and

78686 (e) be either:

78687 (i) an entity whose purpose is to exclusively or substantially promote, develop, or
78688 maintain the economic welfare and prosperity of the state as a whole, regions of the state, or
78689 specific components of the state; or

78690 (ii) a company or individual that does not otherwise qualify under Section [~~63-38f-905~~]
78691 63M-1-906.

78692 (3) Subject to the duties and powers of the board under Section [~~63-38f-303~~]
78693 63M-1-303, the administrator shall:

78694 (a) make findings as to whether an applicant has satisfied each of the conditions set
78695 forth in Subsection (2);

78696 (b) establish benchmarks and timeframes in which progress toward the completion of
78697 the agreed upon activity is to occur;

78698 (c) monitor compliance by an applicant with any contract or agreement entered into by
78699 the applicant and the state as provided by Section [~~63-38f-906~~] 63M-1-907; and

78700 (d) make funding decisions based upon appropriate findings and compliance.

78701 Section 1815. Section **63M-1-910**, which is renumbered from Section 63-38f-909 is
78702 renumbered and amended to read:

78703 [~~63-38f-909~~]. **63M-1-910. Annual policy considerations.**

78704 (1) The board shall determine annually which industries or groups of industries shall be
78705 targeted industries as defined in Section [~~63-38f-902~~] 63M-1-902.

78706 (2) In designating an economically disadvantaged rural area, the board shall consider
78707 the average agricultural and nonagricultural wage, personal income, unemployment, and
78708 employment in the area.

78709 (3) In evaluating the economic impact of applications for assistance, the board shall use

78710 an econometric cost-benefit model or models adopted by the Governor's Office of Planning and
78711 Budget.

78712 (4) The board may establish:

78713 (a) minimum interest rates to be applied to loans granted that reflect a fair social rate of
78714 return to the state comparable to prevailing market-based rates such as the prime rate, U.S.
78715 Government T-bill rate, or bond coupon rate as paid by the state, adjusted by social indicators
78716 such as the rate of unemployment; and

78717 (b) minimum applicant expense ratios, as long as they are at least equal to those
78718 required under Subsection [~~63-38f-905~~] 63M-1-906(1)(a) or [~~63-38f-907~~]
78719 63M-1-908(1)(b)(i)(A).

78720 Section 1816. Section **63M-1-1001**, which is renumbered from Section 63-38f-1001 is
78721 renumbered and amended to read:

78722 **Part 10. Biotechnology Regulation**

78723 [~~63-38f-1001~~]. **63M-1-1001. Definitions.**

78724 As used in this part, "biotechnology" is:

- 78725 (1) the modification of living organisms by recombinant DNA techniques; and
78726 (2) a means to accomplish, through genetic engineering, the same kinds of
78727 modifications accomplished through traditional genetic techniques such as crossbreeding.

78728 Section 1817. Section **63M-1-1002**, which is renumbered from Section 63-38f-1002 is
78729 renumbered and amended to read:

78730 [~~63-38f-1002~~]. **63M-1-1002. Confidential information.**

78731 (1) A state agency having access under federal law to biotechnology trade secrets and
78732 related confidential information shall manage the trade secrets and related confidential records
78733 as protected records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
78734 Access and Management Act.

78735 (2) The records described in this section may be disclosed under the balancing
78736 provisions of [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
78737 Management Act, when a determination is made that disclosure is essential for the protection of

78738 the public's health or environment.

78739 Section 1818. Section **63M-1-1003**, which is renumbered from Section 63-38f-1003 is
78740 renumbered and amended to read:

78741 ~~[63-38f-1003].~~ **63M-1-1003. Preemption of local regulation.**

78742 (1) A county, city, town, or other political subdivision may not regulate the
78743 technological processes relating to the development and use of biotechnologically created
78744 materials and organisms.

78745 (2) This preemption does not affect the powers of a county, city, town, or other
78746 political subdivision, including the power to regulate land use, business, industry, construction,
78747 and public utilities, to protect the public health or environment, or to provide fire protection and
78748 other public safety services.

78749 Section 1819. Section **63M-1-1101**, which is renumbered from Section 63-38f-1101 is
78750 renumbered and amended to read:

78751 **Part 11. Recycling Market Development Zone Act**

78752 ~~[63-38f-1101].~~ **63M-1-1101. Title.**

78753 This part is known as the "Recycling Market Development Zone Act."

78754 Section 1820. Section **63M-1-1102**, which is renumbered from Section 63-38f-1102 is
78755 renumbered and amended to read:

78756 ~~[63-38f-1102].~~ **63M-1-1102. Definitions.**

78757 As used in this part:

78758 (1) "Composting" means the controlled decay of landscape waste or sewage sludge and
78759 organic industrial waste, or a mixture of these, by the action of bacteria, fungi, molds, and other
78760 organisms.

78761 (2) "Postconsumer waste material" means any product generated by a business or
78762 consumer that has served its intended end use, and that has been separated from solid waste for
78763 the purposes of collection, recycling, and disposition and that does not include secondary waste
78764 material.

78765 (3) (a) "Recovered materials" means waste materials and by-products that have been

78766 recovered or diverted from solid waste.

78767 (b) "Recovered materials" does not include those materials and by-products generated
78768 from, and commonly reused within, an original manufacturing process.

78769 (4) (a) "Recycling" means the diversion of materials from the solid waste stream and the
78770 beneficial use of the materials and includes a series of activities by which materials that would
78771 become or otherwise remain waste are diverted from the waste stream for collection,
78772 separation, and processing, and are used as raw materials or feedstocks in lieu of or in addition
78773 to virgin materials in the manufacture of goods sold or distributed in commerce or the reuse of
78774 the materials as substitutes for goods made from virgin materials.

78775 (b) "Recycling" does not include burning municipal solid waste for energy recovery.

78776 (5) "Recycling market development zone" or "zone" means an area designated by the
78777 office as meeting the requirements of this part.

78778 (6) (a) "Secondary waste material" means industrial by-products that go to disposal
78779 facilities and waste generated after completion of a manufacturing process.

78780 (b) "Secondary waste material" does not include internally generated scrap commonly
78781 returned to industrial or manufacturing processes, such as home scrap and mill broke.

78782 (7) "State tax incentives," "tax incentives," or "tax benefits" means the nonrefundable
78783 tax credits available under Sections 59-7-608 and 59-10-1007.

78784 Section 1821. Section **63M-1-1103**, which is renumbered from Section 63-38f-1103 is
78785 renumbered and amended to read:

78786 ~~[63-38f-1103].~~ **63M-1-1103. Duties of the office.**

78787 The office shall:

78788 (1) facilitate recycling development zones through state support of county incentives
78789 which encourage development of manufacturing enterprises that use recycling materials
78790 currently collected;

78791 (2) evaluate an application from a county or municipality executive authority to be
78792 designated as a recycling market development zone and determine if the county or municipality
78793 qualifies for that designation;

78794 (3) provide technical assistance to municipalities and counties in developing applications
78795 for designation as a recycling market development zone;

78796 (4) assist counties and municipalities designated as recycling market development zones
78797 in obtaining assistance from the federal government and agencies of the state;

78798 (5) assist any qualified business in obtaining the benefits of any incentive or inducement
78799 program authorized by this part;

78800 (6) monitor the implementation and operation of this part and conduct a continuing
78801 evaluation of the progress made in the recycling market development zone; and

78802 (7) submit an annual written report evaluating the effectiveness of the program and
78803 providing recommendations for legislation to the Workforce Services and Economic
78804 Development Interim Committee and Natural Resources, Agriculture, and Environment Interim
78805 Committee not later than November 1 of each year.

78806 Section 1822. Section **63M-1-1104**, which is renumbered from Section 63-38f-1104 is
78807 renumbered and amended to read:

78808 ~~[63-38f-1104]~~. **63M-1-1104. Criteria for recycling market development zone**
78809 **-- Application process and fees.**

78810 (1) An area may be designated as a recycling market development zone only if:

78811 (a) the county or municipality agrees to make a qualifying local contribution under
78812 Section ~~[63-38f-1105]~~ 63M-1-1105; and

78813 (b) the county or municipality provides for postconsumer waste collection for recycling
78814 within the county or municipality.

78815 (2) The executive authority of any municipality or county desiring to be designated as a
78816 recycling market development zone shall:

78817 (a) obtain the written approval of the municipality or county's legislative body; and

78818 (b) file an application with the office demonstrating the county or municipality meets
78819 the requirements of this part.

78820 (3) The application shall be in a form prescribed by the office, and shall include:

78821 (a) a plan developed by the county or municipality that identifies local contributions

78822 meeting the requirements of Section [~~63-38f-1105~~] 63M-1-1105;

78823 (b) a county or municipality development plan that outlines:

78824 (i) the specific investment or development reasonably expected to take place;

78825 (ii) any commitments obtained from businesses to participate, and in what capacities

78826 regarding recycling markets;

78827 (iii) the county's or municipality's economic development plan and demonstration of

78828 coordination between the zone and the county or municipality in overall development goals;

78829 (iv) zoning requirements demonstrating that sufficient portions of the proposed zone

78830 area are zoned as appropriate for the development of commercial, industrial, or manufacturing

78831 businesses;

78832 (v) the county's or municipality's long-term waste management plan and evidence that

78833 the zone will be adequately served by the plan; and

78834 (vi) the county or municipality postconsumer waste collection infrastructure;

78835 (c) the county's or municipality's proposed means of assessing the effectiveness of the

78836 development plan or other programs implemented within the zone;

78837 (d) state whether within the zone either of the following will be established:

78838 (i) commercial manufacturing or industrial processes that will produce end products

78839 that consist of not less than 50% recovered materials, of which not less than 25% is

78840 postconsumer waste material; or

78841 (ii) commercial composting;

78842 (e) any additional information required by the office; and

78843 (f) any additional information the county or municipality considers relevant to its

78844 designation as a recycling market development zone.

78845 (4) A county or municipality applying for designation as a recycling market

78846 development zone shall pay to the office an application fee determined under Section

78847 [~~63-38-3.2~~] 63J-1-303.

78848 Section 1823. Section **63M-1-1105**, which is renumbered from Section 63-38f-1105 is

78849 renumbered and amended to read:

78850 ~~[63-38f-1105]~~. 63M-1-1105. **Qualifying local contributions.**
78851 Qualifying local contributions to the recycling market development zone may vary
78852 depending on available resources, and may include:
78853 (1) simplified procedures for obtaining permits;
78854 (2) dedication of available government grants;
78855 (3) waiver of business license or permit fees;
78856 (4) infrastructure improvements;
78857 (5) private contributions;
78858 (6) utility rate concessions;
78859 (7) suspension or relaxation of locally originated zoning laws or general plans; and
78860 (8) other proposed local contributions as the office finds promote the purposes of this
78861 part.

78862 Section 1824. Section **63M-1-1106**, which is renumbered from Section 63-38f-1106 is
78863 renumbered and amended to read:

78864 ~~[63-38f-1106]~~. 63M-1-1106. **Eligibility review.**

- 78865 (1) The office shall:
- 78866 (a) review and evaluate an application submitted under Section ~~[63-38f-1104]~~
78867 63M-1-1104; and
- 78868 (b) determine whether the municipality or county is eligible for designation as a
78869 recycling market development zone.
- 78870 (2) In designating recycling market development zones, the office shall consider:
- 78871 (a) whether the current waste management practices and conditions of the county or
78872 municipality are favorable to the development of postconsumer waste material markets;
- 78873 (b) whether the creation of the zone is necessary to assist in attracting private sector
78874 recycling investments to the area; and
- 78875 (c) the amount of available landfill capacity to serve the zone.

78876 Section 1825. Section **63M-1-1107**, which is renumbered from Section 63-38f-1107 is
78877 renumbered and amended to read:

78878 ~~[63-38f-1107].~~ **63M-1-1107. Quarterly consideration.**

78879 The office shall take action quarterly on any application requesting designation as a
78880 recycling market development zone.

78881 Section 1826. Section **63M-1-1108**, which is renumbered from Section 63-38f-1108 is
78882 renumbered and amended to read:

78883 ~~[63-38f-1108].~~ **63M-1-1108. Duration of designation.**

78884 A recycling market development zone designation ends five years from the date the
78885 office designates the area as a recycling market development zone, at the end of which the
78886 county or municipality may reapply for the designation.

78887 Section 1827. Section **63M-1-1109**, which is renumbered from Section 63-38f-1109 is
78888 renumbered and amended to read:

78889 ~~[63-38f-1109].~~ **63M-1-1109. Revocation of designations.**

78890 (1) The office may revoke the designation of a recycling market development zone if no
78891 businesses utilize the tax incentives during any calendar year.

78892 (2) Before revocation of the zone, the office shall conduct a public hearing within a
78893 reasonable distance of the zone to determine reasons for inactivity and explore possible
78894 alternative actions.

78895 Section 1828. Section **63M-1-1110**, which is renumbered from Section 63-38f-1110 is
78896 renumbered and amended to read:

78897 ~~[63-38f-1110].~~ **63M-1-1110. Recycling market development zones credit.**

78898 For a taxpayer within a recycling market development zone, there are allowed the
78899 nonrefundable credits against tax as provided by Sections 59-7-610 and 59-10-1007.

78900 Section 1829. Section **63M-1-1111**, which is renumbered from Section 63-38f-1111 is
78901 renumbered and amended to read:

78902 ~~[63-38f-1111].~~ **63M-1-1111. Annual report.**

78903 (1) A county or municipality designated as a recycling market development zone shall
78904 report by no later than July 31 of each year to the office regarding the economic activity that has
78905 occurred in the zone following the designation.

78906 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
78907 Administrative Rulemaking Act, the office may make rules providing for the form and content
78908 of the annual reports.

78909 Section 1830. Section **63M-1-1112**, which is renumbered from Section 63-38f-1112 is
78910 renumbered and amended to read:

78911 ~~[63-38f-1112].~~ **63M-1-1112. Centers of excellence.**

78912 In accordance with Part 6, the office may award grants to the Centers of Excellence, as
78913 defined by Section [~~63-38f-703~~] 63M-1-703, to fund development of new technology for
78914 recycling if the program funded is a cooperative effort between the Centers of Excellence and
78915 one or more recycling market development zones created under this part.

78916 Section 1831. Section **63M-1-1201**, which is renumbered from Section 63-38f-1201 is
78917 renumbered and amended to read:

78918 **Part 12. Utah Venture Capital Enhancement Act**

78919 ~~[63-38f-1201].~~ **63M-1-1201. Title.**

78920 This part is known as the "Utah Venture Capital Enhancement Act."

78921 Section 1832. Section **63M-1-1202**, which is renumbered from Section 63-38f-1202 is
78922 renumbered and amended to read:

78923 ~~[63-38f-1202].~~ **63M-1-1202. Findings -- Purpose.**

78924 (1) The Legislature finds that:

78925 (a) fundamental changes have occurred in national and international financial markets
78926 and in the state's financial markets;

78927 (b) a critical shortage of seed and venture capital resources exists in the state, and that
78928 shortage is impairing the growth of commerce in the state;

78929 (c) a need exists to increase the availability of venture equity capital for emerging,
78930 expanding, and restructuring enterprises in Utah, including enterprises in the life sciences,
78931 advanced manufacturing, and information technology;

78932 (d) increased venture equity capital investments in emerging, expanding, and
78933 restructuring enterprises in Utah will:

- 78934 (i) create new jobs in the state; and
78935 (ii) help to diversify the state's economic base; and
78936 (e) a well-trained work force is critical for the maintenance and development of Utah's
78937 economy.
- 78938 (2) This part is enacted to:
- 78939 (a) mobilize private investment in a broad variety of venture capital partnerships in
78940 diversified industries and locales;
- 78941 (b) retain the private-sector culture of focusing on rate of return in the investing
78942 process;
- 78943 (c) secure the services of the best managers in the venture capital industry, regardless of
78944 location;
- 78945 (d) facilitate the organization of the Utah fund of funds to seek private investments and
78946 to serve as a catalyst in those investments by offering state incentives for private persons to
78947 make investments in the Utah fund of funds;
- 78948 (e) enhance the venture capital culture and infrastructure in the state so as to increase
78949 venture capital investment within the state and to promote venture capital investing within the
78950 state;
- 78951 (f) accomplish the purposes referred to in Subsections (2)(a) through (e) in a manner
78952 that would maximize the direct economic impact for the state; and
- 78953 (g) authorize the issuance and use of contingent tax credits to accomplish the purposes
78954 referred to in Subsections (2)(a) through (e) while protecting the interests of the state by
78955 limiting the manner in which contingent tax credits are issued, registered, transferred, claimed as
78956 an offset to the payment of state income tax, and redeemed.
- 78957 Section 1833. Section **63M-1-1203**, which is renumbered from Section 63-38f-1203 is
78958 renumbered and amended to read:
- 78959 ~~[63-38f-1203].~~ **63M-1-1203. Definitions.**
- 78960 As used in this part:
- 78961 (1) "Board" means the Utah Capital Investment Board.

78962 (2) "Certificate" means a contract between the board and a designated investor under
78963 which a contingent tax credit is available and issued to the designated investor.

78964 (3) (a) Except as provided in Subsection (3)(b), "claimant" means a resident or
78965 nonresident person.

78966 (b) "Claimant" does not include an estate or trust.

78967 (4) "Commitment" means a written commitment by a designated purchaser to purchase
78968 from the board certificates presented to the board for redemption by a designated investor.
78969 Each commitment shall state the dollar amount of contingent tax credits that the designated
78970 purchaser has committed to purchase from the board.

78971 (5) "Contingent tax credit" means a contingent tax credit issued under this part that is
78972 available against tax liabilities imposed by Title 59, Chapter 7, Corporate Franchise and Income
78973 Taxes, or Title 59, Chapter 10, Individual Income Tax Act, if there are insufficient funds in the
78974 redemption reserve and the board has not exercised other options for redemption under
78975 Subsection [~~63-38f-1220~~] 63M-1-1220(3)(b).

78976 (6) "Corporation" means the Utah Capital Investment Corporation created under
78977 Section [~~63-38f-1207~~] 63M-1-1207.

78978 (7) "Designated investor" means:

78979 (a) a person who purchases an equity interest in the Utah fund of funds; or

78980 (b) a transferee of a certificate or contingent tax credit.

78981 (8) "Designated purchaser" means:

78982 (a) a person who enters into a written undertaking with the board to purchase a
78983 commitment; or

78984 (b) a transferee who assumes the obligations to make the purchase described in the
78985 commitment.

78986 (9) "Estate" means a nonresident estate or a resident estate.

78987 (10) "Person" means an individual, partnership, limited liability company, corporation,
78988 association, organization, business trust, estate, trust, or any other legal or commercial entity.

78989 (11) "Redemption reserve" means the reserve established by the corporation to facilitate

78990 the cash redemption of certificates.

78991 (12) "Taxpayer" means a taxpayer:

78992 (a) of an investor; and

78993 (b) if that taxpayer is a:

78994 (i) claimant;

78995 (ii) estate; or

78996 (iii) trust.

78997 (13) "Trust" means a nonresident trust or a resident trust.

78998 (14) "Utah fund of funds" means a limited partnership or limited liability company

78999 established under Section [~~63-38f-1213~~] 63M-1-1213 in which a designated investor purchases
79000 an equity interest.

79001 Section 1834. Section **63M-1-1204**, which is renumbered from Section 63-38f-1204 is
79002 renumbered and amended to read:

79003 ~~[63-38f-1204].~~ **63M-1-1204. Utah Capital Investment Board.**

79004 (1) There is created within the office the Utah Capital Investment Board to exercise the
79005 powers conferred by this part.

79006 (2) The purpose of the board is to mobilize venture equity capital for investment in a
79007 manner that will result in a significant potential to create jobs and to diversify and stabilize the
79008 economy of the state.

79009 (3) In the exercise of its powers and duties, the board is considered to be performing an
79010 essential public purpose.

79011 Section 1835. Section **63M-1-1205**, which is renumbered from Section 63-38f-1205 is
79012 renumbered and amended to read:

79013 ~~[63-38f-1205].~~ **63M-1-1205. Board members -- Meetings -- Expenses.**

79014 (1) (a) The board shall consist of five members.

79015 (b) Of the five members:

79016 (i) one shall be the state treasurer;

79017 (ii) one shall be the director or the director's designee; and

79018 (iii) three shall be appointed by the governor and confirmed by the Senate.

79019 (c) The three members appointed by the governor shall serve four-year staggered terms
79020 with the initial terms of the first three members to be four years for one member, three years for
79021 one member, and two years for one member.

79022 (2) When a vacancy occurs in the membership of the board for any reason, the vacancy
79023 shall be:

79024 (a) filled in the same manner as the appointment of the original member; and
79025 (b) for the unexpired term of the board member being replaced.

79026 (3) Appointed members of the board may not serve more than two full consecutive
79027 terms except where the governor determines that an additional term is in the best interest of the
79028 state.

79029 (4) Three members of the board constitute a quorum for conducting business and
79030 exercising board power, provided that a minimum of three affirmative votes is required for
79031 board action and at least one of the affirmative votes is cast by either the director or the
79032 director's designee or the state treasurer.

79033 (5) (a) Members of the board may not receive compensation or benefits for their
79034 services, but may receive per diem and expenses incurred in the performance of the members'
79035 official duties at rates established by the Division of Finance under Sections 63A-3-106 and
79036 63A-3-107.

79037 (b) Members of the board may decline to receive per diem and expenses for their
79038 services.

79039 (6) Members of the board shall be selected on the basis of demonstrated expertise and
79040 competence in:

79041 (a) the supervision of investment managers;
79042 (b) the fiduciary management of investment funds; or
79043 (c) the management and administration of tax credit allocation programs.

79044 (7) The board and its members are considered to be a governmental entity with all of
79045 the rights, privileges, and immunities of a governmental entity of the state, including all of the

79046 rights and benefits conferred under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental
79047 Immunity Act of Utah.

79048 (8) Meetings of the board, except to the extent necessary to protect confidential
79049 information with respect to investments in the Utah fund of funds, are subject to Title 52,
79050 Chapter 4, Open and Public Meetings Act.

79051 Section 1836. Section **63M-1-1206**, which is renumbered from Section 63-38f-1206 is
79052 renumbered and amended to read:

79053 ~~[63-38f-1206].~~ **63M-1-1206. Board duties and powers.**

79054 (1) The board shall:

79055 (a) establish criteria and procedures for the allocation and issuance of contingent tax
79056 credits to designated investors by means of certificates issued by the board, provided that a
79057 contingent tax credit may not be issued unless the Utah fund of funds:

79058 (i) first agrees to treat the amount of the tax credit redeemed by the state as a loan from
79059 the state to the Utah fund of funds; and

79060 (ii) agrees to repay the loan upon terms and conditions established by the board;

79061 (b) establish criteria and procedures for assessing the likelihood of future certificate
79062 redemptions by designated investors, including:

79063 (i) criteria and procedures for evaluating the value of investments made by the Utah
79064 fund of funds; and

79065 (ii) the returns from the Utah fund of funds;

79066 (c) establish criteria and procedures for registering and redeeming contingent tax credits
79067 by designated investors holding certificates issued by the board;

79068 (d) establish a target rate of return or range of returns on venture capital investments of
79069 the Utah fund of funds;

79070 (e) establish criteria and procedures governing commitments obtained by the board
79071 from designated purchasers including:

79072 (i) entering into commitments with designated purchasers; and

79073 (ii) drawing on commitments to redeem certificates from designated investors;

- 79074 (f) have power to:
- 79075 (i) expend funds;
- 79076 (ii) invest funds;
- 79077 (iii) enter into contracts;
- 79078 (iv) insure against loss; and
- 79079 (v) perform any other act necessary to carry out its purpose; and
- 79080 (g) make, amend, and repeal rules for the conduct of its affairs, consistent with this part
- 79081 and in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
- 79082 Rulemaking Act.
- 79083 (2) (a) All rules made by the board under Subsection (1)(g) are subject to review by the
- 79084 Legislative Management Committee:
- 79085 (i) whenever made, modified, or repealed; and
- 79086 (ii) in each even-numbered year.
- 79087 (b) Subsection (2)(a) does not preclude the legislative Administrative Rules Review
- 79088 Committee from reviewing and taking appropriate action on any rule made, amended, or
- 79089 repealed by the board.
- 79090 (3) (a) The criteria and procedures established by the board for the allocation and
- 79091 issuance of contingent tax credits shall:
- 79092 (i) include the contingencies that must be met for a certificate and its related tax credits
- 79093 to be:
- 79094 (A) issued by the board;
- 79095 (B) transferred by a designated investor; and
- 79096 (C) redeemed by a designated investor in order to receive a contingent tax credit; and
- 79097 (ii) tie the contingencies for redemption of certificates to the targeted rates of return
- 79098 and scheduled redemptions of equity interests purchased by designated investors in the Utah
- 79099 fund of funds.
- 79100 (b) The board may not issue contingent tax credits under this part prior to July 1, 2004.
- 79101 (4) (a) The board may charge a placement fee to the Utah fund of funds for the issuance

79102 of a certificate and related contingent tax credit to a designated investor.

79103 (b) The fee shall:

79104 (i) be charged only to pay for reasonable and necessary costs of the board; and

79105 (ii) not exceed .5% of the equity investment of the designated investor.

79106 (5) The board's criteria and procedures for redeeming certificates:

79107 (a) shall give priority to the redemption amount from the available funds in the

79108 redemption reserve; and

79109 (b) to the extent there are insufficient funds in the redemption reserve to redeem

79110 certificates, shall grant the board the option to redeem certificates:

79111 (i) by certifying a contingent tax credit to the designated investor; or

79112 (ii) by making demand on designated purchasers consistent with the requirements of

79113 Section [~~63-38f-1221~~] 63M-1-1221.

79114 (6) (a) The board shall, in consultation with the corporation, publish an annual report of

79115 the activities conducted by the Utah fund of funds, and present the report to the governor and

79116 the Executive Appropriations Committee of the Legislature.

79117 (b) The annual report shall:

79118 (i) include a copy of the audit of the Utah fund of funds and a valuation of the assets of

79119 the Utah fund of funds;

79120 (ii) review the progress of the investment fund allocation manager in implementing its

79121 investment plan; and

79122 (iii) describe any redemption or transfer of a certificate issued under this part.

79123 (c) The annual report may not identify any specific designated investor who has

79124 redeemed or transferred a certificate.

79125 (d) (i) Beginning July 1, 2006, and thereafter every two years, the board shall publish a

79126 progress report which shall evaluate the progress of the state in accomplishing the purposes

79127 stated in Section [~~63-38f-1202~~] 63M-1-1202.

79128 (ii) The board shall give a copy of the report to the Legislature.

79129 Section 1837. Section **63M-1-1207**, which is renumbered from Section 63-38f-1207 is

79130 renumbered and amended to read:

79131 ~~[63-38f-1207]~~. **63M-1-1207. Utah Capital Investment Corporation --**

79132 **Powers and purposes.**

79133 (1) (a) There is created an independent quasi-public nonprofit corporation known as the
79134 Utah Capital Investment Corporation.

79135 (b) The corporation:

79136 (i) may exercise all powers conferred on independent corporations under Section
79137 63E-2-106;

79138 (ii) is subject to the prohibited participation provisions of Section 63E-2-107; and

79139 (iii) is subject to the other provisions of Title 63E, Chapter 2, Independent
79140 Corporations Act, except as otherwise provided in this part.

79141 (c) The corporation shall file with the Division of Corporations and Commercial Code:

79142 (i) articles of incorporation; and

79143 (ii) any amendment to its articles of incorporation.

79144 (d) In addition to the articles of incorporation, the corporation may adopt bylaws and
79145 operational policies that are consistent with this chapter.

79146 (e) Except as otherwise provided in this part, this part does not exempt the corporation
79147 from the requirements under state law which apply to other corporations organized under Title
79148 63E, Chapter 2, Independent Corporations Act.

79149 (2) The purposes of the corporation are to:

79150 (a) organize the Utah fund of funds;

79151 (b) select a venture capital investment fund allocation manager to make venture capital
79152 fund investments by the Utah fund of funds;

79153 (c) negotiate the terms of a contract with the venture capital investment fund allocation
79154 manager;

79155 (d) execute the contract with the selected venture capital investment fund manager on
79156 behalf of the Utah fund of funds;

79157 (e) receive funds paid by designated investors for the issuance of certificates by the

79158 board for investment in the Utah fund of funds;

79159 (f) receive investment returns from the Utah fund of funds; and

79160 (g) establish the redemption reserve to be used by the corporation to redeem

79161 certificates.

79162 (3) The corporation may not:

79163 (a) exercise governmental functions;

79164 (b) have members;

79165 (c) pledge the credit or taxing power of the state or any political subdivision of the

79166 state; or

79167 (d) make its debts payable out of any moneys except those of the corporation.

79168 (4) The obligations of the corporation are not obligations of the state or any political

79169 subdivision of the state within the meaning of any constitutional or statutory debt limitations,

79170 but are obligations of the corporation payable solely and only from the corporation's funds.

79171 (5) The corporation may:

79172 (a) engage consultants and legal counsel;

79173 (b) expend funds;

79174 (c) invest funds;

79175 (d) enter into contracts;

79176 (e) insure against loss;

79177 (f) hire employees; and

79178 (g) perform any other act necessary to carry out its purposes.

79179 Section 1838. Section **63M-1-1208**, which is renumbered from Section 63-38f-1208 is

79180 renumbered and amended to read:

79181 ~~[63-38f-1208].~~ **63M-1-1208. Incorporator -- Appointment committee.**

79182 (1) To facilitate the organization of the corporation, the director or the director's

79183 designee shall serve as the incorporator as provided in Section 16-6a-201.

79184 (2) To assist in the organization of the corporation, the Utah Board of Business and

79185 Economic Development shall appoint three individuals to serve on an appointment committee.

- 79186 (3) The appointment committee shall:
- 79187 (a) elect the initial board of directors of the corporation;
- 79188 (b) exercise due care to assure that persons elected to the initial board of directors have
- 79189 the requisite financial experience necessary in order to carry out the duties of the corporation as
- 79190 established in this part, including in areas related to:
- 79191 (i) venture capital investment;
- 79192 (ii) investment management; and
- 79193 (iii) supervision of investment managers and investment funds; and
- 79194 (c) terminate its existence upon the election of the initial board of directors of the
- 79195 corporation.
- 79196 (4) The office shall assist the incorporator and the appointment committee in any
- 79197 manner determined necessary and appropriate by the incorporator and appointment committee
- 79198 in order to administer this section.

79199 Section 1839. Section **63M-1-1209**, which is renumbered from Section 63-38f-1209 is

79200 renumbered and amended to read:

79201 ~~[63-38f-1209]~~. **63M-1-1209. Board of directors.**

- 79202 (1) The initial board of directors of the corporation shall consist of five members.
- 79203 (2) The persons elected to the initial board of directors by the appointment committee
- 79204 shall include persons who have an expertise, as considered appropriate by the appointment
- 79205 committee, in the areas of:
- 79206 (a) the selection and supervision of investment managers;
- 79207 (b) fiduciary management of investment funds; and
- 79208 (c) other areas of expertise as considered appropriate by the appointment committee.
- 79209 (3) After the election of the initial board of directors, vacancies in the board of directors
- 79210 of the corporation shall be filled by election by the remaining directors of the corporation.
- 79211 (4) (a) Board members shall serve four-year terms, except that of the five initial
- 79212 members:
- 79213 (i) two shall serve four-year terms;

- 79214 (ii) two shall serve three-year terms; and
- 79215 (iii) one shall serve a two-year term.
- 79216 (b) Board members shall serve until their successors are elected and qualified and may
- 79217 serve successive terms.
- 79218 (c) A majority of the board members may remove a board member for cause.
- 79219 (d) (i) The board shall select a chair by majority vote.
- 79220 (ii) The chair's term is for one year.
- 79221 (5) Three members of the board are a quorum for the transaction of business.
- 79222 (6) Members of the board of directors:
- 79223 (a) are subject to any restrictions on conflicts of interest specified in the organizational
- 79224 documents of the corporation; and
- 79225 (b) may have no interest in any:
- 79226 (i) venture capital investment fund allocation manager selected by the corporation under
- 79227 this part; or
- 79228 (ii) investments made by the Utah fund of funds.
- 79229 (7) Directors of the corporation:
- 79230 (a) shall be compensated for direct expenses and mileage; and
- 79231 (b) may not receive a director's fee or salary for service as directors.
- 79232 Section 1840. Section **63M-1-1210**, which is renumbered from Section 63-38f-1210 is
- 79233 renumbered and amended to read:
- 79234 ~~[63-38f-1210]~~. **63M-1-1210. Investment manager.**
- 79235 (1) After incorporation, the corporation shall conduct a national solicitation for
- 79236 investment plan proposals from qualified venture capital investment fund allocation managers
- 79237 for the raising and investing of capital by the Utah fund of funds in accordance with the
- 79238 requirements of this part.
- 79239 (2) Any proposed investment plan shall address the applicant's:
- 79240 (a) level of:
- 79241 (i) experience; and

- 79242 (ii) quality of management;
- 79243 (b) investment philosophy and process;
- 79244 (c) probability of success in fund-raising;
- 79245 (d) prior investment fund results; and
- 79246 (e) plan for achieving the purposes of this part.
- 79247 (3) The selected venture capital investment fund allocation manager shall have
- 79248 substantial, successful experience in the design, implementation, and management of seed and
- 79249 venture capital investment programs and in capital formation.
- 79250 (4) The corporation shall only select a venture capital investment fund allocation
- 79251 manager:
- 79252 (a) with demonstrated expertise in the management and fund allocation of investments
- 79253 in venture capital funds; and
- 79254 (b) considered best qualified to:
- 79255 (i) invest the capital of the Utah fund of funds; and
- 79256 (ii) generate the amount of capital required by this part.
- 79257 Section 1841. Section **63M-1-1211**, which is renumbered from Section 63-38f-1211 is
- 79258 renumbered and amended to read:
- 79259 ~~[63-38f-1211].~~ **63M-1-1211. Management fee -- Additional financial**
- 79260 **assistance.**
- 79261 (1) The corporation may charge a management fee on assets under management in the
- 79262 Utah fund of funds.
- 79263 (2) The fee shall:
- 79264 (a) be in addition to any fee charged to the Utah fund of funds by the venture capital
- 79265 investment fund allocation manager selected by the corporation; and
- 79266 (b) be charged only to pay for reasonable and necessary costs of the corporation.
- 79267 (3) The corporation may apply for and, when qualified, receive financial assistance from
- 79268 the Industrial Assistance Fund under ~~[Title 63, Chapter 38f]~~ **Title 63M, Chapter 1, Part 9,**
- 79269 **Industrial Assistance Fund, and under rules made by the Board of Business and Economic**

79270 Development in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
79271 Administrative Rulemaking Act, to help establish the program authorized under this part.

79272 Section 1842. Section **63M-1-1212**, which is renumbered from Section 63-38f-1212 is
79273 renumbered and amended to read:

79274 ~~[63-38f-1212]~~. **63M-1-1212. Dissolution.**

79275 (1) Upon the dissolution of the Utah fund of funds, the corporation shall be liquidated
79276 and dissolved.

79277 (2) Upon dissolution or privatization of the corporation, any assets owned by the
79278 corporation shall be distributed to one or more Utah nonprofit tax exempt organizations to be
79279 designated by the Legislature for the purposes listed in Section [~~63-38f-1202~~] 63M-1-1202 as
79280 provided in Title 63E, Chapter 1, Independent Entities Act.

79281 Section 1843. Section **63M-1-1213**, which is renumbered from Section 63-38f-1213 is
79282 renumbered and amended to read:

79283 ~~[63-38f-1213]~~. **63M-1-1213. Organization of Utah fund of funds.**

79284 (1) The corporation shall organize the Utah fund of funds.

79285 (2) The Utah fund of funds shall make investments in private seed and venture capital
79286 partnerships or entities in a manner and for the following purposes:

79287 (a) to encourage the availability of a wide variety of venture capital in the state;

79288 (b) to strengthen the economy of the state;

79289 (c) to help business in the state gain access to sources of capital;

79290 (d) to help build a significant, permanent source of capital available to serve the needs
79291 of businesses in the state; and

79292 (e) to accomplish all these benefits in a way that minimizes the use of contingent tax
79293 credits.

79294 (3) The Utah fund of funds shall be organized:

79295 (a) as a limited partnership or limited liability company under Utah law having the
79296 corporation as the general partner or manager; and

79297 (b) to provide for equity interests for designated investors which provide for a

79298 designated scheduled rate of return and a scheduled redemption in accordance with rules made
 79299 by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
 79300 Rulemaking Act.

79301 (4) Public money may not be invested in the Utah fund of funds.

79302 Section 1844. Section **63M-1-1214**, which is renumbered from Section 63-38f-1214 is
 79303 renumbered and amended to read:

79304 ~~[63-38f-1214]~~. **63M-1-1214**. **Compensation from the Utah fund of funds to**
 79305 **the corporation -- Redemption reserve.**

79306 (1) The corporation shall be compensated for its involvement in the Utah fund of funds
 79307 through the payment of the management fee described in Section [~~63-38f-1214~~] 63M-1-1211.

79308 (2) (a) Any returns in excess of those payable to designated investors shall be deposited
 79309 in the redemption reserve and held by the corporation as a first priority reserve for the
 79310 redemption of certificates.

79311 (b) Any returns received by the corporation from investment of amounts held in the
 79312 redemption reserve shall be added to the redemption reserve until it has reached a total of
 79313 \$100,000,000.

79314 (c) If at the end of any calendar year the redemption reserve exceeds the \$100,000,000
 79315 limitation referred to in Subsection (2)(b), the excess shall be reinvested in the Utah fund of
 79316 funds.

79317 (3) Funds held by the corporation in the redemption reserve shall be invested in
 79318 accordance with Title 51, Chapter 7, State Money Management Act.

79319 Section 1845. Section **63M-1-1215**, which is renumbered from Section 63-38f-1215 is
 79320 renumbered and amended to read:

79321 ~~[63-38f-1215]~~. **63M-1-1215**. **Investments by Utah fund of funds.**

79322 (1) The Utah fund of funds shall invest funds:

79323 (a) principally in high-quality venture capital funds managed by investment managers
 79324 who have:

79325 (i) made a commitment to equity investments in businesses located within the state; and

79326 (ii) have committed to maintain a physical presence within the state;

79327 (b) in private venture capital funds and not in direct investments in individual

79328 businesses; and

79329 (c) in venture capital funds with experienced managers or management teams with

79330 demonstrated expertise and a successful history in the investment of venture capital funds.

79331 (2) (a) The Utah fund of funds shall give priority to investments in private seed and

79332 venture capital partnerships and entities that have demonstrated a commitment to the state as

79333 evidenced by:

79334 (i) the investments they have made in Utah-based entities;

79335 (ii) the correspondent relationships they have established with Utah-based venture

79336 capital funds; or

79337 (iii) the commitment they have made to expand the reach of expertise within the state

79338 by adding additional investment areas of expertise.

79339 (b) The manager of the Utah fund of funds may waive the priorities under Subsection

79340 (2)(a) only if necessary to achieve the targeted investment returns required to attract designated

79341 investors.

79342 (3) The Utah fund of funds may invest funds in a newly created venture capital fund

79343 only if the managers or management team of the fund have the experience, expertise, and a

79344 successful history in the investment of venture capital funds as described in Subsection (1)(c).

79345 (4) (a) An investment or investments by the Utah fund of funds in any venture capital

79346 fund may comprise no more than 20% of the total committed capital in the venture capital fund.

79347 (b) (i) No more than 50% of the funds invested by the Utah fund of funds may be made

79348 with venture capital entities with offices in the state established prior to July 1, 2002.

79349 (ii) The restriction under Subsection (4)(b)(i) shall remain in place until three additional

79350 venture capital entities open new offices in the state.

79351 Section 1846. Section **63M-1-1216**, which is renumbered from Section 63-38f-1216 is

79352 renumbered and amended to read:

79353 ~~[63-38f-1216].~~ **63M-1-1216. Powers of Utah fund of funds.**

- 79354 (1) The Utah fund of funds may:
- 79355 (a) engage consultants and legal counsel;
- 79356 (b) expend funds;
- 79357 (c) invest funds;
- 79358 (d) enter into contracts;
- 79359 (e) insure against loss;
- 79360 (f) hire employees;
- 79361 (g) issue equity interests to designated investors that have purchased certificates from
- 79362 the board; and
- 79363 (h) perform any other act necessary to carry out its purposes.
- 79364 (2) (a) The Utah fund of funds shall engage a venture capital investment fund allocation
- 79365 manager.
- 79366 (b) The compensation paid to the fund manager shall be in addition to the management
- 79367 fee paid to the corporation under Section [~~63-38f-1211~~] 63M-1-1211.
- 79368 (3) The Utah fund of funds may:
- 79369 (a) issue debt and borrow the funds needed to accomplish its goals;
- 79370 (b) not secure its debt with contingent tax credits issued by the board;
- 79371 (c) open and manage bank and short-term investment accounts as considered necessary
- 79372 by the venture capital investment fund allocation manager; and
- 79373 (d) expend moneys to secure investment ratings for investments by designated investors
- 79374 in the Utah fund of funds.
- 79375 Section 1847. Section **63M-1-1217**, which is renumbered from Section 63-38f-1217 is
- 79376 renumbered and amended to read:
- 79377 ~~[63-38f-1217]~~. **63M-1-1217. Annual audits.**
- 79378 (1) Each calendar year, an audit of the activities of the Utah fund of funds shall be made
- 79379 as described in this section.
- 79380 (2) (a) The audit shall be conducted by:
- 79381 (i) the state auditor; or

- 79382 (ii) an independent auditor engaged by the state auditor.
- 79383 (b) An independent auditor used under Subsection (2)(a)(ii) must have no business,
- 79384 contractual, or other connection to:
 - 79385 (i) the corporation; or
 - 79386 (ii) the Utah fund of funds.
- 79387 (3) The corporation shall pay the costs associated with the annual audit.
- 79388 (4) The annual audit report shall:
 - 79389 (a) be delivered to:
 - 79390 (i) the corporation; and
 - 79391 (ii) the board; and
 - 79392 (b) include a valuation of the assets owned by the Utah fund of funds as of the end of
 - 79393 the reporting year.

79394 Section 1848. Section **63M-1-1218**, which is renumbered from Section 63-38f-1218 is
79395 renumbered and amended to read:

79396 ~~[63-38f-1218].~~ **63M-1-1218. Certificates and contingent tax credits.**

79397 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
79398 Administrative Rulemaking Act, the board, in consultation with the State Tax Commission, shall
79399 make rules governing the form, issuance, transfer, and redemption of certificates.

79400 (2) The board's issuance of certificates and related contingent tax credits to designated
79401 investors shall be subject to the following:

79402 (a) the aggregate outstanding certificates may not exceed a total of \$100,000,000 of
79403 contingent tax credits;

79404 (b) the certificates shall be issued contemporaneously with an investment in the Utah
79405 fund of funds by a designated investor;

79406 (c) contingent tax credits shall be issued in a manner that not more than \$20,000,000 of
79407 contingent tax credits may be initially redeemable in any fiscal year; and

79408 (d) the credits are certifiable if there are insufficient funds in the redemption reserve to
79409 make a cash redemption and the board does not exercise its other options under Subsection

79410 [~~63-38f-1220~~] 63M-1-1220(3)(b).

79411 (3) In determining the \$100,000,000 maximum limit in Subsection (2)(a) and the
79412 \$20,000,000 limitation in Subsection (2)(c):

79413 (a) the board shall use the cumulative amount of scheduled aggregate returns on
79414 certificates issued by the board to designated investors;

79415 (b) certificates and related contingent tax credits which have expired may not be
79416 included; and

79417 (c) certificates and related contingent tax credits which have been redeemed shall be
79418 included only to the extent of tax credits actually allowed.

79419 (4) Contingent tax credits are subject to the following:

79420 (a) a contingent tax credit may not be redeemed except by a designated investor in
79421 accordance with the terms of a certificate from the board;

79422 (b) a contingent tax credit may not be redeemed prior to the time the Utah fund of
79423 funds receives full payment from the designated investor for the certificate;

79424 (c) a contingent tax credit shall be claimed for a tax year that begins during the calendar
79425 year maturity date stated on the certificate;

79426 (d) an investor who redeems a certificate and the related contingent tax credit shall
79427 allocate the amount of the contingent tax credit to the taxpayers of the investor based on the
79428 taxpayer's pro rata share of the investor's earnings; and

79429 (e) a contingent tax credit shall be claimed as a refundable credit.

79430 (5) In calculating the amount of a contingent tax credit:

79431 (a) a contingent tax credit shall be certified by the board only if the actual return to the
79432 designated investor is less than the return that was targeted at the issuance of the certificate;

79433 (b) the amount of the contingent tax credit may not exceed the difference between:

79434 (i) the sum of:

79435 (A) the initial equity investment of the designated investor in the Utah fund of funds;

79436 and

79437 (B) the scheduled aggregate return to the designated investor at rates of return

79438 authorized by the board at the issuance of the certificate; and

79439 (ii) the aggregate actual return received by the designated investor and any predecessor

79440 in interest of the initial equity investment and interest on the initial equity investment; and

79441 (c) the rates, whether fixed rates or variable rates, shall be determined by a formula

79442 stipulated in the certificate.

79443 (6) The board shall clearly indicate on the certificate:

79444 (a) the targeted return on the invested capital;

79445 (b) the amount of the initial equity investment;

79446 (c) the calculation formula for determining the scheduled aggregate return on the initial

79447 equity investment; and

79448 (d) the calculation formula for determining the amount of the contingent tax credit that

79449 may be claimed.

79450 (7) Once moneys are invested by a designated investor, the certificate:

79451 (a) shall be binding on the board; and

79452 (b) may not be modified, terminated, or rescinded.

79453 (8) Funds invested by a designated investor for a certificate shall be paid to the

79454 corporation for placement in the Utah fund of funds.

79455 (9) The State Tax Commission may, in accordance with [~~Title 63, Chapter 46a~~] Title

79456 63G, Chapter 3, Utah Administrative Rulemaking Act, and in consultation with the board, make

79457 rules to help implement this section.

79458 Section 1849. Section **63M-1-1219**, which is renumbered from Section 63-38f-1219 is

79459 renumbered and amended to read:

79460 ~~[63-38f-1219].~~ **63M-1-1219. Transfer and registration of certificates.**

79461 (1) A certificate and the related contingent tax credit may be transferred by the

79462 designated investor.

79463 (2) The board, in conjunction with the State Tax Commission, shall develop:

79464 (a) a system for registration of any certificate and related contingent tax credit issued or

79465 transferred under this part; and

79466 (b) a system that permits verification that:
79467 (i) any contingent tax credit claimed is valid; and
79468 (ii) any transfers of the certificate and related contingent tax credit are made in
79469 accordance with the requirements of this part.

79470 (3) A certificate or contingent tax credit issued or transferred under this part may not be
79471 considered a security under Title 61, Chapter 1, Utah Uniform Securities Act.

79472 Section 1850. Section **63M-1-1220**, which is renumbered from Section 63-38f-1220 is
79473 renumbered and amended to read:

79474 ~~[63-38f-1220].~~ **63M-1-1220. Redemption of certificates.**

79475 (1) If a designated investor elects to redeem a certificate, the certificate shall be
79476 presented to the board for redemption no later than June 30 of the calendar year maturity date
79477 stated on the certificate.

79478 (2) Upon presentment to the board, it shall determine and certify the amount of the
79479 contingent tax credit that may be claimed by the designated investor based on:

79480 (a) the limitations in Section ~~[63-38f-1218]~~ 63M-1-1218; and

79481 (b) rules made by the board in accordance with ~~[Title 63, Chapter 46a]~~ Title 63G,
79482 Chapter 3, Utah Administrative Rulemaking Act.

79483 (3) (a) If there are sufficient funds in the redemption reserve, the board shall direct the
79484 corporation to make a cash redemption of the certificate.

79485 (b) If there are insufficient funds in the redemption reserve, the board may elect to
79486 redeem the certificate:

79487 (i) by certifying a contingent tax credit to the designated investor; or

79488 (ii) by making demand on designated purchasers to purchase certificates in accordance
79489 with Section ~~[63-38f-1221]~~ 63M-1-1221.

79490 (4) The board shall certify to the State Tax Commission the contingent tax credit which
79491 can be claimed by the designated investor with respect to the redemption of the certificate.

79492 (5) The board shall cancel all redeemed certificates.

79493 Section 1851. Section **63M-1-1221**, which is renumbered from Section 63-38f-1221 is

79494 renumbered and amended to read:

79495 ~~[63-38f-1221]~~. **63M-1-1221**. Use of commitments to redeem certificates.

79496 (1) The board may elect to draw on a commitment to redeem a certificate from a
79497 designated investor.

79498 (2) If the board makes an election under Subsection (1), it shall:

79499 (a) inform the designated purchaser of the amount of the contingent tax credit that must
79500 be purchased from the board;

79501 (b) specify the date on which the purchase must be consummated; and

79502 (c) use the funds delivered to the board by the designated purchaser to redeem the
79503 certificate from the designated investor.

79504 (3) The board has discretion in determining which commitment or commitments and
79505 what portion of those commitments to use to redeem certificates.

79506 (4) The contingent tax credits acquired by a designated purchaser under this section are
79507 subject to Section ~~[63-38f-1218]~~ 63M-1-1218.

79508 Section 1852. Section **63M-1-1222**, which is renumbered from Section 63-38f-1222 is
79509 renumbered and amended to read:

79510 ~~[63-38f-1222]~~. **63M-1-1222**. Powers and effectiveness.

79511 (1) This part may not be construed as a restriction or limitation upon any power which
79512 the board might otherwise have under any other law of this state and the provisions of this part
79513 are cumulative to those powers.

79514 (2) This part shall be construed to provide a complete, additional, and alternative
79515 method for performing the duties authorized and shall be regarded as supplemental and
79516 additional powers to those conferred by any other laws.

79517 (3) The provisions of any contract entered into by the board or the Utah fund of funds
79518 may not be compromised, diminished, invalidated, or affected by the:

79519 (a) level, timing, or degree of success of the Utah fund of funds or the investment funds
79520 in which the Utah fund of funds invests; or

79521 (b) extent to which the investment funds are:

79522 (i) invested in Utah venture capital projects; or
79523 (ii) successful in accomplishing any economic development objectives.

79524 Section 1853. Section **63M-1-1223**, which is renumbered from Section 63-38f-1223 is
79525 renumbered and amended to read:

79526 ~~[63-38f-1223]~~. **63M-1-1223**. **Permissible investments.**

79527 Investments by designated investors in the Utah fund of funds are permissible
79528 investments under applicable laws of the state for:

- 79529 (1) state-chartered banks;
- 79530 (2) state-chartered savings and loan associations;
- 79531 (3) state-chartered credit unions;
- 79532 (4) state-chartered industrial banks; and
- 79533 (5) domestic insurance companies.

79534 Section 1854. Section **63M-1-1224**, which is renumbered from Section 63-38f-1224 is
79535 renumbered and amended to read:

79536 ~~[63-38f-1224]~~. **63M-1-1224**. **Exemption from certain statutes.**

79537 (1) Except as otherwise provided in this part, the corporation is exempt from statutes
79538 governing state agencies, as provided in Section 63E-2-109.

79539 (2) The corporation shall be subject to:

- 79540 (a) Title 52, Chapter 4, Open and Public Meetings Act; and
- 79541 (b) except as provided in Subsection (3), ~~[Title 63, Chapter 2]~~ Title 63G, Chapter 2,
- 79542 Government Records Access and Management Act.

79543 (3) The corporation and the board are exempt from the requirement to report fund
79544 performance of venture firms and private equity firms set forth in ~~[Title 63, Chapter 2]~~ Title
79545 63G, Chapter 2, Government Records Access and Management Act.

79546 Section 1855. Section **63M-1-1301**, which is renumbered from Section 63-38f-1301 is
79547 renumbered and amended to read:

79548 **Part 13. Aerospace and Aviation Zone**

79549 ~~[63-38f-1301]~~. **63M-1-1301**. **Purpose.**

79550 (1) The Legislature finds that:

79551 (a) the fostering and development of industry in Utah is a state public purpose necessary
79552 to assure the welfare of its citizens, the growth of its economy, and adequate employment for its
79553 citizens; and

79554 (b) Utah loses prospective high paying jobs, economic impacts, and corresponding
79555 incremental new state revenues to competing states due to a wide variety of competing
79556 economic development incentives offered by those states.

79557 (2) This part is enacted to address the loss of new economic growth in Utah and the
79558 corresponding loss of incremental new state revenues by providing tax increment financial
79559 incentives to attract new commercial projects in development zones located on or contiguous to
79560 airports in the state.

79561 Section 1856. Section **63M-1-1302**, which is renumbered from Section 63-38f-1302 is
79562 renumbered and amended to read:

79563 ~~[63-38f-1302]~~. **63M-1-1302. Definitions.**

79564 As used in this part:

79565 (1) "Development zone" means the Aerospace and Aviation Development Zone created
79566 under Section ~~[63-38f-1303]~~ 63M-1-1303.

79567 (2) "Indirect state revenues" means the imputed use of a generally accepted indirect
79568 economic multiplier as defined by a fiscal impact model approved by the Governor's Office of
79569 Planning and Budget to quantify by estimate the indirect state tax revenues that are in addition
79570 to direct state tax revenues.

79571 (3) "New state revenues" means incremental new state tax revenues that are generated
79572 as a result of new economic commercial projects in a development zone, to include the state's
79573 portion of sales taxes, and company and employee income taxes derived from the projects,
79574 together with indirect state revenues generated by the projects, but not to include any portion of
79575 sales taxes earmarked for local governments or other taxing jurisdictions eligible for sales tax
79576 revenues.

79577 (4) "Office" means the Governor's Office of Economic Development acting through its

79578 director.

79579 (5) "Partial rebates" means returning a portion of the new state revenues generated by
79580 new commercial projects to companies or individuals that have created new economic growth
79581 within a development zone.

79582 Section 1857. Section **63M-1-1303**, which is renumbered from Section 63-38f-1303 is
79583 renumbered and amended to read:

79584 ~~[63-38f-1303].~~ **63M-1-1303. Creation of development zones.**

79585 The office, with advice from the board, may create an Aerospace and Aviation
79586 Development Zone at or around any airport in the state that has land available for commercial
79587 development on, or contiguous to, the airport.

79588 Section 1858. Section **63M-1-1304**, which is renumbered from Section 63-38f-1304 is
79589 renumbered and amended to read:

79590 ~~[63-38f-1304].~~ **63M-1-1304. Development incentives.**

79591 (1) The office, with advice from the board, may enter into agreements providing for
79592 partial rebates of new state revenues generated by new commercial projects to companies or
79593 individuals that create new economic growth within the development zone.

79594 (2) In no event may the partial rebates be in excess of 50% of the new state revenues in
79595 any given year.

79596 (3) (a) The partial rebates may not exceed 30% of the new state revenues generated
79597 over the life of a new commercial project.

79598 (b) For purposes of this part, the life of a new commercial project is limited to 20 years.

79599 (4) Partial rebates are subject to any other limitations adopted by board rule made in
79600 accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking
79601 Act.

79602 Section 1859. Section **63M-1-1305**, which is renumbered from Section 63-38f-1305 is
79603 renumbered and amended to read:

79604 ~~[63-38f-1305].~~ **63M-1-1305. Qualifications for credits and rebates.**

79605 The office shall set standards to qualify for partial rebates under this part, subject to the

79606 following:

79607 (1) no partial rebates may be paid prior to verification, by the office, of the new state
79608 revenues upon which the tax rebate is based;

79609 (2) partial rebates can only be paid on projects that are within the development zone;

79610 (3) partial rebates can only be paid on projects that bring new, incremental jobs to the
79611 state;

79612 (4) qualifying projects must involve direct investment within the geographic boundaries
79613 of the development zone;

79614 (5) only aerospace and aviation industry projects, as defined by board rule made in
79615 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
79616 Act, are eligible for partial rebates; and

79617 (6) in order to claim payments representing partial rebates of new state revenues, a
79618 person must:

79619 (a) enter into an office-approved agreement with the office and affirm by contractual
79620 agreement to keep supporting records for at least four years after final payment of partial
79621 rebates under this part;

79622 (b) submit to audits for verification of the amounts claimed; and

79623 (c) comply with other conditions as are required by the office.

79624 Section 1860. Section **63M-1-1306**, which is renumbered from Section 63-38f-1306 is
79625 renumbered and amended to read:

79626 ~~[63-38f-1306].~~ **63M-1-1306. Payment procedure.**

79627 Any payment of partial rebates of new state revenues shall be made in accordance with
79628 procedures adopted by the office with the advice of the board, to include the following:

79629 (1) within 90 days of the end of each calendar year, any company or individual that has
79630 entered into an agreement with the office under this part shall provide the office with
79631 documentation of the new state revenues it claims to have generated during that calendar year,
79632 the documentation to include the types of taxes and corresponding amounts of taxes paid
79633 directly to the Utah State Tax Commission, and sales taxes paid to Utah vendors and suppliers

79634 that are indirectly paid to the Utah State Tax Commission;

79635 (2) the office shall audit or review the documentation, make a determination of the
79636 amount of partial rebates earned under the agreement, and forward an office-approved request
79637 for payment of that amount to the Division of Finance, together with information regarding the
79638 name and address of the payee and any other information reasonably requested by the office;
79639 and

79640 (3) the Division of Finance shall pay a partial rebate from the Economic Incentive
79641 Restricted Account created in Section [~~63-38f-1309~~] 63M-1-1309 upon receipt of
79642 documentation and the office-approved request from the office under Subsection (2).

79643 Section 1861. Section **63M-1-1307**, which is renumbered from Section 63-38f-1307 is
79644 renumbered and amended to read:

79645 [~~63-38f-1307~~]. **63M-1-1307. Office's authority.**

79646 (1) The office, with the advice of the board and within the limitations of this part, may
79647 determine:

- 79648 (a) the structure and amount of any partial rebates offered under this part;
- 79649 (b) the economic impacts and job creation necessary to qualify for the incentive; and
- 79650 (c) the other terms and conditions of any agreement entered into under this part.

79651 (2) In reviewing claims for partial rebates of new state revenues, the office may accept:

79652 (a) as the amount of employee income taxes paid, the amount of employee income taxes
79653 withheld and transmitted to the Utah State Tax Commission as evidenced by payroll records
79654 rather than adjusting for the difference between taxes withheld and taxes actually paid through
79655 filing by employees' annual income tax statements; and

79656 (b) as the amount of company income taxes paid, the amount of corporate franchise and
79657 income taxes estimated and transmitted to the Utah State Tax Commission as evidenced by
79658 quarterly payment records rather than adjusting for the difference between estimated taxes paid
79659 quarterly and taxes actually paid through the filing of the corporation's annual income tax
79660 statement.

79661 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

79662 Administrative Rulemaking Act, the board may make, amend, and repeal rules regarding the
79663 development zone and partial rebates offered within it, provided the rules are consistent with
79664 state and federal law.

79665 Section 1862. Section **63M-1-1308**, which is renumbered from Section 63-38f-1308 is
79666 renumbered and amended to read:

79667 ~~[63-38f-1308]~~. **63M-1-1308. Coordination with Industrial Assistance Fund.**

79668 Projects that qualify for partial rebates of new state revenues under this part and enter
79669 into agreements with the office under this part are ineligible to qualify for additional financial
79670 assistance from the Industrial Assistance Fund under Section ~~[63-38f-904]~~ 63M-1-905.

79671 Section 1863. Section **63M-1-1309**, which is renumbered from Section 63-38f-1309 is
79672 renumbered and amended to read:

79673 ~~[63-38f-1309]~~. **63M-1-1309. Establishment of the Economic Incentive**
79674 **Restricted Account.**

79675 (1) There is created a restricted account in the General Fund known as the Economic
79676 Incentive Restricted Account.

79677 (2) The account shall be used to make payments as required under Sections
79678 ~~[63-38f-1306]~~ 63M-1-1306 and ~~[63-38f-1705]~~ 63M-1-1705.

79679 (3) (a) The Division of Finance shall transfer from the General Fund the amount
79680 estimated by the office from new state revenues needed to make the partial rebates as allowed in
79681 Sections ~~[63-38f-1306]~~ 63M-1-1306 and ~~[63-38f-1705]~~ 63M-1-1705.

79682 (b) The amount transferred into the account shall be reduced by any unencumbered
79683 balances in the account.

79684 (4) Notwithstanding Subsections 51-5-3(23)(b) and ~~[63-38-9]~~ 63J-1-404(4)(c), after
79685 receiving a request for payment, in accordance with Subsection ~~[63-38f-1306]~~ 63M-1-1306(2)
79686 or ~~[63-38f-1705]~~ 63M-1-1705(2), the Division of Finance shall pay the partial rebates as
79687 allowed in Section ~~[63-38f-1306]~~ 63M-1-1306 or ~~[63-38f-1705]~~ 63M-1-1705, from the
79688 account.

79689 (5) (a) Prior to the beginning of each fiscal year, the office shall notify the Governor's

79690 Office of Planning and Budget, the Office of Legislative Fiscal Analyst, and the Division of
79691 Finance of:

79692 (i) the estimated amount of new state revenues created from economic growth in the
79693 development zones, the estimate detailed by the amounts from:

79694 (A) sales tax;

79695 (B) income tax; and

79696 (C) corporate franchise and income tax; and

79697 (ii) the estimated amount partial rebates projected to be paid in the upcoming fiscal
79698 year, the estimates detailed by the amounts from:

79699 (A) sales tax;

79700 (B) income tax; and

79701 (C) corporate franchise and income tax.

79702 (b) The office shall update the estimates required by Subsections (5)(a)(i) and (ii) within
79703 30 days of the signing of each new agreement entered into under this part or [~~Title 63, Chapter~~
79704 ~~38f~~] Title 63M, Chapter 1, Part 17, Economic Development Incentives Act.

79705 Section 1864. Section **63M-1-1401**, which is renumbered from Section 63-38f-1406 is
79706 renumbered and amended to read:

79707 **Part 14. Board of Tourism Development**

79708 [~~63-38f-1406~~]. **63M-1-1401. Board of Tourism Development.**

79709 (1) There is created within the office the Board of Tourism Development.

79710 (2) The board shall advise the office on the office's planning, policies, and strategies and
79711 on trends and opportunities for tourism development that may exist in the various areas of the
79712 state.

79713 (3) The board shall perform other duties as required by Section [~~63-38f-1408~~]
79714 63M-1-1403.

79715 Section 1865. Section **63M-1-1402**, which is renumbered from Section 63-38f-1407 is
79716 renumbered and amended to read:

79717 [~~63-38f-1407~~]. **63M-1-1402. Members -- Meetings -- Expenses.**

79718 (1) (a) The board shall consist of 13 members appointed by the governor to four-year
79719 terms of office with the consent of the Senate.

79720 (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the
79721 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
79722 board members are staggered so that approximately half of the board is appointed every two
79723 years.

79724 (2) The members may not serve more than two full consecutive terms unless the
79725 governor determines that an additional term is in the best interest of the state.

79726 (3) Not more than seven members of the board may be of the same political party.

79727 (4) (a) The members shall be representative of:

79728 (i) all areas of the state with six being appointed from separate geographical areas as
79729 provided in Subsection (4)(b); and

79730 (ii) a diverse mix of business ownership or executive management of tourism related
79731 industries.

79732 (b) The geographical representatives shall be appointed as follows:

79733 (i) one member from Salt Lake, Tooele, or Morgan County;

79734 (ii) one member from Davis, Weber, Box Elder, Cache, or Rich County;

79735 (iii) one member from Utah, Summit, Juab, or Wasatch County;

79736 (iv) one member from Carbon, Emery, Grand, Duchesne, Daggett, or Uintah County;

79737 (v) one member from San Juan, Piute, Wayne, Garfield, or Kane County; and

79738 (vi) one member from Washington, Iron, Beaver, Sanpete, Sevier, or Millard County.

79739 (c) The tourism industry representatives of ownership or executive management shall be
79740 appointed as follows:

79741 (i) one member from ownership or executive management of the lodging industry, as
79742 recommended by the lodging industry for the governor's consideration;

79743 (ii) one member from ownership or executive management of the restaurant industry, as
79744 recommended by the restaurant industry for the governor's consideration;

79745 (iii) one member from ownership or executive management of the ski industry, as

79746 recommended by the ski industry for the governor's consideration; and
79747 (iv) one member from ownership or executive management of the motor vehicle rental
79748 industry, as recommended by the motor vehicle rental industry for the governor's consideration.
79749 (d) One member shall be appointed at large from ownership or executive management
79750 of business, finance, economic policy, or the academic media marketing community.
79751 (e) One member shall be appointed from the Utah Tourism Industry Coalition as
79752 recommended by the coalition for the governor's consideration.
79753 (f) One member shall be appointed to represent the state's counties as recommended by
79754 the Utah Association of Counties for the governor's consideration.
79755 (g) (i) The governor may choose to disregard a recommendation made for a board
79756 member under Subsections (4)(c), (e), and (f).
79757 (ii) The governor shall request additional recommendations if recommendations are
79758 disregarded under Subsection (4)(g)(i).
79759 (5) When a vacancy occurs in the membership for any reason, the replacement shall be
79760 appointed for the unexpired term from the same geographic area or industry representation as
79761 the member whose office was vacated.
79762 (6) Seven members of the board constitute a quorum for conducting board business and
79763 exercising board powers.
79764 (7) The governor shall select one of the board members as chair and one of the board
79765 members as vice chair, each for a four-year term as recommended by the board for the
79766 governor's consideration.
79767 (8) (a) Members shall receive no compensation or benefits for their services, but may
79768 receive per diem and expenses incurred in the performance of the member's official duties at the
79769 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.
79770 (b) Members may decline to receive per diem and expenses for their service.
79771 (9) The board shall meet monthly or as often as the board determines to be necessary at
79772 various locations throughout the state.
79773 (10) Members who may have a potential conflict of interest in consideration of fund

79774 allocation decisions shall identify the potential conflict prior to voting on the issue.

79775 (11) (a) The board shall determine attendance requirements for maintaining a
79776 designated board seat.

79777 (b) If a board member fails to attend according to the requirements established pursuant
79778 to Subsection (11)(a), the board member shall be replaced upon written certification from the
79779 board chair or vice chair to the governor.

79780 (c) A replacement appointed by the governor under Subsection (11)(b) shall serve for
79781 the remainder of the board member's unexpired term.

79782 (12) The board's office shall be in Salt Lake City.

79783 Section 1866. Section **63M-1-1403**, which is renumbered from Section 63-38f-1408 is
79784 renumbered and amended to read:

79785 ~~[63-38f-1408].~~ **63M-1-1403. Board duties.**

79786 (1) The board shall:

79787 (a) have authority to approve a tourism program of out-of-state advertising, marketing,
79788 and branding, taking into account the long-term strategic plan, economic trends, and
79789 opportunities for tourism development on a statewide basis, as a condition of the distribution of
79790 funds to the office from the Tourism Marketing Performance Account under Section
79791 ~~[63-38f-1411]~~ 63M-1-1406;

79792 (b) review the office programs for coordination and integration of advertising and
79793 branding themes to be used whenever possible in all office programs, including recreational,
79794 scenic, historic, and tourist attractions of the state at large;

79795 (c) encourage and assist in coordination of the activities of persons, firms, associations,
79796 corporations, civic groups, and governmental agencies engaged in publicizing, developing, and
79797 promoting the scenic attractions and tourist advantages of the state; and

79798 (d) (i) advise the office in establishing a Cooperative Program from the monies in the
79799 Tourism Marketing Performance Account under Section ~~[63-38f-1411]~~ 63M-1-1406 for use by
79800 cities, counties, nonprofit destination marketing organizations, and similar public entities for the
79801 purpose of supplementing monies committed by these entities for advertising and promotion to

79802 and for out-of-state residents to attract them to visit sites advertised by and attend events
79803 sponsored by these entities;

79804 (ii) the Cooperative Program shall be allocated 20% of the revenues appropriated to the
79805 office from the Tourism Marketing Performance Account;

79806 (iii) the office, with approval from the board, shall establish eligibility, advertising, and
79807 timing requirements and criteria and provide for an approval process for applications;

79808 (iv) an application from an eligible applicant to receive monies from the Cooperative
79809 Program must be submitted on or before the appropriate date established by the office; and

79810 (v) Cooperative Program monies not used in each fiscal year shall be returned to the
79811 Tourism Marketing Performance Account.

79812 (2) The board may:

79813 (a) solicit and accept contributions of moneys, services, and facilities from any other
79814 sources, public or private and shall use these funds for promoting the general interest of the
79815 state in tourism; and

79816 (b) establish subcommittees for the purpose of assisting the board in an advisory role
79817 only.

79818 (3) The board may not, except as otherwise provided in Subsection (1)(a), make policy
79819 related to the management or operation of the office.

79820 Section 1867. Section **63M-1-1404**, which is renumbered from Section 63-38f-1409 is
79821 renumbered and amended to read:

79822 ~~[63-38f-1409]~~. **63M-1-1404. Powers and duties of office related to tourism**
79823 **development plan -- Annual report and survey.**

79824 (1) The office shall:

79825 (a) be the tourism development authority of the state;

79826 (b) develop a tourism advertising, marketing, and branding program for the state;

79827 (c) receive approval from the Board of Tourism Development under Subsection

79828 ~~[63-38f-1408]~~ 63M-1-1403(1)(a) before implementing the out-of-state advertising, marketing,
79829 and branding campaign;

79830 (d) develop a plan to increase the economic contribution by tourists visiting the state;
79831 (e) plan and conduct a program of information, advertising, and publicity relating to the
79832 recreational, scenic, historic, and tourist advantages and attractions of the state at large; and
79833 (f) encourage and assist in the coordination of the activities of persons, firms,
79834 associations, corporations, travel regions, counties, and governmental agencies engaged in
79835 publicizing, developing, and promoting the scenic attractions and tourist advantages of the state.

79836 (2) Any plan provided for under Subsection (1) shall address, but not be limited to,
79837 enhancing the state's image, promoting Utah as a year-round destination, encouraging
79838 expenditures by visitors to the state, and expanding the markets where the state is promoted.

79839 (3) The office shall conduct a regular and ongoing research program to identify
79840 statewide economic trends and conditions in the tourism sector of the economy and to provide
79841 an annual evaluation of the economic efficiency of the advertising and branding campaigns
79842 conducted under this part to the Legislature's Workforce Services and Community and
79843 Economic Development Interim Committee and the Economic Development and Human
79844 Resources Appropriations Subcommittee.

79845 Section 1868. Section **63M-1-1405**, which is renumbered from Section 63-38f-1410 is
79846 renumbered and amended to read:

79847 ~~[63-38f-1410].~~ **63M-1-1405. Agreements with other governmental entities.**

79848 The office may enter into agreements with state or federal agencies to accept services,
79849 quarters, or facilities as a contribution in carrying out the duties and functions of the office.

79850 Section 1869. Section **63M-1-1406**, which is renumbered from Section 63-38f-1411 is
79851 renumbered and amended to read:

79852 ~~[63-38f-1411].~~ **63M-1-1406. Tourism Marketing Performance Account.**

79853 (1) There is created within the General Fund a restricted account known as the Tourism
79854 Marketing Performance Account.

79855 (2) The account shall be administered by the office for the purposes listed in Subsection
79856 (5).

79857 (3) (a) The account shall earn interest.

- 79858 (b) All interest earned on account monies shall be deposited into the account.
- 79859 (c) Monies in the account are nonlapsing.
- 79860 (4) The account shall be funded by appropriations made to the account by the
79861 Legislature in accordance with this section.
- 79862 (5) The director may use account monies appropriated to the office to pay for the
79863 statewide advertising, marketing, and branding campaign for promotion of the state as
79864 conducted by the office.
- 79865 (6) (a) For the fiscal year beginning July 1, 2007, the director shall allocate 10% of the
79866 account monies appropriated to the office to be distributed to a sports organization for
79867 advertising, marketing, branding, and promoting Utah in attracting sporting events into the state
79868 as determined by the office.
- 79869 (b) For a fiscal year beginning on or after July 1, 2008, the amount distributed under
79870 Subsection (6)(a) shall be indexed from the July 1, 2007 fiscal year to reflect a percent increase
79871 or decrease of monies set aside into the account as compared to the previous fiscal year.
- 79872 (c) The monies distributed under Subsections (6)(a) and (b) are nonlapsing.
- 79873 (d) The office shall provide for an annual accounting to the office by a sports
79874 organization of the use of monies it receives under Subsection (6)(a) or (b).
- 79875 (e) For purposes of this Subsection (6), "sports organization" means an organization
79876 that is:
- 79877 (i) exempt from federal income taxation in accordance with Section 501(c)(3), Internal
79878 Revenue Code; and
- 79879 (ii) created to foster national and international amateur sports competitions to be held in
79880 the state and sports tourism throughout the state, to include advertising, marketing, branding,
79881 and promoting Utah for the purpose of attracting sporting events into the state.
- 79882 (7) (a) Monies set aside into the account shall be as follows:
- 79883 (i) for the fiscal year beginning July 1, 2005 only, an amount appropriated in Section 7
79884 of this bill;
- 79885 (ii) for the fiscal year beginning July 1, 2006:

79886 (A) the beginning nonlapsing appropriation balances, if any, in the Tourism Marketing
79887 Performance Account;

79888 (B) any legislative appropriation from the sales and use tax revenue increases identified
79889 in Subsection (8); and

79890 (C) any appropriation made by the Legislature from the General Fund to the account in
79891 an appropriations bill; and

79892 (iii) for the fiscal year beginning July 1, 2007, and for each fiscal year thereafter, a
79893 \$1,000,000 reduction in the prior year's appropriation sources other than the sales and use tax
79894 revenue increases identified in Subsection (8), plus a legislative appropriation from the
79895 cumulative sales and use tax revenue increases identified in Subsection (8).

79896 (b) Monies in the account are nonlapsing.

79897 (8) (a) In fiscal years 2006 through 2015, a portion of the state sales and use tax
79898 revenues determined under this Subsection (8) shall be certified as a set-aside for the account by
79899 the State Tax Commission and reported to the Office of Legislative Fiscal Analyst.

79900 (b) The State Tax Commission shall determine the set-aside under this Subsection (8) in
79901 each fiscal year by applying the following formula: if the increase in the state sales and use tax
79902 revenues derived from the retail sales of tourist-oriented goods and services in the fiscal year
79903 two years prior to the fiscal year in which the set-aside is to be made for the account is at least
79904 3% over the state sales and use tax revenues derived from the retail sales of tourist-oriented
79905 goods and services generated in the fiscal year three years prior to the fiscal year in which the
79906 set-aside is to be made, an amount equal to 1/2 of the state sales and use tax revenues generated
79907 above the 3% increase shall be calculated by the commission and set aside by the state treasurer
79908 for appropriation to the account.

79909 (c) Total monies to be appropriated to the account in any fiscal year under Subsections
79910 (8)(a) and (b) may not exceed the amount in the account under this section in the fiscal year
79911 immediately preceding the current fiscal year by more than \$3,000,000.

79912 (d) As used in this Subsection (8), "sales of tourism-oriented goods and services" are
79913 those sales by businesses registered with the State Tax Commission under the following codes

79914 of the 1997 North American Industry Classification System of the federal Executive Office of
79915 the President, Office of Management and Budget:

- 79916 (i) NAICS Code 453 Miscellaneous Store Retailers;
- 79917 (ii) NAICS Code 481 Passenger Air Transportation;
- 79918 (iii) NAICS Code 487 Scenic and Sightseeing Transportation;
- 79919 (iv) NAICS Code 711 Performing Arts, Spectator Sports and Related Industries;
- 79920 (v) NAICS Code 712 Museums, Historical Sites and Similar Institutions;
- 79921 (vi) NAICS Code 713 Amusement, Gambling and Recreation Industries;
- 79922 (vii) NAICS Code 721 Accommodations;
- 79923 (viii) NAICS Code 722 Food Services and Drinking Places;
- 79924 (ix) NAICS Code 4483 Jewelry, Luggage, and Leather Goods Stores;
- 79925 (x) NAICS Code 4853 Taxi and Limousine Service;
- 79926 (xi) NAICS Code 4855 Charter Bus;
- 79927 (xii) NAICS Code 5615 Travel Arrangement and Reservation Services;
- 79928 (xiii) NAICS Code 44611 Pharmacies and Drug Stores;
- 79929 (xiv) NAICS Code 45111 Sporting Goods Stores;
- 79930 (xv) NAICS Code 45112 Hobby Toy and Game Stores;
- 79931 (xvi) NAICS Code 45121 Book Stores and News Dealers;
- 79932 (xvii) NAICS Code 445120 Convenience Stores without Gas Pumps;
- 79933 (xviii) NAICS Code 447110 Gasoline Stations with Convenience Stores;
- 79934 (xix) NAICS Code 447190 Other Gasoline Stations;
- 79935 (xx) NAICS Code 532111 Passenger Car Rental; and
- 79936 (xxi) NAICS Code 532292 Recreational Goods Rental.

79937 Section 1870. Section **63M-1-1501**, which is renumbered from Section 63-38f-1501 is
79938 renumbered and amended to read:

79939 **Part 15. Utah Pioneer Communities Program Act**

79940 ~~[63-38f-1501]~~. **63M-1-1501**. **Title.**

79941 This part ~~[shall be]~~ is known as the "Utah Pioneer Communities Program Act."

79942 Section 1871. Section **63M-1-1502**, which is renumbered from Section 63-38f-1502 is
79943 renumbered and amended to read:

79944 ~~[63-38f-1502]~~. **63M-1-1502. Definitions.**

79945 As used in this part:

79946 (1) "Advisory board" means the Utah Pioneer Communities Program Advisory Board
79947 created in Section ~~[63-38f-1503]~~ 63M-1-1503 within the office.

79948 (2) "Community" means a city, county, town, or any combination of these.

79949 (3) "Revitalization" means the process of engaging in activities to increase economic
79950 activity while preserving and building upon a location's historically significant characteristics.

79951 Section 1872. Section **63M-1-1503**, which is renumbered from Section 63-38f-1503 is
79952 renumbered and amended to read:

79953 ~~[63-38f-1503]~~. **63M-1-1503. Advisory board.**

79954 (1) (a) There is created within the office the Utah Pioneer Communities Advisory
79955 Board.

79956 (b) The Permanent Community Impact Fund Board created in Section 9-4-304 shall act
79957 as the advisory board.

79958 (2) The advisory board shall have the powers and duties described in Section
79959 ~~[63-38f-1504]~~ 63M-1-1504 and shall operate the Utah Pioneer Communities Program in
79960 accordance with Section ~~[63-38f-1505]~~ 63M-1-1505.

79961 (3) The director shall designate an employee of the office to serve as a nonvoting
79962 secretary for the advisory board.

79963 (4) (a) (i) Members who are not government employees shall receive no compensation
79964 or benefits for their services, but may receive per diem and expenses incurred in the
79965 performance of the member's official duties at the rates established by the Division of Finance
79966 under Sections 63A-3-106 and 63A-3-107.

79967 (ii) Members may decline to receive per diem and expenses for their service.

79968 (b) (i) State government officer and employee members who do not receive salary, per
79969 diem, or expenses from their agency for their service may receive per diem and expenses

79970 incurred in the performance of their official duties from the board at the rates established by the
79971 Division of Finance under Sections 63A-3-106 and 63A-3-107.

79972 (ii) State government officer and employee members may decline to receive per diem
79973 and expenses for their service.

79974 (c) (i) Higher education members who do not receive salary, per diem, or expenses
79975 from the entity that they represent for their service may receive per diem and expenses incurred
79976 in the performance of their official duties from the committee at the rates established by the
79977 Division of Finance under Sections 63A-3-106 and 63A-3-107.

79978 (ii) Higher education members may decline to receive per diem and expenses for their
79979 service.

79980 (d) (i) Local government members who do not receive salary, per diem, or expenses
79981 from the entity that they represent for their service may receive per diem and expenses incurred
79982 in the performance of their official duties at the rates established by the Division of Finance
79983 under Sections 63A-3-106 and 63A-3-107.

79984 (ii) Local government members may decline to receive per diem and expenses for their
79985 service.

79986 Section 1873. Section **63M-1-1504**, which is renumbered from Section 63-38f-1504 is
79987 renumbered and amended to read:

79988 ~~[63-38f-1504]~~. **63M-1-1504**. **Advisory board duties.**

79989 (1) The advisory board shall:

79990 (a) establish and administer a Utah Pioneer Communities Program to assist communities
79991 in planning, managing, and implementing programs for the revitalization of business districts and
79992 the preservation of their distinct history, heritage, and culture as a basis for promoting stable,
79993 sustained economic growth through business expansion and tourism;

79994 (b) select, upon application by the community, communities to participate in the Utah
79995 Pioneer Communities Program;

79996 (c) enter into contracts to obtain services related to community preservation and
79997 tourism development;

79998 (d) with help from interested communities, individuals, and organizations, develop a
79999 plan describing the objectives of the Utah Pioneer Communities Program and the methods by
80000 which the advisory board shall:

80001 (i) coordinate the activities of that program with the private and public sector; and

80002 (ii) solicit and use private sector funding to revitalize business districts and provide
80003 services related to community preservation, tourism, and business development; and

80004 (e) coordinate and consult with other state and local or public and private entities that
80005 provide services to communities undertaking projects to provide services related to community
80006 preservation, tourism, and business development.

80007 (2) The advisory board shall provide training, technical assistance, and information on
80008 services related to community preservation, tourism, and business development.

80009 Section 1874. Section **63M-1-1505**, which is renumbered from Section 63-38f-1505 is
80010 renumbered and amended to read:

80011 ~~[63-38f-1505]~~. **63M-1-1505. Criteria for participation -- Report.**

80012 (1) The advisory board shall develop objective criteria including the following:

80013 (a) a three year commitment by the applicant to provide a project manager with a travel
80014 and operating budget;

80015 (b) evidence that both the business community and the local government support the
80016 Utah Pioneer Communities Program approach philosophically and financially;

80017 (c) capacity for economic change as a result of being a participant in the program;

80018 (d) geographic location, population, and economic base diversity;

80019 (e) evidence of past preservation efforts; and

80020 (f) a population of less than 50,000.

80021 (2) The advisory board shall provide to the governor and to the presiding officer of
80022 each house of the Legislature an annual report on the effects of the Utah Pioneer Communities
80023 Program.

80024 Section 1875. Section **63M-1-1601**, which is renumbered from Section 63-38f-1601 is
80025 renumbered and amended to read:

Part 16. Rural Development Act

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~~[63-38f-1601]~~. 63M-1-1601. Title -- Definitions.

- (1) This part is known as the "Rural Development Act."
- (2) As used in this part:
 - (a) "Office" means the Governor's Office of Economic Development.
 - (b) "Program" means the Rural Development Program.

Section 1876. Section **63M-1-1602**, which is renumbered from Section 63-38f-1602 is renumbered and amended to read:

~~[63-38f-1602]~~. 63M-1-1602. Rural Development Program -- Supervision by office.

- (1) There is created within the office the Rural Development Program.
- (2) The program is under the administration and general supervision of the office.

Section 1877. Section **63M-1-1603**, which is renumbered from Section 63-38f-1603 is renumbered and amended to read:

~~[63-38f-1603]~~. 63M-1-1603. Purpose of the program.

The program is established to:

- (1) foster and support economic development programs and activities for the benefit of rural counties and communities;
- (2) foster and support community, county, and resource management planning programs and activities for the benefit of rural counties and communities;
- (3) foster and support leadership training programs and activities for the benefit of:
 - (a) rural leaders in both the public and private sectors;
 - (b) economic development and planning personnel; and
 - (c) rural government officials;
- (4) foster and support efforts to coordinate and focus the technical and other resources of appropriate institutions of higher education, local governments, private sector interests, associations, nonprofit organizations, federal agencies, and others, in ways that address the economic development, planning, and leadership challenges and priorities of rural Utah as

80054 identified in the strategic plan required under Subsection 63C-10-103(2);

80055 (5) work to enhance the capacity of the office to address rural economic development,
80056 planning, and leadership training challenges and opportunities by establishing partnerships and
80057 positive working relationships with appropriate public and private sector entities, individuals,
80058 and institutions; and

80059 (6) foster government-to-government collaboration and good working relations
80060 between state and rural government regarding economic development and planning issues.

80061 Section 1878. Section **63M-1-1604**, which is renumbered from Section 63-38f-1604 is
80062 renumbered and amended to read:

80063 ~~[63-38f-1604]~~. **63M-1-1604. Duties.**

80064 (1) The program shall:

80065 (a) provide, in conjunction with the Rural Coordinating Committee, staff support to the
80066 Governor's Rural Partnership board;

80067 (b) facilitate within the department implementation of the strategic plan prepared under
80068 Subsection 63C-10-103(2);

80069 (c) work to enhance the capacity of the office to address rural economic development,
80070 planning, and leadership training challenges and opportunities by establishing partnerships and
80071 positive working relationships with appropriate public and private sector entities, individuals,
80072 and institutions;

80073 (d) work with the Rural Coordinating Committee to coordinate and focus available
80074 resources in ways that address the economic development, planning, and leadership training
80075 challenges and priorities in rural Utah; and

80076 (e) in accordance with economic development and planning policies set by state
80077 government, coordinate relations between:

80078 (i) the state;

80079 (ii) rural governments;

80080 (iii) other public and private groups engaged in rural economic planning and
80081 development; and

80082 (iv) federal agencies.

80083 (2) (a) The program may:

80084 (i) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

80085 Administrative Rulemaking Act, make rules necessary to carry out the duties of the office;

80086 (ii) accept gifts, grants, devises, and property, in cash or in kind, for the benefit of rural

80087 Utah citizens; and

80088 (iii) use those gifts, grants, devises, and property received under Subsection (2)(a)(ii)

80089 for the use and benefit of rural citizens within the state.

80090 (b) All resources received under Subsection (2)(a)(ii) shall be deposited in the General

80091 Fund as dedicated credits to be used as directed in Subsection (2)(a)(iii).

80092 (c) All funding for the benefit of rural Utah as defined in this section is nonlapsing.

80093 Section 1879. Section **63M-1-1605**, which is renumbered from Section 63-38f-1605 is

80094 renumbered and amended to read:

80095 ~~[63-38f-1605]~~. **63M-1-1605. Program manager.**

80096 (1) The director of the office shall appoint a manager for the program with the approval

80097 of the governor.

80098 (2) The manager shall be a person knowledgeable in the field of rural economic

80099 development and planning and experienced in administration.

80100 (3) Upon change of the director, the manager of the program may not be dismissed

80101 without cause for at least 180 days.

80102 (4) The manager shall be a member of the Rural Coordinating Committee's Steering

80103 Committee created in Subsection 63C-10-202(3).

80104 Section 1880. Section **63M-1-1606**, which is renumbered from Section 63-38f-1606 is

80105 renumbered and amended to read:

80106 ~~[63-38f-1606]~~. **63M-1-1606. Annual report.**

80107 The office shall submit an annual report of the program's operations and

80108 recommendations to:

80109 (1) the governor; and

80110 (2) the Rural Development Legislative Liaison Committee created in Section
80111 36-25-102.

80112 Section 1881. Section **63M-1-1701**, which is renumbered from Section 63-38f-1701 is
80113 renumbered and amended to read:

80114 **Part 17. Economic Development Incentives Act**

80115 ~~[63-38f-1701]~~. **63M-1-1701. Title.**

80116 This part is known as the "Economic Development Incentives Act."

80117 Section 1882. Section **63M-1-1702**, which is renumbered from Section 63-38f-1702 is
80118 renumbered and amended to read:

80119 ~~[63-38f-1702]~~. **63M-1-1702. Findings.**

80120 (1) The Legislature finds that:

80121 (a) to foster and develop industry in Utah is a public purpose necessary to assure
80122 adequate employment for, and the welfare of, Utah's citizens and the growth of the state's
80123 economy;

80124 (b) Utah loses prospective high paying jobs, economic impacts, and corresponding
80125 incremental new state and local revenues to competing states because of a wide variety of
80126 competing economic incentives offered by those states; and

80127 (c) economic development initiatives and interests of state and local economic
80128 development officials should be aligned and united in the creation of higher paying jobs that will
80129 lift the wage levels of the communities in which those jobs will be created.

80130 (2) This part is enacted to:

80131 (a) address the loss of new economic growth in Utah and the corresponding loss of
80132 incremental new state and local revenues by providing tax incremental financial incentives to
80133 attract new commercial projects in economic development zones in the state; and

80134 (b) provide a cooperative and unified working relationship between state and local
80135 economic development efforts.

80136 Section 1883. Section **63M-1-1703**, which is renumbered from Section 63-38f-1703 is
80137 renumbered and amended to read:

80138 ~~[63-38f-1703]~~. **63M-1-1703. Definitions.**

80139 As used in this part:

80140 (1) "Development zone" means an economic development zone created under Section
80141 ~~[63-38f-1704]~~ 63M-1-1704.

80142 (2) "High paying jobs" means the annual wages of employment positions that compare
80143 favorably against the median wage of a community in which the jobs will exist.

80144 (3) "Local incentives" means financial and other assistance provided by local taxing
80145 authorities within a development zone, which may include:

80146 (a) partial rebates of new local revenues; and

80147 (b) other sources of funds under authority of state law or local ordinances, or both state
80148 law and local ordinances.

80149 (4) "New incremental jobs" means jobs that are:

80150 (a) not shifted from one jurisdiction in the state to another jurisdiction in the state; and

80151 (b) created in addition to the baseline count of jobs already in existence within a
80152 company or employed by an individual.

80153 (5) "New local revenues" mean incremental new local tax revenues that are generated
80154 as a result of new economic commercial projects in a development zone, to include the local
80155 government's portion of sales taxes, property taxes, impact fees, and other taxes or fees, or both
80156 taxes and fees, derived from the projects, together with indirect local government revenues
80157 generated by the projects, but not to include any portion of sales taxes earmarked for state
80158 government or other taxing jurisdictions eligible for sales tax revenues.

80159 (6) "New state revenues" means incremental new state tax revenues that are generated
80160 as a result of new economic commercial projects in a development zone, to include the state's
80161 portion of sales taxes, and company and employee income taxes derived from the projects,
80162 together with indirect state revenues generated by the projects, but not to include any portion of
80163 sales taxes earmarked for local governments or other taxing jurisdictions eligible for sales tax
80164 revenues.

80165 (7) "Office" means the Governor's Office of Economic Development.

80166 (8) "Partial rebates" means returning a portion of the new local revenues and new state
80167 revenues generated by new commercial projects to companies or individuals that have created
80168 new economic growth within a development zone.

80169 Section 1884. Section **63M-1-1704**, which is renumbered from Section 63-38f-1704 is
80170 renumbered and amended to read:

80171 ~~[63-38f-1704]~~. **63M-1-1704**. **Creation of economic development zones --**
80172 **Incentives.**

80173 (1) The office, with advice from the board, may create an economic development zone
80174 in the state that satisfies all of the following requirements:

80175 (a) the area is zoned commercial, industrial, manufacturing, business park, research
80176 park, or other appropriate use in a community approved master plan; and

80177 (b) the request to create a development zone has been forwarded to the office after first
80178 being approved by an appropriate local government entity that has committed or will commit to
80179 provide local incentives.

80180 (2) (a) The office, with advice from the board, may enter into agreements providing for
80181 partial rebates of new state revenues generated by new commercial projects to companies or
80182 individuals that create new economic growth within a development zone under the same
80183 restrictions and limitations as provided in Section ~~[63-38f-1304]~~ 63M-1-1304.

80184 (b) The limitations and restrictions applied to partial rebates of new state revenues in
80185 Section ~~[63-38f-1304]~~ 63M-1-1304 also apply to partial rebates of new local revenues under
80186 this part.

80187 Section 1885. Section **63M-1-1705**, which is renumbered from Section 63-38f-1705 is
80188 renumbered and amended to read:

80189 ~~[63-38f-1705]~~. **63M-1-1705**. **Qualifications for rebates -- Payment**
80190 **procedure.**

80191 (1) The office shall set standards to qualify for partial rebates under this part, subject to
80192 the following:

80193 (a) the qualification criteria established in Subsections ~~[63-38f-1305]~~ 63M-1-1305(1),

80194 (2), (3), (4), and (6); and

80195 (b) only projects that include significant capital investment, the creation of high paying
80196 jobs, or significant purchases from Utah vendors and providers, or any combination of these
80197 three economic factors are eligible for partial rebates.

80198 (2) A payment of partial rebates of new state revenues shall be made in accordance with
80199 procedures adopted by the office, with advice from the board, to include the payment
80200 procedures described in Section [~~63-38f-1306~~] 63M-1-1306 as applied to partial rebates
80201 authorized under this part.

80202 Section 1886. Section **63M-1-1706**, which is renumbered from Section 63-38f-1706 is
80203 renumbered and amended to read:

80204 [~~63-38f-1706~~]. **63M-1-1706. Office's authority -- Report to Legislature.**

80205 (1) The office, with advice from the board, and within the limitations of this part, may
80206 determine:

- 80207 (a) the structure and amount of any partial rebates offered under this part;
- 80208 (b) the economic impacts and job creation necessary to qualify for the incentive; and
- 80209 (c) the other terms and conditions of an agreement entered into under this part.

80210 (2) In reviewing claims for partial rebates of new state revenues, the office may accept
80211 the same type of information and evidence allowed under Subsections [~~63-38f-1307~~]
80212 63M-1-1307(2)(a) and (b).

80213 (3) (a) The office shall make a report to the Legislature's Workforce Services and
80214 Community and Economic Development Interim Committee on:

- 80215 (i) the success of attracting new commercial projects to development zones under this
80216 part and the corresponding increase in new incremental jobs;
- 80217 (ii) the period of time over which partial rebates of new state revenues shall be granted
80218 under this part; and
- 80219 (iii) the economic impact on the state related to generating new state revenues and
80220 rebating a portion of those revenues under this part.

80221 (b) The office shall make the report prior to the 2006 General Session of the Legislature

80222 to enable the committee to determine whether this part should be modified during the 2006
80223 General Session.

80224 Section 1887. Section **63M-1-1801**, which is renumbered from Section 63-38f-1801 is
80225 renumbered and amended to read:

80226 **Part 18. Motion Picture Incentive Fund**

80227 ~~[63-38f-1801].~~ **63M-1-1801. Purpose.**

80228 (1) The Legislature finds that:

80229 (a) the state's natural beauty, scenic wonders, and diverse topography provide a variety
80230 of magnificent settings from which the motion picture industry can choose to film part or all of
80231 major or independent motion pictures, made-for-television movies, and television series;

80232 (b) the state has an abundance of resources, including a skilled and able workforce, the
80233 required infrastructure, and a friendly and hospitable populace that have been instrumental in the
80234 filming of several successful motion pictures and television series; and

80235 (c) further development of the motion picture industry in Utah is a state public purpose
80236 that will significantly impact growth in the state's economy and contribute to the fiscal well
80237 being of the state and its people.

80238 (2) The purpose of this part is to:

80239 (a) encourage the use of Utah as a site for the production of motion pictures, television
80240 series, and made-for-television movies;

80241 (b) provide a financial incentive to the film industry so that Utah might compete
80242 successfully with other states and countries for filming locations; and

80243 (c) help develop a strong motion picture industry presence in the state that will
80244 contribute substantially to improving the state's economy.

80245 Section 1888. Section **63M-1-1802**, which is renumbered from Section 63-38f-1802 is
80246 renumbered and amended to read:

80247 ~~[63-38f-1802].~~ **63M-1-1802. Definitions.**

80248 As used in this part:

80249 (1) "Administrator" means the director of the Governor's Office of Economic

80250 Development or the director's designee.

80251 (2) "Board" means the Board of Business and Economic Development.

80252 (3) "Fund" means the restricted account known as the Motion Picture Incentive Fund
80253 created in Section [~~63-38f-1803~~] 63M-1-1803.

80254 (4) "Motion picture company" means a company engaged in the production of motion
80255 pictures, television series, or made-for-television movies.

80256 (5) "State-approved production" means a motion picture, television series, or
80257 made-for-television movie approved by the administrator and ratified by the board that is
80258 produced in the state by a motion picture company.

80259 Section 1889. Section **63M-1-1803**, which is renumbered from Section 63-38f-1803 is
80260 renumbered and amended to read:

80261 [~~63-38f-1803~~]. **63M-1-1803. Motion Picture Incentive Fund created.**

80262 (1) There is created within the General Fund a restricted account known as the Motion
80263 Picture Incentive Fund, which shall be used to provide incentives for within-the-state production
80264 of television series, made-for-television movies, and motion pictures, including feature films and
80265 independent films.

80266 (2) (a) The fund shall be administered by the administrator with advice from the board.

80267 (b) The administrator, with advice from the board, shall approve fund policies and
80268 qualification criteria to receive an incentive award consistent with the provisions of this part.

80269 (3) All interest generated from investment of money in the fund shall be deposited in the
80270 fund.

80271 (4) The fund shall consist of an annual appropriation by the Legislature.

80272 Section 1890. Section **63M-1-1804**, which is renumbered from Section 63-38f-1804 is
80273 renumbered and amended to read:

80274 [~~63-38f-1804~~]. **63M-1-1804. Financial incentives for motion picture
80275 productions.**

80276 (1) A motion picture company that has a state-approved production under this section
80277 may receive a financial incentive from the fund as provided in this section.

80278 (2) (a) The administrator has authority to determine the structure, amount, and nature
80279 of the incentive given to a motion picture company, subject to the limitations and considerations
80280 set out in Subsections (3) and (4).

80281 (b) A financial incentive shall be paid to a motion picture company from the fund only
80282 after the administrator has determined with advice from the board that the motion picture
80283 company has satisfied the conditions upon which the incentive is to be given.

80284 (3) (a) In each fiscal year, the money in the fund shall be used for incentives to motion
80285 picture companies for state-approved productions that are either television series,
80286 made-for-television movies, or motion pictures, which may include both feature films and
80287 independent films.

80288 (b) An incentive awarded under Subsection (3)(a) for a motion picture production may
80289 not exceed \$500,000 per production.

80290 (4) (a) The administrator shall enter into agreements with motion picture companies
80291 that represent postperformance incentive grants that take into consideration:

- 80292 (i) the fact that financing has been obtained and is in place for the production;
- 80293 (ii) distribution is in place, except that the administrator may make allowances for an
80294 independent filmmaker who plans to shop the production on a film festival circuit;
- 80295 (iii) the economic impact of the production on the state; and
- 80296 (iv) the production represents new incremental economic activity in the state as
80297 opposed to existing economic activity.

80298 (b) The administrator may also consider giving preference to a production that
80299 stimulates economic activity in rural areas of the state or that has Utah content, such as
80300 recognizing that the production was made in the state or uses Utah as Utah in the production.

80301 Section 1891. Section **63M-1-1805**, which is renumbered from Section 63-38f-1805 is
80302 renumbered and amended to read:

80303 ~~[63-38f-1805].~~ **63M-1-1805. Annual report.**

80304 (1) The administrator shall prepare an annual report for the board on the economic
80305 impact of this part.

80306 (2) The board shall present the report to the Legislature's Workforce Services and
80307 Community and Economic Development Interim Committee and the Economic Development
80308 and Human Resources Appropriations Subcommittee, together with any proposed
80309 recommendations for modifications in this part or the annual ongoing appropriation for the
80310 fund.

80311 Section 1892. Section **63M-1-1901**, which is renumbered from Section 63-38f-1901 is
80312 renumbered and amended to read:

Part 19. Economic Development on Military Installations

80314 ~~[63-38f-1901].~~ **63M-1-1901. Military installation projects for economic**
80315 **development -- Funding -- Criteria -- Dispersal -- Report.**

80316 (1) The Legislature recognizes that significant growth in the state's economy can be
80317 achieved by state and local support of the continuing expansion and development of federal
80318 military installations throughout the state.

80319 (2) The office, through its director, may receive and distribute legislative appropriations
80320 and public and private grants and donations for military installation projects that:

80321 (a) have a strong probability of increasing the growth and development of a military
80322 facility within the state, thereby providing significant economic benefits to the state;

80323 (b) will provide a significant number of new jobs within the state that should remain
80324 within the state for a period of several years; and

80325 (c) involve a partnership between the military and private industry or local government
80326 or the military and private industry and local government.

80327 (3) (a) The director may distribute monies under this section to:

80328 (i) a regional or statewide nonprofit economic development organization; or

80329 (ii) a federal military partnership that has the mission of promoting the economic
80330 growth of a military installation.

80331 (b) The director shall make a distribution under this section upon:

80332 (i) receipt of an application on a form prescribed by the office that lists:

80333 (A) the particulars of the proposed use of the monies requested, such as needed

80334 equipment purchases and anticipated training costs;

80335 (B) the estimated number of new jobs that will be created by the proposed project;

80336 (C) pending contracts related to the project that are to be finalized from funding

80337 anticipated under this section; and

80338 (D) a projected date on which the applicant shall provide the director with a report on

80339 the implementation and performance of the project, including the creation of new jobs; and

80340 (ii) a determination by the director that the project satisfies the requirements listed in

80341 Subsection (2).

80342 (c) (i) The office shall monitor the activities of a recipient of monies under this section

80343 to ensure that there is compliance with the terms and conditions imposed on the recipient under

80344 this part.

80345 (ii) The office shall make an annual report to the Legislature's Workforce Services and

80346 Community and Economic Development Interim Committee and the Executive Appropriations

80347 Committee on the use and impact of the monies distributed under this section, with the first

80348 report to occur not later than September 1, 2005.

80349 (4) For the fiscal year ending June 30, 2005, the director may disperse an amount not to

80350 exceed \$5,000,000 for projects referred to under this section.

80351 Section 1893. Section **63M-1-2001**, which is renumbered from Section 63-38f-2001 is

80352 renumbered and amended to read:

80353 **Part 20. Business Development for Disadvantaged Rural Communities Act**

80354 **[63-38f-2001]. 63M-1-2001. Title.**

80355 This part is known as the "Business Development for Disadvantaged Rural Communities

80356 Act."

80357 Section 1894. Section **63M-1-2002**, which is renumbered from Section 63-38f-2002 is

80358 renumbered and amended to read:

80359 **[63-38f-2002]. 63M-1-2002. Definitions.**

80360 As used in this part:

80361 (1) "Board" means the Board of Business and Economic Development created by

80362 Section [~~63-38f-301~~] 63M-1-301.

80363 (2) "Business incubator expense" means an expense relating to funding a program that
80364 is:

80365 (a) designed to provide business support services and resources to one or more business
80366 entities within a project area during the business entities' early stages of development; and

80367 (b) determined to be a business incubator by the board.

80368 (3) "Business rehabilitation expense" means an expense relating to the renovation or
80369 rehabilitation of an existing building within a project area as determined by the board.

80370 (4) "Debt service" means the payment of debt service on a bond issued to pay a:

80371 (a) business rehabilitation expense relating to a project; or

80372 (b) public infrastructure expense relating to a project.

80373 (5) "Eligible county" means a county of the third, fourth, fifth, or sixth class.

80374 (6) "Eligible expense" means an expense:

80375 (a) incurred by an eligible county;

80376 (b) relating to a project; and

80377 (c) that is:

80378 (i) a business incubator expense;

80379 (ii) debt service; or

80380 (iii) a public infrastructure expense.

80381 (7) "Project" means an economic development project:

80382 (a) as determined by the board; and

80383 (b) for which an eligible county applies to the board in accordance with this part for a
80384 loan or grant to assist the eligible county in paying an eligible expense.

80385 (8) "Project area" means the geographic area within which a project is implemented by
80386 an eligible county.

80387 (9) "Public infrastructure expense" means an expense relating to a publicly owned
80388 improvement located within a project area if:

80389 (a) the expense is:

- 80390 (i) incurred for:
- 80391 (A) construction;
- 80392 (B) demolition;
- 80393 (C) design;
- 80394 (D) engineering;
- 80395 (E) an environmental impact study;
- 80396 (F) environmental remediation; or
- 80397 (G) rehabilitation; or
- 80398 (ii) similar to an expense described in Subsection (9)(a)(i) as determined by the board;
- 80399 and
- 80400 (b) the publicly owned improvement is:
- 80401 (i) not a building as determined by the board; and
- 80402 (ii) necessary to support a project as determined by the board.
- 80403 (10) "Publicly owned improvement" means an improvement to real property if:
- 80404 (a) the real property is owned by:
- 80405 (i) the United States;
- 80406 (ii) the state; or
- 80407 (iii) a political subdivision:
- 80408 (A) as defined in Section 17B-1-102; and
- 80409 (B) of the state; and
- 80410 (b) the improvement relates to:
- 80411 (i) a sewage system including a system for collection, transport, storage, treatment,
- 80412 dispersal, effluent use, or discharge;
- 80413 (ii) a drainage or flood control system, including a system for collection, transport,
- 80414 diversion, storage, detention, retention, dispersal, use, or discharge;
- 80415 (iii) a water system including a system for production, collection, storage, treatment,
- 80416 transport, delivery, connection, or dispersal;
- 80417 (iv) a highway, street, or road system for vehicular use for travel, ingress, or egress;

80418 (v) a rail transportation system;

80419 (vi) a system for pedestrian use for travel, ingress, or egress;

80420 (vii) a public utility system including a system for electricity, gas, or

80421 telecommunications; or

80422 (viii) a system or device that is similar to a system or device described in Subsections

80423 (10)(b)(i) through (vii) as determined by the board.

80424 (11) "Restricted account" means the Business Development for Disadvantaged Rural

80425 Communities Restricted Account created by Section [~~63-38f-2003~~] 63M-1-2003.

80426 Section 1895. Section **63M-1-2003**, which is renumbered from Section 63-38f-2003 is

80427 renumbered and amended to read:

80428 **[~~63-38f-2003~~]. 63M-1-2003. Creation of Business Development for**

80429 **Disadvantaged Rural Communities Restricted Account -- Interest -- Costs of**

80430 **administering the restricted account -- Monies and interest nonlapsing -- Deposit of**

80431 **certain monies and interest into General Fund.**

80432 (1) There is created within the General Fund the Business Development for

80433 Disadvantaged Rural Communities Restricted Account.

80434 (2) The restricted account shall be funded by:

80435 (a) monies appropriated to the account by the Legislature;

80436 (b) monies received by the office as:

80437 (i) repayment of a loan that the board grants to an eligible county under this part; and

80438 (ii) interest on a loan described in Subsection (2)(b)(i); and

80439 (c) the interest described in Subsection (3).

80440 (3) (a) The restricted account shall earn interest.

80441 (b) The interest described in Subsection (3)(a) shall be deposited into the account.

80442 (4) Upon appropriation by the Legislature, the monies and interest deposited into the

80443 restricted account in accordance with this section may be expended:

80444 (a) by the board to award grants or loans to eligible counties as provided in this part;

80445 and

80446 (b) to cover the costs of administering this part:

80447 (i) in an amount not to exceed \$5,000 in any fiscal year; and

80448 (ii) including the costs of providing staff support to administer this part.

80449 (5) (a) Except as provided in Subsection (5)(b), the monies and interest deposited into
80450 the restricted account in accordance with this section are nonlapsing.

80451 (b) Notwithstanding Subsection (5)(a), the Division of Finance shall deposit any monies
80452 and interest in the restricted account on July 1, 2015 into the General Fund.

80453 Section 1896. Section **63M-1-2004**, which is renumbered from Section 63-38f-2004 is
80454 renumbered and amended to read:

80455 ~~[63-38f-2004]~~. **63M-1-2004. Board authority to award a grant or loan to an**
80456 **eligible county -- Interest on a loan -- Eligible county proposal process -- Process for**
80457 **awarding a grant or loan.**

80458 (1) (a) Subject to the provisions of this section, beginning on July 1, 2005, through June
80459 30, 2015, the board may make an award to an eligible county:

80460 (i) of one or more of the following to assist in paying an eligible expense relating to a
80461 project:

80462 (A) a grant; or

80463 (B) a loan; and

80464 (ii) from amounts or interest deposited into the restricted account in accordance with
80465 Section ~~[63-38f-2003]~~ 63M-1-2003 to the extent that there is a balance in the restricted account
80466 sufficient to cover the amount of the award.

80467 (b) The total amount of grants and loans that the board may award in accordance with
80468 this section relating to one project is \$75,000.

80469 (c) If the board awards a loan to an eligible county in accordance with this section, the
80470 loan shall be subject to interest as provided by the procedures and methods referred to in
80471 Subsection (6).

80472 (2) (a) Before the board may award an eligible county a grant or loan in accordance
80473 with this section, the eligible county shall submit a written proposal to the board in accordance

80474 with Subsection (2)(b).

80475 (b) The proposal described in Subsection (2)(a) shall:

80476 (i) describe the project area;

80477 (ii) describe the characteristics of the project including a description of how the project

80478 will be implemented;

80479 (iii) provide an economic development plan for the project including a description of

80480 any eligible expenses that will be incurred as part of implementing the project;

80481 (iv) describe the characteristics of the community within which the project area is

80482 located;

80483 (v) establish that the community within which the project area is located is a

80484 disadvantaged community on the basis of one or more of the following factors:

80485 (A) median income per capita within the community;

80486 (B) median property tax revenues generated within the community;

80487 (C) median sales and use tax revenues generated within the community; or

80488 (D) unemployment rates within the community;

80489 (vi) demonstrate that there is a need for the project in the community within which the

80490 project area is located;

80491 (vii) describe the short-term and long-term benefits of the project to the community

80492 within which the project area is located;

80493 (viii) demonstrate that there is a need for assistance in paying eligible expenses relating

80494 to the project;

80495 (ix) indicate the amount of any revenues that will be pledged to match any funds the

80496 board may award as a loan or grant under this section; and

80497 (x) indicate whether there is support for the implementation of the project from:

80498 (A) the community within which the project area is located; and

80499 (B) any cities or towns within which the project area is located.

80500 (3) At the request of the board, representatives from an eligible county shall appear

80501 before the board to:

- 80502 (a) present a proposal submitted in accordance with Subsection (2)(b); and
- 80503 (b) respond to any questions or issues raised by the board relating to eligibility to
- 80504 receive a grant or loan under this section.
- 80505 (4) The board shall:
- 80506 (a) consider a proposal submitted to the board in accordance with Subsection (2);
- 80507 (b) make written findings as to whether the proposal described in Subsection (4)(a)
- 80508 meets the requirements of Subsection (2)(b);
- 80509 (c) make written findings as to whether to award the eligible county that submitted the
- 80510 proposal described in Subsection (4)(a) one or more grants or loans:
- 80511 (i) on the basis of the factors established in Subsection (5);
- 80512 (ii) in consultation with the director; and
- 80513 (iii) in accordance with the procedures established for prioritizing which projects may
- 80514 be awarded a grant or loan by the board under this section;
- 80515 (d) if the board determines to award an eligible county a grant or loan in accordance
- 80516 with this section, make written findings in consultation with the director specifying the:
- 80517 (i) amount of the grant or loan;
- 80518 (ii) time period for distributing the grant or loan;
- 80519 (iii) terms and conditions that the eligible county shall meet to receive the grant or loan;
- 80520 (iv) structure of the grant or loan; and
- 80521 (v) eligible expenses for which the eligible county may expend the grant or loan;
- 80522 (e) if the board determines to award an eligible county a loan in accordance with this
- 80523 section, make written findings stating:
- 80524 (i) the method of calculating interest applicable to the loan; and
- 80525 (ii) procedures for:
- 80526 (A) applying interest to the loan; and
- 80527 (B) paying interest on the loan; and
- 80528 (f) provide the written findings required by Subsections (4)(b) through (e) to the eligible
- 80529 county.

80530 (5) For purposes of Subsection (4)(c), the board shall consider the following factors in
80531 determining whether to award an eligible county one or more grants or loans authorized by this
80532 part:

80533 (a) whether the project is likely to result in economic development in the community
80534 within which the project area is located;

80535 (b) whether the community within which the project area is located is a disadvantaged
80536 community on the basis of one or more of the following factors:

80537 (i) median income per capita within the community;

80538 (ii) median property tax revenues generated within the community;

80539 (iii) median sales and use tax revenues generated within the community; or

80540 (iv) unemployment rates within the community;

80541 (c) whether there is a need for the project in the community within which the project
80542 area is located;

80543 (d) whether the project is likely to produce short-term and long-term benefits to the
80544 community within which the project area is located;

80545 (e) whether the project would be successfully implemented without the board awarding
80546 a grant or a loan to the eligible county;

80547 (f) whether any revenues will be pledged to match any funds the board may award as a
80548 grant or loan under this section;

80549 (g) whether there is support for the implementation of the project from:

80550 (i) the community within which the project area is located; and

80551 (ii) any cities or towns within which the project area is located; and

80552 (h) any other factor as determined by the board.

80553 (6) The office shall establish procedures:

80554 (a) for prioritizing which projects may be awarded a grant or loan by the board under
80555 this section; and

80556 (b) for loans awarded in accordance with this section:

80557 (i) the methods of calculating interest applicable to the loans; and

- 80558 (ii) procedures for:
- 80559 (A) applying interest to the loans; and
- 80560 (B) paying interest on the loans.
- 80561 Section 1897. Section **63M-1-2005**, which is renumbered from Section 63-38f-2005 is
- 80562 renumbered and amended to read:
- 80563 ~~[63-38f-2005]~~. **63M-1-2005**. **Agreement between the executive director and**
- 80564 **an eligible county -- Failure to meet or violation of a term or condition of an agreement.**
- 80565 (1) Before an eligible county that has been awarded a grant or loan in accordance with
- 80566 Section ~~[63-38f-2004]~~ 63M-1-2004 may receive the grant or loan, the eligible county shall enter
- 80567 into a written agreement with the director.
- 80568 (2) The written agreement described in Subsection (1):
- 80569 (a) shall:
- 80570 (i) specify the amount of the grant or loan;
- 80571 (ii) specify the time period for distributing the grant or loan;
- 80572 (iii) specify the terms and conditions that the eligible county shall meet to receive the
- 80573 grant or loan;
- 80574 (iv) specify the structure of the grant or loan;
- 80575 (v) specify the eligible expenses for which the eligible county may expend the grant or
- 80576 loan;
- 80577 (vi) if the eligible county has been awarded a loan:
- 80578 (A) specify the repayment schedule for the loan;
- 80579 (B) specify the method of calculating interest applicable to the loan; and
- 80580 (C) specify procedures for:
- 80581 (I) applying interest to the loan; and
- 80582 (II) paying interest on the loan; and
- 80583 (vii) subject to Subsection (3), contain provisions governing the failure to meet or the
- 80584 violation of a term or condition of the agreement; and
- 80585 (b) may contain any other provision as determined by the director.

80586 (3) (a) Except as provided in Subsection (3)(b), and subject to Subsection (3)(c), if an
80587 eligible county fails to meet or violates any provision of the agreement described in Subsection
80588 (2), the board shall impose one or more of the following penalties:

80589 (i) require the eligible county to repay all or a portion of the amount of any grant or
80590 loan the eligible county received in an amount determined by the board;

80591 (ii) provide that an eligible county may not receive any amounts of a grant or loan that
80592 the eligible county has been awarded in accordance with Section [~~63-38f-2004~~] 63M-1-2004
80593 but has not received; or

80594 (iii) provide that an eligible county may not be awarded a grant or loan under this part
80595 for a time period determined by the board.

80596 (b) Notwithstanding Subsection (3)(a), the board may waive, reduce, or compromise a
80597 penalty described in Subsection (3)(a) if an eligible county demonstrates that reasonable cause
80598 exists for the eligible county failing to meet or violating a provision of the agreement described
80599 in Subsection (2).

80600 (c) If the board imposes a penalty in accordance with this Subsection (3) on an eligible
80601 county, the board shall provide written notice of the penalty to the eligible county within ten
80602 calendar days after the day on which the board determines to impose the penalty.

80603 Section 1898. Section **63M-1-2006**, which is renumbered from Section 63-38f-2006 is
80604 renumbered and amended to read:

80605 ~~[63-38f-2006]~~. **63M-1-2006. Report to Workforce Services and Community**
80606 **and Economic Development Interim Committee.**

80607 The board shall annually report to the Workforce Services and Community and
80608 Economic Development Interim Committee on or before the November interim meeting:

80609 (1) the total amount of grants and loans the board awarded to eligible counties under
80610 this part during the fiscal year that ended on the June 30 immediately preceding the November
80611 interim meeting;

80612 (2) a description of the projects with respect to which the board awarded a grant or
80613 loan under this part;

80614 (3) the total amount of outstanding debt service that is being repaid by a grant or loan
80615 awarded under this part;

80616 (4) on whether the grants and loans awarded under this part have resulted in economic
80617 development within project areas;

80618 (5) on whether the board recommends:

80619 (a) that the grants and loans authorized by this part should be continued; or

80620 (b) any modifications to this part; and

80621 (6) on any other issue relating to this part as determined by the Workforce Services and
80622 Community and Economic Development Interim Committee.

80623 Section 1899. Section **63M-1-2101**, which is renumbered from Section 63-38f-2101 is
80624 renumbered and amended to read:

Part 21. Economic Development - Government Procurement Contracts

~~63-38f-2101~~. 63M-1-2101. Projects to assist companies secure new

business with federal, state, and local governments.

80628 (1) The Legislature recognizes that:

80629 (a) many Utah companies provide products and services which are routinely procured
80630 by a myriad of governmental entities at all levels of government, but that attempting to
80631 understand and comply with the numerous certification, registration, proposal, and contract
80632 requirements associated with government procurement often raises significant barriers for those
80633 companies with no government contracting experience;

80634 (b) the costs associated with obtaining a government contract for products or services
80635 often prevent most small businesses from working in the governmental procurement market;

80636 (c) currently a majority of federal procurement opportunities are contracted to
80637 businesses located outside of the state;

80638 (d) the Governor's Office of Economic Development currently administers programs
80639 and initiatives that help create and grow companies in Utah and recruit companies to Utah
80640 through the use of state employees, public-private partnerships, and contractual services; and

80641 (e) there exists a significant opportunity for Utah companies to secure new business

80642 with federal, state, and local governments.

80643 (2) The office, through its director:

80644 (a) shall manage and direct the administration of state and federal programs and
80645 initiatives whose purpose is to procure federal, state, and local governmental contracts;

80646 (b) may require program accountability measures; and

80647 (c) may receive and distribute legislative appropriations and public and private grants
80648 for projects and programs that:

80649 (i) are focused on growing Utah companies and positively impacting statewide revenues
80650 by helping these companies secure new business with federal, state, and local governments;

80651 (ii) provide guidance to Utah companies interested in obtaining new business with
80652 federal, state, and local governmental entities;

80653 (iii) would facilitate marketing, business development, and expansion opportunities for
80654 Utah companies in cooperation with the Governor's Office of Economic Development's
80655 Procurement Technical Assistance Center Program and with public, non-profit, or private sector
80656 partners such as local chambers of commerce, trade associations, or private contractors as
80657 determined by the office's director to successfully match Utah businesses with government
80658 procurement opportunities; and

80659 (iv) may include the following components:

80660 (A) recruitment, individualized consultation, and an introduction to government
80661 contracting;

80662 (B) specialized contractor training for companies located in Utah;

80663 (C) a Utah contractor matching program for government requirements;

80664 (D) experienced proposal and bid support; and

80665 (E) specialized support services.

80666 (3) (a) The office, through its director, shall make any distribution referred to in
80667 Subsection (2) on a semiannual basis.

80668 (b) A recipient of monies distributed under this section shall provide the office with a
80669 set of standard monthly reports, the content of which shall be determined by the office to

80670 include at least the following information:

- 80671 (i) consultive meetings with Utah companies;
- 80672 (ii) seminars or training meetings held;
- 80673 (iii) government contracts awarded to Utah companies;
- 80674 (iv) increased revenues generated by Utah companies from new government contracts;
- 80675 (v) jobs created;
- 80676 (vi) salary ranges of new jobs; and
- 80677 (vii) the value of contracts generated.

80678 Section 1900. Section **63M-1-2201**, which is renumbered from Section 63-38f-2201 is
80679 renumbered and amended to read:

80680 **Part 22. Transient Room Tax Fund Act**

80681 ~~[63-38f-2201].~~ **63M-1-2201. Title.**

80682 This part is known as the "Transient Room Tax Fund Act."

80683 Section 1901. Section **63M-1-2202**, which is renumbered from Section 63-38f-2202 is
80684 renumbered and amended to read:

80685 ~~[63-38f-2202].~~ **63M-1-2202. Definitions.**

80686 As used in this part, "fund" means the Transient Room Tax Fund created by Section
80687 ~~[63-38f-2203]~~ 63M-1-2203.

80688 Section 1902. Section **63M-1-2203**, which is renumbered from Section 63-38f-2203 is
80689 renumbered and amended to read:

80690 ~~[63-38f-2203].~~ **63M-1-2203. Transient Room Tax Fund -- Source of**
80691 **revenues -- Interest -- Expenditure or pledge of revenues.**

80692 (1) There is created a restricted special revenue fund known as the Transient Room Tax
80693 Fund.

80694 (2) (a) The fund shall be funded by the portion of the sales and use tax described in
80695 Subsection 59-12-301(2).

80696 (b) (i) The fund shall earn interest.

80697 (ii) Any interest earned on fund monies shall be deposited into the fund.

80698 (3) (a) Subject to Subsection (3)(b), the director shall expend or pledge the monies
80699 deposited into the fund:

80700 (i) to mitigate the impacts of traffic and parking relating to a convention facility within a
80701 county of the first class;

80702 (ii) for a purpose listed in Section 17-31-2, except that any requirements in Section
80703 17-31-2 for the expenditure of monies do not apply; or

80704 (iii) for a combination of Subsections (3)(a)(i) and (ii).

80705 (b) The director may not expend more than \$20,000,000 in total to mitigate the impacts
80706 of traffic and parking relating to a convention facility within a county of the first class.

80707 Section 1903. Section **63M-1-2301**, which is renumbered from Section 63-38f-2301 is
80708 renumbered and amended to read:

80709 **Part 23. Rural Broadband Service Fund Act**

80710 ~~[63-38f-2301].~~ **63M-1-2301. Title.**

80711 This part is known as the "Rural Broadband Service Fund Act."

80712 Section 1904. Section **63M-1-2302**, which is renumbered from Section 63-38f-2302 is
80713 renumbered and amended to read:

80714 ~~[63-38f-2302].~~ **63M-1-2302. Definitions.**

80715 As used in this part:

80716 (1) "Broadband service" means any wire line technology identified by the director as
80717 having the capacity to transmit data from and to a subscriber's computer to the Internet or
80718 Internet-related services at a minimum rate of data transmission of 256 kilobits per second.

80719 (2) "Fund" means the restricted account known as the Rural Broadband Service Fund
80720 created in Section ~~[63-38f-2303]~~ 63M-1-2303.

80721 (3) "Provider" means a person who will provide retail broadband service to subscribers
80722 in a rural area.

80723 (4) "Rural area" means any territory in the state:

80724 (a) within a city, town, or unincorporated area with a population of 10,000 or less
80725 based on the most recently published data of the United States Census Bureau; and

80726 (b) in which broadband service is not available.

80727 Section 1905. Section **63M-1-2303**, which is renumbered from Section 63-38f-2303 is
80728 renumbered and amended to read:

80729 ~~[63-38f-2303]~~. **63M-1-2303. Rural Broadband Service Fund created --**
80730 **Interest -- Costs -- Deposits to the General Fund.**

80731 (1) There is created within the General Fund a restricted account known as the Rural
80732 Broadband Service Fund.

80733 (2) The fund shall be funded by:

80734 (a) monies appropriated to the fund by the Legislature; and

80735 (b) the interest described in Subsection (3).

80736 (3) (a) The fund shall earn interest.

80737 (b) The interest described in Subsection (3)(a) shall be deposited into the fund.

80738 (4) Upon appropriation by the Legislature, the monies and interest deposited into the
80739 fund in accordance with this section may be expended:

80740 (a) by the director with the advice of the board to award grants to providers as
80741 provided in this part; and

80742 (b) to cover the costs of administering this part in an amount during any fiscal year not
80743 to exceed 2% of the fund balance at the start of any fiscal year.

80744 (5) (a) Except as provided in Subsection (5)(b), the monies and interest deposited into
80745 the fund in accordance with this section shall be nonlapsing.

80746 (b) Notwithstanding Subsection (5)(a), the Division of Finance shall deposit any monies
80747 and interest in the fund into the General Fund on July 1, 2010.

80748 Section 1906. Section **63M-1-2304**, which is renumbered from Section 63-38f-2304 is
80749 renumbered and amended to read:

80750 ~~[63-38f-2304]~~. **63M-1-2304. Grants for rural broadband deployment.**

80751 (1) (a) A provider that wishes to deploy broadband service in a rural area may file an
80752 application for a grant with the office.

80753 (b) An application shall:

- 80754 (i) be accompanied by an affidavit executed by the provider under oath; and
80755 (ii) provide information prescribed in rules adopted by the director.
80756 (2) The director shall:
80757 (a) provide reasonable public notice of an application;
80758 (b) allow public comment on the application for a reasonable period of time;
80759 (c) allow any other provider a reasonable opportunity to file an application to provide
80760 broadband service in all or part of the rural area specified in the application filed under
80761 Subsection (1); and
80762 (d) make rules concerning the method of providing public notice, the time period for
80763 public comment, and the manner of filing a competing application.
80764 (3) (a) The office shall review all applications submitted in accordance with Subsections
80765 (1) and (2) to provide broadband service in a rural area.
80766 (b) In reviewing any application, the office may obtain information from the provider or
80767 others and conduct its own analysis of any issue relevant to the application, including economic
80768 development.
80769 (4) After review of all applications for any rural area in accordance with Subsection (3),
80770 the director may approve an application and enter into a written agreement with a provider to
80771 provide a grant from the fund if the director, with the advice of the board, is satisfied that the
80772 provider's application establishes that:
80773 (a) the provider has the financial, managerial, and technical ability to deploy broadband
80774 service in the rural area in accordance with the application;
80775 (b) the territory in which the provider proposes to deploy broadband service is a rural
80776 area;
80777 (c) the cost of deployment of broadband service in the rural area is reasonable;
80778 (d) the initial terms and conditions on which broadband service will be made available
80779 to potential subscribers in the rural area are reasonable;
80780 (e) the provider has a viable business plan to continue providing broadband service to
80781 all or some subscribers within the rural area;

80782 (f) if a competitive application was filed for the rural area, the provider's application is
80783 the most advantageous application to potential subscribers or the state; and

80784 (g) the application otherwise meets the requirements of this part and any rules adopted
80785 by the director concerning broadband service deployment.

80786 (5) (a) The director may, with the advice of the board, require the provider to make
80787 adjustments to the application or agree to reasonable conditions consistent with the purposes of
80788 this part before approving the application.

80789 (b) Any adjustments and conditions required by the director shall be included in the
80790 written agreement entered into with the provider.

80791 (6) The amount of any grant provided from the fund shall be no greater than the lesser
80792 of 1/2 of:

80793 (a) the actual cost of deployment of broadband service in the rural area as established
80794 by verified accounts filed with the office after completion of deployment; or

80795 (b) the projected amount established during the application process by the director and
80796 board for the deployment of broadband service in the rural area as provided in the verified
80797 application.

80798 (7) Upon completion of deployment of broadband service by a provider in accordance
80799 with the terms of an agreement as provided in Subsection (4), the director shall pay the amount
80800 of the grant agreed upon consistent with Subsection (6) to the provider from the fund.

80801 (8) In making any determination required under this section, the director, the office, and
80802 the board:

80803 (a) may not discriminate against any accepted technology for provision of broadband
80804 service other than for reasons of cost or the terms and conditions upon which the provider
80805 proposes to provide broadband service to potential subscribers; and

80806 (b) may consult with the Division of Public Utilities created in Section 13-1-2.
80807 Section 1907. Section **63M-1-2305**, which is renumbered from Section 63-38f-2305 is
80808 renumbered and amended to read:

80809 ~~[63-38f-2305]~~. **63M-1-2305**. Annual report.

80810 (1) The office shall make a report to the Legislature's Workforce Services and
80811 Community and Economic Development Interim Committee by October 1 of each year until the
80812 fund is terminated under Subsection [~~63-38f-2303~~] 63M-1-2303(5)(b).

80813 (2) The report required by Subsection (1) shall provide information concerning
80814 deployment of broadband service using grants from the fund, pending applications, the balance
80815 remaining in the fund, and suggested appropriations to the fund to achieve the purposes of this
80816 part.

80817 Section 1908. Section **63M-1-2306**, which is renumbered from Section 63-38f-2306 is
80818 renumbered and amended to read:

80819 [~~63-38f-2306~~]. **63M-1-2306**. **Rules.**

80820 The director, with the advice of the board, may, makes rules in accordance with [Title
80821 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to administer this
80822 part.

80823 Section 1909. Section **63M-2-101**, which is renumbered from Section 63-38g-101 is
80824 renumbered and amended to read:

80825 **CHAPTER 2. UTAH SCIENCE TECHNOLOGY AND**
80826 **RESEARCH GOVERNING AUTHORITY ACT**

80827 **Part 1. General Provisions**

80828 [~~63-38g-101~~]. **63M-2-101**. **Title.**

80829 This chapter is known as the "Utah Science Technology and Research Governing
80830 Authority Act."

80831 Section 1910. Section **63M-2-102**, which is renumbered from Section 63-38g-102 is
80832 renumbered and amended to read:

80833 [~~63-38g-102~~]. **63M-2-102**. **Definitions.**

80834 As used in this chapter:

80835 (1) "Commercialization revenues " means dividends, realized capital gains, license fees,
80836 royalty fees, and other revenues received by a university as a result of commercial applications
80837 developed from the project, less:

80838 (a) the portion of those revenues allocated to the inventor; and
 80839 (b) expenditures incurred by the university to legally protect the intellectual property.

80840 (2) "Executive director" means the person appointed by the governing authority under
 80841 Section ~~[63-38g-301]~~ 63M-2-301.

80842 (3) "Governing authority" means the Utah Science Technology and Research
 80843 Governing Authority created in Section ~~[63-38g-301]~~ 63M-2-301.

80844 (4) "Project" means the Utah Science Technology and Research Project.

80845 (5) "Research buildings" means any of the buildings listed in Section ~~[63-38g-201]~~
 80846 63M-2-201.

80847 (6) "Research universities" means the University of Utah and Utah State University.

80848 (7) "Technology outreach program" means the program required by Section
 80849 ~~[63-38g-202]~~ 63M-2-202.

80850 (8) "Utah Science Technology and Research Project" means the buildings and activities
 80851 described in Part 2, Utah Science Technology and Research Project.

80852 Section 1911. Section **63M-2-201**, which is renumbered from Section 63-38g-201 is
 80853 renumbered and amended to read:

Part 2. Utah Science Technology and Research Project

~~[63-38g-201]~~. **63M-2-201. Science technology research buildings.**

80856 (1) As funding becomes available from the Legislature or other sources, the Utah
 80857 Science Technology and Research Governing Authority created in Part 3 shall:

80858 (a) construct at Utah State University:

80859 (i) a Bio Innovations Research Institute;

80860 (ii) an Infectious Disease Research Center; and

80861 (iii) an Informatics/Computing Research Center; and

80862 (b) construct at the University of Utah:

80863 (i) a Neuroscience and Biomedical Technology Research Building; and

80864 (ii) an Information Technology and Bioinformatics Research Center.

80865 (2) The governing authority shall, subject to any restrictions or directions established by

80866 the Legislature, plan, design, and construct the buildings.

80867 (3) (a) Utah State University shall provide the land for the construction of science
80868 technology and research buildings on its campus.

80869 (b) The University of Utah shall provide the land for the construction of science
80870 technology and research buildings on its campus.

80871 (4) The governing authority shall hold title to the research buildings.

80872 (5) The governing authority may:

80873 (a) lease the buildings to Utah State University and the University of Utah;

80874 (b) require research teams to generate a certain amount of revenue from grants or other
80875 sources to contribute to the project; and

80876 (c) unless prohibited by law, deposit lease payments and other monies received from the
80877 universities and research teams with the state treasurer for deposit into the sinking funds created
80878 under Section 63B-1a-301 for debt service on the bonds issued to fund planning, design, and
80879 construction of the research buildings.

80880 Section 1912. Section **63M-2-202**, which is renumbered from Section 63-38g-202 is
80881 renumbered and amended to read:

80882 ~~[63-38g-202]~~. **63M-2-202. Technology outreach program.**

80883 (1) As funding becomes available from the Legislature or other sources, the Utah
80884 Science Technology and Research Governing Authority created in Part 3 shall establish a
80885 technology outreach program at up to five locations distributed strategically throughout Utah.

80886 (2) (a) The governing authority shall ensure that the technology outreach program acts
80887 as a resource to:

80888 (i) broker ideas, new technologies, and services to entrepreneurs and businesses
80889 throughout a defined service area;

80890 (ii) engage local entrepreneurs and professors at applied technology centers, colleges,
80891 and universities by connecting them to Utah's research universities;

80892 (iii) screen business ideas and new technologies to ensure that the ones with the highest
80893 growth potential receive the most targeted services and attention;

80894 (iv) connect market ideas and technologies in new or existing businesses or industries or
80895 in regional colleges and universities with the expertise of Utah's research universities;

80896 (v) assist businesses, applied technology centers, colleges, and universities in developing
80897 commercial applications for their research; and

80898 (vi) disseminate and share discoveries and technologies emanating from Utah's research
80899 universities to local entrepreneurs, businesses, applied technology centers, colleges, and
80900 universities.

80901 (b) In designing and operating the technology outreach program, the governing
80902 authority shall work cooperatively with the Technology Commercialization Offices at Utah
80903 State University and the University of Utah.

80904 Section 1913. Section **63M-2-203**, which is renumbered from Section 63-38g-203 is
80905 renumbered and amended to read:

80906 ~~[63-38g-203]~~. **63M-2-203. Research teams.**

80907 As funding becomes available from the Legislature or other sources, and subject to any
80908 restrictions or directions established by the Legislature, the governing authority shall allocate
80909 monies to Utah State University and the University of Utah to provide funding for research
80910 teams to conduct science and technology research.

80911 Section 1914. Section **63M-2-204**, which is renumbered from Section 63-38g-204 is
80912 renumbered and amended to read:

80913 ~~[63-38g-204]~~. **63M-2-204. Financial participation agreement.**

80914 (1) In consideration of the monies and services provided or agreed to be provided, the
80915 state of Utah, Utah State University, and the University of Utah covenant and agree that they
80916 will allocate commercialization revenues as follows:

80917 (a) for the first \$15,000,000 received:

80918 (i) \$10,000,000 to Utah State University and the University of Utah, with the monies
80919 distributed proportionately based upon which university conducted the research that generated
80920 the commercialization revenues; and

80921 (ii) \$5,000,000 to the Governor's Office of Economic Development for the Centers of

80922 Excellence program created by Chapter 38f, Part 7, Centers of Excellence Act; and
80923 (b) for all subsequent monies received:
80924 (i) 50% to Utah State University and the University of Utah, with the monies
80925 distributed proportionately based upon which university conducted the research that generated
80926 the commercialization revenues; and
80927 (ii) 50% to the governing authority or other entity designated by the state to be used
80928 for:
80929 (A) the Centers of Excellence program created by Chapter 38f, Part 7, Centers of
80930 Excellence Act;
80931 (B) replacement of equipment in the research buildings;
80932 (C) recruiting and paying additional research teams; and
80933 (D) construction of additional research buildings.
80934 (2) The Governor's Office of Economic Development shall:
80935 (a) distribute that portion of the \$5,000,000 allocated to the Centers of Excellence
80936 program by Subsection (1)(a)(ii) to Utah State University and the University of Utah based
80937 upon which institution performed the research that generated the commercialization revenues;
80938 and
80939 (b) credit those amounts to the universities as matching funds under Subsection
80940 [~~63-38f-701~~] 63M-1-702(2).

80941 Section 1915. Section **63M-2-301**, which is renumbered from Section 63-38g-301 is
80942 renumbered and amended to read:

80943 **Part 3. Utah Science Technology and Research Governing Authority**
80944 [~~63-38g-301~~]. **63M-2-301. The Utah Science Technology and Research**
80945 **Governing Authority -- Creation -- Membership -- Meetings -- Staff.**

80946 (1) There is created the Utah Science Technology and Research Governing Authority
80947 consisting of the state treasurer and the following eight members appointed as follows with the
80948 consent of the Senate:
80949 (a) three appointed by the governor;

- 80950 (b) two appointed by the president of the Senate;
- 80951 (c) two appointed by the speaker of the House of Representatives; and
- 80952 (d) one appointed by the commissioner of higher education.
- 80953 (2) (a) (i) The eight appointed members shall serve four-year staggered terms.
- 80954 (ii) The appointed members may not serve more than two full consecutive terms.
- 80955 (b) Notwithstanding Subsection (2)(a)(i), the terms of the first members of the
- 80956 governing authority shall be staggered by lot so that half of the initial members serve two-year
- 80957 terms and half serve four-year terms.
- 80958 (3) Vacancies in the appointed positions on the governing authority shall be filled by the
- 80959 appointing authority with consent of the Senate for the unexpired term.
- 80960 (4) (a) The governor shall select the chair of the governing authority to serve a one-year
- 80961 term.
- 80962 (b) The president of the Senate and the speaker of the House of Representatives shall
- 80963 jointly select the vice chair of the governing authority to serve a one-year term.
- 80964 (5) The governing authority shall meet at least monthly and may meet more frequently
- 80965 at the request of a majority of the members of the governing authority.
- 80966 (6) Five members of the governing authority are a quorum.
- 80967 (7) (a) Members who are not government employees shall receive no compensation or
- 80968 benefits for their services, but may receive per diem and expenses incurred in the performance
- 80969 of the member's official duties at the rates established by the Division of Finance under Sections
- 80970 63A-3-106 and 63A-3-107.
- 80971 (b) Members may decline to receive per diem and expenses for their service.
- 80972 (8) (a) (i) The governing authority shall hire a full-time executive director to provide
- 80973 staff support for the governing authority.
- 80974 (ii) The executive director is an at-will employee who may be terminated without cause
- 80975 by the governor or by majority vote of the governing authority.
- 80976 (b) The Governor's Office of Economic Development shall provide office space and
- 80977 administrative support for the executive director.

80978 Section 1916. Section **63M-2-302**, which is renumbered from Section 63-38g-302 is
80979 renumbered and amended to read:

80980 ~~[63-38g-302]~~. **63M-2-302. Governing authority powers.**

80981 (1) The governing authority shall:

80982 (a) ensure that funds appropriated and received for research and development at the
80983 research universities and for the technology outreach program are used appropriately,
80984 effectively, and efficiently in accordance with the intent of the Legislature;

80985 (b) in cooperation with the universities' administrations, expand key research at the two
80986 research universities;

80987 (c) enhance technology transfer and commercialization of research and technologies
80988 developed at the research universities to create high-quality jobs and new industries in the
80989 private sector in Utah;

80990 (d) review state and local economic development plans and appropriations to ensure
80991 that the project and appropriations do not duplicate existing or planned programs;

80992 (e) establish economic development objectives for the project;

80993 (f) by following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
80994 Chapter 3, Utah Administrative Rulemaking Act, make rules for allocating monies appropriated
80995 to it for research teams and for the commercialization of new technology between Utah State
80996 University and the University of Utah;

80997 (g) verify that the project is being enhanced by research grants and that it is meeting the
80998 governing authority's economic development objectives;

80999 (h) monitor all research plans that are part of the project at the research universities to
81000 determine that appropriations are being spent in accordance with legislative intent and to
81001 maximize the benefit and return to the state;

81002 (i) develop methods and incentives to encourage investment in and contributions to the
81003 project from the private sector; and

81004 (j) annually report and make recommendations to:

81005 (i) the governor;

- 81006 (ii) the Executive Appropriations Committee; and
- 81007 (iii) the Economic Development Appropriations Subcommittee.
- 81008 (2) The governing authority may:
- 81009 (a) in addition to monies received by it from the Legislature, receive contributions from
- 81010 any source in the form of money, property, labor, or other things of value for the project;
- 81011 (b) subject to any restrictions imposed by the donation, appropriations, or bond
- 81012 authorizations, allocate monies received by it among the research universities, technology
- 81013 outreach program, and technology transfer offices to support commercialization and technology
- 81014 transfer to the private sector; or
- 81015 (c) enter into agreements necessary to obtain private equity investment in the project.

81016 Section 1917. Section **63M-2-303**, which is renumbered from Section 63-38g-303 is

81017 renumbered and amended to read:

81018 ~~[63-38g-303]~~. **63M-2-303. Utah Science Technology and Research**

81019 **Governing Authority Advisory Council -- Chair -- Meetings.**

- 81020 (1) There is created the Utah Science Technology and Research Governing Authority
- 81021 Advisory Council consisting of 12 members appointed as follows:
- 81022 (a) one member appointed by the director of the Governor's Office of Economic
- 81023 Development;
- 81024 (b) one member appointed by the Utah Information Technology Association;
- 81025 (c) one member appointed by the Utah Nanotechnology Initiative;
- 81026 (d) one member appointed by the Economic Development Corporation of Utah;
- 81027 (e) one member appointed by the Utah Life Science Association;
- 81028 (f) one member appointed by the Salt Lake Area Chamber of Commerce;
- 81029 (g) one member appointed by the Provo-Orem Chamber of Commerce;
- 81030 (h) one member appointed by the Davis Area Chamber of Commerce;
- 81031 (i) one member appointed by the Ogden-Weber Chamber of Commerce;
- 81032 (j) one member appointed by the Cache Chamber of Commerce;
- 81033 (k) one member appointed by the St. George Area Chamber of Commerce; and

- 81034 (1) one member appointed by the Vernal Chamber of Commerce.
- 81035 (2) The governing authority shall consult with the advisory council about the project.
- 81036 (3) The advisory council shall select a chair from among its members to serve a
- 81037 two-year term.
- 81038 (4) The advisory council shall convene whenever the governing authority requests a
- 81039 meeting for consultation.
- 81040 (5) (a) (i) Members who are not government employees shall receive no compensation
- 81041 or benefits for their services, but may receive per diem and expenses incurred in the
- 81042 performance of the member's official duties at the rates established by the Division of Finance
- 81043 under Sections 63A-3-106 and 63A-3-107.
- 81044 (ii) Members may decline to receive per diem and expenses for their service.
- 81045 (b) (i) State government officer and employee members who do not receive salary, per
- 81046 diem, or expenses from their agency for their service may receive per diem and expenses
- 81047 incurred in the performance of their official duties from the committee at the rates established by
- 81048 the Division of Finance under Sections 63A-3-106 and 63A-3-107.
- 81049 (ii) State government officer and employee members may decline to receive per diem
- 81050 and expenses for their service.

81051 Section 1918. Section **63M-3-101** is enacted to read:

81052 **CHAPTER 3. TAR SANDS PILOT PLANT ACT**

81053 **Part 1. General Provisions**

81054 **63M-3-101. Title.**

81055 This chapter is known as the "Tar Sands Pilot Plant Act."

81056 Section 1919. Section **63M-3-102**, which is renumbered from Section 63-45a-1 is

81057 renumbered and amended to read:

81058 **~~63-45a-1~~. 63M-3-102. Legislative findings -- Purpose of act.**

- 81059 (1) The Legislature finds that:
- 81060 (a) Substantial deposits of tar sands exist within lands located in various places within
- 81061 the state of Utah, but this is primarily a Utah phenomenon, there being no similar significant

81062 deposits within lands located elsewhere in the United States.

81063 (b) While large known deposits of tar sands exist outside the United States, primarily in
81064 South America and Canada, only those in Canada produce commercial quantities of
81065 hydrocarbons, this having come about only after years of research and experimentation and
81066 substantial private and public investment.

81067 (c) Significant laboratory research has been conducted, including research by the
81068 University of Utah, which demonstrates a potential for commercial production of the tar sands
81069 deposits located in the state of Utah, which potential remains to be established by the scale-up
81070 of laboratory research to a pilot plant development stage.

81071 (d) Successful demonstration of a hydrocarbon recovery process from Utah tar sands as
81072 commercially viable at the pilot plant level of production could form the basis for the
81073 development by private industry of commercial production of a substantial volume of
81074 hydrocarbon energy fuel, thereby commensurately reducing the amount of petroleum products
81075 which are required to be imported at exorbitant cost from foreign sources to meet the needs of
81076 the citizens of this state and the United States.

81077 (2) The purpose of this act is to stimulate and encourage the development and
81078 commercial production by private industry of hydrocarbons from the tar sands deposits lying
81079 within the state of Utah for the public good and economic well-being of the citizens of this state
81080 and the United States, and to so do by providing for the design, construction, and operation of a
81081 pilot plant to be employed for the purpose of demonstrating the commercial viability of
81082 processes for the recovery of hydrocarbons from the tar sands deposits of the state through
81083 certain funding by the state in conjunction with funding furnished from other sources, both
81084 public and private.

81085 Section 1920. Section **63M-3-103**, which is renumbered from Section 63-45a-2 is
81086 renumbered and amended to read:

81087 ~~[63-45a-2]~~. **63M-3-103. Definitions.**

81088 As used in this act:

81089 (1) "Contractor" means the parties from private industry who design, construct, or

81090 operate the pilot plant.

81091 (2) "Council" means the state advisory council on science and technology.

81092 (3) "Intellectual property" means the sum of knowledge contained in patents,
81093 know-how, copyrights, trade secrets, and technical information relating to the pilot plant and
81094 the research which has preceded it.

81095 (4) "Objective period" means that period of time required for the pilot plant to achieve
81096 its design objectives.

81097 (5) "Pilot plant" means the tar sands pilot plant which is the subject of this act.

81098 (6) "Station" means the Utah engineering experiment station, University of Utah.

81099 Section 1921. Section **63M-3-201**, which is renumbered from Section 63-45a-3 is
81100 renumbered and amended to read:

81101 **Part 2. Contracts and Intellectual Property**

81102 **~~[63-45a-3]~~. 63M-3-201. Contract for pilot plant -- Contents -- Financing --**

81103 **Termination of contract.**

81104 (1) The council is authorized to enter into contracts with contractors to provide for the
81105 design, construction, and operation of a pilot plant to fulfill the purposes of this act.

81106 (2) The contracts provided for in Subsection (1) shall provide, among other things, for
81107 the following:

81108 (a) The plans and specifications for and the processes to be used in the pilot plant must
81109 be approved by the council.

81110 (b) The station is to be the project engineer in respect to the pilot plant and is to
81111 represent the council in respect to it. As the project engineer the station has the responsibility of
81112 monitoring performance by the contractors, gathering data pertinent to the purpose for which
81113 the pilot plant is to be constructed and operated, and performing such administrative,
81114 accounting, and other duties assigned to it in respect to the pilot plant by the council. As
81115 compensation for its services the station is to receive its costs, direct and indirect, calculated in
81116 accordance with standard accounting procedures followed by the University of Utah in
81117 contracts with the United States government and its agencies; and the amount to be so paid to

81118 the station is to be considered part of the costs of design, construction, and operation of the
81119 pilot plant.

81120 (c) The contractor shall provide all funds necessary to the design, construction, and
81121 operation of the pilot plant for the objective period which are not provided by the appropriation
81122 made to the council for purposes of this act under Section 5. To provide its portion of these
81123 funds the contractor may use both private and public sources, but that from public sources can
81124 only be used with prior approval by the council.

81125 (d) The site for the pilot plant is subject to prior approval by the council.

81126 (e) The pilot plant and any production from it shall be owned by the state of Utah in the
81127 proportion that its appropriation for purposes of this act under Section 5 bears to the total cost
81128 of designing, constructing, and operating the pilot plant for the objective period. This total cost
81129 does not include the cost or value of the site for the pilot plant or tar sand feedstock for the
81130 objective period.

81131 (f) The council shall have the exclusive right to determine when the end of the objective
81132 period has been reached, at which time any contracts between the council and the contractor
81133 regarding the pilot plant shall terminate. The pilot plant is then to be sold for cash pursuant to
81134 law at competitive bidding when the sale of the pilot plant equipment is determined to be
81135 practicable by the council. The gross proceeds from the sale shall be paid to the state but not in
81136 excess of the amount of the appropriation made under Section 5 plus an interest factor of 10%
81137 per year from the date of the contracts to the sale date.

81138 Section 1922. Section **63M-3-202**, which is renumbered from Section 63-45a-4 is
81139 renumbered and amended to read:

81140 ~~[63-45a-4]~~. **63M-3-202. Intellectual properties discovered or developed --**
81141 **Ownership -- Patenting -- Licensing.**

81142 (1) To the extent not inconsistent with the patent laws of the United States, the
81143 intellectual properties which are newly discovered or newly developed in the course of the
81144 design, construction, and operation of the pilot plant during the objective period:

81145 (a) shall be owned by the state of Utah to the same extent as the pilot plant and

81146 production from it as provided for in Subsection [~~63-45a-3~~] 63M-3-201(2)(e); and

81147 (b) shall, if patentable, be patented in a manner appropriate to this ownership by the
81148 state and the other owners.

81149 (2) Any intellectual properties described in Subsection (1) insofar as they are so owned
81150 by the state may be licensed for the objective period upon such terms as are approved by the
81151 council.

81152 Section 1923. Section **63M-4-101**, which is renumbered from Section 63-53b-101 is
81153 renumbered and amended to read:

81154 **CHAPTER 4. UTAH ENERGY ACT**

81155 **Part 1. General Provisions**

81156 [~~63-53b-101~~]. **63M-4-101. Title.**

81157 This chapter is known as the "Utah Energy Act."

81158 Section 1924. Section **63M-4-102**, which is renumbered from Section 63-53b-102 is
81159 renumbered and amended to read:

81160 [~~63-53b-102~~]. **63M-4-102. Definitions.**

81161 As used in this chapter, "state agency" means an executive branch:

- 81162 (1) department;
- 81163 (2) agency;
- 81164 (3) board;
- 81165 (4) commission;
- 81166 (5) division; or
- 81167 (6) state educational institution.

81168 Section 1925. Section **63M-4-201**, which is renumbered from Section 63-53b-201 is
81169 renumbered and amended to read:

81170 **Part 2. Governor's Energy Advisor**

81171 [~~63-53b-201~~]. **63M-4-201. Governor's energy advisor -- Duties.**

- 81172 (1) (a) The governor shall appoint an energy advisor.
- 81173 (b) The governor's energy advisor serves at the pleasure of the governor.

- 81174 (2) The governor's energy advisor shall:
- 81175 (a) advise the governor on energy-related matters;
- 81176 (b) annually review and propose updates to the state's energy policy, as contained in
- 81177 Section ~~[63-53b-301]~~ 63M-4-301;
- 81178 (c) promote as the governor's energy advisor considers necessary:
- 81179 (i) the development of cost-effective energy resources both renewable and
- 81180 nonrenewable; and
- 81181 (ii) educational programs, including programs supporting conservation and energy
- 81182 efficiency measures;
- 81183 (d) coordinate across state agencies to assure consistency with state energy policy,
- 81184 including:
- 81185 (i) working with the State Energy Program to promote access to federal assistance for
- 81186 energy-related projects for state agencies and members of the public;
- 81187 (ii) working with the Division of Homeland Security to assist the governor in carrying
- 81188 out the governor's energy emergency powers under ~~[Title 63, Chapter 53a]~~ Title 63K, Chapter
- 81189 2, Energy Emergency Powers of Governor;
- 81190 (iii) participating in the annual review of the energy emergency plan and the
- 81191 maintenance of the energy emergency plan and a current list of contact persons required by
- 81192 Section 53-2-110; and
- 81193 (iv) identifying and proposing measures necessary to facilitate low-income consumers'
- 81194 access to energy services;
- 81195 (e) coordinate with the Division of Homeland Security ongoing activities designed to
- 81196 test an energy emergency plan to ensure coordination and information sharing among state
- 81197 agencies and political subdivisions in the state, public utilities and other energy suppliers, and
- 81198 other relevant public sector persons as required by Sections 53-2-110, ~~[63-53a-3]~~ 63K-2-201,
- 81199 ~~[63-53a-7]~~ 63K-2-205, and ~~[63-53a-8]~~ 63K-2-301;
- 81200 (f) coordinate with requisite state agencies to study:
- 81201 (i) the creation of a centralized state repository for energy-related information;

- 81202 (ii) methods for streamlining state review and approval processes for energy-related
- 81203 projects; and
- 81204 (iii) the development of multistate energy transmission and transportation
- 81205 infrastructure;
- 81206 (g) coordinate energy-related regulatory processes within the state;
- 81207 (h) compile, and make available to the public, information about federal, state, and local
- 81208 approval requirements for energy-related projects;
- 81209 (i) act as the state's advocate before federal and local authorities for energy-related
- 81210 infrastructure projects or coordinate with the appropriate state agency; and
- 81211 (j) help promote the Division of Facilities Construction and Management's measures to
- 81212 improve energy efficiency in state buildings.

81213 Section 1926. Section **63M-4-202**, which is renumbered from Section 63-53b-202 is

81214 renumbered and amended to read:

81215 ~~[63-53b-202]~~. **63M-4-202. Agency cooperation.**

81216 A state agency shall provide the state energy officer with any energy-related information

81217 requested by the governor's energy advisor if the governor's energy advisor's request is

81218 consistent with other law.

81219 Section 1927. Section **63M-4-203**, which is renumbered from Section 63-53b-203 is

81220 renumbered and amended to read:

81221 ~~[63-53b-203]~~. **63M-4-203. Reports.**

- 81222 (1) The governor's energy advisor shall report annually to:
- 81223 (a) the governor;
- 81224 (b) the Natural Resources, Agriculture, and Environment Interim Committee; and
- 81225 (c) the Public Utilities and Technology Interim Committee.
- 81226 (2) The report required in Subsection (1) shall:
- 81227 (a) summarize the status and development of the state's energy resources;
- 81228 (b) address the governor's energy advisor's activities under this part; and
- 81229 (c) recommend any energy-related executive or legislative action the governor's energy

81230 advisor considers beneficial to the state, including updates to the state energy policy under
81231 Section [~~63-53b-301~~] 63M-4-301.

81232 Section 1928. Section **63M-4-301**, which is renumbered from Section 63-53b-301 is
81233 renumbered and amended to read:

81234 **Part 3. State Energy Policy**

81235 [~~63-53b-301~~]. **63M-4-301. State energy policy.**

81236 (1) It is the policy of the state that:

81237 (a) Utah have adequate, reliable, affordable, sustainable, and clean energy resources;

81238 (b) Utah will promote the development of:

81239 (i) nonrenewable energy resources, including natural gas, coal, oil, oil shale, and tar
81240 sands; and

81241 (ii) renewable energy resources, including geothermal, solar, wind, biomass, biodiesel,
81242 hydroelectric, and ethanol;

81243 (c) Utah will promote the study of nuclear power generation;

81244 (d) Utah will promote the development of resources and infrastructure sufficient to
81245 meet the state's growing demand, while contributing to the regional and national energy supply,
81246 thus reducing dependence on international energy sources;

81247 (e) Utah will allow market forces to drive prudent use of energy resources, although
81248 incentives and other methods may be used to ensure the state's optimal development and use of
81249 energy resources in the short- and long-term;

81250 (f) Utah will pursue energy conservation, energy efficiency, and environmental quality;

81251 (g) (i) state regulatory processes should be streamlined to balance economic costs with
81252 the level of review necessary to ensure protection of the state's various interests; and

81253 (ii) where federal action is required, Utah will encourage expedited federal action and
81254 will collaborate with federal agencies to expedite review;

81255 (h) Utah will maintain an environment that provides for stable consumer prices that are
81256 as low as possible while providing producers and suppliers a fair return on investment,
81257 recognizing that:

81258 (i) economic prosperity is linked to the availability, reliability, and affordability of
81259 consumer energy supplies; and

81260 (ii) investment will occur only when adequate financial returns can be realized; and

81261 (i) Utah will promote training and education programs focused on developing a
81262 comprehensive understanding of energy, including programs addressing:

81263 (i) energy conservation;

81264 (ii) energy efficiency;

81265 (iii) supply and demand; and

81266 (iv) energy related workforce development.

81267 (2) State agencies are encouraged to conduct agency activities consistent with
81268 Subsection (1).

81269 (3) A person may not file suit to challenge a state agency's action that is inconsistent
81270 with Subsection (1).

81271 Section 1929. Section **63M-4-302**, which is renumbered from Section 63-53b-302 is
81272 renumbered and amended to read:

81273 ~~[63-53b-302]~~. **63M-4-302. Legislative committee review.**

81274 The Natural Resources, Agriculture, and Environment Interim Committee and the Public
81275 Utilities and Technology Interim Committee shall review the state energy policy annually and
81276 propose any changes to the Legislature.

81277 Section 1930. Section **63M-5-101** is enacted to read:

81278 **CHAPTER 5. RESOURCE DEVELOPMENT ACT**

81279 **Part 1. General Provisions**

81280 **63M-5-101. Title.**

81281 This chapter is known as the "Resource Development Act."

81282 Section 1931. Section **63M-5-102**, which is renumbered from Section 63-51-1 is
81283 renumbered and amended to read:

81284 ~~[63-51-1]~~. **63M-5-102. Policy -- Legislative recognition.**

81285 (1) The Legislature declares that the policy of this state is:

81286 (a) to encourage industrial development and the development and utilization of the
81287 natural resources in this state in order to promote the economic development of this state and to
81288 provide benefits to the citizens of this state and other states; and

81289 (b) to encourage co-operation between the state and its agencies and political
81290 subdivisions with individuals, firms, and business organizations to provide for industrial
81291 development and the development and utilization of the natural resources of this state.

81292 (2) The Legislature recognizes that:

81293 (a) industrial development and the development and utilization of the natural resources
81294 in this state, particularly in rural areas, may have a significant financial impact on state agencies
81295 and units of local government unless adequate financing is made available to these state agencies
81296 and units of local government to enable them to provide necessary public works and
81297 improvements and public services prior to completion of natural resource and industrial
81298 facilities; and

81299 (b) because of the time lag between the financial impact on affected units of government
81300 and the normal beginning of the receipt of additional tax revenues from this development
81301 normally begins, it may be necessary and in the public interest of this state and its political
81302 subdivisions to provide through utilization of ad valorem taxes funds for these necessary public
81303 works and improvements; and

81304 (c) these necessary public works and improvements may in part be of benefit primarily
81305 to the industrial developer or the person developing or utilizing the natural resources in this
81306 state.

81307 Section 1932. Section **63M-5-103**, which is renumbered from Section 63-51-2 is
81308 renumbered and amended to read:

81309 **[63-51-2]. 63M-5-103. Definitions.**

81310 As used in this chapter:

81311 (1) "Commencement of construction" means any clearing of land, excavation, or
81312 construction but does not include preliminary site review, including soil tests, topographical
81313 surveys, exploratory drilling, boring or mining, or other preliminary tests.

81314 (2) "Developer" means any person engaged or to be engaged in industrial development
81315 or the development or utilization of natural resources in this state through a natural resource or
81316 industrial facility, including owners, contract purchases of owners, and persons who, as a lessee
81317 or under an agreement, are engaged or to be engaged in industrial development or the
81318 development or utilization of natural resources in this state through a natural resource or
81319 industrial facility.

81320 (3) "Major developer" means any developer whose proposed new or additional natural
81321 resource facility or industrial facility is projected:

81322 (a) To employ more than 500 people; or

81323 (b) To cause the population of an affected unit of local government to increase by more
81324 than 5%, the increase to include the primary work force of the facility and their dependents and
81325 the work force and dependents attributable to commercial and public service employment
81326 created by the presence of the facility.

81327 (4) "Natural resource facility" or "industrial facility" means any land, structure, building,
81328 plant, mine, road, installation, excavation, machinery, equipment, or device, or any addition to,
81329 reconstruction, replacement, or improvement of, land or an existing structure, building, plant,
81330 mine, road, installation, excavation, machinery, or device reasonably used, erected, constructed,
81331 acquired, or installed by any person, if a substantial purpose of or result of the use, erection,
81332 construction, acquisition, rental, lease, or installation is related to industrial development or the
81333 development or utilization of the natural resources in this state.

81334 (5) "Person" includes any individual, firm, co-partnership, joint venture, corporation,
81335 estate, trust, business trust, syndicate, or any group or combination acting as a unit.

81336 (6) "Unit of local government" means any county, municipality, school district, local
81337 district, special service district, or any other political subdivision of the state.

81338 Section 1933. Section **63M-5-201**, which is renumbered from Section 63-51-3 is
81339 renumbered and amended to read:

81340 **Part 2. Prepayments**

81341 **[63-51-3]. 63M-5-201. Prepayment of ad valorem property taxes on natural**

81342 **resources or industrial facility.**

81343 The developer also may prepay, with the consent of the governing bodies of the units of
81344 local government affected, to the county treasurer, or to other persons authorized by the
81345 governing body of a unit of local government under Section [~~63-51-10~~] 63M-5-306, a portion
81346 of the ad valorem property taxes which the developer anticipates will be imposed by the unit of
81347 local government under Title 59, Chapter 2, Part 9, in connection with the natural resources or
81348 industrial facility. Ad valorem property taxes prepaid under this chapter may not act as an
81349 abatement of the ad valorem property tax but rather shall be construed as a prepayment for
81350 which, notwithstanding Section 59-2-1321 or any statute of limitations to the contrary, a credit
81351 will be given the developer making the prepayment at the time the ad valorem property taxes
81352 become due and otherwise payable.

81353 Section 1934. Section **63M-5-202**, which is renumbered from Section 63-51-4 is
81354 renumbered and amended to read:

81355 ~~[63-51-4].~~ 63M-5-202. **Prepaid Sales and Use Tax Construction Account -- Use**
81356 **of account funds.**

81357 There is created a Prepaid Sales and Use Tax Construction Account as a special
81358 suspense account within the state General Fund. All revenues collected or received by the State
81359 Tax Commission from the prepayment of sales or use taxes under this chapter shall be deposited
81360 with the state treasurer daily and credited by the state treasurer to the Prepaid Sales and Use
81361 Tax Construction Account. This account shall be used to finance state-related public
81362 improvements, including but not limited to highways and related facilities and schools and
81363 related facilities. Funds from this account shall only be disbursed or drawn upon after proper
81364 authorization and only after appropriation of these funds by the Legislature.

81365 Section 1935. Section **63M-5-301**, which is renumbered from Section 63-51-5 is
81366 renumbered and amended to read:

Part 3. Use of Funds

81367
81368 ~~[63-51-5].~~ 63M-5-301. **State Board of Education and Department of**
81369 **Transportation to prepare budget and submit to governor.**

81370 The State Board of Education and the Department of Transportation shall prepare and
81371 submit to the governor, to be included in [his] the governor's budget to the Legislature, a
81372 budget of the requirements for carrying out the provisions of this chapter.

81373 Section 1936. Section **63M-5-302**, which is renumbered from Section 63-51-6 is
81374 renumbered and amended to read:

81375 **[63-51-6]. 63M-5-302. Appropriations for use of funds -- Board of Education**
81376 **and Department of Transportation -- Repayment by Board of Education -- Board of**
81377 **Education and Transportation Commission requirements.**

81378 (1) The funds needed for construction of schools and highways and any of their related
81379 facilities as a result of industrial development or as a result of development or utilization of
81380 natural resources in this state through natural resource or industrial facilities shall be made
81381 available from the Prepaid Sales and Use Tax Construction Account through appropriations by
81382 the Legislature.

81383 (2) Appropriations will be made to the State Board of Education and the Department of
81384 Transportation for specific public facilities related to a specific natural resource or industrial
81385 facility.

81386 (3) (a) Appropriations made to the State Board of Education for schools and related
81387 facilities shall be repaid to the General Fund through property tax assessments by the school
81388 district within whose boundary the natural resource or industrial facility is located.

81389 (b) The repayment shall be made within a period of six years from the date of
81390 substantial completion of the natural resource or industrial facility or from the date the school
81391 district has a taxable value exceeding \$50,000,000, whichever occurs first.

81392 (c) A refund shall be made to the developer of the natural resource or industrial facility
81393 to the extent of sales and use taxes prepaid by the developer in accordance with this chapter and
81394 appropriated by the Legislature for the specific public school facility, which have not been
81395 credited against sales and use taxes imposed by Title 59, Chapter 12, Sales and Use Tax Act.

81396 (4) The State Board of Education shall:

81397 (a) determine school facility needs as respective communities develop by consulting

81398 with the school district within whose boundary the development project is located; and

81399 (b) recommend to the Legislature the amount to be appropriated at each session of the
81400 Legislature.

81401 (5) The Transportation Commission shall:

81402 (a) determine highway needs in the area of the natural resource or industrial facility;

81403 (b) determine whether the highway should be a part of the state highway system; and

81404 (c) recommend to the Legislature the amounts to be appropriated to the Department of
81405 Transportation for use on the highways.

81406 (6) (a) The State Board of Education and the Department of Transportation shall assess
81407 and determine in connection with each public facility the portion of each facility of benefit
81408 primarily to the industrial developer or the person developing or utilizing the natural resources.

81409 (b) The assessment shall be reported to the Legislature to be used in determining the
81410 amount to be appropriated subject to this chapter.

81411 Section 1937. Section **63M-5-303**, which is renumbered from Section 63-51-7 is
81412 renumbered and amended to read:

81413 **[63-51-7]. 63M-5-303. Public facility -- Prepayment of sales and use tax in**
81414 **installments.**

81415 Notwithstanding anything to the contrary contained in this chapter, prepaid sales or use
81416 taxes sufficient to construct a particular public facility need not be prepaid in one sum but may
81417 be prepaid in installments as may be required by the state or any of its agencies or political
81418 subdivisions in fulfilling contractual commitments for the construction of the public facility if the
81419 state receives assurance that the funds for the agreed project will be prepaid to the State Tax
81420 Commission at the time or times for which the state or any of its agencies or political
81421 subdivisions have made contractual commitments for the disbursement of these funds for the
81422 public facility. In no event shall the total accumulated prepayment be less than the amount of
81423 sales and use taxes due for the calendar quarters for which returns are required to be filed under
81424 Section 59-12-107.

81425 Section 1938. Section **63M-5-304**, which is renumbered from Section 63-51-8 is

81426 renumbered and amended to read:

81427 ~~[63-51-8].~~ **63M-5-304. Department of Transportation and county executives --**
81428 **Cooperation in development or utilization -- Written agreements authorized -- Survey**
81429 **and location work.**

81430 (1) The Department of Transportation and county executives shall cooperate with
81431 persons engaged in industrial development or the development of or utilization of natural
81432 resources in this state through a natural resource or industrial facility who desire to assist this
81433 state or its counties in obtaining financing through prepaid sales or use taxes for improvements
81434 to existing state or county roads or the construction of new state or county roads which are
81435 necessary to provide access to areas of natural resource or industrial facilities.

81436 (2) Where it is determined that the improvements or construction referred to cannot be
81437 financed with existing public funds or when the necessary improvement or construction would
81438 be unduly delayed by postponing the improvements or construction until funds are otherwise
81439 available and the Legislature has appropriated the necessary funds pursuant to Section
81440 ~~[63-51-6]~~ 63M-5-302, the Department of Transportation or any county executive may enter
81441 into written agreements with the person engaged or to be engaged in industrial development or
81442 the development or utilization of natural resources through a natural resource or industrial
81443 facility providing for the necessary improvements or construction if that person agrees to the
81444 prepayment of sales or use taxes as provided in this chapter to the extent necessary to provide
81445 the funds needed to finance the necessary improvements or construction.

81446 (3) The agreements shall include the assurances necessary to provide the state or the
81447 county adequate funds for the payment of all obligations incurred by the state or county for the
81448 necessary improvements or construction and for the transfer of funds and all necessary
81449 adjustments, if the funds prepaid exceed the actual expenditures made for the improvements or
81450 construction.

81451 (4) If the actual expenditures made by the state, its agencies, or political subdivisions
81452 for the improvements or construction exceed the amount of prepaid sales and use taxes actually
81453 imposed by Title 59, Chapter 12, Sales and Use Tax Act, then no refund shall be allowed for the

81454 excess amount prepaid as sales or use taxes.

81455 (5) Initial survey and location work by the Department of Transportation or a county
81456 may proceed prior to the execution of any agreements if otherwise authorized and funded.

81457 Section 1939. Section **63M-5-305**, which is renumbered from Section 63-51-9 is
81458 renumbered and amended to read:

81459 **~~[63-51-9].~~ 63M-5-305. Tax Commission -- Rules and regulations.**

81460 For the purpose of more efficiently administering this act the State Tax Commission is
81461 authorized in its discretion to formulate, amend, or cancel rules and regulations establishing
81462 procedures regarding matters pertaining to the prepayment of sales or use taxes as provided in
81463 this act and the credit against sales or use taxes as the same become due and otherwise payable.

81464 Section 1940. Section **63M-5-306**, which is renumbered from Section 63-51-10 is
81465 renumbered and amended to read:

81466 **~~[63-51-10].~~ 63M-5-306. Financial impact statement -- Alleviation plan -- Filing
81467 required -- Contents -- Payments credited against tax -- Provisions neither exclusive nor
81468 mandatory.**

81469 (1) (a) A developer desiring to prepay ad valorem property taxes under Section
81470 ~~[63-51-3]~~ 63M-5-201 shall first prepare and file with the Governor's Office of Economic
81471 Development and all units of local government likely to be affected with a significant financial
81472 impact due to a natural resource or industrial facility a financial impact statement together with
81473 a plan for alleviating these impacts.

81474 (b) The impact statement and the alleviation plan shall be prepared in cooperation with
81475 and after consultation with the Governor's Office of Economic Development and the affected
81476 units of local government.

81477 (c) The financial impact statement shall assess the projected financial impact on state
81478 agencies and units of local government, including the impact on transportation systems, culinary
81479 water systems, waste treatment facilities, public safety, schools, public health, housing, planning
81480 and zoning, and general government administration.

81481 (d) The alleviation plan shall set out proposals for alleviating the impact and may

81482 include payments to local units of government or direct expenditures by the developer to
81483 alleviate the impact.

81484 (e) The impact statement and the alleviation plan may be amended by the developer in
81485 cooperation with and after consultation with the Governor's Office of Economic Development
81486 and those units of local government affected by the amendment.

81487 (2) At least 90 days prior to commencement of construction of an industrial facility or
81488 natural resources facility by a major developer, an impact statement and alleviation plan as
81489 described in Subsection (1) shall be filed by the major developer whether or not the major
81490 developer desires to prepay ad valorem property taxes.

81491 (3) (a) Upon the filing of the financial impact statement and alleviation plan, a developer
81492 may apply to the governing body of the affected unit of local government for authorization to
81493 prepay a portion of the anticipated ad valorem property taxes to be expended consistent with
81494 the alleviation plan.

81495 (b) This authorization may provide that only a portion of the amounts so prepaid can be
81496 applied against the ad valorem property taxes due in any given year.

81497 (c) In addition to payments directly to the affected unit of local government, an affected
81498 unit of local government may authorize a tax credit on anticipated ad valorem property taxes for
81499 expenditures made by the developer to other persons so long as the expenditure is consistent
81500 with the alleviation plan.

81501 (4) (a) This chapter is designed to provide an additional mechanism for the alleviation
81502 of impacts on units of local government and is not intended to discourage the use of other
81503 mechanisms as may be available.

81504 (b) Nothing in this chapter requires a developer to prepay ad valorem property taxes or
81505 to make any other expenditure not otherwise required by law.

81506 Section 1941. Section **63M-6-101** is enacted to read:

81507 **CHAPTER 6. MILITARY BASE EASEMENTS ACT**

81508 **Part 1. General Provisions**

81509 **63M-6-101. Title.**

81510 This chapter is known as the "Military Base Easements Act."

81511 Section 1942. Section **63M-6-201**, which is renumbered from Section 63-49a-1 is
81512 renumbered and amended to read:

81513 **Part 2. Easements and Improvements**

81514 ~~[63-49a-1]~~. **63M-6-201. Acquisition of easements -- Restrictions -- Resale.**

81515 (1) (a) The Governor's Office of Economic Development shall acquire, by purchase or
81516 condemnation, easements for the establishment, maintenance, and operation of a restrictive use
81517 area for the operation of aircraft to and from Hill Air Force Base because:

81518 (i) Hill Air Force Base is a military installation of vital importance to security of the
81519 United States of America and to the economic well-being of the citizens of Utah;

81520 (ii) there are certain portions of land around the entire base that are being developed for
81521 residential and other uses that are incompatible with current and future operations of the base
81522 because of noise, health, safety, and accident reasons; and

81523 (iii) it is the purpose of this chapter for the state to acquire those easements restricting
81524 the use of those lands and the air space above them in order to assure the continued operation
81525 of Hill Air Force Base as an active military base and to protect the health, safety, and economic
81526 well-being of the citizens of Utah.

81527 (b) The Governor's Office of Economic Development may delegate its power to
81528 purchase or condemn easements under this subsection to other state agencies if the department
81529 ensures that those agencies comply with the procedures and requirements of this chapter.

81530 (2) (a) The Governor's Office of Economic Development shall ensure that the
81531 easements restrict the land from those uses identified in the Hill Air Force Base AICUZ Land
81532 Use Compatibility Guidelines Study, as amended, dated October, 1982, as not being acceptable.

81533 (b) The Governor's Office of Economic Development may allow certain other uses not
81534 prohibited by those guidelines if those uses are consistent with the purpose of this chapter.

81535 (c) Nothing in this chapter may be construed to authorize the Governor's Office of
81536 Economic Development or any other state agency to:

81537 (i) acquire any ownership interest in real property other than an easement restricting the

81538 land from future uses inconsistent with the Hill Air Force Base AICUZ Land Use Compatibility
81539 Guidelines Study, as amended, dated October 1982;

81540 (ii) purchase businesses; or
81541 (iii) require people to relocate or move from their property.

81542 (d) To calculate the purchase price for the easements, the Governor's Office of
81543 Economic Development shall subtract the market value of the real property and its
81544 improvements after the acquisition of the easements from the market value of the real property
81545 and its improvements before the acquisition of the easements.

81546 (e) When the Hill Air Force Base runways have not been used for seven years to
81547 accommodate the arrival and departure of airplanes, the Governor's Office of Economic
81548 Development shall:

81549 (i) notify by certified mail each current owner of the property to which each easement is
81550 attached;

81551 (ii) inform that owner that the owner may purchase the easement from the state for the
81552 same price that the state paid for it originally or for the market value of the easement at the time
81553 of the buyback, whichever is smaller; and

81554 (iii) sell the easement to the owner of the property to which the easement is attached if
81555 the owner tenders the purchase price.

81556 (f) In addition to purchasing the easements required by this chapter, the Governor's
81557 Office of Economic Development may provide reasonable relocation expenses to all churches,
81558 businesses, and schools that, as of March 1, 1994, were located either within the north Hill Air
81559 Force Base accident potential zone (APZ) identified in Subsection [~~63-49a-2~~] 63M-6-202(1)(a)
81560 or within the south Hill Air Force Base accident potential zone (APZ) identified in Subsection
81561 [~~63-49a-2~~] 63M-6-202(1)(b) if those churches, businesses, and schools can reasonably
81562 demonstrate that expansion of the use would have been permitted before acquisition of the
81563 easements but is now prohibited because of the easement.

81564 (3) (a) The Governor's Office of Economic Development may take action to enforce the
81565 provisions of this chapter.

81566 (b) The attorney general shall represent the Governor's Office of Economic
81567 Development in that action.

81568 Section 1943. Section **63M-6-202**, which is renumbered from Section 63-49a-2 is
81569 renumbered and amended to read:

81570 ~~[63-49a-2]~~. **63M-6-202. Location of easements.**

81571 (1) The Governor's Office of Economic Development or its designees may acquire
81572 easements on the land within the following boundaries:

81573 (a) beginning on the north Hill Air Force Base accident potential zone (APZ) at a point
81574 which is North 1,089,743.170 meters and East 459,346.946 meters based on the North zone,
81575 State of Utah, NAD 83 coordinates and runs north to North 63 degrees 10 minutes 44 seconds,
81576 East 457.109 meters, North 26 degrees 49 minutes 16 seconds, West 3,352.129 meters, South
81577 63 degrees 10 minutes 44 seconds, West 914.217 meters, South 26 degrees 49 minutes 16
81578 seconds, East 3,352.129 meters, North 63 degrees 10 minutes 44 seconds, East 457.109 meters
81579 back to the point of beginning; and

81580 (b) beginning on the south Hill Air Force Base APZ which is North 1,086,065.786
81581 meters and East 461,206.222 meters based on the North zone, State of Utah, NAD 83
81582 coordinates and runs South 63 degrees 10 minutes 44 seconds, West 457.109 meters, South 26
81583 degrees 49 minutes 16 seconds, East 502.179 meters, South 0 degrees 20 minutes 35 seconds,
81584 West 1,722.227 meters, South 89 degrees 39 minutes 25 seconds, East 883.743 meters, North
81585 63 degrees 10 minutes 44 seconds, East 914.217 meters, North 26 degrees 49 minutes 16
81586 seconds, West 2,437.912 meters, South 63 degrees 10 minutes 44 seconds, West 457.109
81587 meters back to the point of beginning.

81588 (2) The Governor's Office of Economic Development or its designees may acquire
81589 easements on the following land that is located inside the 75 and 80 level day-night (LDN) noise
81590 contour as identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines
81591 Study, as amended, dated October, 1982:

81592 (a) in the west half of Section 3, T4NR1W;

81593 (b) in the east half of Section 4, T4NR1W;

- 81594 (c) in the northeast quarter of Section 8, T4NR1W;
- 81595 (d) within all of Section 9, T4NR1W;
- 81596 (e) in the northwest quarter of Section 10, T4NR1W;
- 81597 (f) within the southwest quarter of Section 19, T5NR1W;
- 81598 (g) in the south half of Section 20, T5NR1W;
- 81599 (h) within the southwest quarter of Section 28, T5NR1W; and
- 81600 (i) within Section 29, T5NR1W.

81601 Section 1944. Section **63M-6-203**, which is renumbered from Section 63-49a-3 is
 81602 renumbered and amended to read:

81603 ~~[63-49a-3]~~. **63M-6-203. Certain improvements, alterations, and expansions**
 81604 **prohibited.**

81605 (1) A person or entity may not begin to develop, or authorize development, on any land
 81606 identified in this chapter until the Governor's Office of Economic Development has affirmatively
 81607 authorized the development of the land because the development is consistent with those uses
 81608 identified in the Hill Air Force Base AICUZ Land Use Compatibility Guidelines Study, as
 81609 amended, dated October 1982.

81610 (2) Nothing in this chapter prohibits any property owner from improving, altering, or
 81611 expanding any existing residential or commercial use of ~~[his]~~ the property owner's property so
 81612 long as the improvement, alteration, or expansion does not materially increase the human
 81613 density of that present use.

81614 Section 1945. Section **63M-7-101** is enacted to read:

81615 **CHAPTER 7. CRIMINAL JUSTICE AND SUBSTANCE ABUSE**

81616 **Part 1. General Provisions**

81617 **63M-7-101. Title.**

81618 This chapter is known as "Criminal Justice and Substance Abuse."

81619 Section 1946. Section **63M-7-201**, which is renumbered from Section 63-25a-101 is
 81620 renumbered and amended to read:

81621 **Part 2. Commission on Criminal and Juvenile Justice**

81622 ~~[63-25a-101].~~ **63M-7-201. Creation -- Purpose.**

81623 (1) The State Commission on Criminal and Juvenile Justice is created within the
81624 governor's office.

81625 (2) The commission's purpose is to:

81626 (a) promote broad philosophical agreement concerning the objectives of the criminal
81627 and juvenile justice system in Utah;

81628 (b) provide a mechanism for coordinating the functions of the various branches and
81629 levels of government concerned with criminal and juvenile justice to achieve those objectives;

81630 (c) coordinate statewide efforts to reduce crime and victimization in Utah; and

81631 (d) accomplish the duties enumerated in Section ~~[63-25a-104]~~ 63M-7-204.

81632 Section 1947. Section **63M-7-202**, which is renumbered from Section 63-25a-102 is
81633 renumbered and amended to read:

81634 ~~[63-25a-102].~~ **63M-7-202. Composition -- Appointments -- Ex officio**
81635 **members -- Terms -- U.S. Attorney as nonvoting member.**

81636 (1) The commission on criminal and juvenile justice shall be composed of 21 voting
81637 members as follows:

81638 (a) the chief justice of the supreme court, as the presiding officer of the judicial council,
81639 or a judge designated by the chief justice;

81640 (b) the state court administrator;

81641 (c) the executive director of the Department of Corrections;

81642 (d) the director of the Division of Juvenile Justice Services;

81643 (e) the commissioner of the Department of Public Safety;

81644 (f) the attorney general;

81645 (g) the president of the chiefs of police association or a chief of police designated by the
81646 association's president;

81647 (h) the president of the sheriffs' association or a sheriff designated by the association's
81648 president;

81649 (i) the chair of the Board of Pardons and Parole or a member designated by the chair;

- 81650 (j) the chair of the Utah Sentencing Commission;
- 81651 (k) the chair of the Utah Substance Abuse and Anti-Violence Coordinating Council;
- 81652 (l) the chair of the Utah Board of Juvenile Justice;
- 81653 (m) the chair of the Utah Council on Victims of Crime or the chair's designee;
- 81654 (n) the director of the Division of Substance Abuse and Mental Health; and
- 81655 (o) the following members designated to serve four-year terms:
 - 81656 (i) a juvenile court judge, appointed by the chief justice, as presiding officer of the
 - 81657 Judicial Council;
 - 81658 (ii) a representative of the statewide association of public attorneys designated by the
 - 81659 association's officers;
 - 81660 (iii) one member of the House of Representatives who is appointed by the speaker of
 - 81661 the House of Representatives; and
 - 81662 (iv) one member of the Senate who is appointed by the president of the Senate.
- 81663 (2) The governor shall appoint the remaining three members to four-year staggered
- 81664 terms as follows:
 - 81665 (a) one criminal defense attorney appointed from a list of three nominees submitted by
 - 81666 the Utah State Bar Association;
 - 81667 (b) one representative of public education; and
 - 81668 (c) one citizen representative.
- 81669 (3) In addition to the members designated under Subsections (1) and (2), the United
- 81670 States Attorney for the district of Utah may serve as a nonvoting member.
- 81671 (4) In appointing the members under Subsection (2), the governor shall take into
- 81672 account the geographical makeup of the commission.
- 81673 Section 1948. Section **63M-7-203**, which is renumbered from Section 63-25a-103 is
- 81674 renumbered and amended to read:
 - 81675 ~~[63-25a-103]~~. **63M-7-203. Executive director -- Qualifications --**
 - 81676 **Compensation -- Appointment -- Functions.**
 - 81677 (1) The governor, with the consent of the Senate, shall appoint a person experienced in

81678 the field of criminal justice and in administration as the executive director of the Commission on
81679 Criminal and Juvenile Justice. The governor shall establish the executive director's salary within
81680 the salary range fixed by the Legislature in Title 67, Chapter 22, State Officer Compensation.

81681 (2) (a) The executive director, under the direction of the commission, shall administer
81682 the duties of the commission and act as the governor's advisor on national, state, regional,
81683 metropolitan, and local government planning as it relates to criminal justice.

81684 (b) This chapter does not derogate the planning authority conferred on state, regional,
81685 metropolitan, and local governments by existing law.

81686 Section 1949. Section **63M-7-204**, which is renumbered from Section 63-25a-104 is
81687 renumbered and amended to read:

81688 ~~[63-25a-104].~~ **63M-7-204. Duties of commission.**

81689 The State Commission on Criminal and Juvenile Justice administration shall:

81690 (1) promote the commission's purposes as enumerated in Section ~~[63-25a-104]~~
81691 63M-7-201;

81692 (2) promote the communication and coordination of all criminal and juvenile justice
81693 agencies;

81694 (3) study, evaluate, and report on the status of crime in the state and on the
81695 effectiveness of criminal justice policies, procedures, and programs that are directed toward the
81696 reduction of crime in the state;

81697 (4) study, evaluate, and report on policies, procedures, and programs of other
81698 jurisdictions which have effectively reduced crime;

81699 (5) identify and promote the implementation of specific policies and programs the
81700 commission determines will significantly reduce crime in Utah;

81701 (6) provide analysis and recommendations on all criminal and juvenile justice legislation,
81702 state budget, and facility requests, including program and fiscal impact on all components of the
81703 criminal and juvenile justice system;

81704 (7) provide analysis, accountability, recommendations, and supervision for state and
81705 federal criminal justice grant monies;

81706 (8) provide public information on the criminal and juvenile justice system and give
81707 technical assistance to agencies or local units of government on methods to promote public
81708 awareness;

81709 (9) promote research and program evaluation as an integral part of the criminal and
81710 juvenile justice system;

81711 (10) provide a comprehensive criminal justice plan annually;

81712 (11) review agency forecasts regarding future demands on the criminal and juvenile
81713 justice systems, including specific projections for secure bed space;

81714 (12) promote the development of criminal and juvenile justice information systems that
81715 are consistent with common standards for data storage and are capable of appropriately sharing
81716 information with other criminal justice information systems by:

81717 (a) developing and maintaining common data standards for use by all state criminal
81718 justice agencies;

81719 (b) annually performing audits of criminal history record information maintained by
81720 state criminal justice agencies to assess their accuracy, completeness, and adherence to
81721 standards;

81722 (c) defining and developing state and local programs and projects associated with the
81723 improvement of information management for law enforcement and the administration of justice;
81724 and

81725 (d) establishing general policies concerning criminal and juvenile justice information
81726 systems and making rules as necessary to carry out the duties under this Subsection (12) and
81727 Subsection (10);

81728 (13) allocate and administer grants, from monies made available, for approved
81729 education programs to help prevent the sexual exploitation of children; and

81730 (14) allocate and administer grants funded from monies from the Law Enforcement
81731 Operations Account created in Section ~~[63-63a-10]~~ 51-9-411 for law enforcement operations
81732 and programs related to reducing illegal drug activity and related criminal activity.

81733 Section 1950. Section **63M-7-205**, which is renumbered from Section 63-25a-104.5 is

81734 renumbered and amended to read:

81735 ~~[63-25a-104.5].~~ **63M-7-205. Annual report by the commission.**

81736 (1) The commission shall annually prepare and publish a report directed to the
81737 governor, the Legislature, and the Judicial Council.

81738 (2) The report shall describe how the commission fulfilled its statutory purposes and
81739 duties during the year.

81740 Section 1951. Section **63M-7-206**, which is renumbered from Section 63-25a-105 is
81741 renumbered and amended to read:

81742 ~~[63-25a-105].~~ **63M-7-206. Election of chair -- Meetings.**

81743 The membership of the Commission on Criminal and Juvenile Justice by simple majority
81744 vote of those in attendance shall annually elect one of their number to serve as chair. The chair
81745 is responsible for the call and conduct of meetings. Meetings shall be called and held at least
81746 bimonthly. One of the bimonthly meetings shall be held while the Legislature is convened in its
81747 annual session. Additional meetings may be called upon request by a majority of the
81748 commission's members.

81749 Section 1952. Section **63M-7-207**, which is renumbered from Section 63-25a-106 is
81750 renumbered and amended to read:

81751 ~~[63-25a-106].~~ **63M-7-207. Members serve without pay -- Reimbursement
81752 for expenses.**

81753 (1) (a) (i) Members who are not government employees shall receive no compensation
81754 or benefits for their services, but may receive per diem and expenses incurred in the
81755 performance of the member's official duties at the rates established by the Division of Finance
81756 under Sections 63A-3-106 and 63A-3-107.

81757 (ii) Members may decline to receive per diem and expenses for their service.

81758 (b) (i) State government officer and employee members who do not receive salary, per
81759 diem, or expenses from their agency for their service may receive per diem and expenses
81760 incurred in the performance of their official duties from the commission at the rates established
81761 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

81762 (ii) State government officer and employee members may decline to receive per diem
81763 and expenses for their service.

81764 (2) Legislators on the committee shall receive compensation and expenses as provided
81765 by law and legislative rule.

81766 Section 1953. Section **63M-7-301**, which is renumbered from Section 63-25a-201 is
81767 renumbered and amended to read:

81768 **Part 3. Utah Substance Abuse and Anti-Violence Coordinating Council**

81769 **[63-25a-201]. 63M-7-301. Creation of council -- Membership -- Terms.**

81770 (1) There is created within the governor's office the Utah Substance Abuse and
81771 Anti-Violence Coordinating Council.

81772 (2) The Utah Substance Abuse and Anti-Violence Coordinating Council comprises 25
81773 voting members as follows:

81774 (a) the attorney general or the attorney general's designee;

81775 (b) a county commissioner designated by the Utah Association of Counties;

81776 (c) the commissioner of public safety or the commissioner's designee;

81777 (d) the director of the Division of Substance Abuse and Mental Health or the director's
81778 designee;

81779 (e) the state superintendent of public instruction or the superintendent's designee;

81780 (f) the director of the Department of Health or the director's designee;

81781 (g) the executive director of the Commission on Criminal and Juvenile Justice or the
81782 executive director's designee;

81783 (h) the governor or the governor's designee;

81784 (i) the executive director of the Department of Corrections or the executive director's
81785 designee;

81786 (j) the director of the Division of Juvenile Justice Services or the director's designee;

81787 (k) the chair of the Domestic Violence Advisory Council or the chair's designee;

81788 (l) the following members designated to serve four-year terms:

81789 (i) a member of the House of Representatives designated by the speaker;

- 81790 (ii) a member of the Senate designated by the president;
- 81791 (iii) a member of the judiciary designated by the chief justice of the Utah Supreme
- 81792 Court;
- 81793 (iv) a representative designated by the Utah League of Cities and Towns; and
- 81794 (v) a representative from the offices of minority affairs designated by the directors of
- 81795 those offices or a designee;
- 81796 (m) the following members appointed by the governor to serve four-year terms:
- 81797 (i) a representative of the Utah National Guard, appointed by the governor;
- 81798 (ii) one resident of the state who has been personally affected by domestic violence;
- 81799 (iii) one resident of the state who has been personally affected by gang violence;
- 81800 (iv) one resident of the state who has been personally affected by alcohol or other drug
- 81801 abuse; and
- 81802 (v) one citizen representative; and
- 81803 (n) the following members appointed by the members in Subsections (2)(a) through
- 81804 (2)(m) to serve four-year terms:
- 81805 (i) a person knowledgeable in criminal justice issues;
- 81806 (ii) a person knowledgeable in substance abuse treatment issues;
- 81807 (iii) a person knowledgeable in substance abuse prevention issues; and
- 81808 (iv) a person knowledgeable in judiciary issues.
- 81809 Section 1954. Section **63M-7-302**, which is renumbered from Section 63-25a-202 is
- 81810 renumbered and amended to read:
- 81811 ~~[63-25a-202]~~. **63M-7-302. Chair -- Vacancies -- Quorum -- Expenses.**
- 81812 (1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall annually
- 81813 select one of its members to serve as chair.
- 81814 (2) When a vacancy occurs in the membership for any reason, the replacement shall be
- 81815 appointed for the unexpired term in the same manner as the position was originally filled.
- 81816 (3) A majority of the members of the council constitutes a quorum.
- 81817 (4) (a) (i) Members who are not government employees shall receive no compensation

81818 or benefits for their services, but may receive per diem and expenses incurred in the
81819 performance of the member’s official duties at the rates established by the Division of Finance
81820 under Sections 63A-3-106 and 63A-3-107.

81821 (ii) Members may decline to receive per diem and expenses for their service.

81822 (b) (i) State government officer and employee members who do not receive salary, per
81823 diem, or expenses from their agency for their service may receive per diem and expenses
81824 incurred in the performance of their official duties from the council at the rates established by
81825 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

81826 (ii) State government officer and employee members may decline to receive per diem
81827 and expenses for their service.

81828 (c) Legislators on the council shall receive compensation and expenses as provided by
81829 law and legislative rule.

81830 (d) (i) Local government members who do not receive salary, per diem, or expenses
81831 from the entity that they represent for their service may receive per diem and expenses incurred
81832 in the performance of their official duties at the rates established by the Division of Finance
81833 under Sections 63A-3-106 and 63A-3-107.

81834 (ii) Local government members may decline to receive per diem and expenses for their
81835 service.

81836 (5) The council may establish subcommittees as needed to assist in accomplishing its
81837 duties under Section [~~63-25a-203~~] 63M-7-303.

81838 Section 1955. Section **63M-7-303**, which is renumbered from Section 63-25a-203 is
81839 renumbered and amended to read:

81840 [~~63-25a-203~~]. **63M-7-303. Duties of council.**

81841 (1) The Utah Substance Abuse and Anti-Violence Coordinating Council shall:

81842 (a) provide leadership and generate unity for Utah's ongoing efforts to combat
81843 substance abuse and community violence;

81844 (b) recommend and coordinate the creation, dissemination, and implementation of a
81845 statewide substance abuse and anti-violence policy;

81846 (c) facilitate planning for a balanced continuum of substance abuse and community
81847 violence prevention, treatment, and justice services;

81848 (d) promote collaboration and mutually beneficial public and private partnerships;

81849 (e) coordinate recommendations made by any subcommittees created under Section
81850 ~~[63-25a-202]~~ 63M-7-302;

81851 (f) analyze and provide an objective assessment of all proposed legislation concerning
81852 alcohol and other drug issues and community violence issues; and

81853 (g) coordinate the implementation of Section 77-18-1.1 and related provisions in
81854 Subsections 77-18-1(5)(d) and (e) and 77-27-9(2)(g), as provided in Section ~~[63-25a-205.5]~~
81855 63M-7-305.

81856 (2) The council shall meet quarterly or more frequently as determined necessary by the
81857 chair.

81858 (3) The council shall report its recommendations annually to the commission, governor,
81859 the Legislature, and the Judicial Council.

81860 Section 1956. Section **63M-7-304**, which is renumbered from Section 63-25a-205 is
81861 renumbered and amended to read:

81862 ~~[63-25a-205]~~. **63M-7-304. Chair -- Vacancies -- Quorum -- Expenses.**

81863 (1) The members of any subcommittees established by the council shall each annually
81864 select one of their members as chairs.

81865 (2) When a vacancy occurs in the membership for any reason, the replacement shall be
81866 appointed for the unexpired term in the same manner as the position was originally filled.

81867 (3) A majority of the members of a subcommittee constitutes a quorum for the
81868 transaction of business by the subcommittee.

81869 (4) (a) (i) Members who are not government employees shall receive no compensation
81870 or benefits for their services, but may receive per diem and expenses incurred in the
81871 performance of the member's official duties at the rates established by the Division of Finance
81872 under Sections 63A-3-106 and 63A-3-107.

81873 (ii) Members may decline to receive per diem and expenses for their service.

81874 (b) (i) State government officer and employee members who do not receive salary, per
81875 diem, or expenses from their agency for their service may receive per diem and expenses
81876 incurred in the performance of their official duties from the committee at the rates established by
81877 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

81878 (ii) State government officer and employee members may decline to receive per diem
81879 and expenses for their service.

81880 (c) Legislators on the subcommittee shall receive compensation and expenses as
81881 provided by law and legislative rule.

81882 (d) Members from higher education may not receive per diem or expenses for their
81883 service.

81884 (e) (i) Local government members who do not receive salary, per diem, or expenses
81885 from the entity that they represent for their service may receive per diem and expenses incurred
81886 in the performance of their official duties at the rates established by the Division of Finance
81887 under Sections 63A-3-106 and 63A-3-107.

81888 (ii) Local government members may decline to receive per diem and expenses for their
81889 service.

81890 Section 1957. Section **63M-7-305**, which is renumbered from Section 63-25a-205.5 is
81891 renumbered and amended to read:

81892 ~~[63-25a-205.5]~~. **63M-7-305. Drug Offender Reform Act -- Coordination.**

81893 (1) As used in this section:

81894 (a) "Council" means the Utah Substance Abuse and Anti-Violence Coordinating
81895 Council.

81896 (b) "Drug Offender Reform Act" and "act" mean the screening, assessment, and
81897 substance abuse treatment provided to:

81898 (i) convicted offenders under Subsection 77-18-1.1(2) with funds appropriated by the
81899 Legislature under Subsection 77-18-1.1(4); and

81900 (ii) offenders released on parole under Subsection 77-27-9(2)(g)(iv).

81901 (c) "Substance abuse authority" has the same meaning as in Section 17-43-201.

81902 (2) The council shall provide ongoing oversight of the implementation and functions of
81903 the Drug Offender Reform Act.

81904 (3) The council shall evaluate the impact and results of the Drug Offender Reform Act.

81905 (4) The council shall develop an implementation plan for the Drug Offender Reform
81906 Act. The plan shall:

81907 (a) include guidelines on how funds appropriated under the act should be used;

81908 (b) require that treatment plans under the act are appropriate for criminal offenders;

81909 (c) include guidelines on the membership of local planning groups; and

81910 (d) include guidelines on the membership of the Department of Corrections' planning
81911 group under Subsection (6).

81912 (5) (a) Each local substance abuse authority shall establish a local planning group and
81913 shall submit a plan to the council detailing how the authority proposes to use the Drug Offender
81914 Reform Act funds. The uses shall be in accordance with the guidelines established by the
81915 council under Subsection (4).

81916 (b) Upon approval of the plan by the council, the Department of Human Services shall
81917 allocate the funds.

81918 (c) Local substance abuse authorities shall annually submit to the Department of Human
81919 Services and to the council reports detailing use of the funds and the impact and results of the
81920 use of the funds.

81921 (6) (a) The Department of Corrections shall establish a planning group and shall submit
81922 a plan to the council detailing how the department proposes to use the Drug Offender Reform
81923 Act funds. The uses shall be in accordance with the guidelines established by the council under
81924 Subsection (4).

81925 (b) The Department of Corrections shall annually submit to the council a report
81926 detailing use of the funds and the impact and results of the use of the funds.

81927 Section 1958. Section **63M-7-306**, which is renumbered from Section 63-25a-207 is
81928 renumbered and amended to read:

81929 [~~63-25a-207~~]. **63M-7-306. Staffing.**

- 81958 in criminal defense, and appointed by the Utah Bar Commission;
- 81959 (k) an attorney who is a member of the Utah State Bar, experienced in the defense of
- 81960 minors in juvenile court, and appointed by the Utah Bar Commission;
- 81961 (l) the director of Salt Lake Legal Defenders or a designee appointed by the director;
- 81962 (m) the attorney general or a designee appointed by the attorney general;
- 81963 (n) a criminal prosecutor appointed by the Statewide Association of Public Attorneys;
- 81964 (o) a juvenile court prosecutor appointed by the Statewide Association of Public
- 81965 Attorneys;
- 81966 (p) a representative of the Utah Sheriff's Association appointed by the governor;
- 81967 (q) a chief of police appointed by the governor;
- 81968 (r) a licensed professional appointed by the governor who assists in the rehabilitation of
- 81969 adult offenders;
- 81970 (s) a licensed professional appointed by the governor who assists in the rehabilitation of
- 81971 juvenile offenders;
- 81972 (t) two members from the public appointed by the governor who exhibit sensitivity to
- 81973 the concerns of victims of crime and the ethnic composition of the population; and
- 81974 (u) one member from the public at large appointed by the governor.

81975 Section 1960. Section **63M-7-402**, which is renumbered from Section 63-25a-302 is

81976 renumbered and amended to read:

81977 ~~[63-25a-302]~~. **63M-7-402**. **Terms of members -- Vacancies --**

81978 **Reappointment.**

- 81979 (1) (a) Except as required by Subsection (1)(b), as terms of current commission
- 81980 members expire, the appointing authority shall appoint each new member or reappointed
- 81981 member to a four-year term.
- 81982 (b) Notwithstanding the requirements of Subsection (1)(a), the appointing authority
- 81983 shall, at the time of appointment or reappointment, adjust the length of terms to ensure that the
- 81984 terms of commission members are staggered so that approximately half of the commission is
- 81985 appointed every two years.

81986 (2) When a vacancy occurs in the membership for any reason, the replacement shall be
81987 appointed for the unexpired term.

81988 (3) All members of the commission, including those appointed before July 1, 1995, shall
81989 be eligible for reappointment one time.

81990 Section 1961. Section **63M-7-403**, which is renumbered from Section 63-25a-303 is
81991 renumbered and amended to read:

81992 ~~**63-25a-303**~~. **63M-7-403**. **Vacancies.**

81993 If a commission member no longer holds a qualifying position, resigns, or is unable to
81994 serve, the vacancy shall be filled by the appointing authority.

81995 Section 1962. Section **63M-7-404**, which is renumbered from Section 63-25a-304 is
81996 renumbered and amended to read:

81997 ~~**63-25a-304**~~. **63M-7-404**. **Purpose -- Duties.**

81998 The purpose of the commission shall be to develop guidelines and propose
81999 recommendations to the Legislature, the governor, and the Judicial Council about the
82000 sentencing and release of juvenile and adult offenders in order to:

- 82001 (1) respond to public comment;
- 82002 (2) relate sentencing practices and correctional resources;
- 82003 (3) increase equity in criminal sentencing;
- 82004 (4) better define responsibility in criminal sentencing; and
- 82005 (5) enhance the discretion of sentencing judges while preserving the role of the Board
82006 of Pardons and Parole and the Youth Parole Authority.

82007 Section 1963. Section **63M-7-405**, which is renumbered from Section 63-25a-305 is
82008 renumbered and amended to read:

82009 ~~**63-25a-305**~~. **63M-7-405**. **Compensation of members -- Reports to the**
82010 **Legislature, the courts, and the governor.**

82011 (1) (a) (i) Members who are not government employees shall receive no compensation
82012 or benefits for their services, but may receive per diem and expenses incurred in the
82013 performance of the member's official duties at the rates established by the Division of Finance

82014 under Sections 63A-3-106 and 63A-3-107.

82015 (ii) Members may decline to receive per diem and expenses for their service.

82016 (b) (i) State government officer and employee members who do not receive salary, per
82017 diem, or expenses from their agency for their service may receive per diem and expenses
82018 incurred in the performance of their official duties from the commission at the rates established
82019 by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

82020 (ii) State government officer and employee members may decline to receive per diem
82021 and expenses for their service.

82022 (2) The commission shall submit to the Legislature, the courts, and to the governor at
82023 least 60 days prior to the annual general session of the Legislature its reports and
82024 recommendations for sentencing guidelines and amendments. It is intended that the commission
82025 utilize existing data and resources from state criminal justice agencies. The commission is
82026 authorized to employ professional assistance and other staff members as it considers necessary
82027 or desirable.

82028 (3) The commission shall be responsive to all three branches of government, but be part
82029 of the Commission on Criminal and Juvenile Justice for coordination on criminal and juvenile
82030 justice issues, budget, and administrative support.

82031 Section 1964. Section **63M-7-406**, which is renumbered from Section 63-25a-306 is
82032 renumbered and amended to read:

82033 ~~**63-25a-306**~~. **63M-7-406. Publication of reports.**

82034 The commission shall also be authorized to prepare, publish, and distribute from time to
82035 time reports of its studies, recommendations, and statements.

82036 Section 1965. Section **63M-7-501**, which is renumbered from Section 63-25a-401 is
82037 renumbered and amended to read:

82038 **Part 5. Crime Victims' Reparations Act**

82039 ~~**63-25a-401**~~. **63M-7-501. Title.**

82040 This part is known as the "Crime Victims' Reparations Act" and may be abbreviated as
82041 the "CVRA."

82042 Section 1966. Section **63M-7-502**, which is renumbered from Section 63-25a-402 is
82043 renumbered and amended to read:

82044 ~~[63-25a-402]~~. **63M-7-502. Definitions.**

82045 As used in this chapter:

82046 (1) "Accomplice" means a person who has engaged in criminal conduct as defined in
82047 Section 76-2-202.

82048 (2) "Board" means the Crime Victims' Reparations Board created under Section
82049 ~~[63-25a-404]~~ 63M-7-504.

82050 (3) "Bodily injury" means physical pain, illness, or any impairment of physical condition.

82051 (4) "Claim" means:

82052 (a) the victim's application or request for a reparations award; and

82053 (b) the formal action taken by a victim to apply for reparations pursuant to Sections
82054 ~~[63-25a-401]~~ 63M-7-501 through ~~[63-25a-428]~~ 63M-7-525.

82055 (5) "Claimant" means any of the following claiming reparations under this chapter:

82056 (a) a victim;

82057 (b) a dependent of a deceased victim;

82058 (c) a representative other than a collateral source; or

82059 (d) the person or representative who files a claim on behalf of a victim.

82060 (6) "Child" means an unemancipated person who is under 18 years of age.

82061 (7) "Collateral source" means the definition as provided in Section ~~[63-25a-413]~~
82062 63M-7-513.

82063 (8) "Contested case" means a case which the claimant contests, claiming the award was
82064 either inadequate or denied, or which a county attorney, a district attorney, a law enforcement
82065 officer, or other individual related to the criminal investigation proffers reasonable evidence of
82066 the claimant's lack of cooperation in the prosecution of a case after an award has already been
82067 given.

82068 (9) (a) "Criminally injurious conduct" other than acts of war declared or not declared
82069 means conduct that:

- 82070 (i) is or would be subject to prosecution in this state under Section 76-1-201;
- 82071 (ii) occurs or is attempted;
- 82072 (iii) causes, or poses a substantial threat of causing, bodily injury or death;
- 82073 (iv) is punishable by fine, imprisonment, or death if the person engaging in the conduct
- 82074 possessed the capacity to commit the conduct; and
- 82075 (v) does not arise out of the ownership, maintenance, or use of a motor vehicle, aircraft,
- 82076 or water craft, unless the conduct is intended to cause bodily injury or death, or is conduct
- 82077 which is or would be punishable under Title 76, Chapter 5, Offenses Against the Person, or as
- 82078 any offense chargeable as driving under the influence of alcohol or drugs.
- 82079 (b) "Criminally injurious conduct" includes an act of terrorism, as defined in 18 U.S.C.
- 82080 2331 committed outside of the United States against a resident of this state. "Terrorism" does
- 82081 not include an "act of war" as defined in 18 U.S.C. 2331.
- 82082 (10) "Dependent" means a natural person to whom the victim is wholly or partially
- 82083 legally responsible for care or support and includes a child of the victim born after ~~his~~ the
- 82084 victim's death.
- 82085 (11) "Dependent's economic loss" means loss after the victim's death of contributions of
- 82086 things of economic value to ~~his~~ the victim's dependent, not including services the dependent
- 82087 would have received from the victim if ~~he~~ the victim had not suffered the fatal injury, less
- 82088 expenses of the dependent avoided by reason of victim's death.
- 82089 (12) "Dependent's replacement services loss" means loss reasonably and necessarily
- 82090 incurred by the dependent after the victim's death in obtaining services in lieu of those the
- 82091 decedent would have performed for ~~his~~ the victim's benefit if ~~he~~ the victim had not suffered
- 82092 the fatal injury, less expenses of the dependent avoided by reason of the victim's death and not
- 82093 subtracted in calculating the dependent's economic loss.
- 82094 (13) "Director" means the director of the Reparations Office.
- 82095 (14) "Disposition" means the sentencing or determination of penalty or punishment to
- 82096 be imposed upon a person:
- 82097 (a) convicted of a crime;

- 82098 (b) found delinquent; or
- 82099 (c) against whom a finding of sufficient facts for conviction or finding of delinquency is
- 82100 made.
- 82101 (15) "Economic loss" means economic detriment consisting only of allowable expense,
- 82102 work loss, replacement services loss, and if injury causes death, dependent's economic loss and
- 82103 dependent's replacement service loss. Noneconomic detriment is not loss, but economic
- 82104 detriment is loss although caused by pain and suffering or physical impairment.
- 82105 (16) "Elderly victim" means a person 60 years of age or older who is a victim.
- 82106 (17) "Fraudulent claim" means a filed claim based on material misrepresentation of fact
- 82107 and intended to deceive the reparations staff for the purpose of obtaining reparation funds for
- 82108 which the claimant is not eligible as provided in Section [~~63-25a-410~~] 63M-7-510.
- 82109 (18) "Fund" means the Crime Victim Reparation Fund created in Section [~~63-63a-4~~]
- 82110 51-9-404.
- 82111 (19) "Law enforcement officer" means a law enforcement officer as defined in Section
- 82112 53-13-103.
- 82113 (20) "Medical examination" means a physical examination necessary to document
- 82114 criminally injurious conduct but does not include mental health evaluations for the prosecution
- 82115 and investigation of a crime.
- 82116 (21) "Mental health counseling" means outpatient and inpatient counseling necessitated
- 82117 as a result of criminally injurious conduct. The definition of mental health counseling is subject
- 82118 to rules promulgated by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
- 82119 Utah Administrative Rulemaking Act.
- 82120 (22) "Misconduct" as provided in Subsection [~~63-25a-412~~] 63M-7-512(1)(b) means
- 82121 conduct by the victim which was attributable to the injury or death of the victim as provided by
- 82122 rules promulgated by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 82123 Administrative Rulemaking Act.
- 82124 (23) "Noneconomic detriment" means pain, suffering, inconvenience, physical
- 82125 impairment, and other nonpecuniary damage, except as provided in this chapter.

82126 (24) "Pecuniary loss" does not include loss attributable to pain and suffering except as
82127 otherwise provided in this chapter.

82128 (25) "Offender" means a person who has violated the criminal code through criminally
82129 injurious conduct regardless of whether ~~[he]~~ the person is arrested, prosecuted, or convicted.

82130 (26) "Offense" means a violation of the criminal code.

82131 (27) "Perpetrator" means the person who actually participated in the criminally injurious
82132 conduct.

82133 (28) "Personal property" has the same definition as provided in Section 68-3-12.

82134 (29) "Reparations Office" means the office of the reparations staff for the purpose of
82135 carrying out this chapter.

82136 (30) "Reparations officer" means a person employed by the Reparations Office to
82137 investigate claims of victims and award reparations under this chapter, and includes the director
82138 when ~~[he]~~ the director is acting as a reparations officer.

82139 (31) "Reparations staff" means the director, the reparations officers, and any other staff
82140 employed to administer the Crime Victims' Reparations Act.

82141 (32) "Replacement service loss" means expenses reasonably and necessarily incurred in
82142 obtaining ordinary and necessary services in lieu of those the injured person would have
82143 performed, not for income but the benefit of ~~[himself]~~ the injured person or ~~[his]~~ the injured
82144 person's dependents if ~~[he]~~ the injured person had not been injured.

82145 (33) "Representative" means the victim, immediate family member, legal guardian,
82146 attorney, conservator, executor, or an heir of a person but does not include service providers.

82147 (34) "Restitution" means money or services an appropriate authority orders an offender
82148 to pay or render to a victim of the offender's conduct.

82149 (35) "Secondary victim" means a person who is traumatically affected by the criminally
82150 injurious conduct subject to rules promulgated by the board pursuant to ~~[Title 63, Chapter 46a]~~
82151 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

82152 (36) "Service provider" means a person or agency who provides a service to crime
82153 victims for a monetary fee except attorneys as provided in Section ~~[63-25a-424]~~ 63M-7-524.

82154 (37) (a) "Victim" means a person who suffers bodily or psychological injury or death as
82155 a direct result of criminally injurious conduct or of the production of pornography in violation
82156 of Sections 76-5a-1 through 76-5a-4 if the person is a minor.

82157 (b) "Victim" does not include a person who participated in or observed the judicial
82158 proceedings against an offender unless otherwise provided by statute or rule.

82159 (c) "Victim" includes a resident of this state who is injured or killed by an act of
82160 terrorism, as defined in 18 U.S.C. 2331, committed outside of the United States.

82161 (38) "Work loss" means loss of income from work the injured victim would have
82162 performed if ~~he~~ the injured victim had not been injured and expenses reasonably incurred by
82163 ~~him~~ the injured victim in obtaining services in lieu of those ~~he~~ the injured victim would have
82164 performed for income, reduced by any income from substitute work ~~he~~ the injured victim was
82165 capable of performing but unreasonably failed to undertake.

82166 Section 1967. Section **63M-7-503**, which is renumbered from Section 63-25a-403 is
82167 renumbered and amended to read:

82168 ~~[63-25a-403]~~. **63M-7-503. Restitution -- Reparations not to supplant**
82169 **restitution -- Assignment of claim for restitution judgment to Reparations Office.**

82170 (1) A reparations award shall not supplant restitution as established under Title 77,
82171 Chapter 38a, Crime Victims Restitution Act, or as established by any other provisions.

82172 (2) The court shall not consider a reparations award when determining the order of
82173 restitution nor when enforcing restitution.

82174 (3) If, due to reparation payments to a victim, the Reparations Office is assigned under
82175 Section ~~[63-25a-419]~~ 63M-7-519 a claim for the victim's judgment for restitution or a portion
82176 of the restitution, the Reparations Office may file with the sentencing court a notice of the
82177 assignment. The notice of assignment shall be signed by the victim and a Reparations Officer
82178 and shall state the amount of the claim assigned.

82179 (4) Upon conviction and sentencing of the defendant, the court shall enter a civil
82180 judgment for complete restitution as provided in Section 77-38a-401 and identify the
82181 Reparations Office as the assignee of the assigned portion of the judgment.

82182 (5) If the notice of assignment is filed after sentencing, the court shall modify the civil
82183 judgment for restitution to identify the Reparations Office as the assignee of the assigned
82184 portion of the judgment.

82185 Section 1968. Section **63M-7-504**, which is renumbered from Section 63-25a-404 is
82186 renumbered and amended to read:

82187 ~~[63-25a-404]~~. **63M-7-504. Crime Victims' Reparations Board -- Members.**

82188 (1) (a) A Crime Victims' Reparations Board is created, consisting of seven members
82189 appointed by the governor with the consent of the Senate.

82190 (b) The membership of the board shall consist of:

82191 (i) a member of the bar of this state;

82192 (ii) a victim of criminally injurious conduct;

82193 (iii) a licensed physician;

82194 (iv) a representative of law enforcement;

82195 (v) a mental health care provider; and

82196 (vi) two other private citizens.

82197 (c) The governor may appoint a chair of the board who shall serve for a period of time
82198 prescribed by the governor, not to exceed the length of the chair's term. The board may elect a
82199 vice chair to serve in the absence of the chair.

82200 (d) The board may hear appeals from administrative decisions as provided in rules
82201 adopted pursuant to Section ~~[63-25a-415]~~ 63M-7-515.

82202 (2) (a) Except as required by Subsection (2)(b), as terms of current board members
82203 expire, the governor shall appoint each new member or reappointed member to a four-year
82204 term.

82205 (b) Notwithstanding the requirements of Subsection (2)(a), the governor shall, at the
82206 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
82207 board members are staggered so that approximately half of the board is appointed every two
82208 years.

82209 (c) A member may be reappointed to one successive term.

82210 (3) (a) When a vacancy occurs in the membership for any reason, the replacement shall
82211 be appointed for the unexpired term.

82212 (b) A member resigning from the board shall serve until [his] the member's successor is
82213 appointed and qualified.

82214 (4) (a) (i) Members who are not government employees shall receive no compensation
82215 or benefits for their services, but may receive per diem and expenses incurred in the
82216 performance of the member's official duties at the rates established by the Division of Finance
82217 under Sections 63A-3-106 and 63A-3-107.

82218 (ii) Members may decline to receive per diem and expenses for their service.

82219 (b) (i) State government officer and employee members who do not receive salary, per
82220 diem, or expenses from their agency for their service may receive per diem and expenses
82221 incurred in the performance of their official duties from the board at the rates established by the
82222 Division of Finance under Sections 63A-3-106 and 63A-3-107.

82223 (ii) State government officer and employee members may decline to receive per diem
82224 and expenses for their service.

82225 (5) The board shall meet at least once quarterly but may meet more frequently as
82226 necessary.

82227 Section 1969. Section **63M-7-505**, which is renumbered from Section 63-25a-405 is
82228 renumbered and amended to read:

82229 ~~[63-25a-405]~~. **63M-7-505. Board and office within Commission on**
82230 **Criminal and Juvenile Justice.**

82231 (1) The Crime Victims' Reparations Board and Reparations Office are placed within the
82232 Commission on Criminal and Juvenile Justice for the provision by the commission of
82233 administrative and support services to the Reparations Office.

82234 (2) The board or the director may request assistance from the Commission on Criminal
82235 and Juvenile Justice, the Department of Public Safety, and other state agencies in conducting
82236 research or monitoring victims' programs.

82237 (3) The fund shall appear as a separate line item in the Commission on Criminal and

82238 Juvenile Justice budget.

82239 Section 1970. Section **63M-7-506**, which is renumbered from Section 63-25a-406 is
82240 renumbered and amended to read:

82241 ~~[63-25a-406]~~. **63M-7-506. Functions of board.**

82242 (1) The Crime Victim Reparations Board shall:

82243 (a) adopt a description of the organization and prescribe the general operation of the
82244 board;

82245 (b) prescribe policy for the Office of Crime Victim Reparations;

82246 (c) adopt rules to implement and administer Sections ~~[63-25a-401]~~ 63M-7-501 through
82247 ~~[63-25a-428]~~ 63M-7-525 pursuant to ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah

82248 Administrative Rulemaking Act, which may include setting of ceilings on reparations, defining
82249 of terms not specifically stated in this chapter, and establishing of rules governing attorney fees;

82250 (d) prescribe forms for applications for reparations;

82251 (e) review all awards made by the reparations staff, although the board may not reverse
82252 or modify awards authorized by the reparations staff;

82253 (f) render an annual report to the governor and the Legislature regarding the staff's and
82254 the board's activities;

82255 (g) cooperate with the director and ~~[his]~~ the director's staff in formulating standards for
82256 the uniform application of Section ~~[63-25a-409]~~ 63M-7-509, taking into consideration the rates
82257 and amounts of reparation payable for injuries and death under other laws of this state and the
82258 United States;

82259 (h) allocate monies available in the Crime Victim Reparations Fund to victims of
82260 criminally injurious conduct for reparations claims; and

82261 (i) allocate monies available to other victim services as provided by administrative rule
82262 once a sufficient reserve has been established for reparation claims.

82263 (2) All rules, or other statements of policy, along with application forms specified by the
82264 board, are binding upon the director, the reparations officers, and other staff.

82265 Section 1971. Section **63M-7-507**, which is renumbered from Section 63-25a-407 is

82266 renumbered and amended to read:

82267 ~~[63-25a-407]~~. **63M-7-507. Director -- Appointment and functions.**

82268 The executive director of the Commission on Criminal and Juvenile Justice, after
82269 consulting with the board, shall appoint a director to carry out the provisions of this chapter.

82270 The director shall be an experienced administrator with a background in at least one of the
82271 following fields: social work, psychology, criminal justice, law, or a related field. The director
82272 shall demonstrate an understanding of the needs of crime victims and of services to victims.

82273 The director shall devote ~~[his]~~ the director's time and capacity to ~~[his]~~ the director's duties. The
82274 director shall:

82275 (1) hire staff, including reparations officers, as necessary;

82276 (2) act when necessary as a reparations officer in deciding initial claims;

82277 (3) possess the same investigation and decision-making authority as the reparations
82278 officers;

82279 (4) hear appeals from the decisions of the reparations officers, unless ~~[he]~~ the director
82280 acted as a reparations officer on the initial claim;

82281 (5) serve as a liaison between the reparations staff and the Reparations Office;

82282 (6) serve as the public relations representative of the Reparations Office;

82283 (7) provide for payment of all administrative salaries, fees, and expenses incurred by the
82284 staff of the board, to be paid out of appropriations from the fund;

82285 (8) cooperate with the state treasurer and the state Division of Finance in causing the
82286 funds in the trust fund to be invested and its investments sold or exchanged and the proceeds
82287 and income collected;

82288 (9) apply for, receive, allocate, disburse, and account for grants of funds made available
82289 by the United States, the state, foundations, corporations, and other businesses, agencies, or
82290 individuals;

82291 (10) obtain and utilize the services of other governmental agencies upon request; and

82292 (11) act in any other capacity or perform any other acts necessary for the Reparations
82293 Office or board to successfully fulfill its statutory objectives.

82294 Section 1972. Section **63M-7-508**, which is renumbered from Section 63-25a-408 is
82295 renumbered and amended to read:

82296 ~~[63-25a-408]~~. **63M-7-508. Reparations officers.**

82297 The reparations officers shall in addition to any assignments made by the director of the
82298 Reparations Office:

82299 (1) hear and determine all matters relating to claims for reparations and reinvestigate or
82300 reopen claims without regard to statutes of limitation or periods of prescription;

82301 (2) obtain from prosecuting attorneys, law enforcement officers, and other criminal
82302 justice agencies, investigations and data to enable the reparations officer to determine whether
82303 and to what extent a claimant qualifies for reparations;

82304 (3) hold hearings, administer oaths or affirmations, examine any person under oath or
82305 affirmation, issue subpoenas requiring the attendance and giving of testimony of witnesses,
82306 require the production of any books, papers, documents, or other evidence which may
82307 contribute to the reparations officer's ability to determine particular reparation awards;

82308 (4) determine who is a victim or dependent;

82309 (5) award reparations or other benefits determined to be due under this chapter and the
82310 rules of the board;

82311 (6) take notice of judicially recognized facts and general, technical, and scientific facts
82312 within their specialized knowledge;

82313 (7) advise and assist the board in developing policies recognizing the rights, needs, and
82314 interests of crime victims;

82315 (8) render periodic reports as requested by the board concerning:

82316 (a) the officers' activities; and

82317 (b) the manner in which the rights, needs, and interests of crime victims are being
82318 addressed by the state's criminal justice system;

82319 (9) establish priorities for assisting elderly victims of crime or those victims facing
82320 extraordinary hardships;

82321 (10) cooperate with the Commission on Criminal and Juvenile Justice to develop

82322 information regarding crime victims' problems and programs; and

82323 (11) assist the director in publicizing the provisions of the Crime Victims' Reparations
82324 Act, including the procedures for obtaining reparation, and in encouraging law enforcement
82325 agencies, health providers, and other related officials to take reasonable care to ensure that
82326 victims are informed about the provisions of this chapter and the procedure for applying for
82327 reparation.

82328 Section 1973. Section **63M-7-509**, which is renumbered from Section 63-25a-409 is
82329 renumbered and amended to read:

82330 ~~[63-25a-409]~~. **63M-7-509. Grounds for eligibility.**

82331 In order to be eligible for a reparations award under this chapter:

82332 (1) The claimant shall be:

82333 (a) a victim of criminally injurious conduct;

82334 (b) a dependent of a deceased victim of criminally injurious conduct; or

82335 (c) a representative acting on behalf of one of the above.

82336 (2) The victim shall be either a resident of Utah or the criminally injurious conduct shall
82337 have occurred in Utah.

82338 (3) The application shall be made in writing in a form that conforms substantially to that
82339 prescribed by the board.

82340 (4) The criminally injurious conduct shall be reported to a law enforcement officer, in
82341 ~~[his]~~ the law enforcement officer's capacity as a law enforcement officer, or other federal or
82342 state investigative agencies.

82343 (5) (a) The claimant or victim shall cooperate with the appropriate law enforcement
82344 agencies in their efforts to apprehend or convict the perpetrator of the alleged offense.

82345 (b) An award to a victim may be made whether any person is arrested, prosecuted, or
82346 convicted of the criminally injurious conduct giving rise to the claim.

82347 (6) The criminally injurious conduct shall have occurred after December 31, 1986.

82348 Section 1974. Section **63M-7-510**, which is renumbered from Section 63-25a-410 is
82349 renumbered and amended to read:

82350 ~~[63-25a-410]~~. 63M-7-510. Ineligible persons -- Fraudulent claims --

82351 **Penalties.**

82352 (1) The following individuals shall not be eligible to receive an award of reparations:

82353 (a) persons who do not meet all of the provisions set forth in Section ~~[63-25a-409]~~

82354 63M-7-509;

82355 (b) the offender;

82356 (c) an accomplice of the offender;

82357 (d) any person whose receipt of an award would unjustly benefit the offender,

82358 accomplice, or other person reasonably suspected of participating in the offense;

82359 (e) the victim of a motor vehicle injury who was the owner or operator of the motor

82360 vehicle and was not at the time of the injury in compliance with the state motor vehicle

82361 insurance laws;

82362 (f) any convicted offender serving a sentence of imprisonment for that conviction or

82363 residing in any other institution which provides for the maintenance of convicted persons; and

82364 (g) residents of halfway houses or any other correctional facilities and all persons who

82365 are on probation or parole if the circumstances surrounding the offense of which they are

82366 victims constitute a violation of their parole or probation.

82367 (2) A person who knowingly submits a fraudulent claim for reparations or who

82368 knowingly misrepresents material facts in making a claim, and who receives an award based on

82369 that claim, is guilty of an offense, based on the following award amounts:

82370 (a) for value under \$300, a class B misdemeanor;

82371 (b) for value equal to or greater than \$300, but less than \$1,000, a class A

82372 misdemeanor;

82373 (c) for value equal to or greater than \$1,000, but less than \$5,000, a third degree felony;

82374 and

82375 (d) for value equal to or greater than \$5,000, a second degree felony.

82376 (3) A person who submits a claim described in Subsection (2) but receives no award

82377 based on that claim is guilty of a class B misdemeanor.

82378 (4) The state attorney general may prosecute violations under this section or may make
82379 arrangements with county attorneys for the prosecution of violations under this section when
82380 the attorney general cannot conveniently prosecute.

82381 (5) The state may also bring a civil action against a claimant who receives reparation
82382 payments that are later found to be unjustified and who does not return to the board the
82383 unjustified amount.

82384 Section 1975. Section **63M-7-511**, which is renumbered from Section 63-25a-411 is
82385 renumbered and amended to read:

82386 ~~[63-25a-411]~~. **63M-7-511. Compensable losses and amounts.**

82387 A reparations award under this chapter may be made if:

82388 (1) the reparations officer finds the claim satisfies the requirements for the award under
82389 the provisions of this chapter and the rules of the board;

82390 (2) monies are available in the fund;

82391 (3) the person for whom the award of reparations is to be paid is otherwise eligible
82392 under this act;

82393 (4) the claim is for an allowable expense incurred by the victim, as follows:

82394 (a) reasonable and necessary charges incurred for products, services, and
82395 accommodations;

82396 (b) inpatient and outpatient medical treatment and physical therapy, subject to rules
82397 promulgated by the board pursuant to ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
82398 Administrative Rulemaking Act;

82399 (c) mental health counseling which:

82400 (i) is set forth in a mental health treatment plan which has been approved prior to any
82401 payment by a reparations officer; and

82402 (ii) qualifies within any further rules promulgated by the board pursuant to ~~[Title 63,~~
82403 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act;

82404 (d) actual loss of past earnings and anticipated loss of future earnings because of a
82405 death or disability resulting from the personal injury at a rate not to exceed 66-2/3% of the

82406 person's weekly gross salary or wages or the maximum amount allowed under the state workers'
82407 compensation statute;

82408 (e) care of minor children enabling a victim or spouse of a victim, but not both of them,
82409 to continue gainful employment at a rate per child per week as determined under rules
82410 established by the board;

82411 (f) funeral and burial expenses for death caused by the criminally injurious conduct,
82412 subject to rules promulgated by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G,
82413 Chapter 3, Utah Administrative Rulemaking Act;

82414 (g) loss of support to the dependent or dependents not otherwise compensated for a
82415 pecuniary loss for personal injury, for as long as the dependence would have existed had the
82416 victim survived, at a rate not to exceed 66-2/3% of the person's weekly salary or wages or the
82417 maximum amount allowed under the state workers' compensation statute, whichever is less;

82418 (h) personal property necessary and essential to the health or safety of the victim as
82419 defined by rules promulgated by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G,
82420 Chapter 3, Utah Administrative Rulemaking Act; and

82421 (i) medical examinations as defined in Section [~~63-25a-402~~] 63M-7-502, subject to
82422 rules promulgated by the board pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
82423 Administrative Rulemaking Act, which may allow for exemptions from Sections [~~63-25a-409~~]
82424 63M-7-509, [~~63-25a-412~~] 63M-7-512, and [~~63-25a-413~~] 63M-7-513.

82425 (5) If a Utah resident suffers injury or death as a result of criminally injurious conduct
82426 inflicted in a state, territory, or country that does not provide a reciprocal crime victims'
82427 compensation program, the Utah resident has the same rights under this chapter as if the
82428 injurious conduct occurred in this state.

82429 (6) An award of reparations shall not exceed \$25,000 in the aggregate unless the victim
82430 is entitled to proceeds in excess of that amount as provided in Subsection 77-38a-403(2).

82431 However, reparations for actual medical expenses incurred as a result of homicide, attempted
82432 homicide, aggravated assault, or DUI offenses, may be awarded up to \$50,000 in the aggregate.

82433 Section 1976. Section **63M-7-512**, which is renumbered from Section 63-25a-412 is

82434 renumbered and amended to read:

82435 ~~[63-25a-412]~~. **63M-7-512. Reparations reduction.**

82436 (1) Reparations otherwise payable to a claimant may be reduced or denied as follows:

82437 (a) the economic loss upon which the claim is based has been or could be recouped
82438 from other persons, including collateral sources, and the victim was not entitled to nor receiving
82439 monies prior to the criminally injurious conduct giving rise to the claim under this chapter;

82440 (b) the reparations officer considers the claim unreasonable because of the misconduct
82441 of the claimant or of a victim through whom ~~he~~ the claimant claims; or

82442 (c) the victim had not used a facility or health care provider that would be covered by a
82443 collateral source.

82444 (2) When two or more dependents are entitled to an award as a result of a victim's
82445 death, the award shall be apportioned by the reparations officer among the dependents.

82446 Section 1977. Section **63M-7-513**, which is renumbered from Section 63-25a-413 is
82447 renumbered and amended to read:

82448 ~~[63-25a-413]~~. **63M-7-513. Collateral sources.**

82449 (1) Collateral source shall include any source of benefits or advantages for economic
82450 loss otherwise reparable under this chapter which the victim or claimant has received, or which
82451 is readily available to the victim from:

82452 (a) the offender;

82453 (b) the insurance of the offender;

82454 (c) the United States government or any of its agencies, a state or any of its political
82455 subdivisions, or an instrumentality of two or more states, except in the case on nonobligatory
82456 state-funded programs;

82457 (d) social security, Medicare, and Medicaid;

82458 (e) state-required temporary nonoccupational income replacement insurance or
82459 disability income insurance;

82460 (f) workers' compensation;

82461 (g) wage continuation programs of any employer;

82462 (h) proceeds of a contract of insurance payable to the victim for the loss ~~[he]~~ the victim
82463 sustained because of the criminally injurious conduct;

82464 (i) a contract providing prepaid hospital and other health care services or benefits for
82465 disability; or

82466 (j) veteran's benefits, including veteran's hospitalization benefits.

82467 (2) (a) An order of restitution shall not be considered readily available as a collateral
82468 source.

82469 (b) Receipt of an award of reparations under this chapter shall be considered an
82470 assignment of the victim's rights to restitution from the offender.

82471 (3) The victim shall not discharge a claim against a person or entity without the state's
82472 written permission and shall fully cooperate with the state in pursuing its right of
82473 reimbursement, including providing the state with any evidence in ~~[his]~~ the victim's possession.

82474 (4) The state's right of reimbursement applies regardless of whether the victim has been
82475 fully compensated for ~~[his]~~ the victim's losses.

82476 (5) Notwithstanding the collateral source provisions in Subsection (1) and Subsection
82477 ~~[63-25a-412]~~ 63M-7-512(1)(a), a victim of a sexual offense who requests testing of himself may
82478 be reimbursed for the costs of the HIV test only as provided in Subsection 76-5-503(4).

82479 Section 1978. Section **63M-7-514**, which is renumbered from Section 63-25a-414 is
82480 renumbered and amended to read:

82481 ~~[63-25a-414]~~. **63M-7-514. Notification of claimant -- Suspension of**
82482 **proceedings.**

82483 (1) The Reparations Office shall immediately notify the claimant in writing of any
82484 decision and shall forward to the Division of Finance a certified copy of the decision and a
82485 warrant request for the amount of the claim. The Division of Finance shall pay the claimant the
82486 amount submitted to the division, out of the fund. If monies in the fund are temporarily
82487 depleted, claimants entitled to receive awards shall be placed on a waiting list and shall receive
82488 their awards as funds are available in the order in which their claims were awarded.

82489 (2) The reparations officer may suspend the proceedings pending disposition of a

82490 criminal prosecution that has been commenced or is imminent.

82491 Section 1979. Section **63M-7-515**, which is renumbered from Section 63-25a-415 is
82492 renumbered and amended to read:

82493 ~~[63-25a-415]~~. **63M-7-515. Rules for contested claims -- Exemption from**
82494 **Administrative Procedures Act.**

82495 (1) Rules for procedures for contested determinations by a reparations officer shall be
82496 adopted pursuant to ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative
82497 Rulemaking Act.

82498 (2) Crime Victims' Reparations is exempt from ~~[Title 63, Chapter 46b]~~ Title 63G,
82499 Chapter 4, Administrative Procedures Act.

82500 Section 1980. Section **63M-7-516**, which is renumbered from Section 63-25a-416 is
82501 renumbered and amended to read:

82502 ~~[63-25a-416]~~. **63M-7-516. Waiver of privilege.**

82503 (1) A victim filing a claim under the provisions of this chapter shall be considered to
82504 have waived any privilege as to communications or records relevant to an issue of the physical,
82505 mental, or emotional conditions of the victim except for the attorney-client privilege. The
82506 waiver shall apply only to reparations officers, the director of reparations, the board, and legal
82507 counsel.

82508 (2) The claimant may be required to supply any additional medical or psychological
82509 reports available relating to the injury or death for which compensation is claimed.

82510 (3) The reparations officer hearing a claim or an appeal from a claim shall make
82511 available to the claimant a copy of the report. If the victim is deceased, the director or ~~[his]~~ the
82512 director's appointee, on request, shall furnish the claimant a copy of the report unless
82513 dissemination of that copy is prohibited by law.

82514 Section 1981. Section **63M-7-517**, which is renumbered from Section 63-25a-417 is
82515 renumbered and amended to read:

82516 ~~[63-25a-417]~~. **63M-7-517. Additional testing.**

82517 (1) If the mental, physical, or emotional condition of a victim is material to a claim, the

82518 reparations officer, director, or chair of the board who hears the claim or the appeal may order
82519 the claimant to submit to a mental or physical examination by a physician or psychologist and
82520 may recommend to the court to order an autopsy of a deceased victim.

82521 (2) Any order for additional examination shall be for good cause shown and shall
82522 provide notice to the person to be examined and ~~[his]~~ the person's representative.

82523 (3) All reports from additional examinations shall set out findings, including results of
82524 all tests made, diagnoses, prognoses, other conclusions, and reports of earlier examinations of
82525 the same conditions.

82526 (4) A copy of the report shall be made available to the victim or the representative of
82527 the victim unless dissemination of that copy is prohibited by law.

82528 Section 1982. Section **63M-7-518**, which is renumbered from Section 63-25a-418 is
82529 renumbered and amended to read:

82530 ~~[63-25a-418]~~. **63M-7-518. Failure to comply.**

82531 If a person refuses to comply with an order under this chapter or asserts a privilege,
82532 except privileges arising from the attorney-client relationship, to withhold or suppress evidence
82533 relevant to a claim, the director or reparations officer may make any appropriate determination
82534 including denial of the claim.

82535 Section 1983. Section **63M-7-519**, which is renumbered from Section 63-25a-419 is
82536 renumbered and amended to read:

82537 ~~[63-25a-419]~~. **63M-7-519. Assignment of recovery -- Reimbursement.**

82538 (1) By accepting an award of reparations, the victim automatically assigns to the state,
82539 subject to the provisions of Subsection (2), all claims against any third party to the lesser of:

82540 (a) the amount paid by the state; or

82541 (b) the amount recovered from the third party.

82542 (2) The board, with the concurrence of the director, may reduce the state's right of
82543 reimbursement if it is determined that the reduction will benefit the fund.

82544 (3) The state reserves the right to make a claim for reimbursement on behalf of the
82545 victim and the victim shall not impair the state's claim or the state's right of reimbursement.

82546 Section 1984. Section **63M-7-520**, which is renumbered from Section 63-25a-420 is
82547 renumbered and amended to read:

82548 ~~[63-25a-420]~~. **63M-7-520. Special verdict -- Allocation of damages.**

82549 In an action in a court of this state arising out of criminally injurious conduct, the judge,
82550 on timely motion, shall direct the jury to return a special verdict, indicating separately the
82551 awards to noneconomic detriment, punitive damages, and economic loss.

82552 Section 1985. Section **63M-7-521**, which is renumbered from Section 63-25a-421 is
82553 renumbered and amended to read:

82554 ~~[63-25a-421]~~. **63M-7-521. Award -- Payment methods -- Claims against**
82555 **the award.**

82556 (1) The reparations officer may provide for the payment of an award in a lump sum or
82557 in installments. The part of an award equal to the amount of economic loss accrued to the date
82558 of the award shall be paid in a lump sum. An award of allowable expense that would accrue
82559 after an initial award is made may not be paid in a lump sum. Except as provided in Subsection
82560 (2), the part of an award that may not be paid in a lump sum shall be paid in installments.

82561 (2) At the request of the claimant, the reparations officer may convert future economic
82562 loss installment payments, other than allowable expense, to a lump sum payment, discounted to
82563 present value, but only upon a finding by the officer that the award in a lump sum will promote
82564 the interests of the claimant.

82565 (3) An award for future economic loss payable in installments may be made only for a
82566 period for which the reparations officer can reasonably determine future economic loss. The
82567 reparations officer may reconsider and modify an award for future economic loss payable in
82568 installments, upon ~~[his]~~ the reparations officer's finding that a material and substantial change of
82569 circumstances has occurred.

82570 (4) An award is not subject to execution, attachment, or garnishment, except that an
82571 award for allowable expense is not exempt from a claim of a creditor to the extent that ~~[he]~~ the
82572 creditor provided products, services, or accommodations, the costs of which are included in the
82573 award.

82574 (5) An assignment or agreement to assign a right to reparations for loss accruing in the
82575 future is unenforceable, except:

82576 (a) an assignment of a right to reparations for work loss to secure payment of alimony,
82577 maintenance, or child support;

82578 (b) an assignment of a right to reparations for allowable expense to the extent that the
82579 benefits are for the cost of products, services, or accommodations necessitated by the injury or
82580 death on which the claim is based and are provided or to be provided by the assignee; or

82581 (c) an assignment to repay a loan obtained to pay for the obligations or expenses
82582 described in Subsection (5) (a) or (b).

82583 Section 1986. Section **63M-7-522**, which is renumbered from Section 63-25a-422 is
82584 renumbered and amended to read:

82585 ~~[63-25a-422]~~. **63M-7-522. Emergency award.**

82586 If the reparations officer determines that the claimant will suffer financial hardship unless
82587 an emergency award is made, and it appears likely that a final award will be made, an amount
82588 may be paid to the claimant, to be deducted from the final award or repaid by and recoverable
82589 from the claimant to the extent that it exceeds the final award. The board may limit emergency
82590 awards to any amount it considers necessary.

82591 Section 1987. Section **63M-7-523**, which is renumbered from Section 63-25a-423 is
82592 renumbered and amended to read:

82593 ~~[63-25a-423]~~. **63M-7-523. Review of award decision.**

82594 The reparations officer shall review at least annually every award being paid in
82595 installments. An order on review of an award does not require refund of amounts previously
82596 paid unless the award was obtained by fraud or a material mistake of fact.

82597 Section 1988. Section **63M-7-524**, which is renumbered from Section 63-25a-424 is
82598 renumbered and amended to read:

82599 ~~[63-25a-424]~~. **63M-7-524. Attorney fees.**

82600 (1) The claims procedures shall be sufficiently simple that the assistance of an attorney
82601 is unnecessary, and no attorney fees shall be paid for the assistance of an attorney or any other

82602 representative in filing the claim or providing information to the reparations officer.

82603 (2) Attorney fees may be granted in the following circumstances and shall be paid out of
82604 the reparations award not to exceed 15% of the amount of the reparations award:

82605 (a) when an award has been denied and, after a hearing, the decision to deny is
82606 overturned; or

82607 (b) when minor dependents of a deceased victim require assistance in establishing a
82608 trust or determining a guardian.

82609 (3) An attorney or any other person providing assistance in a reparations claim, who
82610 contracts for or receives sums not allowed under this chapter, is guilty of a class B
82611 misdemeanor. This provision shall not extend to attorneys who assist the victim in filing a civil
82612 action against the perpetrator.

82613 Section 1989. Section **63M-7-525**, which is renumbered from Section 63-25a-428 is
82614 renumbered and amended to read:

82615 ~~[63-25a-428]~~. **63M-7-525. Purpose -- Not entitlement program.**

82616 (1) Crime Victims' Reparations is a program with the purpose to assist victims of
82617 criminally injurious conduct. Reparation to a victim is limited to the monies available in the
82618 fund.

82619 (2) This program is not an entitlement program. Awards may be limited or denied as
82620 determined appropriate by the board. Failure to grant an award does not create a cause of
82621 action against Crime Victims' Reparations, the state, or any of its subdivisions. There is no right
82622 to judicial review over the decision whether or not to grant an award.

82623 (3) A cause of action based on a failure to give or receive the notice required by this
82624 chapter does not accrue to any person against the state, any of its agencies or local subdivisions,
82625 any of their law enforcement officers or other agents or employees, or any health care or
82626 medical provider or its agents or employees. The failure does not affect or alter any
82627 requirement for filing or payment of a claim.

82628 Section 1990. Section **63M-7-601**, which is renumbered from Section 63-25a-601 is
82629 renumbered and amended to read:

Part 6. Utah Council on Victims of Crime

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82631

~~[63-25a-601].~~ 63M-7-601. Creation -- Members -- Chair.

82632

(1) There is created within the governor's office the Utah Council on Victims of Crime.

82633

(2) The Utah Council on Victims of Crime shall be composed of 24 voting members as

82634

follows:

82635

(a) a representative of the Commission on Criminal and Juvenile Justice appointed by

82636

the executive director;

82637

(b) a representative of the Department of Corrections appointed by the executive

82638

director;

82639

(c) a representative of the Board of Pardons and Parole appointed by the chair;

82640

(d) a representative of the Department of Public Safety appointed by the commissioner;

82641

(e) a representative of the Division of Juvenile Justice Services appointed by the

82642

director;

82643

(f) a representative of the Office of Crime Victim Reparations appointed by the director;

82644

(g) a representative of the Office of the Attorney General appointed by the attorney

82645

general;

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(h) a representative of the United States Attorney for the district of Utah appointed by

82647

the United States Attorney;

82648

(i) a

82649

professional or volunteer working in the area of violence against women and families appointed

82650

by the governor;

82651

(j) the chair of each judicial district's victims' rights committee;

82652

(k) the following members appointed to serve four-year terms:

82653

(i) a representative of the Statewide Association of Public Attorneys appointed by that

82654

association;

82655

(ii) a representative of the Utah Chiefs of Police Association appointed by the president

82656

of that association;

82657

(iii) a representative of the Utah Sheriffs' Association appointed by the president of that

82658 association;

82659 (iv) a representative of a Children's Justice Center appointed by the Advisory Board on
82660 Children's Justice; and

82661 (v) a citizen representative appointed by the governor; and

82662 (1) the following members appointed by the members in Subsections (2)(a) through
82663 (2)(k) to serve four-year terms:

82664 (i) an individual who works professionally with victims of crime; and

82665 (ii) a victim of crime.

82666 (3) The council shall annually elect one member to serve as chair.

82667 Section 1991. Section **63M-7-602**, which is renumbered from Section 63-25a-602 is
82668 renumbered and amended to read:

82669 **[63-25a-602]. 63M-7-602. Reappointment -- Vacancies.**

82670 (1) Members appointed to serve four-year terms shall be eligible for reappointment one
82671 time.

82672 (2) When a vacancy occurs in the membership for any reason, the replacement shall be
82673 appointed for the unexpired term.

82674 Section 1992. Section **63M-7-603**, which is renumbered from Section 63-25a-603 is
82675 renumbered and amended to read:

82676 **[63-25a-603]. 63M-7-603. Duties.**

82677 (1) The council shall:

82678 (a) make recommendations to the Legislature, the governor, and the Judicial Council on
82679 the following:

82680 (i) enforcing existing rights of victims of crime;

82681 (ii) enhancing rights of victims of crime;

82682 (iii) the role of victims of crime in the criminal justice system;

82683 (iv) victim restitution;

82684 (v) educating and training criminal justice professionals on the rights of victims of
82685 crime; and

82686 (vi) enhancing services to victims of crimes;
82687 (b) provide training on the rights of victims of crime; and
82688 (c) establish a subcommittee to consider complaints not resolved by the Victims' Rights
82689 Committee established in Section 77-37-5.

82690 (2) The council shall advocate the adoption, repeal, or modification of laws or proposed
82691 legislation in the interest of victims of crime.

82692 (3) The council may establish additional subcommittees to assist in accomplishing its
82693 duties.

82694 Section 1993. Section **63M-7-604**, which is renumbered from Section 63-25a-604 is
82695 renumbered and amended to read:

82696 **~~[63-25a-604].~~ 63M-7-604. Compensation of members.**

82697 (1) (a) Members who are not government employees shall receive no compensation or
82698 benefits for their services, but may receive per diem and expenses incurred in the performance
82699 of the member's official duties at the rates established by the Division of Finance under Sections
82700 63A-3-106 and 63A-3-107.

82701 (b) Members may decline to receive per diem and expenses for their services.

82702 (2) (a) State government officer and employee members who do not receive salary, per
82703 diem, or expenses from their agency for their service may receive per diem and expenses
82704 incurred in the performance of their official duties at the rates established by the Division of
82705 Finance under Sections 63A-3-106 and 63A-3-107.

82706 (b) State government officer and employee members may decline to receive per diem
82707 and expenses for their service.

82708 Section 1994. Section **63M-7-605**, which is renumbered from Section 63-25a-605 is
82709 renumbered and amended to read:

82710 **~~[63-25a-605].~~ 63M-7-605. Staffing.**

82711 The Commission on Criminal and Juvenile Justice shall provide staff to the council and
82712 any subcommittees established by the council.

82713 Section 1995. Section **63M-8-101** is enacted to read:

82714 CHAPTER 8. UTAH COMMISSION FOR WOMEN AND FAMILIES ACT

82715 Part 1. General Provisions

82716 63M-8-101. Title.

82717 This chapter is known as the "Utah Commission for Women and Families Act."

82718 Section 1996. Section **63M-8-201**, which is renumbered from Section 63-47-1 is
82719 renumbered and amended to read:

82720 Part 2. Commission Members

82721 [~~63-47-1~~]. 63M-8-201. Creation -- Purpose.

82722 (1) There is established the Utah Commission for Women and Families.

82723 (2) The governor's office shall provide administrative support for the commission.

82724 Section 1997. Section **63M-8-202**, which is renumbered from Section 63-47-2 is
82725 renumbered and amended to read:

82726 [~~63-47-2~~]. 63M-8-202. Members -- Appointment -- Terms -- Vacancies --
82727 Expenses.

82728 (1) (a) Except as required by Subsection (1)(b), the commission shall consist of up to
82729 15 members to be appointed by the governor for a four-year term.

82730 (b) Notwithstanding the requirements of Subsection (1)(a), the governor shall, at the
82731 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
82732 commission members are staggered so that approximately half of the commission is appointed
82733 every two years.

82734 (c) Members may serve two consecutive appointments.

82735 (d) In making appointments, the governor shall insure that no more than one more than
82736 half the membership is from the same political party.

82737 (2) When a vacancy occurs in the membership for any reason, the replacement shall be
82738 appointed by the governor for the remainder of the unexpired term.

82739 (3) (a) Members shall receive no compensation or benefits for their services, but may
82740 receive per diem and expenses incurred in the performance of the member's official duties at the
82741 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

82742 (b) Members may decline to receive per diem and expenses for their service.

82743 Section 1998. Section **63M-8-203**, which is renumbered from Section 63-47-3 is
82744 renumbered and amended to read:

82745 ~~[63-47-3]~~. **63M-8-203. Qualifications of members.**

82746

82747 (1) Members appointed to the commission shall have the following qualifications:

82748 (a) a demonstrated record of leadership and involvement; and

82749 (b) a willingness to make a commitment to the furtherance of the purposes of the
82750 commission.

82751 (2) The commission may make recommendations to the governor concerning
82752 appointment of members.

82753 Section 1999. Section **63M-8-204**, which is renumbered from Section 63-47-4 is
82754 renumbered and amended to read:

82755 ~~[63-47-4]~~. **63M-8-204. Election of chairman -- Meetings.**

82756 Commission members shall elect a chairman, and may appoint such other officers from
82757 its membership as is deemed necessary. The commission shall meet in regular meetings and may
82758 meet at special meetings at the request of the chairman or the governor.

82759 Section 2000. Section **63M-8-301**, which is renumbered from Section 63-47-5 is
82760 renumbered and amended to read:

82761 **Part 3. Commission Duties and Activities**

82762 ~~[63-47-5]~~. **63M-8-301. Duties.**

82763 The commission shall:

82764 (1) confer with state agencies and advise the governor, through the governor's program
82765 director, concerning programs of importance to women and families;

82766 (2) conduct studies, workshops, or fact-finding hearings to develop recommendations
82767 for constructive action in all areas of interest to women and families;

82768 (3) conduct or participate in educational programs concerning issues of importance to
82769 women and families; and

82770 (4) act as a liaison between the governor and national advisory organizations on the
82771 status of women or families.

82772 Section 2001. Section **63M-8-302**, which is renumbered from Section 63-47-7 is
82773 renumbered and amended to read:

82774 **[63-47-7]. 63M-8-302. Authority to accept funds, gifts, and donations.**

82775 The commission may, subject to [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5, Federal
82776 Funds Procedures, receive and accept federal funds, and receive and accept private gifts,
82777 donations, or funds from any source.

82778 Section 2002. Section **63M-8-303**, which is renumbered from Section 63-47-8 is
82779 renumbered and amended to read:

82780 **[63-47-8]. 63M-8-303. Enactment of bylaws and rules.**

82781 The commission may enact bylaws or other rules for its own governance.

82782 Section 2003. Section **63M-9-101**, which is renumbered from Section 63-75-1 is
82783 renumbered and amended to read:

82784 **CHAPTER 9. FAMILIES, AGENCIES, AND COMMUNITIES**
82785 **TOGETHER FOR CHILDREN AND YOUTH AT RISK ACT**

82786 **Part 1. General Provisions**

82787 **[63-75-1]. 63M-9-101. Title.**

82788 This chapter is known as the "Families, Agencies, and Communities Together for
82789 Children and Youth At Risk Act."

82790 Section 2004. Section **63M-9-102**, which is renumbered from Section 63-75-2 is
82791 renumbered and amended to read:

82792 **[63-75-2]. 63M-9-102. Purpose of chapter.**

82793 (1) It is declared that the policy of the state is to unite the Department of Human
82794 Services, the State Office of Education, the Department of Health, the Office of the Court
82795 Administrator, and the Department of Workforce Services, community-based service
82796 organizations, and parents to develop and implement comprehensive systems of services and
82797 supports for children and youth at risk and their families.

82798 (2) It is the intent of the Legislature that service delivery systems developed under this
82799 chapter shall require collaboration between existing state and local agencies and between public,
82800 private, and voluntary agencies to enhance their capacity to meet community needs.

82801 Section 2005. Section **63M-9-103**, which is renumbered from Section 63-75-3 is
82802 renumbered and amended to read:

82803 ~~[63-75-3]~~. **63M-9-103. Definitions.**

82804 As used in this chapter:

82805 (1) "Children and youth at risk" means:

82806 (a) disabled persons age 18 to 22; or

82807 (b) persons in the custody of the Division of Juvenile Justice Services within the

82808 Department of Human Services age 18 to 21; and

82809 (c) minors who may at times require appropriate and uniquely designed intervention to:

82810 (i) achieve literacy;

82811 (ii) advance through the schools;

82812 (iii) achieve commensurate with their ability; and

82813 (iv) participate in society in a meaningful way as competent, productive, caring, and

82814 responsible citizens.

82815 (2) "Council" means the Families, Agencies, and Communities Together Council

82816 established under Section ~~[63-75-4]~~ 63M-9-201.

82817 (3) "Local interagency council" means a council established under Section ~~[63-75-5.7]~~

82818 63M-9-301.

82819 (4) "Steering committee" means the Families, Agencies, and Communities Together

82820 Steering Committee established under Section ~~[63-75-5]~~ 63M-9-202.

82821 (5) (a) "Child and family centered service delivery system" means services provided to

82822 children and youth at risk and their families that may be delivered by teams and within a

82823 supportive community environment.

82824 (b) "Community" includes, when available, parents of children and youth at risk;

82825 directors of geographical service delivery areas designated by state agencies; local government

82826 elected officials; appointed county officials who are responsible for providing substance abuse,
82827 mental health, or public health services; educators; school districts; parent-teacher
82828 organizations; child and family advocacy groups; religious and community-based service
82829 organizations; individuals; and private sector entities who come together to develop, adopt, and
82830 administer a plan for a collaborative service delivery system for children and youth at risk.

82831 (c) "Community resources" means time, money, services, and other contributions
82832 provided by individuals, private sector entities, religious organizations, community-based
82833 service organizations, school districts, municipal governments, and county governments.

82834 (d) "Individualized and coordinated service plan" means a plan for services and supports
82835 that is comprehensive in its scope, is the product of a collaborative process between public and
82836 private service providers, and is specifically tailored to the unique needs of each child or youth
82837 served under this chapter.

82838 (e) "Performance monitoring system" means a process to regularly collect and analyze
82839 performance information including performance indicators and performance goals:

82840 (i) "performance indicators" means actual performance information regarding a program
82841 or activity; and

82842 (ii) "performance goals" means a target level of performance or an expected level of
82843 performance against which actual performance is measured.

82844 (f) "Plan for a collaborative service delivery system," "plan," or "plans" means a written
82845 document describing how a community proposes to deliver services and supports to children
82846 and youth at risk that effectively bring to bear all needed resources, including community
82847 resources, to enable them to achieve the outcomes described in Subsection (1)(c).

82848 Section 2006. Section **63M-9-104**, which is renumbered from Section 63-75-8 is
82849 renumbered and amended to read:

82850 **[63-75-8]. 63M-9-104. Relationship to political subdivisions.**

82851 Nothing in this chapter affects the power of a political subdivision to carry out its
82852 responsibilities as otherwise provided by law.

82853 Section 2007. Section **63M-9-201**, which is renumbered from Section 63-75-4 is

82854 renumbered and amended to read:

82855 **Part 2. State Council and Steering Committee**

82856 **[~~63-75-4~~]. 63M-9-201. Families, Agencies, and Communities Together State**
82857 **Council -- Composition -- Duties -- Interagency case management team.**

82858 (1) (a) There is created within state government the Families, Agencies, and
82859 Communities Together State Council composed of:

82860 (i) the state superintendent of public instruction;

82861 (ii) the executive director of the Department of Health;

82862 (iii) the executive director of the Department of Human Services;

82863 (iv) the state court administrator; and

82864 (v) the executive director of the Department of Workforce Services.

82865 (b) The council members listed in Subsection (1)(a) shall appoint to a four-year term the
82866 following nonvoting members:

82867 (i) a representative of community-based service organizations appointed to a four-year
82868 term;

82869 (ii) a parent representative from a rural community; and

82870 (iii) a parent representative from an urban community.

82871 (c) If a vacancy occurs with respect to a council member appointed under Subsection
82872 (1)(b), council members listed in Subsection (1)(a) shall appoint a replacement for the unexpired
82873 term.

82874 (d) Appointments and reappointments under Subsection (1)(b) and (c) shall be made
82875 within 60 days of a vacancy.

82876 (2) (a) The council shall annually elect a chair from its membership.

82877 (b) All voting members of the council are necessary to constitute a quorum at any
82878 meeting.

82879 (c) The action of a majority of a quorum is the action of the council, except that a
82880 unanimous vote of the council is required to appoint or remove a nonvoting council member.

82881 (d) The council shall meet quarterly or more frequently as determined by the chair.

82882 (3) (a) State government officer and employee members who do not receive salary, per
82883 diem, or expenses from their agency for their service may receive per diem and expenses
82884 incurred in the performance of their official duties from the council at the rates established by
82885 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

82886 (b) Members who are not government employees may not receive compensation or
82887 benefits for their services, but may receive per diem and expenses incurred in the performance
82888 of the member's official duties from the council at rates established by the Division of Finance
82889 under Sections 63A-3-106 and 63A-3-107.

82890 (c) Council members may decline to receive per diem and expenses for their service.

82891 (4) The council shall:

82892 (a) provide leadership to increase and enhance efficient and effective services to Utah's
82893 children and youth at risk by:

82894 (i) cooperatively planning, funding, monitoring, evaluating, and marketing innovative
82895 and individualized service delivery and funding strategies;

82896 (ii) recommending legislative, executive, and judicial policy and procedural changes,
82897 including joint budget proposals as described in Section [~~63-38-2~~] 63J-1-201;

82898 (iii) developing incentives and strategies to increase family involvement, collaboration,
82899 and public-private partnerships in the planning and delivery of services at the state and local
82900 level;

82901 (iv) promoting prevention and early intervention services;

82902 (v) increasing public understanding of and advocating for the needs of Utah's children
82903 and youth who are at risk; and

82904 (vi) establishing policies to remove administrative barriers to collaboration in
82905 communities;

82906 (b) compile and disseminate information regarding effective service delivery and funding
82907 strategies for replication;

82908 (c) receive and act upon recommendations of the steering committee;

82909 (d) approve the establishment of collaborative service delivery systems under Section

82910 [~~63-75-6.5~~] 63M-9-402 and adopt performance goals for those systems;

82911 (e) recommend to the governor for each fiscal year funds contained in an agency's base
82912 budget and building block request that can be identified for collaborative service delivery
82913 systems established under Section [~~63-75-6.5~~] 63M-9-402;

82914 (f) (i) develop model administrative and governance structures to be established by
82915 communities that at least:

82916 (A) ensure accountability for public funds;

82917 (B) are voluntarily adopted and modified by communities, based on community needs;

82918 (C) ensure collaboration on matters of policy and administrative processes in operating
82919 programs under this chapter between the state, school districts, and counties;

82920 (D) establish a board consisting of heads of state and local government agencies, private
82921 agencies, and school districts that provide services under this chapter; and

82922 (E) ensure equity in the scope, duration, and level of services throughout a prescribed
82923 geographical area;

82924 (ii) the council may, through contracts that provide funding for programs under this
82925 chapter, give incentives to communities to establish an administrative and governance structure
82926 that meets the requirements of Subsection (4)(f)(i) and to designate the geographical area within
82927 which that administrative and governance structure will operate;

82928 (g) review the structure and function of the steering committee before December 1,
82929 1999, to determine the effectiveness of the steering committee in:

82930 (i) achieving the purposes and carrying out the responsibilities of the committee; and

82931 (ii) assisting communities to establish collaborative service delivery systems;

82932 (h) forward to the Legislature for the 2000 General Session recommendations for
82933 restructuring the size, membership, and function of the steering committee based on the review
82934 conducted under Subsection (4)(g); and

82935 (i) report to the governor and the Legislature on an annual basis.

82936 (5) The council shall ensure that projects selected under Section [~~63-75-6~~] 63M-9-401
82937 have outcomes that:

82938 (a) focus all project activities on the prevention of academic failure and social
 82939 misbehaviors;

82940 (b) involve parents in planning, implementation, and evaluation of services;

82941 (c) allow frequent opportunities for planning between teachers, parents, school
 82942 administrators, and representatives of agencies and community-based service organizations that
 82943 provide services; and

82944 (d) provide frequent monitoring and assessment of each child's and youth's progress.

82945 (6) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 82946 Administrative Rulemaking Act, the council shall make rules to ensure cooperative development
 82947 of individualized and coordinated service plans by local interagency councils and case
 82948 management teams for children or youth at risk and their families who receive services under
 82949 this chapter.

82950 (b) For purposes of developing and implementing individualized and coordinated plans,
 82951 the members of the local interagency councils and case management teams shall be considered
 82952 to be employees of each agency represented on the team and entitled to review and discuss
 82953 agency records as necessary in planning and providing services under a plan.

82954 (c) Records shared by the teams remain the property of the supplying agency and may
 82955 not be incorporated in the records of another agency unless transferred in accordance with
 82956 standard procedures for transfer of records of the type in question.

82957 Section 2008. Section **63M-9-202**, which is renumbered from Section 63-75-5 is
 82958 renumbered and amended to read:

82959 **~~[63-75-5].~~ 63M-9-202. Steering committee -- Membership -- Duties.**

82960 (1) As used in this section, "Council of Mental Health Programs" means a council
 82961 consisting of all of the directors of Utah public mental health centers.

82962 (2) There is established a Families, Agencies, and Communities Together Steering
 82963 Committee.

82964 (3) The steering committee shall include at least 18 voting members as follows:

82965 (a) the director of the Division of Health Care Financing within the Department of

- 82966 Health;
- 82967 (b) a representative annually designated by the Council of Mental Health Programs;
- 82968 (c) the director of the Division of Substance Abuse and Mental Health within the
- 82969 Department of Human Services;
- 82970 (d) the director of the Division of Juvenile Justice Services within the Department of
- 82971 Human Services;
- 82972 (e) the state director of special education;
- 82973 (f) the person responsible for programs for at risk students within the Utah State Office
- 82974 of Education, if that person is not the state director of special education;
- 82975 (g) the Juvenile Court Administrator;
- 82976 (h) a representative annually designated by substance abuse directors;
- 82977 (i) the director of the Division of Child and Family Services within the Department of
- 82978 Human Services;
- 82979 (j) the director of family health services programs;
- 82980 (k) a representative annually designated by the Utah School Superintendents
- 82981 Association;
- 82982 (l) a juvenile court judge designated by the presiding officer of the state Judicial
- 82983 Council;
- 82984 (m) a representative annually designated by the local health officers;
- 82985 (n) a representative annually designated by the executive director of the Department of
- 82986 Workforce Services;
- 82987 (o) three at-large members appointed by a majority of the committee to four-year terms,
- 82988 who represent a statewide perspective on children and youth issues; and
- 82989 (p) parent representatives appointed by members specified in Subsections (3)(a)
- 82990 through (o).
- 82991 (4) Additional members may be selected by a majority of the committee to serve as
- 82992 voting members for four-year terms.
- 82993 (5) (a) Except as required by Subsection (5)(b), as terms of current at-large committee

82994 members expire, the committee shall appoint each new member or reappointed member to a
82995 four-year term.

82996 (b) Notwithstanding the requirements of Subsection (5)(a), the committee shall, at the
82997 time of appointment or reappointment, adjust the length of terms to ensure that the terms of
82998 at-large committee members are staggered so that approximately half of the at-large committee
82999 members are appointed every two years.

83000 (6) When a vacancy occurs in the membership for any reason, the replacement shall be
83001 appointed for the unexpired term.

83002 (7) The members shall annually elect a chair and vice chair.

83003 (8) A majority of committee members are necessary to constitute a quorum and to
83004 transact the business of the committee.

83005 (9) (a) (i) Members who are not government employees may not receive compensation
83006 or benefits for their services, but may receive per diem and expenses incurred in the
83007 performance of the member's official duties at the rates established by the Division of Finance
83008 under Sections 63A-3-106 and 63A-3-107.

83009 (ii) Members may decline to receive per diem and expenses for their service.

83010 (b) (i) State government officer and employee members who do not receive salary, per
83011 diem, or expenses from their agency for their service may receive per diem and expenses
83012 incurred in the performance of their official duties from the committee at the rates established by
83013 the Division of Finance under Sections 63A-3-106 and 63A-3-107.

83014 (ii) State government officer and employee members may decline to receive per diem
83015 and expenses for their service.

83016 (c) (i) Local government members who do not receive salary, per diem, or expenses
83017 from the entity that they represent for their service may receive per diem and expenses incurred
83018 in the performance of their official duties at the rates established by the Division of Finance
83019 under Sections 63A-3-106 and 63A-3-107.

83020 (ii) Local government members may decline to receive per diem and expenses for their
83021 service.

83022 (10) The committee shall:

83023 (a) assist the council in fulfilling its duties set out in Section ~~[63-75-4]~~ 63M-9-201;

83024 (b) monitor, solicit input for policy changes, and provide technical assistance to local
83025 collaborative programs; and

83026 (c) report any formal recommendations to the council.

83027 Section 2009. Section **63M-9-203**, which is renumbered from Section 63-75-5.5 is
83028 renumbered and amended to read:

83029 ~~[63-75-5.5].~~ **63M-9-203. Staffing.**

83030 The Department of Human Services, the Department of Health, the State Office of
83031 Education, and the Office of the Court Administrator shall provide staff for the state council and
83032 steering committee.

83033 Section 2010. Section **63M-9-301**, which is renumbered from Section 63-75-5.7 is
83034 renumbered and amended to read:

83035 **Part 3. Local Councils**

83036 ~~[63-75-5.7].~~ **63M-9-301. Local interagency council -- Composition -- Duties.**

83037 (1) Communities shall establish local interagency councils to improve service delivery to
83038 children and youth at risk, who are experiencing multiple problems and require services from
83039 more than one agency.

83040 (2) Each local interagency council shall consist of representatives from each agency
83041 serving children and youth who are at risk and their families within the community.

83042 (a) At a minimum the council shall consist of a family advocate and a local
83043 representative from the following:

83044 (i) child welfare;

83045 (ii) developmental disabilities;

83046 (iii) education;

83047 (iv) health;

83048 (v) juvenile justice;

83049 (vi) mental health;

- 83050 (vii) parents;
- 83051 (viii) substance abuse; and
- 83052 (ix) youth corrections.
- 83053 (b) The members of the local interagency council specified in Subsections (a)(i) through
- 83054 (ix) shall select three parents from the local community to serve on the local interagency
- 83055 council, representative of families with children.
- 83056 (3) The local interagency council shall:
- 83057 (a) provide general staffing for individual at risk cases which require services from more
- 83058 than one agency;
- 83059 (b) provide services to meet the needs of individual cases or create new services to fill
- 83060 gaps in current service continuum;
- 83061 (c) develop an individualized and coordinated service plan for each child or youth at
- 83062 risk and ~~his~~ the child or youth's family; and
- 83063 (d) establish a case management process to implement individualized and coordinated
- 83064 service plans.
- 83065 (4) Each local interagency council shall integrate into its operational procedures a
- 83066 method to involve parents in the staffing and service planning process.
- 83067 (5) (a) Each local interagency council shall operate in accordance with a written
- 83068 agreement entered into by the participating agencies.
- 83069 (b) The agreement shall include a provision that the participating agencies agree to
- 83070 implement the service recommendations in the individualized and coordinated service plan when
- 83071 not inconsistent with federal law.

83072 Section 2011. Section **63M-9-401**, which is renumbered from Section 63-75-6 is

83073 renumbered and amended to read:

83074 **Part 4. Service Programs**

83075 ~~[63-75-6].~~ **63M-9-401. Prevention and early intervention programs --**

83076 **Applicants -- Selection process.**

- 83077 (1) Within appropriations from the Legislature, the council shall implement prevention

83078 and early intervention programs for children and youth at risk.

83079 (2) The council shall select a limited number of participants for programs described in
83080 Subsection (1) through applications submitted by local entities.

83081 (3) (a) (i) The written consent of a parent or guardian is necessary for a child or youth
83082 at risk to participate in a program operated under Subsection (1).

83083 (ii) Programs for children who are enrolled in public schools shall also be subject to the
83084 disclosure and written consent provisions of Section 53A-13-301 and Section 53A-13-302.

83085 (iii) A parent or guardian may withdraw consent at any time.

83086 (b) Notwithstanding Subsection (3)(a), a court may order a child's participation in a
83087 prevention and early intervention program.

83088 (4) The prevention and early intervention services provided under this section shall:

83089 (a) be comprehensive and collaborative;

83090 (b) seek to strengthen and preserve families;

83091 (c) be culturally sensitive, family focused, and community based;

83092 (d) protect children and youth at risk;

83093 (e) prevent abuse and neglect;

83094 (f) provide access to health care; and

83095 (g) prevent academic failure as defined in Subsection 78-3a-316(2)(a).

83096 (5) (a) A case management team shall be established at each participating site.

83097 (b) The case management team shall include at least the following:

83098 (i) parents who represent a community perspective on children and youth at risk;

83099 (ii) an educator at the school if the child receiving services is enrolled in a public school;

83100 (iii) the principal if the child receiving services is enrolled in a public school;

83101 (iv) a public health nurse;

83102 (v) a representative of the local mental health authority;

83103 (vi) a representative from the Division of Child and Family Services within the

83104 Department of Human Services;

83105 (vii) a representative from the Employment Development Division; and

83106 (viii) other persons considered appropriate by those persons specified in Subsections
83107 (5)(b)(i) through (vii), based on the needs of the child or youth and ~~[his]~~ the child or youth's
83108 family.

83109 (6) (a) Nothing in this chapter shall be construed to waive the civil, constitutional, or
83110 parental rights of any child, youth, parent, or guardian.

83111 (b) The case management team shall recommend that children or youth be evaluated for
83112 at risk intervention.

83113 Section 2012. Section **63M-9-402**, which is renumbered from Section 63-75-6.5 is
83114 renumbered and amended to read:

83115 ~~[63-75-6.5]~~. **63M-9-402. Plans for collaborative service delivery systems.**

83116 (1) The council shall provide incentives for communities to develop collaborative
83117 service delivery systems. If a community desires to enter into a contract with the council under
83118 this section, it shall submit to the council a plan for a collaborative service delivery system.
83119 That plan shall be in a form prescribed by the council and shall include at least the following:

83120 (a) the community's designation of a state agency, school district, political subdivision,
83121 or private entity that will act as fiscal agent for the plan;

83122 (b) an assurance that the plan was developed through an inclusive process involving,
83123 when available, parents of children and youth at risk, representatives of state agencies and local
83124 governments, educators, school districts, child and family advocacy groups, religious and
83125 service organizations, and parent-teacher associations;

83126 (c) a description of how the collaborative service delivery system will be administered,
83127 including the membership, powers, and duties of any board, commission, or council that will
83128 direct the service delivery system;

83129 (d) a budget for the proposed collaborative service delivery system, including funds
83130 requested from the council;

83131 (e) a description of a performance monitoring system to be used by the community,
83132 including the community's performance goals and performance indicators; and

83133 (f) any waivers to the rules of the State Board of Education, Department of Human

83134 Services, Department of Health, or rule of judicial administration necessary to carry out the
83135 community initiative.

83136 (2) In awarding an application under this section, the council shall consider the extent to
83137 which the proposed community initiative:

83138 (a) promotes early intervention and prevention;

83139 (b) employs a collaborative method of delivering services;

83140 (c) is endorsed by all public and private service delivery agencies that are anticipated to
83141 provide services to at-risk children and youth under the proposed collaborative service delivery
83142 system;

83143 (d) is accountable for results;

83144 (e) utilizes private community resources, including resources provided by religious and
83145 service organizations;

83146 (f) utilizes the resources of the at risk child's immediate and extended family;

83147 (g) leverages county, municipal and school district funding sources to enhance the
83148 scope, extent, and availability of services;

83149 (h) leverages private funding sources within the community to enhance the scope,
83150 extent, and availability of services;

83151 (i) employs individualized and coordinated service plans;

83152 (j) establishes a single point of entry for children, youth, and their families who require
83153 services;

83154 (k) provides comprehensive services for children and youth at risk through grade 12
83155 and appropriate prenatal care; and

83156 (l) exhibits innovation in delivering services or addressing needs.

83157 (3) (a) On or before July 1, 1996, the council shall adopt a prospectus to solicit
83158 proposals for the submission of plans.

83159 (b) From among the proposals for plans received under Subsection (3)(a), the council
83160 may award grants to communities to partially or fully pay for the development of plans.

83161 (c) From the plans received under Subsection (3)(b), the council may contract with the

83162 fiscal agent designated in the plan. That contract shall contain at least the following provisions:

83163 (i) a description of the scope of work and program narrative;

83164 (ii) a description of the community's performance monitoring system which shall
83165 coordinate with existing performance monitoring systems, including the community's
83166 performance goals and performance indicators;

83167 (iii) an enumeration of the dollar amount that will be provided by the council to the
83168 fiscal agent; and

83169 (iv) a waiver to an administrative rule, if any, granted by the agency that adopted the
83170 rule.

83171 (d) For fiscal year 1996-97, a contract under Subsection (3)(c) is for the period of time
83172 between April 1, 1997, and June 30, 1997. For each fiscal year thereafter, a contract may not
83173 exceed the period of the fiscal year.

83174 Section 2013. Section **63M-9-501**, which is renumbered from Section 63-75-7 is
83175 renumbered and amended to read:

83176 **Part 5. Evaluations and Reports**

83177 **~~[63-75-7].~~ 63M-9-501. Evaluation of programs -- Report to legislative interim**
83178 **committee.**

83179 (1) At the end of each fiscal year, a final report shall be submitted to the council
83180 summarizing the outcome of each project under this chapter.

83181 (2) (a) The council may conduct an independent evaluation of any or all of the projects
83182 to assess the status of services provided and identified outcomes.

83183 (b) The council shall prepare and deliver a report on the program to the Legislature's
83184 Education, Health and Human Services, and Judiciary Interim Committees before October 1,
83185 2005.

83186 (c) The report shall include a recommendation by the council as to whether the program
83187 should be terminated, continued, or expanded.

83188 Section 2014. Section **63M-10-101**, which is renumbered from Section 63-92-1 is
83189 renumbered and amended to read:

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**CHAPTER 10. SERIOUS HABITUAL OFFENDER
COMPREHENSIVE ACTION PROGRAM (SHOCAP) ACT**

Part 1. General Provisions

[63-92-1]. 63M-10-101. Title.

This chapter is known as the "Serious Habitual Offender Comprehensive Action Program (SHOCAP) Act."

Section 2015. Section **63M-10-201**, which is renumbered from Section 63-92-2 is renumbered and amended to read:

Part 2. Serious Habitual Offender Comprehensive Action Program

[63-92-2]. 63M-10-201. Creation -- Purpose -- Administration -- Access.

(1) There is created the Serious Habitual Offender Comprehensive Action Program (SHOCAP) to establish a SHOCAP Database to identify and track youthful offenders in order to assist agencies in providing collaborative and comprehensive services to them.

(2) The database shall be administered by the Administrative Office of the Courts with information contributed by the following agencies:

- (a) the State Office of Education, including all school districts;
- (b) the Department of Health;
- (c) the Department of Human Services, including all county mental health agencies;
- (d) the Department of Public Safety;
- (e) all county and municipal law enforcement agencies; and
- (f) all county and district attorney offices.

(3) The database shall be maintained in accordance with guidelines established by the Administrative Office of the Courts so that the agencies listed in Subsection (2) can efficiently access the database.

(4) Information provided by schools in compliance with the provisions of this chapter is authorized under the Family Educational Rights and Privacy Act Regulations, 34 CFR Part 99.

(5) Information in the database provided by an agency to the database is considered to be the property of the agency providing the information and retains any classification given it

83218 under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
83219 Management Act.

83220 (6) Any person who knowingly releases or discloses information from the database for a
83221 purpose other than authorized by this chapter or to a person who is not entitled to it is guilty of
83222 a class B misdemeanor.

83223 (7) Neither the state nor the courts are liable to any person for gathering, managing, or
83224 using the information in the database as provided in this chapter.

83225 Section 2016. Section **63M-10-202**, which is renumbered from Section 63-92-3 is
83226 renumbered and amended to read:

83227 ~~[63-92-3]~~. **63M-10-202. Establishment of local oversight committees --**
83228 **Interagency information sharing.**

83229 (1) The Commission on Criminal and Juvenile Justice shall administer the statewide
83230 SHOCAP oversight committee and provide periodic review of the programs.

83231 (2) Counties or municipalities implementing SHOCAP shall form a local oversight
83232 committee composed of the following persons, or their designees:

- 83233 (a) the district juvenile court administrator;
- 83234 (b) the superintendent of the local school district;
- 83235 (c) the local county attorney;
- 83236 (d) a member of the local county or municipal legislative body;
- 83237 (e) the local county sheriff;
- 83238 (f) a local chief of police;
- 83239 (g) the local chief of probation for the Juvenile Court;
- 83240 (h) the regional director of the Division of Juvenile Justice Services;
- 83241 (i) the regional director of the Division of Child and Family Services;
- 83242 (j) a representative of a local public mental health provider; and
- 83243 (k) any additional members considered appropriate by the local oversight committee.

83244 (3) The local oversight committee shall develop, implement, and periodically review the
83245 following:

- 83246 (a) standardized criteria as developed by the statewide SHOCAP oversight committee
83247 for determining who is a serious habitual offender (SHO);
- 83248 (b) what information is needed on each offender for inclusion in the program;
- 83249 (c) who will have access to the database;
- 83250 (d) who will maintain the database and manage the information in the program;
- 83251 (e) what the information in the database is to be used for; and
- 83252 (f) penalties for improper use of the information in the database.
- 83253 (4) The local oversight committee shall develop a written interagency information
83254 sharing agreement to be signed by the chief executive officer of each of the agencies represented
83255 on the oversight committee. The sharing agreement shall include the provisions requiring that:
- 83256 (a) all records pertaining to a SHO be kept confidential;
- 83257 (b) when a SHO is included in the SHOCAP program for the purposes of tracking and
83258 providing coordinated services, the local law enforcement agency or an agency designated by
83259 the interagency agreement shall as soon as reasonably possible notify the SHO and the parent or
83260 guardian of the SHO;
- 83261 (c) the disclosure of information to other staff members of signatory agencies be made
83262 only to those staff members who provide direct services or supervision to the SHO; and
- 83263 (d) all staff members of signatory agencies receiving confidential information
83264 concerning a SHO be subject to the confidentiality requirements of this chapter.
- 83265 (5) Notwithstanding any other statutory provision, staff members of signatory agencies
83266 who provide direct services or supervision to SHOCAP youth may distribute photographs of
83267 SHOCAP youth to other staff members of signatory agencies who provide direct services or
83268 supervision to SHOCAP youth.
- 83269 (6) The local oversight committee shall develop a program capable of maintaining the
83270 information determined to be necessary under Subsection (3).

83271 Section 2017. Section **63M-11-101**, which is renumbered from Section 63-99-101 is
83272 renumbered and amended to read:

83273 **CHAPTER 11. UTAH COMMISSION ON AGING**

83274 **Part 1. General Provisions**

83275 **[~~63-99-101~~]. 63M-11-101. Title.**

83276 This chapter is known as "Utah Commission on Aging."

83277 Section 2018. Section **63M-11-102**, which is renumbered from Section 63-99-103 is
83278 renumbered and amended to read:

83279 **[~~63-99-103~~]. 63M-11-102. Creation -- Purpose.**

83280 (1) In accordance with this chapter, there is created within the governor's office the
83281 Utah Commission on Aging.

83282 (2) The commission's purpose is to:

83283 (a) increase public and government understanding of the current and future needs of the
83284 state's aging population and how those needs may be most effectively and efficiently met;

83285 (b) study, evaluate, and report on the projected impact that the state's increasing aging
83286 population will have on:

83287 (i) government services;

83288 (ii) health services;

83289 (iii) social services;

83290 (iv) the economy; and

83291 (v) society in general;

83292 (c) identify and recommend implementation of specific policies, procedures, and
83293 programs to respond to the needs and impact of the aging population relating to:

83294 (i) government services;

83295 (ii) health services;

83296 (iii) social services;

83297 (iv) the economy; and

83298 (v) society in general;

83299 (d) facilitate coordination of the functions of public and private entities concerned with
83300 the aging population; and

83301 (e) accomplish the duties enumerated in Section [~~63-99-106~~] 63M-11-203.

83302 Section 2019. Section **63M-11-103**, which is renumbered from Section 63-99-102 is
83303 renumbered and amended to read:

83304 ~~[63-99-102]~~. **63M-11-103. Definitions.**

83305 As used in this chapter:

- 83306 (1) "Aging" and "aged" are as defined in Section 62A-3-101.
- 83307 (2) "Center on Aging" means the Center on Aging within the University of Utah.
- 83308 (3) "Commission" means the Utah Commission on Aging, created in Section
- 83309 ~~[63-99-103]~~ 63M-11-102.

83310 Section 2020. Section **63M-11-201**, which is renumbered from Section 63-99-104 is
83311 renumbered and amended to read:

83312 **Part 2. Commission**

83313 ~~[63-99-104]~~. **63M-11-201. Composition -- Appointments -- Terms --**
83314 **Removal.**

- 83315 (1) The commission shall be composed of 21 voting members as follows:
- 83316 (a) one senator, appointed by the president of the Senate;
- 83317 (b) one representative, appointed by the speaker of the House of Representatives;
- 83318 (c) the executive director of the Department of Health;
- 83319 (d) the executive director of the Department of Human Services;
- 83320 (e) the executive director of the Governor's Office of Economic Development;
- 83321 (f) the executive director of the Department of Workforce Services; and
- 83322 (g) 15 voting members, appointed by the governor, representing each of the following:
- 83323 (i) the Utah Association of Area Agencies on Aging;
- 83324 (ii) higher education in Utah;
- 83325 (iii) the business community;
- 83326 (iv) the Utah Association of Counties;
- 83327 (v) the Utah League of Cities and Towns;
- 83328 (vi) charitable organizations;
- 83329 (vii) the health care provider industry;

83330 (viii) financial institutions;
83331 (ix) the legal profession;
83332 (x) the public safety sector;
83333 (xi) public transportation;
83334 (xii) ethnic minorities;
83335 (xiii) the industry that provides long-term care for the elderly;
83336 (xiv) organizations or associations that advocate for the aging population; and
83337 (xv) the general public.

83338 (2) (a) A member appointed under Subsection (1)(g) shall serve a two-year term.
83339 (b) Notwithstanding the term requirements of Subsection (2)(a), the governor may
83340 adjust the length of the initial commission members' terms to ensure that the terms are staggered
83341 so that approximately 1/2 of the members appointed under Subsection (1)(g) are appointed each
83342 year.

83343 (c) When, for any reason, a vacancy occurs in a position appointed by the governor
83344 under Subsection (1)(g), the governor shall appoint a person to fill the vacancy for the
83345 unexpired term of the commission member being replaced.

83346 (d) Members appointed under Subsection (1)(g) may be removed by the governor for
83347 cause.

83348 (e) A member appointed under Subsection (1)(g) shall be removed from the commission
83349 and replaced by the governor if the member is absent for three consecutive meetings of the
83350 commission without being excused by the chair of the commission.

83351 (3) In appointing the members under Subsection (1)(g), the governor shall:
83352 (a) take into account the geographical makeup of the commission; and
83353 (b) strive to appoint members who are knowledgeable or have an interest in issues
83354 relating to the aging population.

83355 Section 2021. Section **63M-11-202**, which is renumbered from Section 63-99-105 is
83356 renumbered and amended to read:
83357 **[63-99-105]. 63M-11-202. Executive director -- Qualifications --**

83358 **Appointment -- Functions.**

83359 (1) (a) Subject to Subsections (1)(b) and (c), the executive director of the Center on
83360 Aging shall appoint an executive director of the commission.

83361 (b) The executive director appointed under Subsection (1)(a) shall be a person
83362 knowledgeable and experienced in matters relating to:

83363 (i) management; and

83364 (ii) the aging population.

83365 (c) The appointment described in Subsection (1)(a) is not effective until ratified by the
83366 governor.

83367 (2) The executive director of the commission, under the direction of the commission
83368 and the executive director of the Center on Aging, shall administer the duties of the
83369 commission.

83370 Section 2022. Section **63M-11-203**, which is renumbered from Section 63-99-106 is
83371 renumbered and amended to read:

83372 ~~[63-99-106].~~ **63M-11-203. Duties and powers of commission.**

83373 (1) The commission shall:

83374 (a) fulfill the commission's purposes as listed in Section ~~[63-99-103]~~ 63M-11-102;

83375 (b) facilitate the communication and coordination of public and private entities that
83376 provide services to the aging population;

83377 (c) study, evaluate, and report on the status and effectiveness of policies, procedures,
83378 and programs that provide services to the aging population;

83379 (d) study and evaluate the policies, procedures, and programs implemented by other
83380 states that address the needs of the aging population;

83381 (e) facilitate and conduct the research and study of issues related to aging;

83382 (f) provide a forum for public comment on issues related to aging;

83383 (g) provide public information on the aging population and the services available to the
83384 aging population;

83385 (h) facilitate the provision of services to the aging population from the public and

83386 private sectors; and

83387 (i) encourage state and local governments to analyze, plan, and prepare for the impacts

83388 of the aging population on services and operations.

83389 (2) To accomplish its duties, the commission may:

83390 (a) request and receive from any state or local governmental agency or institution,

83391 summary information relating to the aging population, including:

83392 (i) reports;

83393 (ii) audits;

83394 (iii) projections; and

83395 (iv) statistics;

83396 (b) apply for and accept grants or donations for uses consistent with the duties of the

83397 commission from public or private sources; and

83398 (c) appoint special committees to advise and assist the commission.

83399 (3) All funds received under Subsection (2)(b) shall be:

83400 (a) accounted for and expended in compliance with the requirements of federal and

83401 state law; and

83402 (b) continuously available to the commission to carry out the commission's duties.

83403 (4) (a) Members of a special committee described in Subsection (2)(c):

83404 (i) shall be appointed by the commission;

83405 (ii) may be:

83406 (A) members of the commission; or

83407 (B) individuals from the private or public sector; and

83408 (iii) notwithstanding Section [~~63-99-109~~] 63M-11-206, shall not receive any

83409 reimbursement or pay for any work done in relation to the special committee.

83410 (b) A special committee described in Subsection (2)(c) shall report to the commission

83411 on the progress of the special committee.

83412 (5) This chapter does not diminish the planning authority conferred on state, regional,

83413 and local governments by existing law.

83414 Section 2023. Section **63M-11-204**, which is renumbered from Section 63-99-107 is
83415 renumbered and amended to read:

83416 **~~[63-99-107]~~. 63M-11-204. Annual report by the commission.**

83417 (1) The commission shall annually prepare and publish a report directed to the:

83418 (a) governor; and

83419 (b) Executive Appropriations Committee of the Legislature.

83420 (2) The report described in Subsection (1) shall:

83421 (a) describe how the commission fulfilled its statutory purposes and duties during the
83422 year; and

83423 (b) contain recommendations on how the state should act to address issues relating to
83424 the aging population.

83425 Section 2024. Section **63M-11-205**, which is renumbered from Section 63-99-108 is
83426 renumbered and amended to read:

83427 **~~[63-99-108]~~. 63M-11-205. Appointment of chair -- Meetings.**

83428 (1) The governor shall appoint a member of the commission to serve as chair.

83429 (2) (a) Subject to the other provisions of this Subsection (2), the chair is responsible for
83430 the call and conduct of meetings.

83431 (b) The chair shall call and hold meetings of the commission at least bimonthly.

83432 (c) One of the bimonthly meetings described in Subsection (2)(b) shall be held while the
83433 Legislature is convened in its annual session.

83434 (d) One or more additional meetings may be called upon request by a majority of the
83435 commission's members.

83436 (3) (a) A majority of the members of the commission constitute a quorum.

83437 (b) The action of a majority of a quorum constitutes the action of the commission.

83438 Section 2025. Section **63M-11-206**, which is renumbered from Section 63-99-109 is
83439 renumbered and amended to read:

83440 **~~[63-99-109]~~. 63M-11-206. Members serve without pay -- Reimbursement
83441 for expenses.**

83442 (1) A member of the commission who is not a government employee shall receive no
83443 compensation or benefits for the member's services, but may:

83444 (a) receive per diem and expenses incurred in the performance of the member's official
83445 duties at the rates established by the Division of Finance under Sections 63A-3-106 and
83446 63A-3-107; or

83447 (b) decline to receive per diem and expenses for the member's service.

83448 (2) A member of the commission who is a state government officer or employee and
83449 who does not receive salary, per diem, or expenses from the member's agency for the member's
83450 service may:

83451 (a) receive per diem and expenses incurred in the performance of the member's official
83452 duties from the commission at the rates established by the Division of Finance under Sections
83453 63A-3-106 and 63A-3-107; or

83454 (b) decline to receive per diem and expenses for the member's service.

83455 (3) A legislator on the commission shall receive compensation and expenses as provided
83456 by law and legislative rule.

83457 Section 2026. Section **63M-11-207**, which is renumbered from Section 63-99-110 is
83458 renumbered and amended to read:

83459 **~~[63-99-110]~~. 63M-11-207. Oversight -- Executive director salary -- Staff**
83460 **support -- Use of funds.**

83461 (1) The Center on Aging shall:

83462 (a) pay the salary, and oversee the performance of, the executive director of the
83463 commission;

83464 (b) provide staff support for the executive director of the commission and the
83465 commission; and

83466 (c) provide office space, furnishings, and supplies to the commission, the executive
83467 director of the commission, and support staff.

83468 (2) The funds appropriated by the Legislature for the commission may only be used for
83469 the purposes described in this chapter.

83470 Section 2027. Section **64-9b-6** is amended to read:

83471 **64-9b-6. Rules.**

83472 The department is authorized to promulgate rules in accordance with [~~Title 63, Chapter~~
83473 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, as necessary to carry out the
83474 purposes of this chapter.

83475 Section 2028. Section **64-13-10** is amended to read:

83476 **64-13-10. Department duties -- Rulemaking authority.**

83477 (1) The department shall provide probation supervision programs, parole supervision
83478 programs, correctional facilities, community correctional centers, and other programs or
83479 facilities as necessary and as required to accomplish its purposes.

83480 (2) The department may make rules in accordance with [~~Title 63, Chapter 46a]~~ Title
83481 63G, Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this
83482 chapter.

83483 Section 2029. Section **64-13-14.7** is amended to read:

83484 **64-13-14.7. Victim notification of offender's release.**

83485 (1) As used in this section:

83486 (a) "Offender" means a person who committed an act of criminally injurious conduct
83487 against the victim and has been sentenced to incarceration in the custody of the department.

83488 (b) "Victim" means a person against whom an offender committed criminally injurious
83489 conduct as defined in Section [~~63-25a-402]~~ 63M-7-502, and who is entitled to notice of
83490 hearings regarding the offender's parole under Section 77-27-9.5. "Victim" includes the legal
83491 guardian of a victim, or the representative of the family of a victim who is deceased.

83492 (2) (a) A victim shall be notified of an offender's release under Sections 64-13-14.5 and
83493 64-13-14.7, or any other release to or from a half-way house, to a program outside of the prison
83494 such as a rehabilitation program, state hospital, community center other than a release on
83495 parole, commutation or termination for which notice is provided under Sections 77-27-9.5 and
83496 77-27-9.7, transfer of the offender to an out-of-state facility, or an offender's escape, upon
83497 submitting a signed written request of notification to the Department of Corrections. The

83498 request shall include a current mailing address and may include current telephone numbers if the
83499 victim chooses.

83500 (b) The department shall advise the victim of an offender's release or escape under
83501 Subsection (2)(a), in writing. However, if written notice is not feasible because the release is
83502 immediate or the offender escapes, the department shall make a reasonable attempt to notify the
83503 victim by telephone if the victim has provided a telephone number under Subsection (2)(a) and
83504 shall follow up with a written notice.

83505 (3) Notice of victim rights under this section shall be provided to the victim in the
83506 notice of hearings regarding parole under Section 77-27-9.5. The department shall coordinate
83507 with the Board of Pardons and Parole to ensure the notice is implemented.

83508 (4) A victim's request for notification under this section and any notification to a victim
83509 under this section is private information that the department may not release:

83510 (a) to the offender under any circumstances; or

83511 (b) to any other party without the written consent of the victim.

83512 (5) The department may make rules as necessary to implement this section.

83513 (6) The department or its employees acting within the scope of their employment are
83514 not civilly or criminally liable for failure to provide notice or improper notice under this section
83515 unless the failure or impropriety is willful or grossly negligent.

83516 Section 2030. Section **64-13-17** is amended to read:

83517 **64-13-17. Visitors to correctional facilities -- Correspondence.**

83518 (1) (a) The following persons may visit correctional facilities without the consent of the
83519 department:

83520 (i) the governor;

83521 (ii) the attorney general;

83522 (iii) a justice or judge of the courts of record;

83523 (iv) members of the Board of Pardons and Parole;

83524 (v) members of the Legislature;

83525 (vi) the sheriff, district attorney, and county attorney for the county in which the

83526 correctional facility is located; and

83527 (vii) any other persons authorized under rules prescribed by the department or court
83528 order.

83529 (b) Any person acting under a court order may visit or correspond with any inmate
83530 without the consent of the department provided the department has received notice of, and is
83531 permitted to respond to, the court order. The court shall consider department policy when
83532 making its order.

83533 (c) The department may limit access to correctional facilities when the department or
83534 governor declares an emergency or when there is a riot or other disturbance.

83535 (2) (a) A person may not visit with any offender at any correctional facility, other than
83536 under Subsection (1), without the consent of the department.

83537 (b) Offenders and all visitors, including those listed in Subsection (1), may be required
83538 to submit to a search or inspection of their persons and properties as a condition of visitation.

83539 (3) The department shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter
83540 3, Utah Administrative Rulemaking Act, establishing guidelines for providing written notice to
83541 visitors regarding prohibited items and regarding the fact that under state law all visitors may be
83542 required to submit to a search of their persons and properties as a condition of visitation.

83543 (4) Offenders housed at any correctional facility may send and receive correspondence,
83544 subject to the rules of the department. All correspondence is subject to search, consistent with
83545 department rules.

83546 Section 2031. Section **64-13-20** is amended to read:

83547 **64-13-20. Investigative services -- Presentence investigations and diagnostic**
83548 **evaluations.**

83549 (1) The department shall:

83550 (a) provide investigative and diagnostic services and prepare reports to:

83551 (i) assist the courts in sentencing;

83552 (ii) assist the Board of Pardons and Parole in its decisionmaking responsibilities
83553 regarding offenders;

- 83554 (iii) assist the department in managing offenders; and
- 83555 (iv) assure the professional and accountable management of the department;
- 83556 (b) establish standards for providing investigative and diagnostic services based on
- 83557 available resources, giving priority to felony cases;
- 83558 (c) employ staff for the purpose of conducting:
- 83559 (i) thorough presentence investigations of the social, physical, and mental conditions
- 83560 and backgrounds of offenders;
- 83561 (ii) examinations when required by the court or the Board of Pardons and Parole; and
- 83562 (iii) thorough diagnostic evaluations of offenders as the court finds necessary to
- 83563 supplement the presentence investigation report under Section 76-3-404.
- 83564 (2) The department may provide recommendations concerning appropriate measures to
- 83565 be taken regarding offenders.
- 83566 (3) (a) The presentence diagnostic evaluation and investigation reports prepared by the
- 83567 department are protected as defined in Section [~~63-2-304~~] 63G-2-305 and after sentencing may
- 83568 not be released except by express court order or by rules made by the Department of
- 83569 Corrections.
- 83570 (b) The reports are intended only for use by:
- 83571 (i) the court in the sentencing process;
- 83572 (ii) the Board of Pardons and Parole in its decisionmaking responsibilities; and
- 83573 (iii) the department in the supervision, confinement, and treatment of the offender.
- 83574 (4) Presentence diagnostic evaluation and investigation reports shall be made available
- 83575 upon request to other correctional programs within the state if the offender who is the subject
- 83576 of the report has been committed or is being evaluated for commitment to the facility for
- 83577 treatment as a condition of probation or parole.
- 83578 (5) (a) The presentence investigation reports shall include a victim impact statement in
- 83579 all felony cases and in misdemeanor cases if the defendant caused bodily harm or death to the
- 83580 victim.
- 83581 (b) Victim impact statements shall:

- 83582 (i) identify the victim of the offense;
- 83583 (ii) itemize any economic loss suffered by the victim as a result of the offense;
- 83584 (iii) identify any physical, mental, or emotional injuries suffered by the victim as a result
- 83585 of the offense, and the seriousness and permanence;
- 83586 (iv) describe any change in the victim's personal welfare or familial relationships as a
- 83587 result of the offense;
- 83588 (v) identify any request for mental health services initiated by the victim or the victim's
- 83589 family as a result of the offense; and
- 83590 (vi) contain any other information related to the impact of the offense upon the victim
- 83591 or the victim's family that the court requires.

83592 (6) If the victim is deceased; under a mental, physical, or legal disability; or otherwise

83593 unable to provide the information required under this section, the information may be obtained

83594 from the personal representative, guardian, or family members, as necessary.

83595 (7) The department shall employ staff necessary to pursue investigations of complaints

83596 from the public, staff, or offenders regarding the management of corrections programs.

83597 Section 2032. Section **64-13-21** is amended to read:

83598 **64-13-21. Supervision of sentenced offenders placed in community -- Rulemaking**

83599 **-- POST certified parole or probation officers and peace officers -- Duties -- Supervision**

83600 **fee.**

83601 (1) (a) The department, except as otherwise provided by law, shall supervise sentenced

83602 offenders placed in the community on probation by the courts, on parole by the Board of

83603 Pardons and Parole, or upon acceptance for supervision under the terms of the Interstate

83604 Compact for the Supervision of Parolees and Probationers.

83605 (b) Standards for the supervision of offenders shall be established by the department in

83606 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking

83607 Act, giving priority, based on available resources, to felony offenders.

83608 (2) Employees of the department who are POST certified as law enforcement officers

83609 or correctional officers and who are designated as parole and probation officers by the executive

83610 director have the following duties:

83611 (a) monitoring, investigating, and supervising a parolee's or probationer's compliance
83612 with the conditions of the parole or probation agreement;

83613 (b) investigating or apprehending any offender who has escaped from the custody of the
83614 department or absconded from supervision;

83615 (c) providing investigative services for the courts, the department, or the Board of
83616 Pardons and Parole;

83617 (d) supervising any offender during transportation; or

83618 (e) collecting DNA specimens when the specimens are required under Section
83619 53-10-404.

83620 (3) (a) A monthly supervision fee of \$30 shall be collected from each offender on
83621 probation or parole. The fee may be suspended or waived by the department upon a showing
83622 by the offender that imposition would create a substantial hardship or if the offender owes
83623 restitution to a victim.

83624 (b) (i) The department shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
83625 63G, Chapter 3, Utah Administrative Rulemaking Act, specifying the criteria for suspension or
83626 waiver of the supervision fee and the circumstances under which an offender may request a
83627 hearing.

83628 (ii) In determining whether the imposition of the supervision fee would constitute a
83629 substantial hardship, the department shall consider the financial resources of the offender and
83630 the burden that the fee would impose, with regard to the offender's other obligations.

83631 Section 2033. Section **64-13-25** is amended to read:

83632 **64-13-25. Standards for programs -- Audits.**

83633 (1) To promote accountability and to ensure safe and professional operation of
83634 correctional programs, the department shall establish minimum standards for the organization
83635 and operation of its programs.

83636 (a) The standards shall be promulgated according to state rulemaking provisions.

83637 Those standards that apply to offenders are exempt from the provisions of [~~Title 63, Chapter~~

83638 46a] Title 63G, Chapter 3, the Utah Administrative Rulemaking Act. Offenders are not a class
83639 of persons under that act.

83640 (b) Standards shall provide for inquiring into and processing offender complaints.

83641 (2) There shall be an audit for compliance with standards according to policies and
83642 procedures established by the department, for continued operation of correctional programs.

83643 (a) At least every three years, the department shall internally audit all programs for
83644 compliance with established standards.

83645 (b) All financial statements and accounts of the department shall be reviewed during the
83646 audit. Written review shall be provided to the managers of the programs and the executive
83647 director of the department.

83648 (c) The reports shall be classified as confidential internal working papers and access is
83649 available at the discretion of the executive director or the governor, or upon court order.

83650 Section 2034. Section **64-13-38** is amended to read:

83651 **64-13-38. Emergency release due to overcrowding.**

83652 (1) When the executive director of the department finds that the inmate population of
83653 the Utah State Prison has exceeded physical capacity for at least 45 calendar days, ~~he~~ the
83654 executive director may:

83655 (a) notify the governor that an overcrowding emergency exists and provide him with
83656 information relevant to that determination; and

83657 (b) notify the Board of Pardons and Parole of the existence of the overcrowding
83658 emergency so that the board may commence emergency releases pursuant to Subsection (2).

83659 (2) Upon the governor's receipt of notification of the existence of an emergency release,
83660 the department shall:

83661 (a) notify the board of the number of inmates who need to be released in order to
83662 eliminate the overcrowding emergency;

83663 (b) in cooperation and consultation with the board, compile a list of inmates by
83664 chronological order according to their existing parole release dates, sufficient to eliminate the
83665 overcrowding emergency; and

83666 (c) for each inmate listed in accordance with Subsection (2)(b), notify the board if the
83667 department has any reason to believe that the inmate has violated a disciplinary rule or for some
83668 other reason recommends that the inmate's existing parole date be rescinded.

83669 (3) Unless the board has identified a reason to believe that the inmate's existing parole
83670 date should be rescinded, the parole release date of each inmate identified in Subsection (2)(b)
83671 may be advanced a sufficient number of days to allow for release.

83672 (4) When the process described in Subsections (2) and (3) has been completed, the
83673 board may order the release of the eligible inmates.

83674 (5) The department shall:

83675 (a) send to the Commission on Criminal and Juvenile Justice a list of names of the
83676 inmates released under this section; and

83677 (b) provide the name and address of each inmate to the local law enforcement agency
83678 for the political subdivision in which the inmate intends to reside.

83679 (6) The department shall inform the governor when the emergency release has been
83680 completed.

83681 (7) The board shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
83682 Chapter 3, Utah Administrative Rulemaking Act, to carry out the provisions of this section.

83683 Section 2035. Section **64-13-39.5** is amended to read:

83684 **64-13-39.5. Definitions -- Health care for chronically or terminally ill offenders --**
83685 **Notice to health care facility.**

83686 (1) As used in this section:

83687 (a) "Department or agency" means the Utah Department of Corrections or a department
83688 of corrections or government entity responsible for placing an offender in a facility located in
83689 Utah.

83690 (b) "Chronically ill" has the same meaning as in Section 31A-36-102.

83691 (c) "Facility" means an assisted living facility as defined in Subsection 26-21-2(5) and a
83692 nursing care facility as defined in Subsection 26-21-2(17), except that transitional care units and
83693 other long term care beds owned or operated on the premises of acute care hospitals or critical

83694 care hospitals are not facilities for the purpose of this section.

83695 (d) "Offender" means an inmate whom the department or agency has given an early
83696 release, pardon, or parole due to a chronic or terminal illness.

83697 (e) "Terminally ill" has the same meaning as in Subsection 31A-36-102(11).

83698 (2) If an offender from Utah or any other state is admitted as a resident of a facility due
83699 to the chronic or terminal illness, the department or agency placing the offender shall:

83700 (a) provide written notice to the administrator of the facility no later than 15 days prior
83701 to the offender's admission as a resident of a facility, stating:

83702 (i) the offense for which the offender was convicted and a description of the actual
83703 offense;

83704 (ii) the offender's status with the department or agency;

83705 (iii) that the information provided by the department or agency regarding the offender
83706 shall be provided to employees of the facility no later than ten days prior to the offender's
83707 admission to the facility; and

83708 (iv) the contact information for:

83709 (A) the offender's parole officer and also a point of contact within the department or
83710 agency, if the offender is on parole; and

83711 (B) a point of contact within the department or agency, if the offender is not under
83712 parole supervision but was given an early release or pardon due to a chronic or terminal illness;

83713 (b) make available to the public on the Utah Department of Corrections' website and
83714 upon request:

83715 (i) the name and address of the facility where the offender resides; and

83716 (ii) the date the offender was placed at the facility; and

83717 (c) provide a training program for employees who work in a facility where offenders
83718 reside, and if the offender is placed at the facility by:

83719 (i) the Utah Department of Corrections, the department shall provide the training
83720 program for the employees; and

83721 (ii) by a department or agency from another state, that state's department or agency

83722 shall arrange with the Utah Department of Corrections to provide the training required by this
83723 Subsection (2), if training has not already been provided by the Utah Department of
83724 Corrections, and shall provide to the Utah Department of Corrections any necessary
83725 compensation for this service.

83726 (3) The administrator of the facility shall:

83727 (a) provide residents of the facility or their guardians notice that a convicted felon is
83728 being admitted to the facility no later than ten days prior to the offender's admission to the
83729 facility;

83730 (b) advise potential residents or their guardians of persons under Subsection (2) who
83731 are current residents of the facility; and

83732 (c) provide training, offered by the Utah Department of Corrections, in the safe
83733 management of offenders for all employees.

83734 (4) The Utah Department of Corrections shall make rules under [~~Title 63, Chapter 46a]~~
83735 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing:

83736 (a) a consistent format and procedure for providing notification to facilities and
83737 information to the public in compliance with Subsection (2); and

83738 (b) a training program, in compliance with Subsection (3) for employees, who work at
83739 facilities where offenders reside to ensure the safety of facility residents and employees.

83740 Section 2036. Section **64-13-41** is amended to read:

83741 **64-13-41. Limitations on offender access to sexually explicit material.**

83742 (1) As used in this section:

83743 (a) (i) "Commercially published information or material" means any book, booklet,
83744 pamphlet, magazine, periodical, newsletter, or similar document, including stationery and
83745 greeting cards, and video and audio tapes, disks, or other recording, that is distributed or made
83746 available through any means or media for a commercial purpose.

83747 (ii) "Commercially published information or material" includes an extraction,
83748 photocopy, clipping, or electronically created copy made from any of the items under
83749 Subsection (1)(a)(i).

83750 (b) (i) "Features nudity" means the information or material:
83751 (A) that, in the case of a one-time publication or issue, promotes itself based upon
83752 depictions of nudity or sexually explicit conduct; or
83753 (B) that, in the case of information or material other than under Subsection (1)(b)(i)(A),
83754 contains depictions of nudity or sexually explicit conduct on a routine or regular basis.
83755 (ii) The department may by rule, pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter
83756 3, Utah Administrative Rulemaking Act, exclude from the definition in Subsection (1)(b)(i)
83757 information or material containing nudity that is illustrative of medical, educational, or
83758 anthropological content.
83759 (c) "Nudity" means a pictorial depiction where genitalia or female breasts are exposed.
83760 (d) "Offender" means any person who has been convicted of a crime and is housed in a
83761 prison, jail, youth detention facility, or community correctional center.
83762 (e) "Sexually explicit" means a pictorial depiction of actual or simulated sexual acts,
83763 including sexual intercourse, sodomy, or masturbation.
83764 (f) "State funds" means state or local funding provided to the department, and includes
83765 legislative appropriations to the department, dedicated credits, grants, and monies for jail
83766 reimbursement to county correctional facilities under Title 64, Chapter 13, Department of
83767 Corrections - State Prison, private providers, and contractors.
83768 (2) State funds may not be used to distribute or make available any commercially
83769 published information or material to an offender when the state employee, contractor, or private
83770 provider who has the authority to expend the funds knows that the commercially published
83771 information or material is sexually explicit or features nudity.
83772 (3) (a) When the department rejects commercially published information or material for
83773 distribution to an offender under this section, the department shall advise the publisher or sender
83774 that it may request reconsideration by the department of the decision to reject the material.
83775 However, the department need advise the publisher or sender only once in the case of
83776 information or material that on a routine or regular basis either depicts sexually explicit material
83777 or features nudity.

83778 (b) The department shall make rules pursuant to [~~Title 63, Chapter 46a~~] Title 63G,
83779 Chapter 3, Utah Administrative Rulemaking Act, to establish an administrative reconsideration
83780 process.

83781 (c) For purposes of extraordinary relief under Rule 65B, Utah Rules of Civil Procedure,
83782 this administrative reconsideration process is a plain, speedy, and adequate legal remedy that
83783 must be exhausted before extraordinary relief is available.

83784 (d) There is no right to judicial review of the department's decision under this section to
83785 reject material for distribution.

83786 (4) This section does not apply to sexually explicit material used under Section
83787 76-10-1207.5 for the assessment or treatment of an offender.

83788 Section 2037. Section **64-13a-13** is amended to read:

83789 **64-13a-13. Purchases of material -- Exemption.**

83790 (1) The Division of Correctional Industries is exempt from the provisions of [~~Title 63,~~
83791 ~~Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, in respect to goods or services
83792 purchased by or sold to the department.

83793 (2) The purchase of raw materials for use by the division in manufacturing or
83794 processing products for resale is exempt from the powers and duties of the state purchasing
83795 agent.

83796 Section 2038. Section **65A-1-4** is amended to read:

83797 **65A-1-4. Division of Forestry, Fire and State Lands -- Creation -- Power and**
83798 **authority.**

83799 (1) (a) The Division of Forestry, Fire and State Lands is created within the Department
83800 of Natural Resources under the administration and general supervision of the executive director
83801 of the department.

83802 (b) The division is the executive authority for the management of sovereign lands, and
83803 the state's mineral estates on lands other than school and institutional trust lands, and shall
83804 provide for forestry and fire control activities as required in Section 65A-8-101.

83805 (2) The division shall adopt rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

83806 Utah Administrative Rulemaking Act, necessary to fulfill the purposes of this title.

83807 (3) The director of the Division of Forestry, Fire and State Lands is the executive and
83808 administrative head of the division and shall be a person experienced in administration and
83809 management of natural resources.

83810 (4) The director shall inform the council:

83811 (a) in an annual meeting of the division's plans, policies, and budget; and

83812 (b) of policy changes and developing conflicts.

83813 (5) The director shall give the council an opportunity to advise on the changes and
83814 conflicts.

83815 (6) (a) An aggrieved party to a final action by the director may appeal that action to the
83816 executive director of the Department of Natural Resources within 20 days after the action.

83817 (b) The executive director shall rule on the director's action within 20 days after receipt
83818 of the appeal.

83819 Section 2039. Section **65A-8-105** is amended to read:

83820 **65A-8-105. Urban and community forestry program.**

83821 (1) An urban and community forestry program is created within the division.

83822 (2) The purpose of the program is to encourage the planting and maintenance of trees
83823 within municipalities and unincorporated communities.

83824 (3) The division may:

83825 (a) advise and assist municipalities, counties, and other public and private entities in
83826 developing and coordinating policies, programs, and activities promoting urban and community
83827 forestry;

83828 (b) receive, by following the procedures and requirements of [~~Title 63, Chapter 38e~~]
83829 Title 63J, Chapter 5, Federal Funds Procedures, federal funds for the urban and community
83830 forestry program; and

83831 (c) provide grants to municipalities and counties for urban and community forestry
83832 programs and cooperative projects.

83833 (4) The division shall:

83834 (a) develop a public education program to inform tree care professionals and citizens of
83835 the hazards involved with the planting of new trees and the maintenance of existing trees near
83836 overhead power lines and highways; and

83837 (b) develop and implement a program of public awareness to inform citizens about the
83838 benefits of planting trees in urban areas and how to maintain trees.

83839 Section 2040. Section **65A-8-207** is amended to read:

83840 **65A-8-207. Division to administer Wildland Fire Suppression Fund --**
83841 **Rulemaking -- Procedures.**

83842 (1) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
83843 Chapter 3, Utah Administrative Rulemaking Act, the division shall make rules to administer the
83844 Wildland Fire Suppression Fund, including rules:

83845 (a) requiring documentation for:

83846 (i) the number of acres of privately or county-owned land in the unincorporated area of
83847 a participating county; and

83848 (ii) an acre or real property exempt in Subsection 65A-8-205(2)(b);

83849 (b) describing the method or formula for determining:

83850 (i) normal fire suppression costs; and

83851 (ii) equity payments required by Section 65A-8-205; and

83852 (c) specifying fire suppression and presuppression costs that may be paid with
83853 disbursements from the fund.

83854 (2) By following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
83855 Chapter 4, Administrative Procedures Act, the division shall determine whether an acre or real
83856 property is eligible for the exemption provided in Subsection 65A-8-205(2)(b).

83857 Section 2041. Section **65A-8a-103** is amended to read:

83858 **65A-8a-103. Registration of operators.**

83859 (1) An operator intending to conduct forest practices in Utah, except a landowner
83860 conducting forest practices on [~~his or her~~] the landowner's own land, shall register with the
83861 division.

83862 (2) The operator shall submit the following information to the division:

83863 (a) the name of the company;

83864 (b) the name of the state where the company is incorporated; and

83865 (c) the name, telephone number, and address of a company officer and an

83866 on-the-ground supervisor.

83867 (3) In consultation with industry representatives, the division may establish, by rule,
83868 minimum requirements for registration of operators in accordance with [~~Title 63, Chapter 46a]~~

83869 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

83870 (4) The division shall make available to landowners a list of registered operators.

83871 Section 2042. Section **67-1-2** is amended to read:

83872 **67-1-2. Sending list of gubernatorial nominees to Senate and to Office of**
83873 **Legislative Research and General Counsel.**

83874 (1) Unless waived by a majority of the president of the Senate, the Senate majority
83875 leader, and the Senate minority leader, 15 days before any Senate session to confirm any
83876 gubernatorial nominee, except a judicial appointment, the governor shall send to each member
83877 of the Senate and to the Office of Legislative Research and General Counsel:

83878 (a) a list of each nominee for an office or position made by the governor in accordance
83879 with the Utah Constitution and state law; and

83880 (b) any information that may support or provide biographical information about the
83881 nominee, including resumes and curriculum vitae.

83882 (2) When the governor makes a judicial appointment, the governor shall immediately
83883 provide to the president of the Senate and the Office of Legislative Research and General
83884 Counsel:

83885 (a) the name of the judicial appointee; and

83886 (b) the judicial appointee's:

83887 (i) resume;

83888 (ii) complete file of all the application materials the governor received from the Judicial
83889 Nominating Commission; and

83890 (iii) any other related documents, including any letters received by the governor about
83891 the appointee, unless the letter specifically directs that it may not be shared.

83892 (3) The governor shall inform the president of the Senate and the Office of Legislative
83893 Research and General Counsel of the number of letters withheld pursuant to Subsection
83894 (2)(b)(iii).

83895 (4) (a) Letters of inquiry submitted by any judge at the request of any judicial
83896 nominating commission shall be classified as private in accordance with Section [~~63-2-302~~]
83897 63G-2-302.

83898 (b) All other records received from the governor pursuant to this Subsection (4) may be
83899 classified as private in accordance with Section [~~63-2-302~~] 63G-2-302.

83900 (5) The Senate shall consent or refuse to give its consent to the nomination or judicial
83901 appointment.

83902 Section 2043. Section **67-1a-2.5** is amended to read:

83903 **67-1a-2.5. Fees of lieutenant governor.**

83904 In addition to the fees prescribed by Title 16, Chapter 6a, Utah Revised Nonprofit
83905 Corporation Act, and Title 16, Chapter 10a, Utah Revised Business Corporation Act, the
83906 lieutenant governor shall receive and determine fees pursuant to Section [~~63-38-3.2~~] 63J-1-303
83907 for the following:

83908 (1) for a copy of any law, resolution, record, or other document or paper on file in the
83909 lieutenant governor's office, other than documents or papers filed under Title 16, Chapter 6a,
83910 Utah Revised Nonprofit Corporation Act, and Title 16, Chapter 10a, Utah Revised Business
83911 Corporation Act;

83912 (2) for affixing certificate and the Great Seal of the state, except on documents filed
83913 under Title 16, Chapter 6a, Utah Revised Nonprofit Corporation Act, and Title 16, Chapter
83914 10a, Utah Revised Business Corporation Act;

83915 (3) for each commission signed by the governor, except that no charge may be made for
83916 commissions to public officers serving without compensation;

83917 (4) for each warrant of arrest issued by the governor and attested by the lieutenant

83918 governor upon the requisition of any other state or territory;
83919 (5) for recording miscellaneous papers or documents;
83920 (6) for filing any paper or document not otherwise provided for; and
83921 (7) for searching records and archives of the state, except that no member of the
83922 Legislature or other state or county officer may be charged for any search relative to matters
83923 appertaining to the duties of [~~his~~] the member or officer's office or for a certified copy of any
83924 law or resolution relative to [~~his~~] the member or officer's official duties passed by the
83925 Legislature.

83926 Section 2044. Section **67-3-1** is amended to read:

83927 **67-3-1. Functions and duties.**

83928 (1) (a) The state auditor is the auditor of public accounts and is independent of any
83929 executive or administrative officers of the state.

83930 (b) The state auditor is not limited in the selection of personnel or in the determination
83931 of the reasonable and necessary expenses of [~~his~~] the state auditor's office.

83932 (2) The state auditor shall examine and certify annually in respect to each fiscal year,
83933 financial statements showing:

83934 (a) the condition of the state's finances;

83935 (b) the revenues received or accrued;

83936 (c) expenditures paid or accrued;

83937 (d) the amount of unexpended or unencumbered balances of the appropriations to the
83938 agencies, departments, divisions, commissions, and institutions; and

83939 (e) the cash balances of the funds in the custody of the state treasurer.

83940 (3) (a) The state auditor shall:

83941 (i) audit each permanent fund, each special fund, the General Fund, and the accounts of
83942 any department of state government or any independent agency or public corporation as the law
83943 requires, as the auditor determines is necessary, or upon request of the governor or the
83944 Legislature;

83945 (ii) perform the audits in accordance with generally accepted auditing standards and

83946 other auditing procedures as promulgated by recognized authoritative bodies;

83947 (iii) as the auditor determines is necessary, conduct the audits to determine:

83948 (A) honesty and integrity in fiscal affairs;

83949 (B) accuracy and reliability of financial statements;

83950 (C) effectiveness and adequacy of financial controls; and

83951 (D) compliance with the law.

83952 (b) If any state entity receives federal funding, the state auditor shall ensure that the

83953 audit is performed in accordance with federal audit requirements.

83954 (c) (i) The costs of the federal compliance portion of the audit may be paid from an

83955 appropriation to the state auditor from the General Fund.

83956 (ii) If an appropriation is not provided, or if the federal government does not specifically

83957 provide for payment of audit costs, the costs of the federal compliance portions of the audit

83958 shall be allocated on the basis of the percentage that each state entity's federal funding bears to

83959 the total federal funds received by the state.

83960 (iii) The allocation shall be adjusted to reflect any reduced audit time required to audit

83961 funds passed through the state to local governments and to reflect any reduction in audit time

83962 obtained through the use of internal auditors working under the direction of the state auditor.

83963 (4) (a) Except as provided in Subsection (4)(b), the state auditor shall, in addition to

83964 financial audits, and as the auditor determines is necessary, conduct performance and special

83965 purpose audits, examinations, and reviews of any entity that receives public funds, including a

83966 determination of any or all of the following:

83967 (i) the honesty and integrity of all its fiscal affairs;

83968 (ii) whether or not its administrators have faithfully complied with legislative intent;

83969 (iii) whether or not its operations have been conducted in an efficient, effective, and

83970 cost-efficient manner;

83971 (iv) whether or not its programs have been effective in accomplishing the intended

83972 objectives; and

83973 (v) whether or not its management, control, and information systems are adequate and

83974 effective.

83975 (b) The auditor may not conduct performance and special purpose audits, examinations,
83976 and reviews of any entity that receives public funds if the entity:

83977 (i) has an elected auditor; and

83978 (ii) has, within the entity's last budget year, had its financial statements or performance
83979 formally reviewed by another outside auditor.

83980 (5) The state auditor shall administer any oath or affirmation necessary to the
83981 performance of the duties of the auditor's office, and may subpoena witnesses and documents,
83982 whether electronic or otherwise, and examine into any matter that the auditor considers
83983 necessary.

83984 (6) The state auditor may require all persons who have had the disposition or
83985 management of any property of this state or its political subdivisions to submit statements
83986 regarding it at the time and in the form that the auditor requires.

83987 (7) The state auditor shall:

83988 (a) except where otherwise provided by law, institute suits in Salt Lake County in
83989 relation to the assessment, collection, and payment of its revenues against:

83990 (i) persons who by any means have become entrusted with public monies or property
83991 and have failed to pay over or deliver those monies or property; and

83992 (ii) all debtors of the state;

83993 (b) collect and pay into the state treasury all fees received by the state auditor;

83994 (c) perform the duties of a member of all boards of which the state auditor is a member
83995 by the constitution or laws of the state, and any other duties that are prescribed by the
83996 constitution and by law;

83997 (d) stop the payment of the salary of any state official or state employee who:

83998 (i) refuses to settle accounts or provide required statements about the custody and
83999 disposition of public funds or other state property;

84000 (ii) refuses, neglects, or ignores the instruction of the state auditor or any controlling
84001 board or department head with respect to the manner of keeping prescribed accounts or funds;

84002 or

84003 (iii) fails to correct any delinquencies, improper procedures, and errors brought to the
84004 official's or employee's attention;

84005 (e) establish accounting systems, methods, and forms for public accounts in all taxing or
84006 fee-assessing units of the state in the interest of uniformity, efficiency, and economy;

84007 (f) superintend the contractual auditing of all state accounts;

84008 (g) subject to Subsection (8), withhold state allocated funds or the disbursement of
84009 property taxes from any state taxing or fee-assessing unit, if necessary, to ensure that officials
84010 and employees in those taxing units of the state comply with state laws and procedures in the
84011 budgeting, expenditures, and financial reporting of public funds; and

84012 (h) subject to Subsection (9), withhold the disbursement of tax monies from any county,
84013 if necessary, to ensure that officials and employees in the county comply with Section
84014 59-2-303.1.

84015 (8) Except as otherwise provided by law, the state auditor may not withhold funds
84016 under Subsection (7)(g) until a taxing or fee-assessing unit has received formal written notice of
84017 noncompliance from the auditor and has been given 60 days to make the specified corrections.

84018 (9) The state auditor may not withhold funds under Subsection (7)(h) until a county has
84019 received formal written notice of noncompliance from the auditor and has been given 60 days to
84020 make the specified corrections.

84021 (10) The state auditor shall:

84022 (a) establish audit guidelines and procedures for audits of local mental health and
84023 substance abuse authorities and their contract providers, conducted pursuant to Title 17,
84024 Chapter 43, Parts 2, Local Substance Abuse Authorities and 3, Local Mental Health
84025 Authorities, Title 51, Chapter 2a, Accounting Reports from Political Subdivisions, Interlocal
84026 Organizations, and Other Local Entities Act, and Title 62A, Chapter 15, Substance Abuse and
84027 Mental Health Act; and

84028 (b) ensure that those guidelines and procedures provide assurances to the state that:

84029 (i) state and federal funds appropriated to local mental health authorities are used for

84030 mental health purposes;

84031 (ii) a private provider under an annual or otherwise ongoing contract to provide
84032 comprehensive mental health programs or services for a local mental health authority is in

84033 compliance with state and local contract requirements, and state and federal law;

84034 (iii) state and federal funds appropriated to local substance abuse authorities are used
84035 for substance abuse programs and services; and

84036 (iv) a private provider under an annual or otherwise ongoing contract to provide
84037 comprehensive substance abuse programs or services for a local substance abuse authority is in
84038 compliance with state and local contract requirements, and state and federal law.

84039 (11) The state auditor may, in accordance with the auditor's responsibilities for political
84040 subdivisions of the state as provided in Title 51, Chapter 2a, Accounting Reports from Political
84041 Subdivisions, Interlocal Organizations, and Other Local Entities Act, initiate audits or
84042 investigations of any political subdivision that are necessary to determine honesty and integrity
84043 in fiscal affairs, accuracy and reliability of financial statements, effectiveness, and adequacy of
84044 financial controls and compliance with the law.

84045 (12) (a) The state auditor may not audit work that the state auditor performed before
84046 becoming state auditor.

84047 (b) If the state auditor has previously been a responsible official in state government
84048 whose work has not yet been audited, the Legislature shall:

84049 (i) designate how that work shall be audited; and

84050 (ii) provide additional funding for those audits, if necessary.

84051 (13) The state auditor shall:

84052 (a) with the assistance, advice, and recommendations of an advisory committee
84053 appointed by the state auditor from among local district boards of trustees, officers, and
84054 employees and special service district boards, officers, and employees:

84055 (i) prepare a Uniform Accounting Manual for Local Districts that:

84056 (A) prescribes a uniform system of accounting and uniform budgeting and reporting
84057 procedures for local districts under Title 17B, Limited Purpose Local Government Entities -

84058 Local Districts, and special service districts under Title 17A, Chapter 2, Part 13, Utah Special
84059 Service District Act;

84060 (B) conforms with generally accepted accounting principles; and

84061 (C) prescribes reasonable exceptions and modifications for smaller districts to the
84062 uniform system of accounting, budgeting, and reporting;

84063 (ii) maintain the manual under Subsection (13)(a) so that it continues to reflect
84064 generally accepted accounting principles;

84065 (iii) conduct a continuing review and modification of procedures in order to improve
84066 them;

84067 (iv) prepare and supply each district with suitable budget and reporting forms; and

84068 (v) prepare instructional materials, conduct training programs, and render other services
84069 considered necessary to assist local districts and special service districts in implementing the
84070 uniform accounting, budgeting, and reporting procedures; and

84071 (b) continually analyze and evaluate the accounting, budgeting, and reporting practices
84072 and experiences of specific local districts and special service districts selected by the state
84073 auditor and make the information available to all districts.

84074 (14) (a) The following records in the custody or control of the state auditor are
84075 protected records under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
84076 Access and Management Act:

84077 (i) records that would disclose information relating to allegations of personal
84078 misconduct, gross mismanagement, or illegal activity of a past or present governmental
84079 employee if the information or allegation cannot be corroborated by the state auditor through
84080 other documents or evidence, and the records relating to the allegation are not relied upon by
84081 the state auditor in preparing a final audit report;

84082 (ii) records and audit workpapers to the extent they would disclose the identity of a
84083 person who during the course of an audit, communicated the existence of any waste of public
84084 funds, property, or manpower, or a violation or suspected violation of a law, rule, or regulation
84085 adopted under the laws of this state, a political subdivision of the state, or any recognized entity

84086 of the United States, if the information was disclosed on the condition that the identity of the
84087 person be protected;

84088 (iii) before an audit is completed and the final audit report is released, records or drafts
84089 circulated to a person who is not an employee or head of a governmental entity for their
84090 response or information;

84091 (iv) records that would disclose an outline or part of any audit survey plans or audit
84092 program; and

84093 (v) requests for audits, if disclosure would risk circumvention of an audit.

84094 (b) The provisions of Subsections (14)(a)(i), (ii), and (iii) do not prohibit the disclosure
84095 of records or information that relate to a violation of the law by a governmental entity or
84096 employee to a government prosecutor or peace officer.

84097 (c) The provisions of this Subsection (14) do not limit the authority otherwise given to
84098 the state auditor to classify a document as public, private, controlled, or protected under [~~Title~~
84099 ~~63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act.

84100 Section 2045. Section ~~67-4a-703~~ is amended to read:

84101 **67-4a-703. Interest and penalties.**

84102 (1) A person who fails to pay or deliver property within the time required by this
84103 chapter shall pay interest to the administrator at the rate of 12% per annum on the property or
84104 value of the property from the date the property should have been paid or delivered.

84105 (2) (a) A person who willfully fails to file any report, or perform a duty required by this
84106 chapter, or to pay or deliver property to the administrator as required by this chapter shall pay a
84107 civil penalty equal to 20% of the value of the property that should have been paid or delivered.

84108 (b) The administrator shall comply with the procedures and requirements of [~~Title 63,~~
84109 ~~Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in imposing civil penalties
84110 under this section.

84111 (3) (a) It is unlawful for any person to willfully refuse to pay or deliver property to the
84112 administrator after written demand by the administrator as required by this chapter.

84113 (b) Any person who violates this Subsection (3) is guilty of a class B misdemeanor.

84114 (4) The administrator may, in appropriate circumstances:

84115 (a) waive the payment of civil penalties;

84116 (b) waive the payment of interest; or

84117 (c) reduce the amount of the interest.

84118 Section 2046. Section **67-5-15** is amended to read:

84119 **67-5-15. Records of the attorney general.**

84120 (1) A record provided to the Office of the Attorney General by a client governmental
84121 entity shall be considered a record of the client governmental entity for purposes of [~~Title 63;~~
84122 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act, if the
84123 client governmental entity retains a copy of the record.

84124 (2) Notwithstanding Subsection [~~63-2-201~~] 63G-2-201(5), records may be exchanged
84125 between the Office of the Attorney General and a client governmental entity, without meeting
84126 the requirements of Section [~~63-2-206~~] 63G-2-206 provided that they are used only for the
84127 purpose of representing the client governmental entity.

84128 Section 2047. Section **67-5-18** is amended to read:

84129 **67-5-18. Obscenity and Pornography Complaints Ombudsman -- Powers.**

84130 (1) As used in this section, "pornography" means material or a performance that meets
84131 the requirements of Subsection 76-10-1203(1).

84132 (2) (a) There is created an Obscenity and Pornography Complaints Ombudsman in the
84133 Office of the Attorney General.

84134 (b) The attorney general shall hire an attorney licensed to practice law in Utah who has
84135 knowledge of obscenity and pornography law and, if possible, who has a background or
84136 expertise in investigating and prosecuting obscenity and pornography law violations to fill the
84137 position.

84138 (c) The person hired to fill the position is an exempt employee.

84139 (d) The attorney general may hire clerks, interns, or other personnel to assist the
84140 pornography complaints ombudsman.

84141 (3) The Obscenity and Pornography Complaints Ombudsman shall:

84142 (a) develop and maintain expertise in and understanding of laws designed to control or
84143 eliminate obscenity and pornography and the legal standards governing the regulation or
84144 elimination of obscenity and pornography;

84145 (b) advise citizens and local governments about remedies to address instances of
84146 obscenity and pornography in their communities;

84147 (c) advise local governments about ways to strengthen local laws and ordinances
84148 addressing obscenity and pornography;

84149 (d) advise local governments about strategies to restrict, suppress, or eliminate
84150 obscenity and pornography in their communities;

84151 (e) at the request of the attorney general or a local government, assist a local
84152 government in investigating and prosecuting state and local laws and ordinances addressing
84153 obscenity or pornography;

84154 (f) before beginning an investigation:

84155 (i) contact the county, district, or city attorney within whose jurisdiction an
84156 investigation by the Obscenity and Pornography Complaints Ombudsman will take place and
84157 inform that county, district, or city attorney of the investigation; and

84158 (ii) coordinate efforts and share records, in accordance with Section [~~63-2-206~~]
84159 63G-2-206, with the county, district, or city's attorney referred to in Subsection (3)(f)(i)
84160 throughout the investigation;

84161 (g) advise citizens about their options to address specific complaints about obscenity or
84162 pornography in their communities;

84163 (h) when requested by a citizen or local government official, arbitrate between citizens
84164 and businesses to resolve complaints about obscenity or pornography;

84165 (i) provide information to private citizens, civic groups, government entities, and other
84166 interested parties about the dangers of obscenity and pornography, the current laws to restrict,
84167 suppress, or eliminate pornography, and their rights and responsibilities under those laws;

84168 (j) draft model ordinances that contain:

84169 (i) various degrees of regulation of sexually-oriented businesses; and

- 84170 (ii) options for local communities that can be used to regulate pornography and
- 84171 obscenity;
- 84172 (k) assist political subdivisions in:
- 84173 (i) drafting model rules, regulations, and policies; and
- 84174 (ii) providing recommendations for enforcing those rules, regulations, and policies;
- 84175 (l) in conjunction with Utah's county and municipal prosecuting attorneys:
- 84176 (i) review Utah's and Idaho's moral nuisance law;
- 84177 (ii) draft a comprehensive moral nuisance law for Utah and a model ordinance for
- 84178 municipalities and counties to provide an effective mechanism to abate and discourage obscenity
- 84179 and pornography; and
- 84180 (iii) present the draft to the Legislature's Judiciary Interim Committee before October
- 84181 25, 2001; and
- 84182 (m) establish a program to combat Internet pornography and to assist parents in
- 84183 protecting their children from Internet pornography.

84184 Section 2048. Section **67-5a-8** is amended to read:

84185 **67-5a-8. Administration.**

84186 (1) (a) The administration costs of this chapter, including council staff compensation,

84187 shall be funded from appropriations made by the Legislature to the Office of the Attorney

84188 General for the support of the council from the Public Safety Support Account established in

84189 Section [~~63-63a-4~~] 51-9-404.

84190 (b) Funds available from other sources may also be appropriated by the Legislature to

84191 the Office of the Attorney General for the administration of this chapter.

84192 (2) In exercising its duties, the council shall minimize costs of administration and utilize

84193 existing training facilities and resources where possible so the greatest portion of the funds

84194 available are expended for training prosecuting attorneys.

84195 (3) The council may reimburse council staff for travel and per diem expenses from the

84196 appropriations made from the Public Safety Support Account to the Office of the Attorney

84197 General for the support of the council, in an amount not to exceed the amounts approved by the

84198 director of the Division of Finance.

84199 Section 2049. Section **67-5b-107** is amended to read:

84200 **67-5b-107. Immunity -- Limited liability.**

84201 (1) Officers and employees performing services for two or more public agencies
84202 pursuant to contracts executed under the provisions of this part are considered to be officers
84203 and employees of the public agency employing their services, even though performing those
84204 functions outside of the territorial limits of any one of the contracting public agencies, and are
84205 considered to be officers and employees of public agencies in accordance with [~~Title 63,~~
84206 ~~Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

84207 (2) The officers and employees of the center, while acting within the scope of their
84208 authority, are not subject to any personal or civil liability resulting from carrying out any of the
84209 purposes of a center under the provisions of [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7,
84210 Governmental Immunity Act of Utah.

84211 (3) A volunteer is considered a government employee in accordance with Section
84212 67-20-3 and entitled to immunity under the provisions of [~~Title 63, Chapter 30d~~] Title 63G,
84213 Chapter 7, Governmental Immunity Act of Utah.

84214 (4) A volunteer, other than one considered a government employee in accordance with
84215 Section 67-20-3, may not incur any personal financial liability for any tort claim or other action
84216 seeking damage for an injury arising from any act or omission of the volunteer while providing
84217 services for the nonprofit organization if:

84218 (a) the individual was acting in good faith and reasonably believed he was acting within
84219 the scope of [~~his~~] the individual's official functions and duties with the center; and

84220 (b) the damage or injury was not caused by an intentional or knowing act by the
84221 volunteer which constitutes illegal or wanton misconduct.

84222 (5) The center is not liable for the acts or omissions of its volunteers in any
84223 circumstance where the acts of its volunteers are not as described in Subsection (4) unless:

84224 (a) the center had, or reasonably should have had, reasonable notice of the volunteer's
84225 unfitness to provide services to the center under circumstances that make the center's use of the

84226 volunteer reckless or wanton in light of that notice; or

84227 (b) a business employer would be liable under the laws of this state if the act or
84228 omission were the act or omission of one of its employees.

84229 Section 2050. Section **67-16-3** is amended to read:

84230 **67-16-3. Definitions.**

84231 As used in this chapter:

84232 (1) "Agency" means any department, division, agency, commission, board, council,
84233 committee, authority, or any other institution of the state or any of its political subdivisions.

84234 (2) "Agency head" means the chief executive or administrative officer of any agency.

84235 (3) "Assist" means to act, or offer or agree to act, in such a way as to help, represent,
84236 aid, advise, furnish information to, or otherwise provide assistance to a person or business
84237 entity, believing that such action is of help, aid, advice, or assistance to such person or business
84238 entity and with the intent to assist such person or business entity.

84239 (4) "Business entity" means a sole proprietorship, partnership, association, joint
84240 venture, corporation, firm, trust, foundation, or other organization or entity used in carrying on
84241 a business.

84242 (5) "Compensation" means anything of economic value, however designated, which is
84243 paid, loaned, granted, given, donated, or transferred to any person or business entity by anyone
84244 other than the governmental employer for or in consideration of personal services, materials,
84245 property, or any other thing whatsoever.

84246 (6) "Controlled, private, or protected information" means information classified as
84247 controlled, private, or protected in [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government
84248 Records Access and Management Act, or other applicable provision of law.

84249 (7) "Governmental action" means any action on the part of the state, a political
84250 subdivision, or an agency, including:

84251 (a) any decision, determination, finding, ruling, or order; and

84252 (b) any grant, payment, award, license, contract, subcontract, transaction, decision,
84253 sanction, or approval, or the denial thereof, or the failure to act in respect to.

84254 (8) "Improper disclosure" means disclosure of controlled, private, or protected
84255 information to any person who does not have the right to receive the information.

84256 (9) "Legislative employee" means any officer or employee of the Legislature, or any
84257 committee of the Legislature, who is appointed or employed to serve, either with or without
84258 compensation, for an aggregate of less than 800 hours during any period of 365 days.
84259 "Legislative employee" does not include legislators.

84260 (10) "Legislator" means a member or member-elect of either house of the Legislature of
84261 the state of Utah.

84262 (11) "Political subdivision" means a district, county, school district, or any other
84263 political subdivision of the state that is not an agency, but does not include municipalities.

84264 (12) "Public employee" means a person who is not a public officer who is employed on
84265 a full-time, part-time, or contract basis by the state or any of its political subdivisions. "Public
84266 employee" does not include legislators or legislative employees.

84267 (13) "Public officer" means all elected or appointed officers of the state or any of its
84268 political subdivisions who occupy policymaking posts. "Public officer" does not include
84269 legislators or legislative employees.

84270 (14) "State" means the state of Utah.

84271 (15) "Substantial interest" means the ownership, either legally or equitably, by an
84272 individual, ~~[his]~~ the individual's spouse, or ~~[his]~~ the individual's minor children, of at least 10%
84273 of the outstanding capital stock of a corporation or a 10% interest in any other business entity.

84274 Section 2051. Section **67-16-4** is amended to read:

84275 **67-16-4. Improperly disclosing or using private, controlled, or protected**
84276 **information -- Using position to secure privileges or exemptions -- Accepting employment**
84277 **which would impair independence of judgment or ethical performance -- Exceptions.**

84278 (1) Except as provided in Subsection (3), it is an offense for a public officer, public
84279 employee, or legislator, under circumstances not amounting to a violation of Section
84280 ~~[63-56-1001]~~ 63G-6-1001 or 76-8-105, to:

84281 (a) accept employment or engage in any business or professional activity that he might

84282 reasonably expect would require or induce him to improperly disclose controlled information
84283 that he has gained by reason of his official position;

84284 (b) disclose or improperly use controlled, private, or protected information acquired by
84285 reason of his official position or in the course of official duties in order to further substantially
84286 the officer's or employee's personal economic interest or to secure special privileges or
84287 exemptions for himself or others;

84288 (c) use or attempt to use his official position to:

84289 (i) further substantially the officer's or employee's personal economic interest; or

84290 (ii) secure special privileges or exemptions for himself or others;

84291 (d) accept other employment that he might expect would impair his independence of
84292 judgment in the performance of his public duties; or

84293 (e) accept other employment that he might expect would interfere with the ethical
84294 performance of his public duties.

84295 (2) (a) Subsection (1) does not apply to the provision of education-related services to
84296 public school students by public education employees acting outside their regular employment.

84297 (b) The conduct referred to in Subsection (2)(a) is subject to Section 53A-1-402.5.

84298 (3) A county legislative body member who does not participate in the process of
84299 selecting a mental health or substance abuse service provider does not commit an offense under
84300 Subsection (1)(a) or (b) by:

84301 (a) serving also as a member of the governing board of the provider of mental health or
84302 substance abuse services under contract with the county; or

84303 (b) discharging, in good faith, the duties and responsibilities of each position.

84304 Section 2052. Section **67-16-5** is amended to read:

84305 **67-16-5. Accepting gift, compensation, or loan -- When prohibited.**

84306 (1) As used in this section, "economic benefit tantamount to a gift" includes:

84307 (a) a loan at an interest rate that is substantially lower than the commercial rate then
84308 currently prevalent for similar loans; and

84309 (b) compensation received for private services rendered at a rate substantially exceeding

84310 the fair market value of the services.

84311 (2) It is an offense for a public officer or public employee, under circumstances not
84312 amounting to a violation of Section [~~63-56-1001~~] 63G-6-1001 or 76-8-105, to knowingly
84313 receive, accept, take, seek, or solicit, directly or indirectly for himself or another a gift of
84314 substantial value or a substantial economic benefit tantamount to a gift:

84315 (a) that would tend improperly to influence a reasonable person in the person's position
84316 to depart from the faithful and impartial discharge of the person's public duties;

84317 (b) that the [~~person~~] public officer or public employee knows or that a reasonable
84318 person in that position should know under the circumstances is primarily for the purpose of
84319 rewarding the [~~person~~] public officer or public employee for official action taken; or

84320 (c) if [~~he~~] the public officer or public employee recently has been, is now, or in the near
84321 future may be involved in any governmental action directly affecting the donor or lender, unless
84322 a disclosure of the gift, compensation, or loan and other relevant information has been made in
84323 the manner provided in Section 67-16-6.

84324 (3) Subsection (2) does not apply to:

84325 (a) an occasional nonpecuniary gift, having a value of not in excess of \$50;

84326 (b) an award publicly presented in recognition of public services;

84327 (c) any bona fide loan made in the ordinary course of business; or

84328 (d) a political campaign contribution.

84329 Section 2053. Section **67-16-5.3** is amended to read:

84330 **67-16-5.3. Requiring donation, payment, or service to government agency in**
84331 **exchange for approval -- When prohibited.**

84332 (1) It is an offense for a public officer, public employee, or legislator, under
84333 circumstances not amounting to a violation of Section [~~63-56-1001~~] 63G-6-1001 or 76-8-105,
84334 to demand from any person as a condition of granting any application or request for a permit,
84335 approval, or other authorization, that the person donate personal property, money, or services
84336 to any agency.

84337 (2) (a) Subsection (1) does not apply to any donation of property, funds, or services to

84338 an agency that is:

84339 (i) expressly required by statute, ordinance, or agency rule;

84340 (ii) mutually agreed to between the applicant and the entity issuing the permit, approval,

84341 or other authorization;

84342 (iii) made voluntarily by the applicant; or

84343 (iv) a condition of a consent decree, settlement agreement, or other binding instrument

84344 entered into to resolve, in whole or in part, an actual or threatened agency enforcement action.

84345 (b) If a person donates property, funds, or services to an agency, the agency shall, as

84346 part of the permit or other written authorization:

84347 (i) identify that a donation has been made;

84348 (ii) describe the donation;

84349 (iii) certify, in writing, that the donation was voluntary; and

84350 (iv) place that information in its files.

84351 Section 2054. Section **67-16-6** is amended to read:

84352 **67-16-6. Receiving compensation for assistance in transaction involving an**
84353 **agency -- Filing sworn statement.**

84354 (1) It is an offense for a public officer or public employee, under circumstances not

84355 amounting to a violation of Section [~~63-56-1001~~] 63G-6-1001 or 76-8-105, to receive or agree

84356 to receive compensation for assisting any person or business entity in any transaction involving

84357 an agency unless the public officer or public employee files a sworn, written statement

84358 containing the information required by Subsection (2) with:

84359 (a) the head of [~~his~~] the officer or employee's own agency;

84360 (b) the agency head of the agency with which the transaction is being conducted; and

84361 (c) the state attorney general.

84362 (2) The statement shall contain:

84363 (a) the name and address of the public officer or public employee involved;

84364 (b) the name of the public officer's or public employee's agency;

84365 (c) the name and address of the person or business entity being or to be assisted; and

84366 (d) a brief description of:

84367 (i) the transaction as to which service is rendered or is to be rendered; and

84368 (ii) the nature of the service performed or to be performed.

84369 (3) The statement required to be filed under Subsection (1) shall be filed within ten
84370 days after the date of any agreement between the public officer or public employee and the
84371 person or business entity being assisted or the receipt of compensation, whichever is earlier.

84372 (4) The statement is public information and shall be available for examination by the
84373 public.

84374 Section 2055. Section **67-18-5** is amended to read:

84375 **67-18-5. Confidential, private, or protected documents excepted.**

84376 The right to examine and copy documents in an employee's personnel file is subject to
84377 access provisions in [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access
84378 and Management Act.

84379 Section 2056. Section **67-19-5** is amended to read:

84380 **67-19-5. Department of Human Resource Management created -- Executive**
84381 **director -- Compensation -- Staff.**

84382 (1) There is created the Department of Human Resource Management.

84383 (2) (a) The department shall be administered by an executive director appointed by the
84384 governor with the consent of the Senate.

84385 (b) The executive director shall be a person with experience in human resource
84386 management and shall be accountable to the governor for the executive director's performance
84387 in office.

84388 (3) The executive director may:

84389 (a) appoint a personal secretary and a deputy director, both of whom shall be exempt
84390 from career service; and

84391 (b) appoint division directors and program managers who may be career service
84392 exempt.

84393 (4) (a) The executive director shall have full responsibility and accountability for the

84394 administration of the statewide human resource management system.

84395 (b) Except as provided in Section 67-19-6.1, an agency may not perform human
84396 resource functions without the consent of the executive director.

84397 (5) Statewide human resource management rules adopted by the Department of Human
84398 Resource Management in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
84399 Administrative Rulemaking Act, shall take precedence if there is a conflict with agency rules,
84400 policies, or practices.

84401 (6) The department may operate as an internal service fund agency in accordance with
84402 Section [~~63-38-3.5~~] 63J-1-306 for the human resource functions the department provides.

84403 Section 2057. Section **67-19-6** is amended to read:

84404 **67-19-6. Responsibilities of the executive director.**

84405 (1) The executive director shall:

84406 (a) develop, implement, and administer a statewide program of human resource
84407 management that will:

84408 (i) aid in the efficient execution of public policy;

84409 (ii) foster careers in public service for qualified employees; and

84410 (iii) render assistance to state agencies in performing their missions;

84411 (b) design and administer the state pay plan;

84412 (c) design and administer the state classification system and procedures for determining
84413 schedule assignments;

84414 (d) design and administer the state recruitment and selection system;

84415 (e) administer agency human resource practices and ensure compliance with federal law,
84416 state law, and state human resource rules, including equal employment opportunity;

84417 (f) consult with agencies on decisions concerning employee corrective action and
84418 discipline;

84419 (g) maintain central personnel records;

84420 (h) perform those functions necessary to implement this chapter unless otherwise
84421 assigned or prohibited;

- 84422 (i) perform duties assigned by the governor or statute;
- 84423 (j) adopt rules for human resource management according to the procedures of [~~Title~~
- 84424 ~~63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act;
- 84425 (k) establish and maintain a management information system that will furnish the
- 84426 governor, the Legislature, and agencies with current information on authorized positions,
- 84427 payroll, and related matters concerning state human resources;
- 84428 (l) conduct research and planning activities to:
- 84429 (i) determine and prepare for future state human resource needs;
- 84430 (ii) develop methods for improving public human resource management; and
- 84431 (iii) propose needed policy changes to the governor;
- 84432 (m) study the character, causes, and extent of discrimination in state employment and
- 84433 develop plans for its elimination through programs consistent with federal and state laws
- 84434 governing equal employment opportunity in employment;
- 84435 (n) when requested by counties, municipalities, and other political subdivisions of the
- 84436 state, provide technical service and advice on human resource management at a charge
- 84437 determined by the executive director;
- 84438 (o) establish compensation policies and procedures for early voluntary retirement;
- 84439 (p) confer with the heads of other agencies about human resource policies and
- 84440 procedures;
- 84441 (q) submit an annual report to the governor and the Legislature; and
- 84442 (r) (i) develop a procedure by which each agency will:
- 84443 (A) identify funded vacant positions; and
- 84444 (B) report those funded vacant positions to the department;
- 84445 (ii) identify all funded employee positions in each agency that have been vacant for
- 84446 more than 180 consecutive days during the 18-month period prior to July 1 of each year; and
- 84447 (iii) by no later than September 1 of each year, provide a report of all funded employee
- 84448 positions in each agency identified in Subsections (1)(r)(i) and (ii) to:
- 84449 (A) the Governor's Office of Planning and Budget; and

84450 (B) the Office of the Legislative Fiscal Analyst.

84451 (2) (a) After consultation with the governor and the heads of other agencies, the
84452 executive director shall establish and coordinate statewide training programs.

84453 (b) The programs developed under this Subsection (2) shall have application to more
84454 than one agency.

84455 (c) The department may not establish training programs that train employees to perform
84456 highly specialized or technical jobs and tasks.

84457 (3) (a) (i) The department may collect fees for training as authorized by this Subsection
84458 (3).

84459 (ii) Training funded from General Fund appropriations shall be treated as a separate
84460 program within the department budget.

84461 (iii) All money received from fees under this section will be accounted for by the
84462 department as a separate user driven training program.

84463 (iv) The user training program includes the costs of developing, procuring, and
84464 presenting training and development programs, and other associated costs for these programs.

84465 (b) (i) Funds remaining at the end of the fiscal year in the user training program are
84466 nonlapsing.

84467 (ii) Each year, as part of the appropriations process, the Legislature shall review the
84468 amount of nonlapsing funds remaining at the end of the fiscal year and may, by statute, require
84469 the department to lapse a portion of the funds.

84470 Section 2058. Section **67-19-6.7** is amended to read:

84471 **67-19-6.7. Overtime policies for state employees.**

84472 (1) As used in this section:

84473 (a) "Accrued overtime hours" means:

84474 (i) for nonexempt employees, overtime hours earned during a fiscal year that, at the end
84475 of the fiscal year, have not been paid and have not been taken as time off by the nonexempt
84476 state employee who accrued them; and

84477 (ii) for exempt employees, overtime hours earned during an overtime year.

- 84478 (b) "Appointed official" means:
- 84479 (i) each department executive director and deputy director, each division director, and
- 84480 each member of a board or commission; and
- 84481 (ii) any other person employed by a department who is appointed by, or whose
- 84482 appointment is required by law to be approved by, the governor and who:
- 84483 (A) is paid a salary by the state; and
- 84484 (B) who exercises managerial, policy-making, or advisory responsibility.
- 84485 (c) "Department" means the Department of Administrative Services, the Department of
- 84486 Corrections, the Department of Financial Institutions, the Department of Alcoholic Beverage
- 84487 Control, the Insurance Department, the Public Service Commission, the Labor Commission, the
- 84488 Department of Agriculture and Food, the Department of Human Services, the State Board of
- 84489 Education, the Department of Natural Resources, the Department of Technology Services, the
- 84490 Department of Transportation, the Department of Commerce, the Department of Workforce
- 84491 Services, the State Tax Commission, the Department of Community and Culture, the
- 84492 Department of Health, the National Guard, the Department of Environmental Quality, the
- 84493 Department of Public Safety, the Department of Human Resource Management, the
- 84494 Commission on Criminal and Juvenile Justice, all merit employees except attorneys in the Office
- 84495 of the Attorney General, merit employees in the Office of the State Treasurer, and merit
- 84496 employees in the Office of the State Auditor.
- 84497 (d) "Elected official" means any person who is an employee of the state because [~~he~~
- 84498 the person] was elected by the registered voters of Utah to a position in state government.
- 84499 (e) "Exempt employee" means a state employee who is exempt as defined by the Fair
- 84500 Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.
- 84501 (f) "FLSA" means the Fair Labor Standards Act of 1978, 29 U.S.C. Section 201 et seq.
- 84502 (g) "FLSA agreement" means the agreement authorized by the Fair Labor Standards
- 84503 Act of 1978, 29 U.S.C. Section 201 et seq., by which a nonexempt employee elects the form of
- 84504 compensation [~~he~~] the nonexempt employee will receive for overtime.
- 84505 (h) "Nonexempt employee" means a state employee who is nonexempt as defined by the

84506 Department of Human Resource Management applying FLSA requirements.

84507 (i) "Overtime" means actual time worked in excess of the employee's defined work
84508 period.

84509 (j) "Overtime year" means the year determined by a department under Subsection (4)(b)
84510 at the end of which an exempt employee's accrued overtime lapses.

84511 (k) (i) "State employee" means every person employed by a department who is not an
84512 appointed official or an elected official.

84513 (ii) "State employee" does not mean:

84514 (A) certificated employees of the State Board of Education; and

84515 (B) employees of the Department of Community and Culture or the Governor's Office
84516 of Economic Development, whose positions are designated as schedule AM exempt employees
84517 under Section 67-19-15.

84518 (l) "Uniform annual date" means the date when an exempt employee's accrued overtime
84519 lapses.

84520 (m) "Work period" means:

84521 (i) for all nonexempt employees, except law enforcement and hospital employees, a
84522 consecutive seven day 24 hour work period of 40 hours;

84523 (ii) for all exempt employees, a 14 day, 80 hour payroll cycle; and

84524 (iii) for nonexempt law enforcement and hospital employees, the period established by
84525 each department by rule for those employees according to the requirements of the Fair Labor
84526 Standards Act of 1978, 29 U.S.C. Section 201 et seq.

84527 (2) Each department shall compensate each state employee who works overtime by
84528 complying with the requirements of this section.

84529 (3) (a) Each department shall negotiate and obtain a signed FLSA agreement from each
84530 nonexempt employee.

84531 (b) In the FLSA agreement, the nonexempt employee shall elect either to be
84532 compensated for overtime by:

84533 (i) taking time off work at the rate of one and one-half hour off for each overtime hour

84534 worked; or

84535 (ii) being paid for the overtime worked at the rate of one and one-half times the rate per
84536 hour that the state employee receives for nonovertime work.

84537 (c) Any nonexempt employee who elects to take time off under this Subsection (3) shall
84538 be paid for any overtime worked in excess of the cap established by the Department of Human
84539 Resource Management.

84540 (d) Before working any overtime, each nonexempt employee shall obtain authorization
84541 to work overtime from the employee's immediate supervisor.

84542 (e) Each department shall:

84543 (i) for employees who elect to be compensated with time off for overtime, allow
84544 overtime earned during a fiscal year to be accumulated; and

84545 (ii) for employees who elect to be paid for overtime worked, pay them for overtime
84546 worked in the paycheck for the pay period in which the employee worked the overtime.

84547 (f) If the department pays a nonexempt employee for overtime, the department shall
84548 charge that payment to the department's budget.

84549 (g) At the end of each fiscal year, the Division of Finance shall total all the accrued
84550 overtime hours for nonexempt employees and charge that total against the appropriate fund or
84551 subfund.

84552 (4) (a) (i) Except as provided in Subsection (4)(a)(ii), each department shall
84553 compensate exempt employees who work overtime by granting them time off at the rate of one
84554 hour off for each hour of overtime worked.

84555 (ii) The executive director of the Department of Human Resource Management may
84556 grant limited exceptions to this requirement, where work circumstances dictate, by authorizing a
84557 department to pay employees for overtime worked at the rate per hour that the employee
84558 receives for nonovertime work, if the department has funds available.

84559 (b) (i) Each department shall:

84560 (A) establish in its written human resource policies a uniform annual date for each
84561 division that is at the end of any pay period; and

84562 (B) communicate the uniform annual date to its employees.

84563 (ii) If any department fails to establish a uniform annual date as required by this
84564 Subsection (4), the executive director of the Department of Human Resource Management, in
84565 conjunction with the director of the Division of Finance, shall establish the date for that
84566 department.

84567 (c) (i) Any overtime earned under this Subsection (4) is not an entitlement, is not a
84568 benefit, and is not a vested right.

84569 (ii) A court may not construe the overtime for exempt employees authorized by this
84570 Subsection (4) as an entitlement, a benefit, or as a vested right.

84571 (d) At the end of the overtime year, upon transfer to another department at any time,
84572 and upon termination, retirement, or other situations where the employee will not return to
84573 work before the end of the overtime year:

84574 (i) any of an exempt employee's overtime that is more than the maximum established by
84575 the Department of Human Resource Management rule lapses; and

84576 (ii) unless authorized by the executive director of the Department of Human Resource
84577 Management under Subsection (4)(a)(ii), a department may not compensate the exempt
84578 employee for that lapsed overtime by paying the employee for the overtime or by granting the
84579 employee time off for the lapsed overtime.

84580 (e) Before working any overtime, each exempt employee shall obtain authorization to
84581 work overtime from the exempt employee's immediate supervisor.

84582 (f) If the department pays an exempt employee for overtime under authorization from
84583 the executive director of the Department of Human Resource Management, the department
84584 shall charge that payment to the department's budget in the pay period earned.

84585 (5) The Department of Human Resource Management shall:

84586 (a) ensure that the provisions of the FLSA and this section are implemented throughout
84587 state government;

84588 (b) determine, for each state employee, whether that employee is exempt, nonexempt,
84589 law enforcement, or has some other status under the FLSA;

84590 (c) in coordination with modifications to the systems operated by the Division of
84591 Finance, make rules:

84592 (i) establishing procedures for recording overtime worked that comply with FLSA
84593 requirements;

84594 (ii) establishing requirements governing overtime worked while traveling and
84595 procedures for recording that overtime that comply with FLSA requirements;

84596 (iii) establishing requirements governing overtime worked if the employee is "on call"
84597 and procedures for recording that overtime that comply with FLSA requirements;

84598 (iv) establishing requirements governing overtime worked while an employee is being
84599 trained and procedures for recording that overtime that comply with FLSA requirements;

84600 (v) subject to the FLSA, establishing the maximum number of hours that a nonexempt
84601 employee may accrue before a department is required to pay the employee for the overtime
84602 worked;

84603 (vi) subject to the FLSA, establishing the maximum number of overtime hours for an
84604 exempt employee that do not lapse; and

84605 (vii) establishing procedures for adjudicating appeals of any FLSA determinations made
84606 by the Department of Human Resource Management as required by this section;

84607 (d) monitor departments for compliance with the FLSA; and

84608 (e) recommend to the Legislature and the governor any statutory changes necessary
84609 because of federal government action.

84610 (6) In coordination with the procedures for recording overtime worked established in
84611 rule by the Department of Human Resource Management, the Division of Finance shall modify
84612 its payroll and human resource systems to accommodate those procedures.

84613 (a) Notwithstanding the procedures and requirements of [~~Title 63, Chapter 46b~~] Title
84614 63G, Chapter 4, Administrative Procedures Act, Section 67-19-31, and Section 67-19a-301,
84615 any employee who is aggrieved by the FLSA designation made by the Department of Human
84616 Resource Management as required by this section may appeal that determination to the
84617 executive director of the Department of Human Resource Management by following the

84618 procedures and requirements established in Department of Human Resource Management rule.

84619 (b) Upon receipt of an appeal under this section, the executive director shall notify the
 84620 executive director of the employee's department that the appeal has been filed.

84621 (c) If the employee is aggrieved by the decision of the executive director of the
 84622 Department of Human Resource Management, [~~he~~] the employee shall appeal that
 84623 determination to the Department of Labor, Wage and Hour Division, according to the
 84624 procedures and requirements of federal law.

84625 Section 2059. Section **67-19-11** is amended to read:

84626 **67-19-11. Use of department facilities -- Field office facilities cost allocation --**
 84627 **Funding for department.**

84628 (1) (a) All officers and employees of the state and its political subdivisions shall allow
 84629 the department to use public buildings under their control, and furnish heat, light, and furniture,
 84630 for any examination, hearing, or investigation authorized by this chapter.

84631 (b) The cost of the department's use of facilities shall be paid by the agency housing a
 84632 field office staff.

84633 (2) The executive director shall:

84634 (a) prepare an annual budget request for the department;

84635 (b) submit the budget request to the governor and the Legislature; and

84636 (c) except for fiscal year 2007, before charging a fee for services provided by the
 84637 department's internal service fund to an executive branch agency, the executive director shall:

84638 (i) submit the proposed rates, fees, and cost analysis to the Rate Committee established
 84639 under Subsection (3); and

84640 (ii) obtain the approval of the Legislature as required under Section [~~63-38-3.5~~]
 84641 63J-1-306.

84642 (3) (a) There is created a Rate Committee which shall consist of:

84643 (i) the director of the Governor's Office of Planning and Budget, or a designee;

84644 (ii) the executive directors of three state agencies that use services and pay rates to one
 84645 of the department internal service funds, or their designee, appointed by the governor for a

84646 two-year term;

84647 (iii) the director of the Division of Finance, or a designee; and

84648 (iv) the executive director of the Department of Human Resource Management, or a

84649 designee.

84650 (b) (i) The committee shall elect a chair from its members.

84651 (ii) Members of the committee who are state government employees and who do not

84652 receive salary, per diem, or expenses from their agency for their service on the committee shall

84653 receive no compensation, benefits, per diem, or expenses for the members' service on the

84654 committee.

84655 (c) The Department of Human Resource Management shall provide staff services to the

84656 committee.

84657 (4) (a) The department shall submit to the committee a proposed rate and fee schedule

84658 for services rendered.

84659 (b) The committee shall:

84660 (i) conduct meetings in accordance with Title 52, Chapter 4, Open and Public Meetings

84661 Act;

84662 (ii) review the proposed rate and fee schedules and may approve, increase, or decrease

84663 the rate and fee;

84664 (iii) recommend a proposed rate and fee schedule for the internal service fund to:

84665 (A) the Governor's Office of Planning and Budget; and

84666 (B) the legislative appropriations subcommittees that, in accordance with Section

84667 ~~[63-38-3.5]~~ 63J-1-306, approve the internal service fund rates, fees, and budget; and

84668 (iv) review and approve, increase or decrease an interim rate, fee, or amount when the

84669 department begins a new service or introduces a new product between annual general sessions

84670 of the Legislature.

84671 (c) The committee may in accordance with Subsection ~~[63-38-3.5]~~ 63J-1-306(4)

84672 decrease a rate, fee, or amount that has been approved by the Legislature.

84673 Section 2060. Section **67-19-12.5** is amended to read:

84674 **67-19-12.5. Creation of Flexible Benefit Program -- Rulemaking power granted to**
84675 **establish program.**

84676 (1) The department shall establish for calendar year 1990 and thereafter a Flexible
84677 Benefit Program under Section 125 of the Internal Revenue Code of 1986.

84678 (2) The department shall establish accounts for all employees eligible for benefits which
84679 meet the nondiscrimination requirements of the Internal Revenue Code of 1986.

84680 (3) (a) Each account established under this section shall include employee paid
84681 premiums for health and dental services.

84682 (b) The account may also include, at the option of the employee, out-of-pocket
84683 employee medical and dependent care expenses.

84684 (c) Accounts may also include other expenses allowed under the Internal Revenue Code
84685 of 1986.

84686 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
84687 Administrative Rulemaking Act, the department may make rules to implement the program
84688 established under this section.

84689 Section 2061. Section **67-19-14** is amended to read:

84690 **67-19-14. Sick leave -- Definitions -- Unused sick days retirement programs --**
84691 **Rulemaking.**

84692 (1) As used in Sections 67-19-14 through 67-19-14.4:

84693 (a) "Continuing medical and life insurance benefits" means the state provided policy of
84694 medical insurance and the state provided portion of a policy of life insurance, each offered at the
84695 same:

84696 (i) benefit level and the same proportion of state/member participation in the total
84697 premium costs as an active member as defined in Section 49-11-102; and

84698 (ii) coverage level for a member, two person, or family policy as provided to the
84699 member at the time of retirement.

84700 (b) "Converted sick leave" means leave that has been converted from unused sick leave
84701 in accordance with Section 67-19-14.1 which may be used by an employee in the same manner

84702 as:

84703 (i) annual leave;

84704 (ii) sick leave; or

84705 (iii) unused accumulated sick leave after the employee's retirement for the purchase of
84706 continuing medical and life insurance benefits under Sections 67-19-14.2, 67-19-14.3, and
84707 67-19-14.4.

84708 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
84709 Administrative Rulemaking Act, the executive director shall make rules for the procedures to
84710 implement the provisions of Sections 67-19-14 through 67-19-14.4.

84711 (3) For purposes of Sections 67-19-14 through 67-19-14.4 the most recently earned
84712 converted sick leave or sick leave hours shall be used first when an employee uses converted
84713 sick leave or sick leave hours.

84714 (4) The Division of Finance shall develop and maintain a system of accounting for
84715 employee sick leave and converted sick leave as necessary to implement the provisions of
84716 Sections 67-19-14 through 67-19-14.4.

84717 Section 2062. Section **67-19-30** is amended to read:

84718 **67-19-30. Grievance resolution -- Jurisdiction.**

84719 (1) Employees shall comply with the procedural and jurisdictional requirements of this
84720 section, [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act, and Title
84721 67, Chapter 19a, Grievance and Appeal Procedures, in seeking resolution of grievances.

84722 (2) All grievances based upon a claim or charge of injustice or oppression, including
84723 dismissal from employment, resulting from an act, occurrence, commission, or condition shall be
84724 governed by Title 67, Chapter 19a, Grievance and Appeal Procedures, and [~~Title 63, Chapter~~
84725 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

84726 (3) All grievances involving classification shall be governed by Section 67-19-31 and
84727 are designated as informal adjudicative proceedings as defined by [~~Title 63, Chapter 46b~~] Title
84728 63G, Chapter 4, Administrative Procedures Act.

84729 (4) All grievances by applicants for positions in state government involving an alleged

84730 discriminatory or prohibited employment practice shall be governed by Section 67-19-32 and
84731 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

84732 (5) A "grievance" under this chapter is a request for agency action for purposes of
84733 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

84734 Section 2063. Section **67-19-31** is amended to read:

84735 **67-19-31. Position classification grievances -- Scope -- Procedure.**

84736 (1) (a) For the purpose of position classification grievances, the process that culminates
84737 in assigning a career service position to an appropriate class specification is a matter of position
84738 classification and may be grieved.

84739 (b) The process that culminates in assigning a salary range to the class specification is
84740 not a position classification and may not be grieved as a classification grievance.

84741 (2) (a) Upon receipt of a position classification grievance, the executive director shall
84742 refer the grievance to a classification panel of three or more impartial persons trained in state
84743 classification procedures.

84744 (b) The classification panel shall determine whether or not the classification assignment
84745 for career service positions was appropriate by applying the statutes, rules, and procedures
84746 adopted by the department that were in effect at the time of the classification change.

84747 (c) The classification panel may:

84748 (i) obtain access to previous audits, classification decisions, and reports;

84749 (ii) request new or additional audits by human resource analysts; and

84750 (iii) consider new or additional information.

84751 (d) The classification panel may sustain or modify the original decision and, if
84752 applicable, recommend a new classification.

84753 (e) The classification panel shall report its recommendation to the executive director,
84754 who shall make the classification decision and notify the grievant.

84755 (3) (a) Either party may appeal the executive director's decision to an impartial hearing
84756 officer trained in state classification procedures selected through a public bid process by a panel
84757 consisting of the following members:

- 84758 (i) the executive director of the Department of Human Resource Management;
- 84759 (ii) two department executive directors;
- 84760 (iii) a private sector human resources executive appointed by the governor; and
- 84761 (iv) a representative of the Utah Public Employees Association.

84762 (b) The successful bid shall serve under contract for no more than three years. At the
84763 end of that time, the Department of Human Resource Management shall reissue the bid.

84764 (c) The hearing officer shall review the classification and make the final decision. The
84765 final decision is subject to judicial review pursuant to the provisions of Section [~~63-46b-15~~]
84766 63G-4-402.

84767 Section 2064. Section **67-19-34** is amended to read:

84768 **67-19-34. Rulemaking power to executive director.**

84769 In accordance with this chapter and [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
84770 Administrative Rulemaking Act, the executive director shall make rules regulating:

- 84771 (1) disciplinary actions for employees subject to discipline under Section 67-19-37;
- 84772 (2) the testing of employees for the use of controlled substances or alcohol as provided
84773 in Section 67-19-36;
- 84774 (3) the confidentiality of drug testing and test results performed under Section 67-19-36
84775 in accordance with [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records Access and
84776 Management Act; and

84777 (4) minimum blood levels of alcohol or drug content for work effectiveness of an
84778 employee.

84779 Section 2065. Section **67-19a-202** is amended to read:

84780 **67-19a-202. Powers -- Jurisdiction.**

84781 (1) (a) The board shall serve as the final administrative body to review appeals from
84782 career service employees and agencies of decisions about promotions, dismissals, demotions,
84783 suspensions, written reprimands, wages, salary, violations of personnel rules, issues concerning
84784 the equitable administration of benefits, reductions in force, and disputes concerning
84785 abandonment of position that have not been resolved at an earlier stage in the grievance

84786 procedure.

84787 (b) The board has no jurisdiction to review or decide any other personnel matters.

84788 (2) The time limits established in this chapter supersede the procedural time limits
84789 established in [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

84790 (3) In conjunction with any inquiry, investigation, hearing, or other proceeding, any
84791 member of the board may:

84792 (a) administer oaths;

84793 (b) certify official acts;

84794 (c) subpoena witnesses, documents, and other evidence; and

84795 (d) grant continuances pursuant to board rule.

84796 Section 2066. Section **67-19a-203** is amended to read:

84797 **67-19a-203. Rulemaking authority.**

84798 The board may make rules governing:

84799 (1) definitions of terms, phrases, and words used in the grievance process established by
84800 this chapter;

84801 (2) what matters constitute excusable neglect for purposes of the waiver of time limits
84802 established by this chapter;

84803 (3) the application for and service of subpoenas, the service and filing of pleadings, and
84804 the issuance of rulings, orders, determinations, summary judgments, transcripts, and other legal
84805 documents necessary in grievance proceedings;

84806 (4) the use, calling, attendance, participation, and fees of witnesses in grievance
84807 proceedings;

84808 (5) continuances of grievance proceedings;

84809 (6) procedures in jurisdictional and evidentiary hearings, unless governed by [~~Title 63,~~
84810 ~~Chapter 46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act;

84811 (7) the presence of media representatives at grievance proceedings; and

84812 (8) procedures for sealing files or making data pertaining to a grievance unavailable to
84813 the public.

84814 Section 2067. Section **69-2-5.6** is amended to read:

84815 **69-2-5.6. Emergency services telephone charge to fund statewide unified E-911**
84816 **emergency service.**

84817 (1) Subject to Subsection 69-2-5(3)(g), there is imposed a statewide unified E-911
84818 emergency service charge on each local exchange service switched access line and each revenue
84819 producing radio communications access line that is subject to an emergency services telephone
84820 charge levied by a county, city, or town under Section 69-2-5 or 69-2-5.5 at:

84821 (a) 13 cents per month until June 30, 2007; and

84822 (b) 8 cents per month on and after July 1, 2007.

84823 (2) The emergency services telephone charge imposed under this section shall be:

84824 (a) subject to Subsection 69-2-5(3)(g);

84825 (b) billed and collected by the person that provides:

84826 (i) local exchange service switched access line services;

84827 (ii) radio communications access line services; or

84828 (iii) service described in Subsection 69-2-5(3)(a)(iii).

84829 (c) except for costs retained under Subsection (3), remitted to the State Tax

84830 Commission at the same time as the person remits to the State Tax Commission monies

84831 collected by the person under Title 59, Chapter 12, Sales and Use Tax Act; and

84832 (d) deposited into the Statewide Unified E-911 Emergency Service Fund restricted
84833 account in the General Fund created by Section 53-10-603.

84834 (3) The person that bills and collects the charges levied by this section pursuant to
84835 Subsections (2)(b) and (c) may:

84836 (a) bill the charge imposed by this section in combination with the charge levied under
84837 Section 69-2-5 as one line item charge; and

84838 (b) retain an amount not to exceed 1.5% of the charges collected under this section as
84839 reimbursement for the cost of billing, collecting, and remitting the levy.

84840 (4) The State Tax Commission shall collect, enforce, and administer the charges

84841 imposed under Subsection (1) using the same procedures used in the administration, collection,

84842 and enforcement of the emergency services telephone charge to fund the Poison Control Center
84843 under Section 69-2-5.5.

84844 (5) This section sunsets in accordance with Section [~~63-55-269~~] 63I-1-269.

84845 Section 2068. Section **70-3a-201** is amended to read:

84846 **70-3a-201. Rulemaking authority of division.**

84847 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
84848 Rulemaking Act, the division may by rule:

84849 (1) pursuant to Subsection 70-3a-302(1), establish the filing requirements for an
84850 application for a registration of a mark;

84851 (2) pursuant to Subsection 70-3a-303(2), establish what information in addition to the
84852 information contained in the application shall be submitted by an applicant for registration under
84853 Section 70-3a-302;

84854 (3) pursuant to Subsection 70-3a-303(3), establish the requirements for an applicant or
84855 registrant to disclaim an unregistrable component of a mark that is otherwise registrable;

84856 (4) pursuant to Section 70-3a-305, establish the filing requirements for an application to
84857 renew a registration of a mark; and

84858 (5) establish the filing requirements for a filing under Section 70-3a-306.

84859 Section 2069. Section **70-3a-203** is amended to read:

84860 **70-3a-203. Fees.**

84861 (1) (a) A regulatory fee, as defined in Section [~~63-38-3.2~~] 63J-1-303, shall be
84862 determined by the division in accordance with Section [~~63-38-3.2~~] 63J-1-303, but may not
84863 exceed \$250 annually for registration of an electronic registration mark in a single class.

84864 (b) A person who pays the annual regulatory fee for the registration of an electronic
84865 registration mark may register additional classes for the same mark for an additional fee not to
84866 exceed \$25 annually.

84867 (2) (a) For a fee authorized by this chapter that is not a regulatory fee, the division may
84868 adopt a schedule of fees provided that each fee in the schedule of fees is:

84869 (i) reasonable and fair; and

84870 (ii) submitted to the Legislature as part of the Department of Commerce's annual
84871 appropriations request.

84872 (b) When a fee schedule described in Subsection (2)(a) is submitted as part of the
84873 annual appropriations request, the Legislature, in a manner substantially similar to Section
84874 [~~63-38-3.2~~] 63J-1-303, may for any fee in the fee schedule:

84875 (i) approve the fee;

84876 (ii) (A) increase or decrease the fee; and

84877 (B) approve the fee as changed by the Legislature; or

84878 (iii) reject the fee.

84879 (c) A fee approved by the Legislature pursuant to this section shall be deposited in a
84880 restricted account within the General Fund known as the Commerce Service Fund.

84881 Section 2070. Section **70-3a-303** is amended to read:

84882 **70-3a-303. Filing of applications.**

84883 (1) The division may examine an application to determine whether the application
84884 conforms with this chapter if:

84885 (a) the application for registration is filed under Section 70-3a-302; and

84886 (b) the regulatory fee required by Section 70-3a-203 is paid.

84887 (2) If reasonably requested by the division or considered by the applicant to be
84888 advisable to respond to any rejection or objection, the applicant:

84889 (a) shall provide any additional information requested by rule by the division, including
84890 a description of a design mark; and

84891 (b) may make, or authorize the division to make, amendments to the application.

84892 (3) (a) The division may require the applicant to disclaim an unregistrable component of
84893 a mark otherwise registrable.

84894 (b) An applicant may voluntarily disclaim a component of a mark for which the
84895 applicant has filed a registration application.

84896 (c) A disclaimer under this Subsection (3) may not prejudice or affect the applicant's or
84897 registrant's rights:

- 84898 (i) in the disclaimed matter:
- 84899 (A) existing at the time of the disclaimer; or
- 84900 (B) arising after the disclaimer; or
- 84901 (ii) of registration on another application if the disclaimed matter is or has become
- 84902 distinctive of the applicant's or registrant's goods or services.
- 84903 (d) The division may make rules consistent with this Subsection (3) to establish the
- 84904 requirements for an applicant to disclaim an unregistrable component of a mark that is otherwise
- 84905 registrable.
- 84906 (4) The division may:
- 84907 (a) amend an application filed by the applicant if the applicant agrees in writing to the
- 84908 amendment; or
- 84909 (b) require the applicant to file a new application.
- 84910 (5) (a) If the division determines that the applicant is not qualified to register a mark,
- 84911 the division shall notify the applicant of:
- 84912 (i) the refusal; and
- 84913 (ii) the reasons for the refusal.
- 84914 (b) The applicant shall have a reasonable period of time specified by the division, but
- 84915 not more than 60 days from the date of the notice under this Subsection (5) to:
- 84916 (i) reply to the refusal; or
- 84917 (ii) amend the application for reexamination.
- 84918 (c) The procedure described in Subsections (5)(a) and (b) may be repeated until:
- 84919 (i) the division finally refuses registration of the mark; or
- 84920 (ii) the applicant fails to reply or amend within the time period specified under
- 84921 Subsection (5)(b).
- 84922 (d) If the applicant fails to reply or to amend within the time period specified under
- 84923 Subsection (5)(b), the application is considered abandoned.
- 84924 (6) If the division finally refuses registration of the mark, the refusal shall:
- 84925 (a) be in writing; and

84926 (b) notify the applicant of the applicant's right to a review of the agency action in
84927 accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

84928 (7) (a) An applicant may file an action to compel registration by obtaining judicial
84929 review of the final agency action in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter
84930 4, Administrative Procedures Act.

84931 (b) The division is not liable for damages in an action to compel registration.

84932 (c) An action to compel registration shall only be granted on proof that:

84933 (i) all the statements in the application for registration are true; and

84934 (ii) the mark is otherwise entitled to registration.

84935 (8) (a) If more than one application is concurrently being processed by the division
84936 seeking registration of the same or confusingly similar marks for the same or related goods or
84937 services, the division shall grant priority to the applications in order of filing.

84938 (b) If a prior-filed application is granted a registration, the division shall refuse an
84939 application filed after the prior-filed application.

84940 (c) An applicant refused under this Subsection (8) may bring an action for cancellation
84941 of the registration upon grounds of prior or superior rights to the mark.

84942 Section 2071. Section **70A-9a-526** is amended to read:

84943 **70A-9a-526. Filing-office rules.**

84944 (1) The Division of Corporations and Commercial Code shall adopt and publish rules to
84945 implement this chapter that apply to a filing office described in Subsection 70A-9a-501(1)(b).
84946 The filing-office rules must be:

84947 (a) consistent with this chapter; and

84948 (b) adopted and published in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
84949 Chapter 3, Utah Administrative Rulemaking Act.

84950 (2) To keep the filing-office rules and practices of the filing office in harmony with the
84951 rules and practices of filing offices in other jurisdictions that enact substantially this part, and to
84952 keep the technology used by the filing office compatible with the technology used by filing
84953 offices in other jurisdictions that enact substantially this part, the Division of Corporations and

84954 Commercial Code, so far as is consistent with the purposes, policies, and provisions of this
84955 chapter, in adopting, amending, and repealing filing-office rules, shall:

- 84956 (a) consult with filing offices in other jurisdictions that enact substantially this part;
- 84957 (b) consult the most recent version of the Model Rules promulgated by the International
84958 Association of Corporate Administrators or any successor organization; and
- 84959 (c) take into consideration the rules and practices of, and the technology used by, filing
84960 offices in other jurisdictions that enact substantially this part.

84961 Section 2072. Section **70C-8-104** is amended to read:

84962 **70C-8-104. Enforcement proceedings.**

84963 (1) (a) The department may take an action described in Subsection (1)(b) if the
84964 department determines that any party engaging in activities subject to this title is violating or has
84965 violated or the department has reasonable cause to believe is about to violate:

- 84966 (i) any applicable provision of this title;
- 84967 (ii) any rule or order under this title;
- 84968 (iii) any condition imposed in writing in connection with the granting of any application
84969 or other request by the party; or
- 84970 (iv) any federal statute or regulation pertaining to consumer credit in effect at the time
84971 of the determination described in Subsection (1)(a).

84972 (b) If the department makes a determination described in Subsection (1)(a), the
84973 department may:

- 84974 (i) order the party to cease and desist from committing any further violations; and
- 84975 (ii) in the most serious instances, prohibit a party from making further extensions of
84976 credit to consumers.

84977 (c) The department shall by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title
84978 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter,
84979 designate which one or more federal statutes or regulations are federal statutes or regulations
84980 pertaining to consumer credit for purposes of this Subsection (1).

84981 (2) The department shall afford an opportunity for hearing upon request of any party

84982 described in Subsection (1)(a) if the request is filed with the department within 30 days after the
84983 party requesting the hearing first receives notice of the allegations.

84984 (3) (a) If the department determines that a practice that it has alleged is unlawful should
84985 be enjoined during the pendency of any proceedings incident to that allegation, the department
84986 may issue a temporary order:

84987 (i) at the commencement of the proceedings; or

84988 (ii) at any time after commencement of the proceeding.

84989 (b) The temporary order described in this Subsection (3) is fully binding on the party to
84990 whom the temporary order is directed until:

84991 (i) the proceedings are concluded; or

84992 (ii) the temporary order is modified or dissolved by the department.

84993 (c) Any party to whom a temporary order is directed may request a hearing concerning
84994 the order, which shall be held:

84995 (i) at the earliest mutually convenient time, but in no event more than ten days, after the
84996 party's request is received by the department; or

84997 (ii) at any other time the parties may mutually agree upon.

84998 (d) Every temporary order shall include findings and conclusions in support of the
84999 order.

85000 (e) A temporary order may not be issued unless the department finds from specific facts
85001 supported by sworn statement or the records of a party subject to the order that consumers are
85002 otherwise likely to suffer immediate and irreparable injury, loss, or damage before proceedings,
85003 incident to a final order, can be completed.

85004 (4) The department may not award damages or penalties against a creditor.

85005 (5) (a) Any order issued by the department under authority of this title shall:

85006 (i) be in writing;

85007 (ii) be delivered to or served upon the party affected; and

85008 (iii) specify its effective date, which may be immediate or at a later date.

85009 (b) An order described in Subsection (5)(a) shall remain in effect until:

- 85010 (i) withdrawn by the department; or
- 85011 (ii) terminated by a court order.
- 85012 (c) (i) An order of the department, upon application made on or after the effective date
- 85013 of the order by the department to a court of general jurisdiction in the county in which an office
- 85014 or the residence of the party is located, may be enforced ex parte and without notice by an order
- 85015 to comply entered by the court.
- 85016 (ii) If the proceeding involves more than one party and each of the parties do not have
- 85017 an office or residence in one county, the department may file its application in any county of this
- 85018 state where one of the parties has an office or residence.
- 85019 (iii) If no party to the proceeding has an office or residence in the state, the
- 85020 department's application shall be filed in the Third District Court.
- 85021 Section 2073. Section **70D-1-14** is amended to read:
- 85022 **70D-1-14. Enforcement by department -- Rulemaking -- Federal loan.**
- 85023 (1) The department has the power, within the limitations provided by [~~Title 63, Chapter~~
- 85024 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, to:
- 85025 (a) (i) receive and act on complaints;
- 85026 (ii) take action designed to obtain voluntary compliance with this chapter; or
- 85027 (iii) commence proceedings on its own initiative to enforce compliance with this
- 85028 chapter;
- 85029 (b) counsel persons and groups on their rights and duties under this chapter;
- 85030 (c) adopt, amend, and repeal rules to:
- 85031 (i) restrict or prohibit lending or servicing practices which are misleading, unfair, or
- 85032 abusive;
- 85033 (ii) promote or assure fair and full disclosure of the terms and conditions of agreements
- 85034 and communications between mortgage lenders or servicers and borrowers; or
- 85035 (iii) promote or assure uniform application of or to resolve ambiguities in applicable
- 85036 state or federal laws or federal regulations; and
- 85037 (d) employ hearing examiners, clerks, and other employees and agents as necessary to

85038 perform its duties under this chapter.

85039 (2) A rule or any part of a rule adopted by the department pursuant to this chapter may
85040 not be determined by any judicial or other authority to be invalid in whole or in part unless the
85041 judicial or other authority expressly finds that the rule or a part of it:

85042 (a) is arbitrary, capricious, constitutes an abuse of discretion;

85043 (b) exceeds the authority granted to the department by this chapter; or

85044 (c) is otherwise unlawful.

85045 (3) (a) A person subject to this chapter violates this chapter if the person violates a
85046 federal law:

85047 (i) that is applicable to the person because of the activities that make the person subject
85048 to this chapter; and

85049 (ii) pursuant to the terms of the federal law in effect on the day the person violates the
85050 federal law.

85051 (b) The department shall by rule, made in accordance with [~~Title 63, Chapter 46a~~] Title
85052 63G, Chapter 3, Utah Administrative Rulemaking Act, and consistent with this chapter,
85053 designate which one or more federal laws are applicable to a person described in Subsection
85054 (3)(a).

85055 (c) (i) Notwithstanding the other provisions of this chapter, only the department may
85056 enforce or bring an action under this chapter for a violation described in this Subsection (3).

85057 (ii) The department may bring an action under this Subsection (3) in state court.

85058 Section 2074. Section **70D-1-16** is amended to read:

85059 **70D-1-16. Department orders.**

85060 (1) If the department determines that any person engaging in business as a mortgage
85061 lender, broker, or servicer is violating, has violated, or the department has reasonable cause to
85062 believe is about to violate any provision of this chapter or any rule of the department made
85063 under this chapter, the department may order the person to cease and desist from committing
85064 any further violations, and in the most serious instances may prohibit the person from continuing
85065 to engage in business as a mortgage lender, broker, or servicer.

85066 (2) The department shall afford an opportunity for hearing upon request of any person
85067 alleged to have violated this chapter if the request is filed with the department within 30 days
85068 after the person requesting the hearing first receives notice of the allegations.

85069 (3) (a) If the department determines that a practice which it has alleged is unlawful
85070 should be enjoined during the pendency of any proceedings incident to that allegation, it may
85071 issue a temporary order at the commencement of the proceedings or at any time thereafter
85072 which is fully binding on the person to whom the temporary order is directed until the
85073 proceedings are concluded or the temporary order is modified or dissolved by the department.

85074 (b) Any person to whom a temporary order is directed may request a hearing
85075 concerning the order, which shall be held at the earliest mutually convenient time, but in no
85076 event more that ten days after the person's request is received by the department unless the
85077 department and the person requesting the hearing mutually agree to a later time.

85078 (c) Every temporary order shall include findings and conclusions in support of it.

85079 (d) For purposes of Section [~~63-46b-20~~] 63G-4-502, an immediate and significant
85080 danger to the public health, safety, or welfare exists if the department finds from specific facts
85081 supported by sworn statement or the records of a person subject to the order that loan
85082 applicants or mortgagors are otherwise likely to suffer immediate and irreparable injury, loss, or
85083 damage before proceedings incident to a final order can be completed.

85084 (4) The department may not award damages or penalties against a mortgage lender,
85085 broker, or servicer.

85086 (5) (a) Any order issued by the department under authority of this chapter shall be in
85087 writing, be delivered to or served upon the person affected, and specify its effective date, which
85088 may be immediate or at a later date.

85089 (b) Orders shall remain in effect until withdrawn by the department or until terminated
85090 by a court order. The order of the department, upon application made on or after its effective
85091 date to the Third District Court, or in any other district court, may be enforced ex parte and
85092 without notice by an order to comply entered by the court.

85093 Section 2075. Section **70D-1-17** is amended to read:

85094 **70D-1-17. Relief from department order.**

85095 Any person aggrieved by any rule, order, temporary order, decision, ruling, or other act
85096 or failure to act by the department under this chapter is entitled to judicial review as provided
85097 under [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act.

85098 Section 2076. Section **71-7-3** is amended to read:

85099 **71-7-3. Development, operation, and maintenance of Utah Veterans' Cemetery**
85100 **and Memorial Park -- Responsibilities of Department of Veterans' Affairs -- Costs --**
85101 **Definition.**

85102 (1) The Department of Veterans' Affairs, in consultation with the Veterans' Memorial
85103 Park Board, shall develop, operate, and maintain a veterans' cemetery and memorial park.

85104 (2) To help pay the costs of developing, constructing, operating, and maintaining a
85105 veterans' cemetery and memorial park, the Department of Veterans' Affairs may:

85106 (a) by following the procedures and requirements of [~~Title 63, Chapter 38e~~] Title 63J,
85107 Chapter 5, Federal Funds Procedures, receive federal funds, and may receive state funds,
85108 contributions from veterans' organizations, and other private donations; and

85109 (b) charge fees for at least the cost of the burial of veterans' spouses and other persons,
85110 whom the department and the Veterans' Memorial Park Board determines are eligible to be
85111 buried in a veterans' cemetery established by the state.

85112 (3) As used in this chapter, "veteran" has the same meaning as in Section 71-8-1.

85113 Section 2077. Section **71-8-2** is amended to read:

85114 **71-8-2. Department of Veterans' Affairs created -- Appointment of executive**
85115 **director -- Department responsibilities.**

85116 (1) There is created the Department of Veterans' Affairs.

85117 (2) The governor shall appoint an executive director for the department, subject to
85118 Senate confirmation, from a list of qualified veterans provided by the Veterans' Advisory
85119 Council. Any veteran or veteran's group may submit names to the council for consideration.

85120 (3) The department shall:

85121 (a) conduct and supervise all veteran activities as provided in this title; and

85122 (b) adopt rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85123 Administrative Rulemaking Act, to carry out the provisions of this title.

85124 Section 2078. Section **71-11-5** is amended to read:

85125 **71-11-5. Operation of homes -- Rulemaking authority -- Selection of**
85126 **administrator.**

85127 (1) The department shall, subject to the approval of the executive director:

85128 (a) establish appropriate criteria for the admission and discharge of residents for each
85129 home, subject to the requirements in Section 71-11-6 and criteria set by the U.S. Department of
85130 Veterans' Affairs;

85131 (b) establish a schedule of charges for each home in cases where residents have
85132 available resources;

85133 (c) establish standards for the operation of the homes not inconsistent with standards
85134 set by the United States Department of Veterans Affairs;

85135 (d) make rules to implement this chapter in accordance with [~~Title 63, Chapter 46a~~]
85136 Title 63G, Chapter 3, Utah Administrative Rulemaking Act; and

85137 (e) ensure that the homes are licensed in accordance with Title 26, Chapter 21, Health
85138 Care Facility Licensing and Inspection Act, and 38 U.S.C. Sec. 1742(a).

85139 (2) The department shall, after reviewing recommendations of the board, appoint an
85140 administrator for each home.

85141 Section 2079. Section **72-1-201** is amended to read:

85142 **72-1-201. Creation of Department of Transportation -- Functions, powers, duties,**
85143 **rights, and responsibilities.**

85144 There is created the Department of Transportation which shall:

85145 (1) have the general responsibility for planning, research, design, construction,
85146 maintenance, security, and safety of state transportation systems;

85147 (2) provide administration for state transportation systems and programs;

85148 (3) implement the transportation policies of the state;

85149 (4) plan, develop, construct, and maintain state transportation systems that are safe,

85150 reliable, environmentally sensitive, and serve the needs of the traveling public, commerce, and
85151 industry;

85152 (5) establish standards and procedures regarding the technical details of administration
85153 of the state transportation systems as established by statute and administrative rule;

85154 (6) advise the governor and the Legislature about state transportation systems needs;

85155 (7) coordinate with utility companies for the reasonable, efficient, and cost-effective
85156 installation, maintenance, operation, relocation, and upgrade of utilities within state highway
85157 rights-of-way; and

85158 (8) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85159 Administrative Rulemaking Act, make policy and rules for the administration of the department,
85160 state transportation systems, and programs.

85161 Section 2080. Section **72-1-211** is amended to read:

85162 **72-1-211. Department to develop strategic initiatives -- Report -- Rulemaking.**

85163 (1) The executive director shall develop strategic initiatives for the department.

85164 (2) The strategic initiatives developed under Subsection (1) shall include consideration
85165 of the following factors:

85166 (a) corridor preservation;

85167 (b) development of new transportation capacity projects;

85168 (c) long-term maintenance and operations of the transportation system;

85169 (d) safety;

85170 (e) incident management; and

85171 (f) homeland security.

85172 (3) (a) The executive director or the executive director's designee shall report the
85173 strategic initiatives of the department developed under Subsection (1) to the Transportation
85174 Commission.

85175 (b) The report required under Subsection (3)(a) shall include the measure that will be
85176 used to determine whether the strategic initiatives have been achieved.

85177 (4) After compliance with Subsection (3) and in accordance with [~~Title 63, Chapter~~

85178 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the department shall make
85179 rules establishing the strategic initiatives developed under this part.

85180 Section 2081. Section **72-1-303** is amended to read:

85181 **72-1-303. Duties of commission.**

85182 The commission has the following duties:

85183 (1) determining priorities and funding levels of projects in the state transportation
85184 systems for each fiscal year based on project lists compiled by the department;

85185 (2) determining additions and deletions to state highways under Chapter 4, Designation
85186 of State Highways Act;

85187 (3) holding public hearings and otherwise providing for public input in transportation
85188 matters;

85189 (4) making policies and rules in accordance with [~~Title 63, Chapter 46a]~~ Title 63G,
85190 Chapter 3, Utah Administrative Rulemaking Act, necessary to perform the commission's duties
85191 described under this section;

85192 (5) in accordance with Section [~~63-46b-12]~~ 63G-4-301, reviewing orders issued by the
85193 executive director in adjudicative proceedings held in accordance with [~~Title 63, Chapter 46b]~~
85194 Title 63G, Chapter 4, Administrative Procedures Act;

85195 (6) advising the department in state transportation systems policy;

85196 (7) approving settlement agreements of condemnation cases subject to Section
85197 [~~63-38b-401]~~ 63G-10-401;

85198 (8) in accordance with Section 17B-2a-807, appointing a commissioner to serve as a
85199 nonvoting, ex officio member on the board of trustees of a public transit district;

85200 (9) in accordance with Section 17B-2a-808, reviewing, at least annually, the short-term
85201 and long-range public transit plans; and

85202 (10) reviewing administrative rules made, amended, or repealed by the department.

85203 Section 2082. Section **72-1-304** is amended to read:

85204 **72-1-304. Written project prioritization process for new transportation capacity**
85205 **projects -- Rulemaking.**

85206 (1) The Transportation Commission, in consultation with the department and the
85207 metropolitan planning organizations as defined in Section 72-1-208.5, shall develop a written
85208 prioritization process for the prioritization of new transportation capacity projects that are or
85209 will be part of the state highway system under Chapter 4, Part 1, State Highways.

85210 (2) The following shall be included in the written prioritization process under
85211 Subsection (1):

85212 (a) a description of how the strategic initiatives of the department adopted under
85213 Section 72-1-211 are advanced by the written prioritization process;

85214 (b) a definition of the type of projects to which the written prioritization process
85215 applies;

85216 (c) specification of a weighted criteria system that is used to rank proposed projects and
85217 how it will be used to determine which projects will be prioritized;

85218 (d) specification of the data that is necessary to apply the weighted ranking criteria; and

85219 (e) any other provisions the commission considers appropriate.

85220 (3) In developing the written prioritization process, the commission:

85221 (a) shall seek and consider public comment by holding public meetings at locations
85222 throughout the state; and

85223 (b) may not consider local matching dollars as provided under Section 72-2-123 unless
85224 the state provides an equal opportunity to raise local matching dollars for state highway
85225 improvements within each county.

85226 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85227 Administrative Rulemaking Act, the Transportation Commission, in consultation with the
85228 department, shall make rules establishing the written prioritization process under Subsection (1).

85229 (5) The commission shall submit the proposed rules under this section to a committee
85230 or task force designated by the Legislative Management Committee for review prior to taking
85231 final action on the proposed rules or any proposed amendment to the rules described in
85232 Subsection (4).

85233 Section 2083. Section **72-2-109** is amended to read:

85234 **72-2-109. Rules for uniform accounting -- Apportionment and use of class B and**
 85235 **class C road funds -- Compliance with federal-aid provisions -- Duties of department.**

85236 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
 85237 Administrative Rulemaking Act, the department shall make rules providing for uniform
 85238 accounting of funds to be expended upon class B and C roads as required by the federal
 85239 government under Title 23, United States Code Annotated, relating to federal aid for highway
 85240 purposes together with all amendatory acts.

85241 (2) The department shall cooperate with the county governing bodies and the governing
 85242 officials of the cities and towns in the apportionment and use of class B and C road funds.

85243 Section 2084. Section **72-2-111** is amended to read:

85244 **72-2-111. Assent to federal acts on federal aid for highway purposes --**
 85245 **Department to represent state -- Pledge of funds -- Rulemaking authority -- Contracts for**
 85246 **energy conservation.**

85247 (1) (a) The Legislature assents to all the provisions of Title 23, Highways, U.S.C.,
 85248 relating to federal aid for highway purposes, and all amendatory acts.

85249 (b) The department may:

85250 (i) enter into a contract or agreement with the United States government relating to the
 85251 survey, construction, and maintenance of highways under a federal act;

85252 (ii) submit a scheme or program of construction and maintenance required by a federal
 85253 agency; and

85254 (iii) do any other thing necessary to fully carry out the cooperation contemplated and
 85255 provided for by a federal act.

85256 (c) The good faith of the state is pledged to make available sufficient funds to match the
 85257 sums apportioned to the state by the United States government:

85258 (i) for the construction of federal-aid highways; and

85259 (ii) to provide adequate maintenance for federal-aid highways.

85260 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

85261 Administrative Rulemaking Act, the department may make rules to encourage car pools and van

85262 pools in order to save energy.

85263 (3) The department may contract with individuals, associations, or corporations to
85264 accomplish energy conservation and encouragement of car and van pooling.

85265 Section 2085. Section **72-2-113** is amended to read:

85266 **72-2-113. Rulemaking for cost limitations on contracts -- Auditing for**
85267 **compliance -- Federal accounting and audit standards.**

85268 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85269 Administrative Rulemaking Act, the department may make rules for determining the allowability
85270 of costs included in contracts entered into by the department for engineering and design
85271 services. The rules shall comply with the provisions of 23 U.S.C. Section 112.

85272 (2) The department may require a provider of engineering or design services to submit
85273 annual audits or to submit to audits to determine compliance with the rules made under
85274 Subsection (1). The audits may not be duplicative of federal audits under the Federal
85275 Acquisition Regulations System, 48 C.F.R. Part 31.

85276 (3) All engineering and design contracts and subcontracts entered into by the
85277 department shall be accounted for and audited in compliance with the Federal Acquisition
85278 Regulations System, 48 C.F.R. Part 31.

85279 Section 2086. Section **72-2-117** is amended to read:

85280 **72-2-117. Transportation Corridor Preservation Revolving Loan Fund --**
85281 **Distribution -- Repayment -- Rulemaking.**

85282 (1) There is created the Transportation Corridor Preservation Revolving Loan Fund
85283 within the Transportation Fund.

85284 (2) The fund shall be funded from the following sources:

85285 (a) motor vehicle rental tax imposed under Section 59-12-1201;

85286 (b) appropriations made to the fund by the Legislature;

85287 (c) contributions from other public and private sources for deposit into the fund;

85288 (d) interest earnings on cash balances;

85289 (e) all monies collected for repayments and interest on fund monies;

85290 (f) all monies collected from rents and sales of real property acquired with fund monies;
85291 and

85292 (g) proceeds from general obligation bonds, revenue bonds, or other obligations as
85293 authorized by Title 63B, Bonds.

85294 (3) All monies appropriated to the Transportation Corridor Preservation Revolving
85295 Loan Fund are nonlapsing.

85296 (4) (a) The commission shall authorize the expenditure of fund monies to allow the
85297 department to acquire real property or any interests in real property for state, county, and
85298 municipal transportation corridors subject to:

- 85299 (i) monies available in the fund;
- 85300 (ii) rules made under Subsection (7); and
- 85301 (iii) Subsection (9).

85302 (b) Fund monies may be used to pay interest on debts incurred in accordance with this
85303 section.

85304 (5) Administrative costs for transportation corridor preservation shall be paid from the
85305 fund.

85306 (6) The department:

85307 (a) may apply to the commission under this section for monies from the Transportation
85308 Corridor Preservation Revolving Loan Fund for a specified transportation corridor project,
85309 including for county and municipal projects; and

85310 (b) shall repay the fund monies authorized for the project to the fund as required under
85311 Subsection (7).

85312 (7) The commission shall:

85313 (a) administer the Transportation Corridor Preservation Revolving Loan Fund to:

- 85314 (i) preserve transportation corridors;
- 85315 (ii) promote long-term statewide transportation planning;
- 85316 (iii) save on acquisition costs; and
- 85317 (iv) promote the best interests of the state in a manner which minimizes impact on

- 85318 prime agricultural land;
- 85319 (b) prioritize fund monies based on considerations, including:
- 85320 (i) areas with rapidly expanding population;
- 85321 (ii) the willingness of local governments to complete studies and impact statements that
- 85322 meet department standards;
- 85323 (iii) the preservation of corridors by the use of local planning and zoning processes;
- 85324 (iv) the availability of other public and private matching funds for a project; and
- 85325 (v) the cost-effectiveness of the preservation projects;
- 85326 (c) designate high priority corridor preservation projects in cooperation with a
- 85327 metropolitan planning organization;
- 85328 (d) administer the program for the purposes provided in this section;
- 85329 (e) prioritize fund monies in accordance with this section; and
- 85330 (f) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 85331 Administrative Rulemaking Act, establishing:
- 85332 (i) the procedures for the awarding of fund monies;
- 85333 (ii) the procedures for the department to apply for transportation corridor preservation
- 85334 monies for projects; and
- 85335 (iii) repayment conditions of the monies to the fund from the specified project funds.
- 85336 (8) (a) The proceeds from any bonds or other obligations secured by revenues of the
- 85337 Transportation Corridor Preservation Revolving Loan Fund shall be used for:
- 85338 (i) the acquisition of real property in hardship cases; and
- 85339 (ii) any of the purposes authorized for funds in the Transportation Corridor
- 85340 Preservation Revolving Loan Fund under this section.
- 85341 (b) The commission shall pledge the necessary part of the revenues of the
- 85342 Transportation Corridor Preservation Revolving Loan Fund to the payment of principal of and
- 85343 interest on the bonds or other obligations.
- 85344 (9) (a) The department may not apply for monies under this section unless the highway
- 85345 authority has an access management policy or ordinance in effect that meets the requirements

85346 under Subsection (9)(b).

85347 (b) The access management policy or ordinance shall:

85348 (i) be for the purpose of balancing the need for reasonable access to land uses with the
85349 need to preserve the smooth flow of traffic on the highway system in terms of safety, capacity,
85350 and speed; and

85351 (ii) include provisions:

85352 (A) limiting the number of conflict points at driveway locations;

85353 (B) separating conflict areas;

85354 (C) reducing the interference of through traffic;

85355 (D) spacing at-grade signalized intersections; and

85356 (E) providing for adequate on-site circulation and storage.

85357 (c) The department shall develop a model access management policy or ordinance that
85358 meets the requirements of this Subsection (9) for the benefit of a county or municipality under
85359 this section.

85360 (10) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85361 Administrative Rulemaking Act, the commission shall make rules establishing a corridor
85362 preservation advisory council.

85363 (b) The corridor preservation advisory council shall:

85364 (i) assist with and help coordinate the corridor preservation efforts of the department
85365 and local governments;

85366 (ii) provide recommendations and priorities concerning corridor preservation and the
85367 use of fund monies to the department and to the commission; and

85368 (iii) include members designated by each metropolitan planning organization in the state
85369 to represent local governments that are involved with corridor preservation through official
85370 maps and planning.

85371 Section 2087. Section **72-2-122** is amended to read:

85372 **72-2-122. Aeronautics Construction Revolving Loan Fund -- Distribution --**
85373 **Repayment -- Rulemaking.**

85374 (1) There is created the Aeronautics Construction Revolving Loan Fund within the
85375 Transportation Fund.

85376 (2) The fund shall include monies from the following sources:

85377 (a) appropriations made to the fund by the Legislature;

85378 (b) contributions from other public and private sources for deposit into the fund;

85379 (c) interest earnings on cash balances;

85380 (d) all monies collected for repayments and interest on fund monies; and

85381 (e) proceeds from revenue bonds or other obligations issued in accordance with [~~Title~~

85382 ~~63, Chapter 9a, State Building Ownership Act~~] Title 63B, Chapter 1, Part 3, State Building

85383 Ownership Authority Act, and Title 63B, Bonds.

85384 (3) All monies appropriated to the Aeronautics Construction Revolving Loan Fund are
85385 nonlapsing.

85386 (4) (a) The commission shall authorize the expenditure of fund monies for construction,
85387 major reconstruction, major renovation, or property acquisition of airports and airport runways
85388 for state, county, and municipal airports subject to:

85389 (i) monies available in the fund; and

85390 (ii) rules made under Subsection (7).

85391 (b) Fund monies may be used to pay interest on debts incurred in accordance with this
85392 section.

85393 (5) Administrative costs of the Aeronautics Construction Revolving Loan Fund shall be
85394 paid from the fund.

85395 (6) The Operations Division:

85396 (a) may apply to the commission under this section for monies from the Aeronautics
85397 Construction Revolving Loan Fund for a specified aeronautics project, including for county and
85398 municipal projects; and

85399 (b) shall repay the fund monies authorized for the project to the fund as required under
85400 Subsection (7).

85401 (7) The commission shall:

85402 (a) administer the Aeronautics Construction Revolving Loan Fund to promote
85403 long-term statewide aeronautics transportation;

85404 (b) prioritize fund monies based on considerations, including:
85405 (i) areas with rapidly expanding population;
85406 (ii) the willingness of local governments to:
85407 (A) complete studies and impact statements that meet department standards; and
85408 (B) preserve long-term airport operations by the use of local planning and zoning
85409 processes;

85410 (iii) the availability of other public and private matching funds for a project; and
85411 (iv) the cost-effectiveness of the projects; and

85412 (c) make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85413 Administrative Rulemaking Act, establishing:
85414 (i) the procedures for the awarding of fund monies;
85415 (ii) the procedures for the Operations Division to apply for Aeronautics Construction
85416 Revolving Loan Fund monies for projects; and
85417 (iii) repayment schedules and conditions of replacing the monies back into the fund.

85418 (8) For loans made under this section to a county or municipal airport, the Division of
85419 Finance shall:
85420 (a) collect and account for a loan made in accordance with this section; and
85421 (b) have custody of all loan documents evidencing indebtedness of the Aeronautics
85422 Construction Revolving Loan Fund, including all:
85423 (i) notes; and
85424 (ii) contracts.

85425 (9) (a) The proceeds from the revenue bonds or other obligations issued on revenues of
85426 the Aeronautics Construction Revolving Loan Fund shall be used for the purposes authorized
85427 for funds under this section.

85428 (b) The commission shall pledge the necessary part of the revenues of the Aeronautics
85429 Construction Revolving Loan Fund to the payment of principal of and interest on the revenue

85430 bonds or other obligations.

85431 Section 2088. Section **72-2-123** is amended to read:

85432 **72-2-123. Rules adopting guidelines -- Partnering to finance state highway**
85433 **capacity improvements -- Partnering proposals.**

85434 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85435 Administrative Rulemaking Act, the commission, in consultation with representatives of local
85436 government, shall make rules adopting guidelines for partnering with counties and municipalities
85437 for their help to finance state highway improvement projects through:

- 85438 (a) local matching dollars; or
- 85439 (b) other local participation methods.

85440 (2) The guidelines shall encourage partnering to help finance state highway
85441 improvement projects and provide for:

85442 (a) consideration of factors relevant to a decision to make a program adjustment
85443 including the potential to:

- 85444 (i) extend department resources to other needed projects;
- 85445 (ii) alleviate significant existing or future congestion or hazards to the traveling public;

85446 and

85447 (iii) address a need that is widely recognized by the public, elected officials, and
85448 transportation planners;

85449 (b) a process for submitting, evaluating, and hearing partnering proposals; and

85450 (c) keeping a public record of each proposal from initial submission to final disposition.

85451 (3) The commission shall submit the proposed rules under this section to a committee
85452 or task force designated by the Legislative Management Committee for review prior to taking
85453 final action on the proposed rules or any proposed amendment to the rules.

85454 Section 2089. Section **72-2-202** is amended to read:

85455 **72-2-202. Transportation Infrastructure Loan Fund -- Creation -- Use of monies.**

85456 (1) There is created a revolving loan fund entitled the Transportation Infrastructure
85457 Loan Fund.

85458 (2) The fund consists of monies generated from the following revenue sources:
85459 (a) appropriations made to the fund by the Legislature;
85460 (b) federal monies and grants that are deposited in the fund;
85461 (c) monies transferred to the fund by the commission from other monies available to the
85462 department;
85463 (d) state grants that are deposited in the fund;
85464 (e) contributions or grants from any other private or public sources for deposit into the
85465 fund; and
85466 (f) all monies collected from repayments of fund monies used for infrastructure loans or
85467 infrastructure assistance.

85468 (3) (a) The fund shall earn interest.
85469 (b) All interest earned on fund monies shall be deposited into the fund.

85470 (4) Monies in the fund shall be used by the department, as prioritized by the
85471 commission, only to:
85472 (a) provide infrastructure loans or infrastructure assistance; and
85473 (b) pay the department for the costs of administering the fund, providing infrastructure
85474 loans or infrastructure assistance, monitoring transportation projects, and obtaining repayments
85475 of infrastructure loans or infrastructure assistance.

85476 (5) (a) The department may establish separate accounts in the fund for infrastructure
85477 loans, infrastructure assistance, administrative and operating expenses, or any other purpose to
85478 implement this part.
85479 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85480 Administrative Rulemaking Act, the department may make rules governing how the fund and its
85481 accounts may be held by an escrow agent.

85482 (6) Fund monies shall be invested by the state treasurer as provided in Title 51, Chapter
85483 7, State Money Management Act, and the earnings from the investments shall be credited to the
85484 fund.

85485 Section 2090. Section **72-2-203** is amended to read:

85486 **72-2-203. Loans and assistance -- Authority -- Rulemaking.**

85487 (1) Monies in the fund may be used by the department, as prioritized by the
85488 commission, to make infrastructure loans or to provide infrastructure assistance to any public
85489 entity for any purpose consistent with any applicable constitutional limitation.

85490 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85491 Administrative Rulemaking Act, the commission shall make rules providing procedures and
85492 standards for making infrastructure loans and providing infrastructure assistance.

85493 Section 2091. Section **72-2-204** is amended to read:

85494 **72-2-204. Loan program procedures -- Repayment.**

85495 (1) A public entity may obtain an infrastructure loan from the department, upon
85496 approval by the commission, by entering into a loan contract with the department secured by
85497 legally issued bonds, notes, or other evidence of indebtedness validly issued under state law,
85498 including pledging all or any portion of a revenue source to the repayment of the loan.

85499 (2) The public entity shall repay the infrastructure loan in accordance with the loan
85500 contract from any of the following sources:

85501 (a) transportation project revenues, including special assessment revenues;

85502 (b) general funds of the public entity;

85503 (c) monies withheld under Subsection (5); or

85504 (d) any other legally available revenues.

85505 (3) An infrastructure loan contract with a public entity may provide that a portion of the
85506 proceeds of the loan may be applied to fund a reserve fund to secure the repayment of the loan.

85507 (4) Before obtaining an infrastructure loan, a county or municipality shall:

85508 (a) publish its intention to obtain an infrastructure loan at least once in accordance with
85509 the publication of notice requirements under Section 11-14-316; and

85510 (b) adopt an ordinance or resolution authorizing the infrastructure loan.

85511 (5) (a) If a public entity fails to comply with the terms of its infrastructure loan contract,
85512 the department may seek any legal or equitable remedy to obtain compliance or payment of
85513 damages.

85514 (b) If a public entity fails to make infrastructure loan payments when due, the state
85515 shall, at the request of the department, withhold an amount of monies due to the public entity
85516 and deposit the withheld monies in the fund to pay the amounts due under the contract.

85517 (c) The department may elect when to request the withholding of monies under this
85518 Subsection (5).

85519 (6) All loan contracts, bonds, notes, or other evidence of indebtedness securing the loan
85520 contracts shall be held, collected, and accounted for in accordance with Section [~~63-65-4~~]
85521 63B-1b-202.

85522 Section 2092. Section **72-3-109** is amended to read:

85523 **72-3-109. Division of responsibility with respect to state highways in cities and**
85524 **towns.**

85525 (1) Except as provided in Subsection (3), the jurisdiction and responsibility of the
85526 department and the municipalities for state highways within municipalities is as follows:

85527 (a) The department has jurisdiction over and is responsible for the construction and
85528 maintenance of:

85529 (i) the portion of the state highway located between the back of the curb on either side
85530 of the state highway; or

85531 (ii) if there is no curb, the traveled way, its contiguous shoulders, and appurtenances.

85532 (b) The department may widen or improve state highways within municipalities.

85533 (c) (i) A municipality has jurisdiction over all other portions of the right-of-way and is
85534 responsible for construction and maintenance of the right-of-way.

85535 (ii) If a municipality grants permission for the installation of any pole, pipeline, conduit,
85536 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
85537 character within the portion of the right-of-way under its jurisdiction:

85538 (A) the permission shall contain the condition that any installation will be removed from
85539 the right-of-way at the request of the municipality; and

85540 (B) the municipality shall cause any installation to be removed at the request of the
85541 department when the department finds the removal necessary:

85542 (I) to eliminate a hazard to traffic safety;

85543 (II) for the construction and maintenance of the state highway; or

85544 (III) to meet the requirements of federal regulations.

85545 (d) If it is necessary that a utility, as defined in Section 72-6-116, be relocated,

85546 reimbursement shall be made for the relocation as provided for in Section 72-6-116.

85547 (e) (i) The department shall construct curbs, gutters, and sidewalks on the state

85548 highways if necessary for the proper control of traffic, driveway entrances, or drainage.

85549 (ii) If a state highway is widened or altered and existing curbs, gutters, or sidewalks are

85550 removed, the department shall replace the curbs, gutters, or sidewalks.

85551 (f) The department may furnish and install street lighting systems for state highways,

85552 but their operation and maintenance is the responsibility of the municipality.

85553 (g) If new storm sewer facilities are necessary in the construction and maintenance of

85554 the state highways, the cost of the storm sewer facilities shall be borne by the state and the

85555 municipality in a proportion mutually agreed upon between the department and the municipality.

85556 (2) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

85557 Administrative Rulemaking Act, the department shall make rules governing the location and

85558 construction of approach roads and driveways entering the state highway. The rules shall:

85559 (i) include criteria for the design, location, and spacing of approach roads and

85560 driveways based on the functional classification of the adjacent highway, including the urban or

85561 rural nature of the area;

85562 (ii) be consistent with the "Manual on Uniform Traffic Control Devices" and the model

85563 access management policy or ordinance developed by the department under Subsection

85564 72-2-117(9);

85565 (iii) include procedures for:

85566 (A) the application and review of a permit for approach roads and driveways including

85567 review of related site plans that have been recommended according to local ordinances; and

85568 (B) approving, modifying, denying, or appealing the modification or denial of a permit

85569 for approach roads and driveways within 45 days of receipt of the application; and

- 85570 (iv) require written justifications for modifying or denying a permit.
- 85571 (b) The department may delegate the administration of the rules to the highway
- 85572 authorities of a municipality.
- 85573 (c) In accordance with this section and Section 72-7-104, an approach road or driveway
- 85574 may not be constructed on a state highway without a permit issued under this section.
- 85575 (3) The department has jurisdiction and control over the entire right-of-way of
- 85576 interstate highways within municipalities and is responsible for the construction, maintenance,
- 85577 and regulation of the interstate highways within municipalities.

85578 Section 2093. Section **72-3-207** is amended to read:

85579 **72-3-207. State Park Access Highways Improvement Program -- Distribution --**
85580 **Rulemaking.**

85581 (1) There is created the State Park Access Highways Improvement Program within the
85582 department.

85583 (2) The program shall be funded from the following revenue sources:

85584 (a) any voluntary contributions received for improvements to state park access
85585 highways; and

85586 (b) appropriations made to the program by the Legislature.

85587 (3) The department may use the program monies as matching grants to a county or
85588 municipality for the improvement of class B or class C roads specified as state park access
85589 highways under this part subject to:

85590 (a) monies available in the program;

85591 (b) prioritization of the program monies by the commission;

85592 (c) a county or municipality providing at least 50% of the cost of each improvement
85593 project in matching funds; and

85594 (d) rules made under Subsection (4).

85595 (4) The department shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
85596 63G, Chapter 3, Utah Administrative Rulemaking Act, necessary to administer the program and
85597 to establish the procedures for a county or municipality to apply for a grant of program monies.

85598 (5) All appropriations made to the program by the Legislature are nonlapsing.

85599 (6) The department shall commit funds for state park access highway projects for the
85600 amount of funding currently programmed in a funded year in the 2007 Statewide Transportation
85601 Improvement Program.

85602 Section 2094. Section **72-4-102** is amended to read:

85603 **72-4-102. Additions to or deletions from state highway system -- Designation of**
85604 **highways as state highways between sessions.**

85605 (1) (a) The Legislature may add to or delete highways or sections of highways from the
85606 state highway system.

85607 (b) The department shall annually submit to the Legislature a list of highways or
85608 sections of highways the commission recommends for addition to or deletion from the state
85609 highway system.

85610 (c) All recommendations under Subsection (1)(b) shall be based on:

85611 (i) the criteria for state highways under Section 72-4-102.5;

85612 (ii) funding and operational considerations identified under Subsection (3);

85613 (iii) efficiency of highway operations and maintenance; and

85614 (iv) other factors the commission determines are appropriate, in consultation with the
85615 department and the highway authorities involved in the transfer.

85616 (2) Between general sessions of the Legislature, highways may be designated as state
85617 highways or deleted from the state highway system if:

85618 (a) approved by the commission in accordance with:

85619 (i) the criteria for state highways under Section 72-4-102.5;

85620 (ii) funding and operational considerations identified under Subsection (3);

85621 (iii) efficiency of highway operations and maintenance; and

85622 (iv) other factors the commission determines are appropriate, in consultation with the
85623 department and the highway authorities involved in the transfer;

85624 (b) a deletion is agreed upon by all highway authorities involved in the transfer; and

85625 (c) the highways are included in the list of recommendations submitted to the

85626 Legislature in the next year for legislative approval or disapproval.

85627 (3) All highway authorities involved in a highway transfer under this section shall
85628 consider available highway financing levels and operational abilities for the maintenance and
85629 construction of a transferred highway.

85630 (4) (a) The department shall no later than June 30 report to the Transportation Interim
85631 Committee of the Legislature any proposed additions to or deletions from the state highway
85632 system whether proposed by the department or another highway authority.

85633 (b) The commission shall submit to the Transportation Interim Committee of the
85634 Legislature on or before November 1 of each year:

85635 (i) the list of highways recommended for transfer under Subsection (1);

85636 (ii) a list of potential additions to or deletions from the state highway system that are
85637 currently under consideration; and

85638 (iii) a list of additions to or deletions from the state highway system that were proposed
85639 but not agreed to by the affected highway authorities.

85640 (c) The recommendations shall include:

85641 (i) any fiscal and funding recommendations of each highway authority involved in the
85642 transfer of a highway or section of a highway; and

85643 (ii) a cost estimate, fiscal analysis, and funding recommendation, or recommendation for
85644 further study from the Office of the Legislative Fiscal Analyst.

85645 (5) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85646 Administrative Rulemaking Act, the commission shall make rules, in consultation with the
85647 department and local highway authorities, establishing a process for a highway authority to
85648 propose an addition to or deletion from the state highway system.

85649 (b) The rules established under Subsection (5)(a) shall include provisions for:

85650 (i) notification to highway authorities of the department's intent to:

85651 (A) collect proposed additions to or deletions from the state highway system; and

85652 (B) report the proposals to the Transportation Interim Committee as required under
85653 Subsection (4)(a);

85654 (ii) public comment regarding a proposed addition to or deletion from the state highway
85655 system under this section during a commission meeting held under Section 72-1-302;

85656 (iii) notification to any affected highway authority of an addition to or deletion from the
85657 state highway system under consideration prior to the meeting held under Subsection (5)(b)(ii);
85658 and

85659 (iv) opportunity for a highway authority to initiate consideration of additions to or
85660 deletions from the state highway system by the commission.

85661 Section 2095. Section **72-4-102.5** is amended to read:

85662 **72-4-102.5. Definitions -- Rulemaking -- Criteria for state highways.**

85663 (1) As used in this section:

85664 (a) "arterial highway" has the same meaning as provided under the Federal Highway
85665 Administration Functional Classification Guidelines;

85666 (b) "collector highway," "collector road," or "collector street" has the same meaning as
85667 provided under the Federal Highway Administration Functional Classification Guidelines;

85668 (c) "local street" or "local road" means a highway that is not an arterial highway or a
85669 collector highway and that is under the jurisdiction of a county or municipality;

85670 (d) "major collector highway," "major collector road," or "major collector street" has
85671 the same meaning as provided under the Federal Highway Administration Functional
85672 Classification Guidelines;

85673 (e) "minor collector road" or "minor collector street" has the same meaning as provided
85674 under the Federal Highway Administration Functional Classification Guidelines;

85675 (f) "minor arterial highway" or "minor arterial street" has the same meaning as provided
85676 under the Federal Highway Administration Functional Classification Guidelines;

85677 (g) "principal arterial highway" has the same meaning as provided under the Federal
85678 Highway Administration Functional Classification Guidelines;

85679 (h) "rural area" has the same meaning as provided under the Federal Highway
85680 Administration Functional Classification Guidelines;

85681 (i) "tourist area" means an area of the state frequented by tourists for the purpose of

85682 visiting national parks, national recreation areas, national monuments, or state parks; and

85683 (j) "urban area" has the same meaning as provided under the Federal Highway
85684 Administration Functional Classification Guidelines.

85685 (2) (a) Subject to the provisions of Title 72, Chapter 3, Highway Jurisdiction and
85686 Classification Act, and this chapter, a state highway shall meet the criteria provided under this
85687 section.

85688 (b) The highway authorities of this state or their representatives shall cooperate to
85689 match the criteria provided under this section with the state highways designated under this title.

85690 (c) The primary function of state highways is to provide for the safe and efficient
85691 movement of traffic, while providing access to property is a secondary function.

85692 (d) The primary function of county and municipal highways is to provide access to
85693 property.

85694 (e) For purposes of this section, if a highway is within ten miles of a location identified
85695 under this section, the location is considered to be served by that highway.

85696 (3) A state highway shall:

85697 (a) serve a statewide purpose by accommodating interstate movement of traffic or
85698 interregion movement of traffic within the state;

85699 (b) primarily move higher traffic volumes over longer distances than highways under
85700 local jurisdiction;

85701 (c) connect major population centers;

85702 (d) be spaced so that:

85703 (i) all developed areas in the state are within a reasonable distance of a state highway;

85704 and

85705 (ii) duplicative state routes are avoided;

85706 (e) provide state highway system continuity and efficiency of state highway system
85707 operation and maintenance activities;

85708 (f) include all interstate routes, all expressways, and all highways on the National
85709 Highway System as designated by the Federal Highway Administration under 23 C.F.R. Section

- 85710 470, Subpart A, as of January 1, 2005; and
- 85711 (g) exclude parking lots, driving ranges, and campus roads.
- 85712 (4) In addition to the provisions of Subsection (3), in rural areas a state highway shall:
- 85713 (a) include all minor arterial highways;
- 85714 (b) include a major collector highway that:
- 85715 (i) serves a county seat;
- 85716 (ii) serves a municipality with a population of 1,000 or more;
- 85717 (iii) serves a major industrial, commercial, or recreation areas that generate traffic
- 85718 volumes equivalent to a population of 1,000 or more;
- 85719 (iv) provides continuity for the state highway system by providing major connections
- 85720 between other state highways;
- 85721 (v) provides service between two or more counties; or
- 85722 (vi) serves a compelling statewide public safety interest; and
- 85723 (c) exclude all minor collector streets and local roads.
- 85724 (5) In addition to the provisions of Subsection (3), in urban areas a state highway shall:
- 85725 (a) include all principal arterial highways;
- 85726 (b) include a minor arterial highway that:
- 85727 (i) provides continuity for the state highway system by providing major connections
- 85728 between other state highways;
- 85729 (ii) is a route that is expected to be a principal arterial highway within ten years; or
- 85730 (iii) is needed to provide access to state highways; and
- 85731 (c) exclude all collector highways and local roads.
- 85732 (6) In addition to the provisions of Subsections (3) and (4), in tourist areas, a state
- 85733 highway:
- 85734 (a) shall include a highway that:
- 85735 (i) serves a national park or a national recreational area; or
- 85736 (ii) serves a national monument with visitation greater than 100,000 per year; or
- 85737 (b) may include a highway that:

85738 (i) serves a state park with visitation greater than 100,000 per year; or
85739 (ii) serves a recreation site with visitation greater than 100,000 per year.
85740 (7) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85741 Administrative Rulemaking Act, the department shall make rules:
85742 (i) establishing and defining a functional classification of highways for the purpose of
85743 implementing this section;
85744 (ii) defining and designating regionally significant arterial highways; and
85745 (iii) establishing an access management policy consistent with the functional
85746 classification of roadways.
85747 (b) The definitions under Subsection (7)(a) shall provide a separate functional
85748 classification system for urban and rural highways recognizing the unique differences in the
85749 character of services provided by urban and rural highways.
85750 (c) The rules under Subsection (7)(a):
85751 (i) shall conform as nearly as practical to the Federal Highway Administration
85752 Functional Classification Guidelines; and
85753 (ii) may incorporate by reference, in whole or in part, the federal guidelines under
85754 Subsection (7)(c)(i).
85755 Section 2096. Section **72-4-303** is amended to read:
85756 **72-4-303. Powers and duties of the Utah State Scenic Byway Committee --**
85757 **Rulemaking authority -- Designation on state maps -- Outdoor advertising.**
85758 (1) The committee shall have the responsibility to:
85759 (a) administer a coordinated scenic byway program within the state that:
85760 (i) preserves and protects the intrinsic qualities described in Subsection (1)(b) unique to
85761 scenic byways;
85762 (ii) enhances recreation; and
85763 (iii) promotes economic development through tourism and education;
85764 (b) ensure that a highway nominated for a scenic byway designation possesses at least
85765 one of the following six intrinsic qualities:

- 85766 (i) scenic quality;
- 85767 (ii) natural quality;
- 85768 (iii) historic quality;
- 85769 (iv) cultural quality;
- 85770 (v) archaeological quality; or
- 85771 (vi) recreational quality;
- 85772 (c) designate highways as state scenic byways from nominated highways within the
- 85773 state if the committee determines that the highway possesses the criteria for a state scenic
- 85774 byway; and
- 85775 (d) remove the designation of a highway as a scenic byway if the committee determines
- 85776 that the highway no longer meets the criteria under which it was designated.
- 85777 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 85778 Administrative Rulemaking Act, the department shall make rules in consultation with the
- 85779 committee:
- 85780 (a) for the administration of a scenic byway program;
- 85781 (b) establishing the criteria that a highway shall possess to be designated as a scenic
- 85782 byway, including the criteria described in Subsection (1)(b);
- 85783 (c) establishing the process for nominating a highway to be designated as a state scenic
- 85784 byway;
- 85785 (d) specifying the process for hearings to be conducted in the area of proposed
- 85786 designation prior to the highway being designated as a scenic byway;
- 85787 (e) identifying the highways within the state designated as scenic byways; and
- 85788 (f) establishing the process and criteria for removing the designation of a highway as a
- 85789 scenic byway.
- 85790 (3) The department shall designate scenic byway routes on future state highway maps.
- 85791 (4) A highway within the state designated as a scenic byway is subject to federal
- 85792 outdoor advertising regulations in accordance with 23 U.S.C. Sec. 131.
- 85793 Section 2097. Section **72-5-203** is amended to read:

85794 **72-5-203. Public easement or right of entry -- Grant -- Application -- Conditions.**

85795 (1) (a) (i) Subject to Section 53C-1-302 and Subsection 53C-1-204(1), a temporary
85796 public easement or right of entry is granted for each highway existing prior to January 1, 1992,
85797 that terminates at or within or traverses any state lands and that has been constructed and
85798 maintained or used by a responsible authority.

85799 (ii) The temporary public easement or right of entry granted under Subsection (1)(a)(i)
85800 is 100 feet wide for each class A and B highway.

85801 (b) Each easement shall remain in effect through June 30, 2004, or until a permanent
85802 easement or right of entry has been established under Subsection (2), whichever is greater.

85803 (2) (a) The School and Institutional Trust Lands Administration and the Division of
85804 Forestry, Fire and State Lands shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title
85805 63G, Chapter 3, Utah Administrative Rulemaking Act, establishing an application process for a
85806 responsible authority to obtain a permanent easement or right of entry over any temporary
85807 public easement granted under Subsection (1), subject to the provisions of Subsections (2)(b),
85808 (c), and (d).

85809 (b) A grant of a permanent easement or right of entry across sovereign lands shall be
85810 made upon a showing to the Division of Forestry, Fire and State Lands that continued use of
85811 the easement will provide a public benefit commensurate with the value of the permanent
85812 easement or right of entry.

85813 (c) A grant of a permanent easement or right of entry across trust lands shall be made
85814 upon a showing to the School and Institutional Trust Lands Administration that the grant is
85815 consistent with the state's fiduciary responsibilities under Section 53C-1-302 and Subsection
85816 53C-1-204(1).

85817 (d) A grant of a permanent easement or right of entry across state lands other than
85818 sovereign and trust lands shall be made upon a showing to the managing unit of state
85819 government that the continued use will provide a public benefit commensurate with the value of
85820 the easement and will not unreasonably interfere with the purposes for which the land was
85821 obtained or is now held.

85822 (3) The grant of the temporary public easement or right of entry under Subsection (1) is
85823 consistent with the trust responsibilities of the state and in the best interest of the state.

85824 (4) A responsible authority that has been granted a permanent easement or right of
85825 entry over state lands may maintain the permanent easement or right of entry for the uses to
85826 which the permanent easement or right of entry was put prior to and including January 1, 1992,
85827 subject to the right of the managing unit of state government or private party to relocate the
85828 permanent easement or right of entry.

85829 (5) The grant of a permanent easement or right of entry under this section is effective
85830 on the date the highway was originally constructed or established for public use.

85831 Section 2098. Section **72-5-306** is amended to read:

85832 **72-5-306. Assumption of risk -- Immunity -- Public safety.**

85833 (1) An R.S. 2477 right-of-way not designated under Section 72-3-102, 72-3-103, or
85834 72-3-104 as a Class A, B, or C road is traveled at the risk of the user.

85835 (2) The state and its political subdivisions do not waive immunity under [~~Title 63,~~
85836 ~~Chapter 30d]~~ Title 63G, Chapter 7, Governmental Immunity Act of Utah, for injuries or
85837 damages occurring in or associated with any R.S. 2477 right-of-way.

85838 (3) The state and its political subdivisions assume no liability for injury or damage
85839 resulting from a failure to maintain any:

85840 (a) R.S. 2477 right-of-way for vehicular travel; or

85841 (b) highway sign on an R.S. 2477 right-of-way.

85842 (4) If the state or any political subdivision of the state chooses to maintain an R.S. 2477
85843 right-of-way, the basic governmental objective involved in providing the improvements is the
85844 consistent promotion of public safety.

85845 (5) (a) The state recognizes that there are limited funds available to upgrade all R.S.
85846 2477 rights-of-way to applicable safety standards.

85847 (b) A decision by the state or a political subdivision of the state to allocate funds for
85848 maintaining an R.S. 2477 right-of-way is the result of evaluation and assigning of priorities for
85849 the promotion of public safety.

85850 (c) The state or a political subdivision of the state must use its judgment and expertise
85851 to evaluate which safety feature improvements should be made first. In making this policy
85852 determination the state or a political subdivision of the state may:

85853 (i) perform on-site inspections and weigh all factors relating to safety, including the
85854 physical characteristics and configuration of the R.S. 2477 right-of-way and the volume and
85855 type of traffic on the R.S. 2477 right-of-way; and

85856 (ii) consult with transportation experts who have expertise to make an evaluation of the
85857 relative dangerousness of R.S. 2477 rights-of-way within their jurisdiction.

85858 Section 2099. Section **72-5-309** is amended to read:

85859 **72-5-309. Acceptance of rights-of-way -- Notice of acknowledgment required.**

85860 (1) The governor or the governor's designee may assess whether the grant of the R.S.
85861 2477 has been accepted with regard to any right-of-way so as to vest title of the right-of-way in
85862 the state and the applicable political subdivision as provided for in Section 72-5-103.

85863 (2) If the governor or governor's designee concludes that the grant has been accepted as
85864 to any right-of-way, the governor or a designee shall issue a notice of acknowledgment of the
85865 acceptance of the R.S. 2477 grant as to that right-of-way.

85866 (3) A notice of acknowledgment of the R.S. 2477 grant shall include:

85867 (a) a statement of reasons for the acknowledgment;

85868 (b) a general description of the right-of-way or rights-of-way subject to the notice of
85869 acknowledgment, including the county in which it is located, and notice of where a center-line
85870 description derived from Global Positioning System data may be viewed or obtained;

85871 (c) a statement that the owner of the servient estate in the land over which the
85872 right-of-way or rights-of-way subject to the notice runs or any person with a competing
85873 dominant estate ownership claim may file a petition with the district court for a decision
85874 regarding the correctness or incorrectness of the acknowledgment; and

85875 (d) a statement of the time limit provided in Section 72-5-310 for filing a petition.

85876 (4) (a) (i) A notice of acknowledgment may be recorded in the office of the county
85877 recorder in the county where the right-of-way or rights-of-way exist.

85878 (ii) (A) A notice of acknowledgment recorded in the county recorder's office is not
85879 required to be accompanied by a paper copy of the center-line description.

85880 (B) A paper copy of each center-line description together with the notice of
85881 acknowledgment shall be placed in the state archives created in Section ~~[63-2-901]~~ 63A-12-101
85882 and made available to the public upon request in accordance with ~~[Title 63, Chapter 2]~~ Title
85883 63G, Chapter 2, Government Records Access and Management Act.

85884 (C) An electronic copy of the center-line description identified in a notice of
85885 acknowledgment shall be available upon request at:

85886 (I) the county recorder's office; or

85887 (II) the Automated Geographic Reference Center created in Section 63F-1-506.

85888 (b) A notice of acknowledgment recorded in the county recorder's office is conclusive
85889 evidence of acceptance of the R.S. 2477 grant upon:

85890 (i) expiration of the 60-day period for filing a petition under Section 72-5-310 without
85891 the filing of a petition; or

85892 (ii) a final court decision that the notice of acknowledgment was not incorrect.

85893 Section 2100. Section **72-5-405** is amended to read:

85894 **72-5-405. Private owner rights.**

85895 (1) The department, counties, and municipalities shall observe all protections conferred
85896 on private property rights, including ~~[Title 63, Chapter 90]~~ Title 63L, Chapter 3, Private
85897 Property Protection Act, ~~[Title 63, Chapter 90a]~~ Title 63L, Chapter 4, Constitutional Taking
85898 Issues, and compensation for takings.

85899 (2) Private property owners from whom less than fee simple rights are obtained for
85900 transportation corridors or transportation corridor preservation have the right to petition the
85901 department, a county, or a municipality to acquire the entire fee simple interest in the affected
85902 property.

85903 (3) (a) A private property owner whose property's development is limited or restricted
85904 by a power granted under this part may petition the county or municipality that adopted the
85905 official map to acquire less than or the entire fee simple interest in the affected property, at the

85906 option of the property owner.

85907 (b) If the county or municipality petitioned under Subsection (3)(a) does not acquire the
85908 interest in the property requested by the property owner, then the county or municipality may
85909 not exercise any of the powers granted under this part to limit or restrict the affected property's
85910 development.

85911 Section 2101. Section **72-5-406** is amended to read:

85912 **72-5-406. Rulemaking.**

85913 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
85914 Rulemaking Act, the department shall make rules providing for private property owner petition
85915 procedures described in Section 72-5-405.

85916 Section 2102. Section **72-6-107** is amended to read:

85917 **72-6-107. Construction or improvement of highway -- Contracts -- Retainage.**

85918 (1) (a) The department shall make plans, specifications, and estimates prior to the
85919 construction or improvement of any state highway.

85920 (b) Except as provided in Section [~~63-56-502~~] 63G-6-502 and except for construction
85921 or improvements performed with state prison labor, a construction or improvement project with
85922 an estimated cost exceeding the bid limit as defined in Section 72-6-109 for labor and materials
85923 shall be performed under contract awarded to the lowest responsible bidder.

85924 (c) The advertisement for bids shall be published in a newspaper of general circulation
85925 in the county in which the work is to be performed, at least once a week for two consecutive
85926 weeks, with the last publication at least ten days before bids are opened.

85927 (d) The department shall receive sealed bids and open the bids at the time and place
85928 designated in the advertisement. The department may then award the contract but may reject
85929 any and all bids.

85930 (e) If the department's estimates are substantially lower than any responsible bid
85931 received, the department may perform any work by force account.

85932 (2) If any payment on a contract with a private contractor for construction or
85933 improvement of a state highway is retained or withheld, the payment shall be retained or

85934 withheld and released as provided in Section 13-8-5.

85935 (3) If the department performs a construction or improvement project by force account,
85936 the department shall:

85937 (a) provide an accounting of the costs and expenditures of the improvement including
85938 material and labor;

85939 (b) disclose the costs and expenditures to any person upon request and allow the person
85940 to make a copy and pay for the actual cost of the copy; and

85941 (c) perform the work using the same specifications and standards that would apply to a
85942 private contractor.

85943 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85944 Administrative Rulemaking Act, the department shall establish procedures for:

85945 (a) hearing evidence that a region within the department violated this section; and

85946 (b) administering sanctions against the region if the region is found in violation.

85947 Section 2103. Section **72-6-108** is amended to read:

85948 **72-6-108. Class B and C roads -- Improvement projects -- Contracts -- Retainage.**

85949 (1) A county executive for class B roads and the municipal executive for class C roads
85950 shall cause plans, specifications, and estimates to be made prior to the construction of any
85951 improvement project, as defined in Section 72-6-109, on a class B or C road if the estimated
85952 cost for any one project exceeds the bid limit as defined in Section 72-6-109 for labor,
85953 equipment, and materials.

85954 (2) (a) All projects in excess of the bid limit shall be performed under contract to be let
85955 to the lowest responsible bidder.

85956 (b) If the estimated cost of the improvement project exceeds the bid limit for labor,
85957 equipment, and materials, the project may not be divided to permit the construction in parts,
85958 unless each part is done by contract.

85959 (3) The advertisement on bids shall be published in a newspaper of general circulation in
85960 the county in which the work is to be performed at least once a week for three consecutive
85961 weeks. If there is no newspaper of general circulation, the notice shall be posted for at least 20

85962 days in at least five public places in the county.

85963 (4) The county or municipal executive or their designee shall receive sealed bids and
85964 open the bids at the time and place designated in the advertisement. The county or municipal
85965 executive or their designee may then award the contract but may reject any and all bids.

85966 (5) The person, firm, or corporation that is awarded a contract under this section is
85967 subject to the provisions of [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement
85968 Code.

85969 (6) If any payment on a contract with a private contractor for construction or
85970 improvement of a class B or C road is retained or withheld, the payment shall be retained or
85971 withheld and released as provided in Section 13-8-5.

85972 Section 2104. Section **72-6-111** is amended to read:

85973 **72-6-111. Construction and maintenance of appurtenances -- Noise abatement**
85974 **measures.**

85975 (1) The department is authorized to construct and maintain appurtenances along the
85976 state highway system necessary for public safety, welfare, and information. Appurtenances
85977 include highway illumination, sidewalks, curbs, gutters, steps, driveways, retaining walls, fire
85978 hydrants, guard rails, noise abatement measures, storm sewers, and rest areas.

85979 (2) A noise abatement measure may only be constructed by the department along a
85980 highway when:

85981 (a) the department is constructing a new state highway or performing major
85982 reconstruction on an existing state highway;

85983 (b) the Legislature provides an appropriation or the federal government provides
85984 funding for construction of retrofit noise abatement along an existing state highway; or

85985 (c) the cost for the noise abatement measure is provided by citizens, adjacent property
85986 owners, developers, or local governments.

85987 (3) In addition to the requirements under Subsection (2), the department may only
85988 construct noise abatement measures within the unincorporated area of a county or within a
85989 municipality that has an ordinance or general plan that requires:

85990 (a) a study to be conducted to determine the noise levels along new development
85991 adjacent to an existing state highway or a dedicated right-of-way; and

85992 (b) the construction of noise abatement measures at the expense of the developer if
85993 required to be constructed under standards established by a rule of the department.

85994 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
85995 Administrative Rulemaking Act, the department shall make rules establishing:

85996 (a) when noise abatement measures are required to be constructed, including standards
85997 for decibel levels of traffic noise;

85998 (b) the decibel level of traffic noise which identifies the projects to be programmed by
85999 the commission for the earliest construction of retrofit noise abatement measures funded under
86000 Subsection (2)(b) based on availability of funding; and

86001 (c) a priority system for the construction of other retrofit noise abatement measures that
86002 meet or exceed the standards established under this section and are funded under Subsection
86003 (2)(b) which includes:

86004 (i) the number of residential dwellings adversely affected by the traffic noise;

86005 (ii) the cost effectiveness of mitigating the traffic noise; and

86006 (iii) the length of time the decibel level of traffic noise has met or exceeded the
86007 standards established under this section.

86008 Section 2105. Section **72-6-116** is amended to read:

86009 **72-6-116. Regulation of utilities -- Relocation of utilities.**

86010 (1) As used in this section:

86011 (a) "Cost of relocation" includes the entire amount paid by the utility company properly
86012 attributable to the relocation of the utility after deducting any increase in the value of the new
86013 utility and any salvage value derived from the old utility.

86014 (b) "Utility" includes telecommunication, gas, electricity, cable television, water, sewer,
86015 data, and video transmission lines, drainage and irrigation systems, and other similar utilities
86016 located in, on, along, across, over, through, or under any state highway.

86017 (c) "Utility company" means a privately, cooperatively, or publicly owned utility,

86018 including utilities owned by political subdivisions.

86019 (2) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86020 Administrative Rulemaking Act, the department may make rules for the installation,
86021 construction, maintenance, repair, renewal, system upgrade, and relocation of all utilities.

86022 (b) If the department determines under the rules established in this section that it is
86023 necessary that any utilities should be relocated, the utility company owning or operating the
86024 utilities shall relocate the utilities in accordance with this section and the order of the
86025 department.

86026 (3) (a) The department shall pay 100% of the cost of relocation of a utility on a state
86027 highway if the:

- 86028 (i) utility is owned or operated by a political subdivision of the state; or
- 86029 (ii) utility company owns the easement or fee title to the right-of-way in which the
86030 utility is located.

86031 (b) Except as provided in Subsection (3)(a) or (c), the department shall pay 50% of the
86032 cost of relocation of a utility on a state highway and the utility company shall pay the remainder
86033 of the cost of relocation.

86034 (c) This Subsection (3) does not affect the provisions of Subsection 72-7-108(5).

86035 (4) If a utility is relocated, the utility company owning or operating the utility, its
86036 successors or assigns, may maintain and operate the utility, with the necessary appurtenances, in
86037 the new location.

86038 (5) In accordance with this section, the cost of relocating a utility in connection with
86039 any project on a highway is a cost of highway construction.

86040 (6) (a) The department shall notify affected utility companies whenever the relocation of
86041 utilities is likely to be necessary because of a reconstruction project.

86042 (b) The notification shall be made during the preliminary design of the project or as
86043 soon as practical in order to minimize the number, costs, and delays of utility relocations.

86044 (c) A utility company notified under this Subsection (6) shall coordinate with the
86045 department and the department's contractor on the utility relocations, including the scheduling

86046 of the utility relocations.

86047 Section 2106. Section **72-6-118** is amended to read:

86048 **72-6-118. Definitions -- Establishment and operation of tollways -- Imposition**
86049 **and collection of tolls -- Amount of tolls -- Rulemaking.**

86050 (1) As used in this section:

86051 (a) "High occupancy toll lane" means a high occupancy vehicle lane designated under
86052 Section 41-6a-702 that may be used by an operator of a vehicle carrying less than the number of
86053 persons specified for the high occupancy vehicle lane if the operator of the vehicle pays a toll or
86054 fee.

86055 (b) "Toll" means any tax, fee, or charge assessed for the specific use of a tollway.

86056 (c) "Toll lane" means a designated new highway or additional lane capacity that is
86057 constructed, operated, or maintained for which a toll is charged for its use.

86058 (d) (i) "Tollway" means a highway, highway lane, bridge, path, tunnel, or right-of-way
86059 designed and used as a transportation route that is constructed, operated, or maintained through
86060 the use of toll revenues.

86061 (ii) "Tollway" includes a high occupancy toll lane and a toll lane.

86062 (e) "Tollway development agreement" has the same meaning as defined in Section
86063 72-6-202.

86064 (2) Subject to the provisions of Subsection (3), the department may:

86065 (a) establish, expand, and operate tollways and related facilities for the purpose of
86066 funding in whole or in part the acquisition of right-of-way and the design, construction,
86067 reconstruction, operation, enforcement, and maintenance of or impacts from a transportation
86068 route for use by the public;

86069 (b) enter into contracts, agreements, licenses, franchises, tollway development
86070 agreements, or other arrangements to implement this section;

86071 (c) impose and collect tolls on any tollway established under this section; and

86072 (d) grant exclusive or nonexclusive rights to a private entity to impose and collect tolls
86073 pursuant to the terms and conditions of a tollway development agreement.

86074 (3) (a) Except as provided under Subsection (3)(d), the department or other entity may
86075 not establish or operate a tollway on an existing state highway, except as approved by the
86076 commission and the Legislature.

86077 (b) Between sessions of the Legislature, a state tollway may be designated or deleted if:

86078 (i) approved by the commission in accordance with the standards made under this
86079 section; and

86080 (ii) the tollways are submitted to the Legislature in the next year for legislative approval
86081 or disapproval.

86082 (c) In conjunction with a proposal submitted under Subsection (3)(b)(ii), the
86083 department shall provide a description of the tollway project, projected traffic, the anticipated
86084 amount of tolls to be charged, and projected toll revenue.

86085 (d) If approved by the commission, the department may:

86086 (i) establish high occupancy toll lanes on existing state highways; and

86087 (ii) establish tollways on new state highways or additional capacity lanes.

86088 (4) (a) Except as provided in Subsection (4)(b), in accordance with [~~Title 63, Chapter~~
86089 ~~46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, the commission shall:

86090 (i) set the amount of any toll imposed or collected on a tollway on a state highway; and

86091 (ii) for tolls established under Subsection (4)(b), set:

86092 (A) an increase in a toll rate or user fee above an increase specified in a tollway
86093 development agreement; or

86094 (B) an increase in a toll rate or user fee above a maximum toll rate specified in a tollway
86095 development agreement.

86096 (b) A toll or user fee and an increase to a toll or user fee imposed or collected on a
86097 tollway on a state highway that is the subject of a tollway development agreement shall be set in
86098 the tollway development agreement.

86099 (5) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86100 Administrative Rulemaking Act, the department shall make rules:

86101 (i) necessary to establish and operate tollways on state highways; and

86102 (ii) that establish standards and specifications for automatic tolling systems.

86103 (b) The rules shall:

86104 (i) include minimum criteria for having a tollway; and

86105 (ii) conform to regional and national standards for automatic tolling.

86106 (6) (a) The commission may provide funds for public or private tollway pilot projects or
86107 high occupancy toll lanes from General Fund monies appropriated by the Legislature to the
86108 commission for that purpose.

86109 (b) The commission may determine priorities and funding levels for tollways designated
86110 under this section.

86111 (7) (a) Except as provided in Subsection (7)(b), all revenue generated from a tollway on
86112 a state highway shall be deposited into the Tollway Restricted Special Revenue Fund created in
86113 Section 72-2-120 and used for acquisition of right-of-way and the design, construction,
86114 reconstruction, operation, maintenance, enforcement of transportation facilities, and other
86115 facilities used exclusively for the operation of a tollway facility within the corridor served by the
86116 tollway.

86117 (b) Revenue generated from a tollway that is the subject of a tollway development
86118 agreement shall be deposited into the Tollway Restricted Special Revenue Fund and used in
86119 accordance with Subsection (7)(a) unless:

86120 (i) the revenue is to a private entity through the tollway development agreement; or

86121 (ii) the revenue is identified for a different purpose under the tollway development
86122 agreement.

86123 Section 2107. Section **72-6-119** is amended to read:

86124 **72-6-119. "511" Traveler information services -- Lead agency -- Implementation**
86125 **-- Cooperation -- Rulemaking -- Costs.**

86126 (1) As used in this section, "511" or "511 service" means three-digit
86127 telecommunications dialing to access intelligent transportation system -- traveler information
86128 service provided in the state in accordance with the Federal Communications Commission and
86129 United States Department of Transportation.

86130 (2) The department is the state's lead agency for implementing 511 service and is the
86131 state's point of contact for coordinating 511 service with telecommunications service providers.

86132 (3) The department shall:

86133 (a) implement and administer 511 service in the state;

86134 (b) coordinate with the highway authorities and public transit districts to provide
86135 advanced multimodal traveler information through 511 service and other means; and

86136 (c) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86137 Administrative Rulemaking Act, make rules as necessary to implement this section.

86138 (4) (a) In accordance with Title 11, Chapter 13, Interlocal Cooperation Act, the
86139 department shall enter into agreements or contracts with highway authorities and public transit
86140 districts to share the costs of implementing and administering 511 service in the state.

86141 (b) The department shall enter into other agreements or contracts relating to the 511
86142 service to offset the costs of implementing and administering 511 service in the state.

86143 Section 2108. Section **72-6-120** is amended to read:

86144 **72-6-120. Department authorized to participate in federal program assuming**
86145 **responsibility for environmental review of categorically excluded projects -- Rulemaking**
86146 **authority.**

86147 (1) The department may:

86148 (a) assume responsibilities under 23 U.S.C. Sec. 326 for:

86149 (i) determining whether state highway design and construction projects are categorically
86150 excluded from requirements for environmental assessments or environmental impact statements;
86151 and

86152 (ii) environmental review, consultation, or other actions required under federal law for
86153 categorically excluded projects;

86154 (b) enter one or more memoranda of understanding with the United States Department
86155 of Transportation related to federal highway programs as provided in 23 U.S.C. Sec. 326
86156 subject to the requirements of Subsection 72-1-207(5);

86157 (c) accept, receive, and administer grants, other money, or gifts from public and private

86158 agencies, including the federal government, for the purpose of carrying out the programs
86159 authorized under this section; and

86160 (d) cooperate with the federal government in implementing this section and any
86161 memorandum of understanding entered into under Subsection 72-1-207(5).

86162 (2) Notwithstanding any other provision of law, in implementing a program under this
86163 section that is approved by the United States Department of Transportation, the department is
86164 authorized to:

86165 (a) perform or conduct any of the activities described in a memorandum of
86166 understanding entered into under Subsection 72-1-207(5);

86167 (b) take actions necessary to implement the program; and

86168 (c) adopt relevant federal environmental standards as the standards for this state for
86169 categorically excluded projects.

86170 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86171 Administrative Rulemaking Act, the department may makes rules to implement the provisions of
86172 this section.

86173 Section 2109. Section **72-6-204** is amended to read:

86174 **72-6-204. Minimum requirements for a tollway development agreement proposal.**

86175 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86176 Administrative Rulemaking Act, the department and the commission shall make rules
86177 establishing minimum guidelines for tollway development agreement proposals.

86178 (2) The guidelines under Subsection (1) shall require the proposal to include:

86179 (a) a map indicating the location of the tollway facility;

86180 (b) a description of the tollway facility;

86181 (c) a list of the major permits and approvals required for developing or operating
86182 improvements to the tollway facility from local, state, or federal agencies and a projected
86183 schedule for obtaining the permits and approvals;

86184 (d) a description of the types of public utility facilities, if any, that will be crossed by the
86185 tollway facility and a statement of the plans to accommodate the crossing;

- 86186 (e) an estimate of the design and construction costs of the tollway facility;
- 86187 (f) a statement setting forth the private entity's general plans for developing or operating
- 86188 the tollway facility, including identification of any revenue, public or private, or proposed debt
- 86189 or equity investment proposed by the private entity;
- 86190 (g) a statement of the estimated level of funding, if any, required to be provided by the
- 86191 state;
- 86192 (h) the name and addresses of the persons who may be contacted for further
- 86193 information concerning the tollway development agreement proposal; and
- 86194 (i) any other material or information that the department requires by rules made under
- 86195 this section.

86196 (3) The department is not required to review a tollway development agreement
86197 proposal if it determines that the proposal does not meet the guidelines established under this
86198 section.

86199 Section 2110. Section **72-6-205** is amended to read:

86200 **72-6-205. Solicited and unsolicited tollway development agreement proposals.**

86201 (1) In accordance with this section, the department may:

- 86202 (a) accept unsolicited tollway development agreement proposals; or
- 86203 (b) solicit tollway development agreement proposals for a proposed project.

86204 (2) The department shall solicit tollway development agreement proposals in
86205 accordance with Section [~~63-56-502.5~~] 63G-6-503.

86206 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86207 Administrative Rulemaking Act, the department and the commission shall establish rules and
86208 procedures for accepting unsolicited proposals that require the:

86209 (a) private entity that submits the unsolicited proposal to comply with the minimum
86210 requirements for tollway development agreement proposals under Section 72-6-204;

86211 (b) department to issue a request for competing proposals and qualifications that
86212 includes:

- 86213 (i) a description of the proposed tollway development facility and the terms and

86214 conditions of a tollway development agreement;
86215 (ii) submittal requirements;
86216 (iii) the criteria to be used to evaluate the proposals;
86217 (iv) the relative weight given to the criteria; and
86218 (v) the deadline by which competing proposals must be received; and
86219 (c) department to publish a notice advertising the request for competing proposals and
86220 providing information regarding how to obtain a copy of the request.

86221 (4) (a) The department may establish a fee in accordance with Section [~~63-38-3.2~~]
86222 63J-1-303 for reviewing unsolicited proposals and competing proposals submitted under this
86223 section.

86224 (b) The department may waive the fee under Subsection (4)(a) if it determines that it is
86225 reasonable and in the best interest of the state.

86226 Section 2111. Section **72-7-102** is amended to read:

86227 **72-7-102. Excavations, structures, or objects prohibited within right-of-way**
86228 **except in accordance with law -- Permit and fee requirements -- Rulemaking -- Penalty**
86229 **for violation.**

86230 (1) As used in this section, "management costs" means the reasonable, direct, and actual
86231 costs a highway authority incurs in exercising authority over the highways under its jurisdiction.

86232 (2) Except as provided in Subsection (3) and Section 54-4-15, a person may not:

86233 (a) dig or excavate, within the right-of-way of any state highway, county road, or city
86234 street; or

86235 (b) place, construct, or maintain any approach road, driveway, pole, pipeline, conduit,
86236 sewer, ditch, culvert, billboard, advertising sign, or any other structure or object of any kind or
86237 character within the right-of-way.

86238 (3) (a) A highway authority having jurisdiction over the right-of-way may allow
86239 excavating, installation of utilities and other facilities or access under rules made by the highway
86240 authority and in compliance with federal, state, and local law as applicable.

86241 (b) (i) The rules may require a permit for any excavation or installation and may require

86242 a surety bond or other security.

86243 (ii) The application for a permit for excavation or installation on a state highway shall
86244 be accompanied by a fee established under Subsection (4)(f).

86245 (iii) The permit may be revoked and the surety bond or other security may be forfeited
86246 for cause.

86247 (4) (a) Except as provided in Section 72-7-108 with respect to the department
86248 concerning the interstate highway system, a highway authority may require compensation from
86249 a utility service provider for access to the right-of-way of a highway only as provided in this
86250 section.

86251 (b) A highway authority may recover from a utility service provider, only those
86252 management costs caused by the utility service provider's activities in the right-of-way of a
86253 highway under the jurisdiction of the highway authority.

86254 (c) (i) A fee or other compensation under this Subsection (4) shall be imposed on a
86255 competitively neutral basis.

86256 (ii) If a highway authority's management costs cannot be attributed to only one entity,
86257 the management costs shall be allocated among all privately owned and government agencies
86258 using the highway right-of-way for utility service purposes, including the highway authority
86259 itself. The allocation shall reflect proportionately the management costs incurred by the
86260 highway authority as a result of the various utility uses of the highway.

86261 (d) A highway authority may not use the compensation authority granted under this
86262 Subsection (4) as a basis for generating revenue for the highway authority that is in addition to
86263 its management costs.

86264 (e) (i) A utility service provider that is assessed management costs or a franchise fee by
86265 a highway authority is entitled to recover those management costs.

86266 (ii) If the highway authority that assesses the management costs or franchise fees is a
86267 political subdivision of the state and the utility service provider serves customers within the
86268 boundaries of that highway authority, the management costs may be recovered from those
86269 customers.

86270 (f) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86271 Administrative Rulemaking Act, the department shall adopt a schedule of fees to be assessed for
86272 management costs incurred in connection with issuing and administering a permit on a state
86273 highway under this section.

86274 (g) In addition to the requirements of this Subsection (4), a telecommunications tax or
86275 fee imposed by a municipality on a telecommunications provider, as defined in Section
86276 10-1-402, is subject to Section 10-1-406.

86277 (5) Permit fees collected by the department under this section shall be deposited with
86278 the state treasurer and credited to the Transportation Fund.

86279 (6) Nothing in this section shall affect the authority of a municipality under:

86280 (a) Section 10-1-203;

86281 (b) Section 11-26-1;

86282 (c) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

86283 (d) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

86284 (7) A person who violates the provisions of Subsection (2) is guilty of a class B
86285 misdemeanor.

86286 Section 2112. Section **72-7-104** is amended to read:

86287 **72-7-104. Installations constructed in violation of rules -- Rights of highway**
86288 **authorities to remove or require removal.**

86289 (1) If any person, firm, or corporation installs, places, constructs, alters, repairs, or
86290 maintains any approach road, driveway, pole, pipeline, conduit, sewer, ditch, culvert, outdoor
86291 advertising sign, or any other structure or object of any kind or character within the
86292 right-of-way of any highway without complying with this title, the highway authority having
86293 jurisdiction over the right-of-way may:

86294 (a) remove the installation from the right-of-way or require the person, firm, or
86295 corporation to remove the installation; or

86296 (b) give written notice to the person, firm, or corporation to remove the installation
86297 from the right-of-way.

86298 (2) Notice under Subsection (1)(b) may be served by:
86299 (a) personal service; or
86300 (b) (i) mailing the notice to the person, firm, or corporation by certified mail; and
86301 (ii) posting a copy on the installation for ten days.
86302 (3) If the installation is not removed within ten days after the notice is complete, the
86303 highway authority may remove the installation at the expense of the person, firm, or
86304 corporation.
86305 (4) A highway authority may recover:
86306 (a) the costs and expenses incurred in removing the installation, serving notice, and the
86307 costs of a lawsuit if any; and
86308 (b) \$10 for each day the installation remained within the right-of-way after notice was
86309 complete.
86310 (5) (a) If the person, firm, or corporation disputes or denies the existence, placement,
86311 construction, or maintenance of the installation, or refuses to remove or permit its removal, the
86312 highway authority may bring an action to abate the installation as a public nuisance.
86313 (b) If the highway authority is granted a judgment, the highway authority may recover
86314 the costs of having the public nuisance abated as provided in Subsection (4).
86315 (6) The department, its agents, or employees, if acting in good faith, incur no liability
86316 for causing removal of an installation within a right-of-way of a highway as provided in this
86317 section.
86318 (7) The actions of the department under this section are not subject to the provisions of
86319 [~~Title 63, Chapter 46b, the~~] Title 63G, Chapter 4, Administrative Procedures Act.
86320 Section 2113. Section **72-7-107** is amended to read:
86321 **72-7-107. Public safety program signs -- Permits.**
86322 (1) As used in this section, "public safety program sign" means a sign, placed on or
86323 adjacent to a highway, that is promoting a highway safety program or highway safety practice,
86324 or a crime or drug abuse prevention program that is being sponsored by the department, the
86325 Department of Public Safety, or a local law enforcement agency.

86326 (2) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86327 Administrative Rulemaking Act, the department shall make rules to allow public safety program
86328 signs on state highways by permit. The rules shall contain reasonable terms and conditions:

86329 (a) that are no more restrictive than motorist service signing requirements of the
86330 Manual on Uniform Traffic Control Devices for Streets and Highways adopted under Section
86331 41-6a-301; and

86332 (b) for granting and maintaining a permit.
86333 Section 2114. Section **72-7-108** is amended to read:

86334 **72-7-108. Longitudinal telecommunication access in the interstate highway**
86335 **system -- Definitions -- Agreements -- Compensation -- Restrictions -- Rulemaking.**

86336 (1) As used in this section:

86337 (a) "Longitudinal access" means access to or use of any part of a right-of-way of a
86338 highway on the interstate system that extends generally parallel to the right-of-way for a total of
86339 30 or more linear meters.

86340 (b) "Statewide telecommunications purposes" means the further development of the
86341 statewide network that meets the telecommunications needs of state agencies and enhances the
86342 learning purposes of higher and public education.

86343 (c) "Telecommunication facility" means any telecommunication cable, line, fiber, wire,
86344 conduit, innerduct, access manhole, handhole, tower, hut, pedestal, pole, box, transmitting
86345 equipment, receiving equipment, power equipment, or other equipment, system, and device
86346 used to transmit, receive, produce, or distribute via wireless, wireline, electronic, or optical
86347 signal for communication purposes.

86348 (2) (a) Except as provided in Subsection (4), the department may allow a
86349 telecommunication facility provider longitudinal access to the right-of-way of a highway on the
86350 interstate system for the installation, operation, and maintenance of a telecommunication facility.

86351 (b) The department shall enter into an agreement with a telecommunication facility
86352 provider and issue a permit before granting it any longitudinal access under this section.

86353 (i) Except as specifically provided by the agreement, a property interest in a

86354 right-of-way may not be granted under the provisions of this section.

86355 (ii) An agreement entered into by the department under this section shall:

86356 (A) specify the terms and conditions for the renegotiation of the agreement;

86357 (B) specify maintenance responsibilities for each telecommunication facility;

86358 (C) be nonexclusive; and

86359 (D) be limited to a maximum term of 30 years.

86360 (3) (a) The department shall require compensation from a telecommunication facility

86361 provider under this section for longitudinal access to the right-of-way of a highway on the

86362 interstate system.

86363 (b) The compensation charged shall be:

86364 (i) fair and reasonable;

86365 (ii) competitively neutral;

86366 (iii) nondiscriminatory;

86367 (iv) open to public inspection;

86368 (v) established to promote access by multiple telecommunication facility providers;

86369 (vi) established for zones of the state, with zones determined based upon factors that

86370 include population density, distance, numbers of telecommunication subscribers, and the impact

86371 upon private right-of-way users;

86372 (vii) established to encourage the deployment of digital infrastructure within the state;

86373 (viii) set after the department conducts a market analysis to determine the fair and

86374 reasonable values of the right-of-way based upon adjacent property values;

86375 (ix) a lump sum payment or annual installment, at the option of the telecommunications

86376 facility provider; and

86377 (x) set in accordance with Subsection (3)(f).

86378 (c) (i) The compensation charged may be cash, in-kind compensation, or a combination

86379 of cash and in-kind compensation.

86380 (ii) In-kind compensation requires the agreement of both the telecommunication facility

86381 provider and the department.

86382 (iii) The department shall, in consultation with the Telecommunications Advisory
86383 Council created in Section 72-7-109, determine the present value of any in-kind compensation
86384 based upon the incremental cost to the telecommunication facility provider.

86385 (iv) The value of in-kind compensation or a combination of cash and in-kind
86386 compensation shall be equal to or greater than the amount of cash compensation that would be
86387 charged if the compensation is cash only.

86388 (d) (i) The department shall provide for the proportionate sharing of costs among the
86389 department and telecommunications providers for joint trenching or trench sharing based on the
86390 amount of conduit innerduct space that is authorized in the agreement for the trench.

86391 (ii) If two or more telecommunications facility providers are required to share a single
86392 trench, each telecommunications facility provider in the trench shall share the cost and benefits
86393 of the trench in accordance with Subsection (3)(d)(i) on a fair, reasonable, competitively
86394 neutral, and nondiscriminatory basis.

86395 (e) The market analysis under Subsection (3)(b)(viii) shall be conducted at least every
86396 five years and any adjustments warranted shall apply only to agreements entered after the date
86397 of the new market analysis.

86398 (f) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86399 Administrative Rulemaking Act, the department shall establish a schedule of rates of
86400 compensation for any longitudinal access granted under this section.

86401 (4) The department may not grant any longitudinal access under this section that results
86402 in a significant compromise of the safe, efficient, and convenient use of the interstate system for
86403 the traveling public.

86404 (5) The department may not pay any cost of relocation of a telecommunication facility
86405 granted longitudinal access to the right-of-way of a highway on the interstate system under this
86406 section.

86407 (6) (a) Monetary compensation collected by the department in accordance with this
86408 section shall be deposited with the state treasurer and credited to the Transportation Fund.

86409 (b) Any telecommunications capacity acquired as in-kind compensation shall be used:

86410 (i) exclusively for statewide telecommunications purposes and may not be sold or leased
86411 in competition with telecommunication or Internet service providers; and

86412 (ii) as determined by the department after consultation with the Telecommunications
86413 Advisory Council created in Section 72-7-109.

86414 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86415 Administrative Rulemaking Act, the department shall make rules:

86416 (a) governing the installation, operation, and maintenance of a telecommunication
86417 facility granted longitudinal access under this section;

86418 (b) specifying the procedures for establishing an agreement for longitudinal access for a
86419 telecommunication facility provider;

86420 (c) providing for the relocation or removal of a telecommunication facility for:

86421 (i) needed changes to a highway on the interstate system;

86422 (ii) expiration of an agreement; or

86423 (iii) a breach of an agreement; and

86424 (d) providing an opportunity for all interested providers to apply for access within open
86425 right-of-way segments.

86426 (8) (a) Except for a right-of-way of a highway on the interstate system, nothing in this
86427 section shall be construed to allow a highway authority to require compensation from a
86428 telecommunication facility provider for longitudinal access to the right-of-way of a highway
86429 under the highway authority's jurisdiction.

86430 (b) Nothing in this section shall affect the authority of a municipality under:

86431 (i) Section 10-1-203;

86432 (ii) Section 11-26-1;

86433 (iii) Title 10, Chapter 1, Part 3, Municipal Energy Sales and Use Tax Act; or

86434 (iv) Title 10, Chapter 1, Part 4, Municipal Telecommunications License Tax Act.

86435 (9) Compensation paid to the department under Subsection (3) may not be used by any
86436 person as evidence of the market or other value of the access for any other purpose, including
86437 condemnation proceedings, other litigation, or the application of rates of taxation or the

86438 establishment of franchise fees relating to longitudinal access rights.

86439 Section 2115. Section **72-7-203** is amended to read:

86440 **72-7-203. License required.**

86441 (1) A person may not establish, operate, or maintain a junkyard, any portion of which is
86442 within 1,000 feet of the nearest edge of the right-of-way of any interstate or federal-aid primary
86443 highway, without obtaining a license from the department under this part.

86444 (2) A municipality may adopt ordinances, not in conflict with this part, to regulate the
86445 creation or maintenance of junkyards of any type within 660 feet of the right-of-way of
86446 designated state and federal highways within the jurisdictional limits of the adopting
86447 municipality.

86448 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86449 Administrative Rulemaking Act, the department may make rules, not in conflict with this part,
86450 to regulate the creation and maintenance of junkyards within 660 feet of the right-of-way of
86451 designated federal and state highways outside the jurisdictional limits of a municipality.

86452 Section 2116. Section **72-7-205** is amended to read:

86453 **72-7-205. Conditions for licensing of junkyard within 1,000 feet of highway.**

86454 (1) The department may not grant a license for the establishment, maintenance, or
86455 operation of a junkyard within 1,000 feet of the nearest edge of the right-of-way of any highway
86456 on the interstate or primary systems unless the junkyard is:

86457 (a) screened by natural objects, plantings, fences, or other appropriate means so the
86458 junkyard is not visible from the main-traveled-way of the system; and

86459 (b) (i) located within areas that are zoned for industrial use under county or municipal
86460 ordinances; or

86461 (ii) located within unzoned industrial areas, determined by actual land uses as defined by
86462 rules made by the department in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
86463 Utah Administrative Rulemaking Act.

86464 (2) A junkyard controlled by this part may not be expanded or have its use extended
86465 except by permission of the department under rules made by the department.

86466 Section 2117. Section **72-7-206** is amended to read:

86467 **72-7-206. Screening of existing junkyards.**

86468 (1) The department shall screen any junkyard lawfully in existence on May 9, 1967,
86469 which is located within 1,000 feet of the nearest edge of the right-of-way and visible from the
86470 main-traveled-way of any highway on the interstate or primary system.

86471 (2) The screening shall be at locations on the right-of-way or in areas outside the
86472 right-of-way acquired for that purpose and may not be visible from the main-traveled-way of the
86473 interstate or federal-aid primary systems.

86474 (3) The department may not install junkyard screening under this section unless:

86475 (a) the necessary federal funds for participation have been appropriated by the federal
86476 government and are immediately available to the state; and

86477 (b) the department has received approval to seek federal grants, loans, or participation
86478 in federal programs under [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5, Federal Funds
86479 Procedures.

86480 Section 2118. Section **72-7-207** is amended to read:

86481 **72-7-207. Junkyards not adaptable to screening -- Authority of department to**
86482 **acquire land -- Compensation.**

86483 (1) If the department determines that the topography of the land adjoining the interstate
86484 and primary systems will not permit adequate screening of junkyards or that screening would
86485 not be economically feasible, the department may acquire by gift, purchase, exchange, or
86486 eminent domain the interests in lands necessary to secure the relocation, removal, or disposal of
86487 the junkyards.

86488 (2) If the department determines that it is in the best interests of the state, it may
86489 acquire lands, or interests in lands, necessary to provide adequate screening of junkyards.

86490 (3) The acquisitions provided for in this section may not be undertaken unless:

86491 (a) the necessary federal funds for participation have been appropriated by the federal
86492 government and are immediately available to the state; and

86493 (b) the department has received approval to seek federal grants, loans, or participation

86494 in federal programs under [~~Title 63, Chapter 38e~~] Title 63J, Chapter 5, Federal Funds
86495 Procedures.

86496 (4) Damages resulting from any taking of property in eminent domain shall be
86497 ascertained in the manner provided by law.

86498 (5) Just compensation shall be paid the owner for the relocation, removal, or disposal of
86499 a junkyard lawfully established under the laws of this state and which must be relocated,
86500 removed, or disposed of under this part.

86501 Section 2119. Section **72-7-209** is amended to read:

86502 **72-7-209. Enforcement authority -- Agreements with United States.**

86503 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86504 Administrative Rulemaking Act, the department may make rules:

86505 (a) governing the materials that may be used for screening and the location,
86506 construction, and maintenance of screening for junkyards; and

86507 (b) implementing and enforcing this part.

86508 (2) The department may:

86509 (a) enter into agreements with the secretary pursuant to Title 23, United States Code as
86510 amended, relating to the control of junkyards in areas adjacent to the interstate and primary
86511 systems; and

86512 (b) take action in the name of the state to comply with the terms of the agreements.

86513 Section 2120. Section **72-7-402** is amended to read:

86514 **72-7-402. Limitations as to vehicle width, height, length, and load extensions.**

86515 (1) (a) Except as provided by statute, all state or federally approved safety devices and
86516 any other lawful appurtenant devices, including refrigeration units, hitches, air line connections,
86517 and load securing devices related to the safe operation of a vehicle are excluded for purposes of
86518 measuring the width and length of a vehicle under the provisions of this part, if the devices are
86519 not designed or used for carrying cargo.

86520 (b) Load-induced tire bulge is excluded for purposes of measuring the width of vehicles
86521 under the provisions of this part.

86522 (c) Appurtenances attached to the sides or rear of a recreational vehicle that is not a
86523 commercial motor vehicle are excluded for purposes of measuring the width and length of the
86524 recreational vehicle if the additional width or length of the appurtenances does not exceed six
86525 inches.

86526 (2) A vehicle unladen or with a load may not exceed a width of 8-1/2 feet.

86527 (3) A vehicle unladen or with a load may not exceed a height of 14 feet.

86528 (4) (a) (i) A single-unit vehicle, unladen or with a load, may not exceed a length of 45
86529 feet including front and rear bumpers.

86530 (ii) In this section, a truck tractor coupled to one or more semitrailers or trailers is not
86531 considered a single-unit vehicle.

86532 (b) (i) Except as provided under Subsection (4)(b)(iii), a semitrailer, unladen or with a
86533 load, may not exceed a length of 48 feet excluding refrigeration units, hitches, air line
86534 connections, and safety appurtenances.

86535 (ii) There is no overall length limitation on a truck tractor and semitrailer combination
86536 when the semitrailer length is 48 feet or less.

86537 (iii) A semitrailer that exceeds a length of 48 feet but does not exceed a length of 53
86538 feet may operate on a route designated by the department or within one mile of that route.

86539 (c) (i) Two trailers coupled together, unladen or with a load, may not exceed an overall
86540 length of 61 feet, measured from the front of the first trailer to the rear of the second trailer.

86541 (ii) There is no overall length limitation on a truck tractor and double trailer
86542 combination when the trailers coupled together measure 61 feet or less.

86543 (d) All other combinations of vehicles, unladen or with a load, when coupled together,
86544 may not exceed a total length of 65 feet, except the length limitations do not apply to
86545 combinations of vehicles operated at night by a public utility when required for emergency
86546 repair of public service facilities or properties, or when operated under a permit under Section
86547 72-7-406.

86548 (5) (a) Subject to Subsection (4), a vehicle or combination of vehicles may not carry
86549 any load extending more than three feet beyond the front of the body of the vehicle or more

86550 than six feet beyond the rear of the bed or body of the vehicle.

86551 (b) A passenger vehicle may not carry any load extending beyond the line of the fenders
86552 on the left side of the vehicle nor extending more than six inches beyond the line of the fenders
86553 on the right side of the vehicle.

86554 (6) Any exception to this section must be authorized by a permit as provided under
86555 Section 72-7-406.

86556 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86557 Administrative Rulemaking Act, the department shall make rules designating routes where a
86558 semitrailer that exceeds a length of 48 feet but that does not exceed a length of 53 feet may
86559 operate as provided under Subsection (4)(b)(iii).

86560 (8) Any person who violates this section is guilty of a class B misdemeanor.
86561 Section 2121. Section ~~72-7-406~~ is amended to read:

86562 **72-7-406. Oversize permits and oversize and overweight permits for vehicles of**
86563 **excessive size or weight -- Applications -- Restrictions -- Fees -- Rulemaking provisions --**
86564 **Penalty.**

86565 (1) (a) The department may, upon receipt of an application and good cause shown,
86566 issue in writing an oversize permit or an oversize and overweight permit. The oversize permit
86567 or oversize and overweight permit may authorize the applicant to operate or move upon a
86568 highway:

86569 (i) a vehicle or combination of vehicles, unladen or with a load weighing more than the
86570 maximum weight specified in Section 72-7-404 for any wheel, axle, group of axles, or total
86571 gross weight; or

86572 (ii) a vehicle or combination of vehicles that exceeds the vehicle width, height, or length
86573 provisions under Section 72-7-402.

86574 (b) Except as provided under Subsection (8), an oversize and overweight permit may
86575 not be issued under this section to allow the transportation of a load that is reasonably divisible.

86576 (c) The maximum size or weight authorized by a permit under this section shall be
86577 within limits that do not impair the state's ability to qualify for federal-aid highway funds.

86578 (d) The department may deny or issue a permit under this section to protect the safety
86579 of the traveling public and to protect highway foundation, surfaces, or structures from undue
86580 damage by one or more of the following:

86581 (i) limiting the number of trips the vehicle may make;

86582 (ii) establishing seasonal or other time limits within which the vehicle may operate or
86583 move on the highway indicated;

86584 (iii) requiring security in addition to the permit to compensate for any potential damage
86585 by the vehicle to any highway; and

86586 (iv) otherwise limiting the conditions of operation or movement of the vehicle.

86587 (e) Prior to granting a permit under this section, the department shall approve the route
86588 of any vehicle or combination of vehicles.

86589 (2) An application for a permit under this section shall state:

86590 (a) the proposed maximum wheel loads, maximum axle loads, all axle spacings of each
86591 vehicle or combination of vehicles;

86592 (b) the proposed maximum load size and maximum size of each vehicle or combination
86593 of vehicles;

86594 (c) the specific roads requested to be used under authority of the permit; and

86595 (d) if the permit is requested for a single trip or if other seasonal limits or time limits
86596 apply.

86597 (3) Each oversize permit or oversize and overweight permit shall be carried in the
86598 vehicle or combination of vehicles to which it refers and shall be available for inspection by any
86599 peace officer, special function officer, port of entry agent, or other personnel authorized by the
86600 department.

86601 (4) A permit under this section may not be issued or is not valid unless the vehicle or
86602 combination of vehicles is:

86603 (a) properly registered for the weight authorized by the permit; or

86604 (b) registered for a gross laden weight of 78,001 pounds or over, if the gross laden
86605 weight authorized by the permit exceeds 80,000 pounds.

86606 (5) (a) (i) An oversize permit may be issued under this section for a vehicle or
86607 combination of vehicles that exceeds one or more of the maximum width, height, or length
86608 provisions under Section 72-7-402.

86609 (ii) Except for an annual oversize permit for an implement of husbandry under Section
86610 72-7-407 or for an annual oversize permit issued under Subsection (5)(a)(iii), only a single trip
86611 oversize permit may be issued for a vehicle or combination of vehicles that is more than 14 feet
86612 6 inches wide, 14 feet high, or 105 feet long.

86613 (iii) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86614 Administrative Rulemaking Act, the department shall make rules for the issuance of an annual
86615 oversize permit for a vehicle or combination of vehicles that is more than 14 feet 6 inches wide,
86616 14 feet high, or 105 feet long if the department determines that the permit is needed to
86617 accommodate highway transportation needs for multiple trips on a specified route.

86618 (b) The fee is \$25 for a single trip oversize permit under this Subsection (5). This
86619 permit is valid for not more than 96 continuous hours.

86620 (c) The fee is \$60 for a semiannual oversize permit under this Subsection (5). This
86621 permit is valid for not more than 180 continuous days.

86622 (d) The fee is \$75 for an annual oversize permit under this Subsection (5). This permit
86623 is valid for not more than 365 continuous days.

86624 (6) (a) An oversize and overweight permit may be issued under this section for a vehicle
86625 or combination of vehicles carrying a nondivisible load that exceeds one or more of the
86626 maximum weight provisions of Section 72-7-404 by not more than 25%, except that the gross
86627 weight may not exceed 125,000 pounds.

86628 (b) The fee is \$50 for a single trip oversize and overweight permit under this Subsection
86629 (6). This permit is valid for not more than 96 continuous hours.

86630 (c) A semiannual oversize and overweight permit under this Subsection (6) is valid for
86631 not more than 180 continuous days. The fee for this permit is:

86632 (i) \$150 for a vehicle or combination of vehicles with gross vehicle weight of more than
86633 80,000 pounds, but not exceeding 84,000 pounds;

86634 (ii) \$260 for a vehicle or combination of vehicles with gross vehicle weight of more
86635 than 84,000 pounds, but not exceeding 112,000 pounds; and

86636 (iii) \$350 for a vehicle or combination of vehicles with gross vehicle weight of more
86637 than 112,000 pounds, but not exceeding 125,000 pounds.

86638 (d) An annual oversize and overweight permit under this Subsection (6) is valid for not
86639 more than 365 continuous days. The fee for this permit is:

86640 (i) \$200 for a vehicle or combination of vehicles with gross vehicle weight of more than
86641 80,000 pounds, but not exceeding 84,000 pounds;

86642 (ii) \$400 for a vehicle or combination of vehicles with gross vehicle weight of more
86643 than 84,000 pounds, but not exceeding 112,000 pounds; and

86644 (iii) \$450 for a vehicle or combination of vehicles with gross vehicle weight of more
86645 than 112,000 pounds, but not exceeding 125,000 pounds.

86646 (7) (a) A single trip oversize and overweight permit may be issued under this section for
86647 a vehicle or combination of vehicles carrying a nondivisible load that exceeds one or more of the
86648 maximum weight provisions of Section 72-7-404 by more than 25% or that exceeds a gross
86649 weight of 125,000 pounds.

86650 (b) (i) The fee for a single trip oversize and overweight permit under this Subsection
86651 (7), which is valid for not more than 96 continuous hours, is \$.01 per mile for each 1,000
86652 pounds above 80,000 pounds subject to the rounding described in Subsection (7)(c).

86653 (ii) The minimum fee that may be charged under this Subsection (7) is \$65.

86654 (iii) The maximum fee that may be charged under this Subsection (7) is \$450.

86655 (c) (i) The miles used to calculate the fee under this Subsection (7) shall be rounded up
86656 to the nearest 50 mile increment.

86657 (ii) The pounds used to calculate the fee under this Subsection (7) shall be rounded up
86658 to the nearest 25,000 pound increment.

86659 (8) (a) An oversize and overweight permit may be issued under this section for a vehicle
86660 or combination of vehicles carrying a divisible load if:

86661 (i) the bridge formula under Subsection 72-7-404(3) is not exceeded; and

86662 (ii) the length of the vehicle or combination of vehicles is:
86663 (A) more than the limitations specified under Subsections 72-7-402(4)(c) and (d) but
86664 not exceeding 81 feet in cargo carrying length and the application is for a single trip,
86665 semiannual trip, or annual trip permit; or
86666 (B) more than 81 feet in cargo carrying length but not exceeding 95 feet in cargo
86667 carrying length and the application is for an annual trip permit.
86668 (b) The fee is \$50 for a single trip oversize and overweight permit under this Subsection
86669 (8). The permit is valid for not more than 96 continuous hours.
86670 (c) The fee for a semiannual oversize and overweight permit under this Subsection (8),
86671 which permit is valid for not more than 180 continuous days is:
86672 (i) \$150 for a vehicle or combination of vehicles with gross vehicle weight of more than
86673 80,000 pounds, but not exceeding 84,000 pounds;
86674 (ii) \$260 for a vehicle or combination of vehicles with gross vehicle weight of more
86675 than 84,000 pounds, but not exceeding 112,000 pounds; and
86676 (iii) \$350 for a vehicle or combination of vehicles with gross vehicle weight of more
86677 than 112,000 pounds, but not exceeding 129,000 pounds.
86678 (d) The fee for an annual oversize and overweight permit under this Subsection (8),
86679 which permit is valid for not more than 365 continuous days is:
86680 (i) \$200 for a vehicle or combination of vehicles with gross vehicle weight of more than
86681 80,000 pounds, but not exceeding 84,000 pounds;
86682 (ii) \$400 for a vehicle or combination of vehicles with gross vehicle weight of more
86683 than 84,000 pounds, but not exceeding 112,000 pounds; and
86684 (iii) \$450 for a vehicle or combination of vehicles with gross vehicle weight of more
86685 than 112,000 pounds, but not exceeding 129,000 pounds.
86686 (9) Permits under Subsections (7) and (8) may be issued only upon authorization of the
86687 commission.
86688 (10) Permit fees collected under this section shall be credited monthly to the
86689 Transportation Fund.

86690 (11) The department shall prepare maps, drawings, and instructions as guidance when
86691 issuing permits under this section.

86692 (12) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86693 Administrative Rulemaking Act, the department shall make rules governing the issuance and
86694 revocation of all permits under this section and Section 72-7-407.

86695 (13) Any person who violates any of the terms or conditions of a permit issued under
86696 this section:

86697 (a) may have [~~his~~] the person's permit revoked; and

86698 (b) is guilty of a class B misdemeanor.

86699 Section 2122. Section ~~72-7-407~~ is amended to read:

86700 **72-7-407. Implements of husbandry -- Escort vehicle requirements -- Oversize**
86701 **permit -- Rulemaking -- Penalty.**

86702 (1) As used in this section, "escort vehicle" means a motor vehicle, as defined under
86703 Section 41-1a-102, that has its emergency warning lights operating, and that is being used to
86704 warn approaching motorists by either preceding or following a slow or oversized vehicle,
86705 object, or implement of husbandry being moved on the highway.

86706 (2) An implement of husbandry being moved on a highway shall be accompanied by:

86707 (a) front and rear escort vehicles when the implement of husbandry is 16 feet in width
86708 or greater unless the implement of husbandry is moved by a farmer or rancher or [~~his~~] the
86709 farmer or rancher's employees in connection with an agricultural operation; or

86710 (b) one or more escort vehicles when the implement of husbandry is traveling on a
86711 highway where special hazards exist related to weather, pedestrians, other traffic, or highway
86712 conditions.

86713 (3) In addition to the requirements of Subsection (2), a person may not move an
86714 implement of husbandry on a highway during hours of darkness without lights and reflectors as
86715 required under Section 41-6a-1608 or 41-6a-1609.

86716 (4) (a) Except for an implement of husbandry moved by a farmer or rancher or the
86717 farmer's or rancher's employees in connection with an agricultural operation, a person may not

86718 move an implement of husbandry on the highway without:

86719 (i) an oversize permit obtained under Section 72-7-406 if required;

86720 (ii) trained escort vehicle drivers and approved escort vehicles when required under
86721 Subsection (2); and

86722 (iii) compliance with the vehicle weight requirements of Section 72-7-404.

86723 (b) (i) The department shall issue an annual oversize permit for the purpose of allowing
86724 the movement of implements of husbandry on the highways in accordance with this chapter.

86725 (ii) The permit shall require the applicant to obtain verbal permission from the
86726 department for each trip involving the movement of an implement of husbandry 16 feet or
86727 greater in width.

86728 (c) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86729 Administrative Rulemaking Act, the department shall make rules specifying training for escort
86730 vehicle drivers and equipment requirements for escort vehicles as provided in Subsection (4)(a).

86731 (5) Any person who violates this section is guilty of a class B misdemeanor.

86732 Section 2123. Section **72-7-504** is amended to read:

86733 **72-7-504. Advertising prohibited near interstate or primary system -- Exceptions**
86734 **-- Logo advertising -- Department rules.**

86735 (1) Outdoor advertising that is capable of being read or comprehended from any place
86736 on the main-traveled way of an interstate or primary system may not be erected or maintained,
86737 except:

86738 (a) directional and other official signs and notices authorized or required by law,
86739 including signs and notices pertaining to natural wonders and scenic and historic attractions,
86740 informational or directional signs regarding utility service, emergency telephone signs, buried or
86741 underground utility markers, and above ground utility closure signs;

86742 (b) signs advertising the sale or lease of property upon which they are located;

86743 (c) signs advertising activities conducted on the property where they are located,
86744 including signs on the premises of a public assembly facility as provided in Section 72-7-504.5;

86745 (d) signs located in a commercial or industrial zone;

86746 (e) signs located in unzoned industrial or commercial areas as determined from actual
86747 land uses; and

86748 (f) logo advertising under Subsection (2).

86749 (2) (a) The department may itself or by contract erect, administer, and maintain
86750 informational signs on the main-traveled way of an interstate or primary system for the display
86751 of logo advertising and information of interest to the traveling public if:

86752 (i) the department complies with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah
86753 Procurement Code, in the lease or other contract agreement with a private party for the sign or
86754 sign space; and

86755 (ii) the private party for the lease of the sign or sign space pays an amount set by the
86756 department to be paid to the department or the party under contract with the department under
86757 this Subsection (2).

86758 (b) The amount shall be sufficient to cover the costs of erecting, administering, and
86759 maintaining the signs or sign spaces.

86760 (c) The department may consult the Governor's Office of Economic Development in
86761 carrying out this Subsection (2).

86762 (3) (a) Revenue generated under Subsection (2) shall be:

86763 (i) applied first to cover department costs under Subsection (2); and

86764 (ii) deposited in the Transportation Fund.

86765 (b) Revenue in excess of costs under Subsection (2)(a) shall be deposited in the General
86766 Fund as a dedicated credit for use by the Governor's Office of Economic Development no later
86767 than the following fiscal year.

86768 (4) Outdoor advertising under Subsections (1)(a), (d), (e), and (f) shall conform to the
86769 rules made by the department under Sections 72-7-506 and 72-7-507.

86770 Section 2124. Section **72-7-506** is amended to read:

86771 **72-7-506. Advertising -- Regulatory power of department -- Notice requirements.**

86772 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

86773 Administrative Rulemaking Act, the department may make rules no more restrictive than this

86774 chapter to:

86775 (a) control the erection and maintenance of outdoor advertising along the interstate and
86776 primary highway systems;

86777 (b) provide for enforcement of this chapter;

86778 (c) establish the form, content, and submittal of applications to erect outdoor
86779 advertising; and

86780 (d) establish administrative procedures.

86781 (2) In addition to all other statutory notice requirements:

86782 (a) the department shall give reasonably timely written notice to all outdoor advertising
86783 permit holders of any changes or proposed changes in administrative rules made under authority
86784 of this part; and

86785 (b) any county, municipality, or governmental entity shall, upon written request, give
86786 reasonably timely written notice to all outdoor advertising permit holders within its jurisdiction
86787 of any change or proposed change to the outdoor or off-premise advertising provisions of its
86788 zoning provisions, codes, or ordinances.

86789 Section 2125. Section **72-7-507** is amended to read:

86790 **72-7-507. Advertising -- Permits -- Application requirements -- Duration -- Fees.**

86791 (1) (a) Outdoor advertising may not be maintained without a current permit.

86792 (b) Applications for permits shall be made to the department on forms furnished by it.

86793 (c) A permit must be obtained prior to installing each outdoor sign.

86794 (d) The application for a permit shall be accompanied by an initial fee established under
86795 Section [~~63-38-3.2~~] 63J-1-303.

86796 (2) (a) Each permit issued by the department is valid for a period of up to five years and
86797 shall expire on June 30 of the fifth year of the permit, or upon the expiration or termination of
86798 the right to use the property, whichever is sooner.

86799 (b) Upon renewal, each permit may be renewed for periods of up to five years upon the
86800 filing of a renewal application and payment of a renewal fee established under Section
86801 [~~63-38-3.2~~] 63J-1-303.

86802 (3) Sign owners residing outside the state shall provide the department with a
86803 continuous performance bond in the amount of \$2,500.

86804 (4) Fees may not be prorated for fractions of the permit period. Advertising copy may
86805 be changed at any time without payment of an additional fee.

86806 (5) (a) Each sign shall have its permit continuously affixed to the sign in a position
86807 visible from the nearest traveled portion of the highway.

86808 (b) The permit shall be affixed to the sign structure within 30 days after delivery by the
86809 department to the permit holder, or within 30 days of the installation date of the sign structure.

86810 (c) Construction of the sign structure shall begin within 180 days after delivery of the
86811 permit by the department to the permit holder and construction shall be completed within 365
86812 days after delivery of the permit.

86813 (6) The department may not accept any applications for a permit or issue any permit to
86814 erect or maintain outdoor advertising within 500 feet of a permitted sign location except to the
86815 permit holder or the permit holder's assigns until the permit has expired or has been terminated
86816 pursuant to the procedures under Section 72-7-508.

86817 (7) Permits are transferrable if the ownership of the permitted sign is transferred.

86818 (8) Conforming, permitted sign structures may be altered, changed, remodeled, and
86819 relocated subject to the provisions of Subsection (6).

86820 Section 2126. Section **72-7-508** is amended to read:

86821 **72-7-508. Unlawful outdoor advertising -- Adjudicative proceedings -- Judicial**
86822 **review -- Costs of removal -- Civil and criminal liability for damaging regulated signs --**
86823 **Immunity for Department of Transportation.**

86824 (1) Outdoor advertising is unlawful when:

86825 (a) erected after May 9, 1967, contrary to the provisions of this chapter;

86826 (b) a permit is not obtained as required by this part;

86827 (c) a false or misleading statement has been made in the application for a permit that
86828 was material to obtaining the permit; or

86829 (d) the sign for which a permit was issued is not in a reasonable state of repair, is

86830 unsafe, or is otherwise in violation of this part.

86831 (2) The establishment, operation, repair, maintenance, or alteration of any sign contrary
86832 to this chapter is also a public nuisance.

86833 (3) Except as provided in Subsection (4), in its enforcement of this section, the
86834 department shall comply with the procedures and requirements of [~~Title 63, Chapter 46b~~] Title
86835 63G, Chapter 4, Administrative Procedures Act.

86836 (4) (a) The district courts shall have jurisdiction to review by trial de novo all final
86837 orders of the department under this part resulting from formal and informal adjudicative
86838 proceedings.

86839 (b) Venue for judicial review of final orders of the department shall be in the county in
86840 which the sign is located.

86841 (5) If the department is granted a judgment, the department is entitled to have any
86842 nuisance abated and recover from the responsible person, firm, or corporation, jointly and
86843 severally:

86844 (a) the costs and expenses incurred in removing the sign; and

86845 (b) \$100 for each day the sign was maintained following the expiration of ten days after
86846 notice of agency action was filed and served under Section [~~63-46b-3~~] 63G-4-201.

86847 (6) (a) Any person, partnership, firm, or corporation who vandalizes, damages, defaces,
86848 destroys, or uses any sign controlled under this chapter without the owner's permission is liable
86849 to the owner of the sign for treble the amount of damage sustained and all costs of court,
86850 including a reasonable attorney's fee, and is guilty of a class C misdemeanor.

86851 (b) This Subsection (6) does not apply to the department, its agents, or employees if
86852 acting to enforce this part.

86853 Section 2127. Section **72-9-103** is amended to read:

86854 **72-9-103. Rulemaking -- Adjudicative proceedings.**

86855 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86856 Administrative Rulemaking Act, the department shall make rules:

86857 (a) adopting by reference in whole or in part the Federal Motor Carrier Safety

86858 Regulations including minimum security requirements for motor carriers;
86859 (b) specifying the equipment required to be carried in each tow truck, including limits
86860 on loads that may be moved based on equipment capacity and load weight;
86861 (c) specifying collection procedures, in conjunction with the administration and
86862 enforcement of the safety or security requirements, for the motor carrier fee under Section
86863 72-9-706; and

86864 (d) providing for the necessary administration and enforcement of this chapter.
86865 (2) The department shall comply with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
86866 Administrative Procedures Act, in its adjudicative proceedings.

86867 Section 2128. Section **72-9-502** is amended to read:

86868 **72-9-502. Motor vehicles to stop at ports-of-entry -- Signs -- Exceptions --**
86869 **Rulemaking -- By-pass permits.**

86870 (1) Except under Subsection (3), a motor carrier operating a motor vehicle with a gross
86871 vehicle weight of 10,001 pounds or more or any motor vehicle carrying livestock as defined in
86872 Section 4-24-2 shall stop at a port-of-entry as required under this section.

86873 (2) The department may erect and maintain signs directing motor vehicles to a
86874 port-of-entry as provided in this section.

86875 (3) A motor vehicle required to stop at a port-of-entry under Subsection (1) is exempt
86876 from this section if:

86877 (a) the total one-way trip distance for the motor vehicle would be increased by more
86878 than 5% or three miles, whichever is greater if diverted to a port-of-entry; or

86879 (b) the motor vehicle is operating under a temporary port-of-entry by-pass permit
86880 issued under Subsection (4).

86881 (4) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86882 Administrative Rulemaking Act, the department shall make rules for the issuance of a temporary
86883 port-of-entry by-pass permit exempting a motor vehicle from the provisions of Subsection (1) if
86884 the department determines that the permit is needed to accommodate highway transportation
86885 needs due to multiple daily or weekly trips in the proximity of a port-of-entry.

86886 (b) The rules under Subsection (4)(a) shall provide that one permit may be issued to a
86887 motor carrier for multiple motor vehicles.

86888 Section 2129. Section **72-9-602** is amended to read:

86889 **72-9-602. Towing inspections, investigations, and certification -- Equipment**
86890 **requirements -- Consumer information.**

86891 (1) (a) The department shall inspect, investigate, and certify tow truck motor carriers,
86892 tow trucks, and tow truck drivers to ensure compliance with this chapter and compliance with
86893 Sections 41-6a-1406 and 41-6a-1407.

86894 (b) The inspection, investigation, and certification shall be conducted prior to any tow
86895 truck operation and at least every two years thereafter.

86896 (c) (i) The department shall issue an authorized towing certificate for each tow truck
86897 motor carrier, tow truck, and driver that complies with this part.

86898 (ii) The certificate shall expire two years from the month of issuance.

86899 (d) The department may charge a biennial fee established under Section [~~63-38-3.2~~]
86900 63J-1-303 to cover the cost of the inspection, investigation, and certification required under this
86901 part.

86902 (2) The department shall make consumer protection information available to the public
86903 that may use a tow truck motor carrier.

86904 Section 2130. Section **72-9-603** is amended to read:

86905 **72-9-603. Towing notice requirements -- Cost responsibilities -- Abandoned**
86906 **vehicle title restrictions -- Rules for maximum rates and certification.**

86907 (1) Except for tow truck service that was ordered by a peace officer, or a person acting
86908 on behalf of a law enforcement agency, or a highway authority, as defined in Section 72-1-102,
86909 after performing a tow truck service that is being done without the vehicle, vessel, or outboard
86910 motor owner's knowledge, the tow truck operator or the tow truck motor carrier shall:

86911 (a) immediately upon arriving at the place of storage or impound of the vehicle, vessel,
86912 or outboard motor, contact the law enforcement agency having jurisdiction over the area where
86913 the vehicle, vessel, or outboard motor was picked up and notify the agency of the:

86914 (i) location of the vehicle, vessel, or outboard motor;

86915 (ii) date, time, and location from which the vehicle, vessel, or outboard motor was
86916 removed;

86917 (iii) reasons for the removal of the vehicle, vessel, or outboard motor;

86918 (iv) person who requested the removal of the vehicle, vessel, or outboard motor; and

86919 (v) vehicle, vessel, or outboard motor's description, including its identification number
86920 and license number or other identification number issued by a state agency; and

86921 (b) within two business days of performing the tow truck service, send a certified letter
86922 to the last-known address of the registered owner and lien holder of the vehicle, vessel, or
86923 outboard motor obtained from the Motor Vehicle Division or if the person has actual
86924 knowledge of the owner's address to the current address, notifying him of the:

86925 (i) location of the vehicle, vessel, or outboard motor;

86926 (ii) date, time, location from which the vehicle, vessel, or outboard motor was removed;

86927 (iii) reasons for the removal of the vehicle, vessel, or outboard motor;

86928 (iv) person who requested the removal of the vehicle, vessel, or outboard motor;

86929 (v) a description, including its identification number and license number or other
86930 identification number issued by a state agency; and

86931 (vi) costs and procedures to retrieve the vehicle, vessel, or outboard motor.

86932 (2) Until the tow truck operator or tow truck motor carrier reports the removal as
86933 required under Subsection (1)(a), a tow truck motor carrier or impound yard may not:

86934 (a) collect any fee associated with the removal; and

86935 (b) begin charging storage fees.

86936 (3) The owner of a vehicle, vessel, or outboard motor lawfully removed is only
86937 responsible for paying:

86938 (a) the tow truck service and storage fees set in accordance with Subsection (7); and

86939 (b) the administrative impound fee set in Section 41-6a-1406, if applicable.

86940 (4) The fees under Subsection (3) are a possessory lien on the vehicle, vessel, or
86941 outboard motor until paid.

86942 (5) A person may not request a transfer of title to an abandoned vehicle until at least 30
86943 days after notice has been sent under Subsection (1)(b).

86944 (6) A tow truck motor carrier or impound yard shall clearly and conspicuously post and
86945 disclose all its current fees and rates for tow truck service and storage of a vehicle in accordance
86946 with rules established under Subsection (7).

86947 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86948 Administrative Rulemaking Act, the Department of Transportation shall:

86949 (a) set maximum rates that:

86950 (i) tow truck motor carriers may charge for the tow truck service of a vehicle, vessel, or
86951 outboard motor that are transported in response to:

86952 (A) a peace officer dispatch call;

86953 (B) a motor vehicle division call; and

86954 (C) any other call where the owner of the vehicle, vessel, or outboard motor has not
86955 consented to the removal; and

86956 (ii) impound yards may charge for the storage of a vehicle, vessel, or outboard motor
86957 stored as a result of one of the conditions listed under Subsection (7)(a)(i);

86958 (b) establish authorized towing certification requirements, not in conflict with federal
86959 law, related to incident safety, clean-up, and hazardous material handling; and

86960 (c) specify the form and content of the posting and disclosure of fees and rates charged
86961 by a tow truck motor carrier or impound yard.

86962 Section 2131. Section **72-10-103** is amended to read:

86963 **72-10-103. Rulemaking requirement.**

86964 (1) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
86965 Administrative Rulemaking Act, the department shall make rules:

86966 (a) governing the establishment, location, and use of air navigation facilities;

86967 (b) regulating the use, licensing, and supervision of airports;

86968 (c) establishing minimum standards with which all air navigation facilities, flying clubs,
86969 aircraft, gliders, pilots, and airports must comply; and

- 86970 (d) safeguarding from accident and protecting the safety of persons operating or using
86971 aircraft and persons and property on the ground.
- 86972 (2) The rules may:
- 86973 (a) require that any device or accessory that forms part of any aircraft or its equipment
86974 be certified as complying with this chapter;
- 86975 (b) limit the use of any device or accessory as necessary for safety; and
- 86976 (c) develop and promote aeronautics within this state.
- 86977 (3) (a) To avoid the danger of accident incident to confusion arising from conflicting
86978 rules governing aeronautics, the rules shall conform as nearly as possible with federal legislation,
86979 rules, regulations, and orders on aeronautics.
- 86980 (b) The rules may not be inconsistent with paramount federal legislation, rules,
86981 regulations, and orders on the subject.
- 86982 (4) The department may not require any pilot, aircraft, or mechanic who has procured a
86983 license under the Civil Aeronautics Authority of the United States to obtain a license from this
86984 state, other than required by this chapter.
- 86985 (5) The department may not make rules that conflict with the regulations of:
- 86986 (a) the Civil Aeronautics Authority; or
- 86987 (b) other federal agencies authorized to regulate the particular activity.
- 86988 (6) All schedules of charges, tolls, and fees established by the division shall be approved
86989 and adopted by the department.
- 86990 (7) The department shall comply with the procedures and requirements of [~~Title 63,~~
86991 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
86992 proceedings.

86993 Section 2132. Section **72-10-107** is amended to read:
86994 **72-10-107. Procedures -- Adjudicative proceedings.**

86995 The division shall conduct adjudicative proceedings in accordance with [~~Title 63,~~
86996 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act.

86997 Section 2133. Section **72-10-116** is amended to read:

86998 **72-10-116. Airport license required -- Issuance by division -- Restrictions on use**
86999 **of lands or waters of another -- Annual fee.**

87000 (1) (a) An airport open to public use may not be used or operated unless it is duly
87001 licensed by the division.

87002 (b) Any person who owns or operates an airport open to public use shall file an
87003 application with the division for a license for the facility.

87004 (2) (a) A license shall be granted whenever it is reasonably necessary for the
87005 accommodation and convenience of the public and may be granted in other cases in the
87006 discretion of the division.

87007 (b) The division may not issue a license if the division finds that the facility is not
87008 constructed, equipped, and operated in accordance with the standards set by the department.

87009 (3) (a) The landing or taking off of aircraft on or from the lands or waters of another
87010 without consent is unlawful, except in the case of a forced landing.

87011 (b) For damages caused by a takeoff or landing, the owner, lessee of the aircraft,
87012 operator, or any of them is liable.

87013 (4) (a) A student pilot may not land on any area without the knowledge of the operator,
87014 instructor, or school from which the student is flying.

87015 (b) The use of private landing fields must not impose a hazard upon the person or
87016 property of others.

87017 (5) A certificate of registration is not required of, and the rules made under this title do
87018 not apply to an airport owned or operated by the government of the United States.

87019 (6) The division, with the approval of the commission, may charge a fee determined by
87020 the division pursuant to Section [~~63-38-3.2~~] 63J-1-303 for the issuance of an annual airport
87021 license.

87022 Section 2134. Section **72-10-117** is amended to read:

87023 **72-10-117. Aircraft landing permits -- Eligible aircraft -- Special licenses -- Rules**
87024 **-- Proof of insurance -- Bonds.**

87025 (1) (a) The county executive of any county may issue permits authorizing aircraft to

87026 land on or take off from designated county roads.

87027 (b) Permits may be issued to aircraft operated:

87028 (i) as air ambulances;

87029 (ii) as pesticide applicators; or

87030 (iii) by or under contract with public utilities and used in connection with inspection,
87031 maintenance, installation, operation, construction, or repair of property owned or operated by
87032 the public utility.

87033 (2) Permits may also be issued by the county executive to other aircraft under rules
87034 made by the division.

87035 (3) (a) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
87036 Administrative Rulemaking Act, the division shall make rules for issuing a special license to:

87037 (i) an aircraft permitted by a county executive to land on a county road; and

87038 (ii) a pilot permitted to operate an aircraft licensed under this subsection from a county
87039 road.

87040 (b) The rules made under this subsection shall include provisions for the safety of the
87041 flying and motoring public.

87042 (4) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
87043 Administrative Rulemaking Act, the department shall make rules for the landing and taking off
87044 of aircraft to which permits have been issued, which may include annual reports of activities of
87045 the aircraft.

87046 (5) Prior to obtaining a permit or license to any aircraft, the applicant shall file with the
87047 county executive and the division a certificate of insurance executed by an insurance company
87048 or association authorized to transact business in this state upon a form prescribed by the division
87049 that there is in full force and effect a policy of insurance covering the aircraft for liability
87050 against:

87051 (a) personal injury or death for any one person in an amount of \$50,000 or more;

87052 (b) any one accident in an amount of \$100,000 or more; and

87053 (c) property damage in an amount of \$50,000 or more.

87054 (6) In addition to the insurance required under this section, either the county executive
87055 or the division may require the posting of a bond to indemnify the county or division against
87056 liability resulting from issuing the permit or license.

87057 Section 2135. Section **72-11-203** is amended to read:

87058 **72-11-203. Procedures -- Adjudicative proceedings.**

87059 The committee shall comply with the procedures and requirements of [~~Title 63, Chapter~~
87060 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative proceedings.

87061 Section 2136. Section **72-11-208** is amended to read:

87062 **72-11-208. Passenger ropeways -- Registration fee.**

87063 The application for registration, or supplemental application, shall be accompanied by an
87064 annual fee adopted by the committee in accordance with Section [~~63-38-3.2~~] 63J-1-303.

87065 Section 2137. Section **72-11-210** is amended to read:

87066 **72-11-210. Passenger ropeways -- Additional powers and duties of committee.**

87067 The committee may:

87068 (1) in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

87069 Administrative Rulemaking Act, make rules establishing:

87070 (a) public safety in the design, construction, and operation of passenger ropeways that:

87071 (i) adopt the American National Standard for Passenger Ropeways;

87072 (ii) modify the standard under Subsection (1)(a)(i); or

87073 (iii) establish an equivalent standard; and

87074 (b) the annual registration date;

87075 (2) hold hearings and take evidence in all matters relating to the exercise and

87076 performance of the powers and duties vested in the committee;

87077 (3) subpoena witnesses;

87078 (4) administer oaths;

87079 (5) compel the testimony of witnesses and the production of books, papers, and records

87080 relevant to any inquiry;

87081 (6) approve, deny, revoke, and renew the registrations provided for in this chapter;

87082 (7) cause the prosecution and enjoinder of all persons violating the provisions of this
87083 chapter and incur the necessary expenses;

87084 (8) elect officers and adopt a seal which may be affixed to all registrations issued by the
87085 committee; and

87086 (9) employ, within the funds available, and prescribe the duties of a secretary and other
87087 personnel as the committee considers necessary.

87088 Section 2138. Section **73-1-4** is amended to read:

87089 **73-1-4. Reversion to the public by abandonment or forfeiture for nonuse within**
87090 **five years -- Extension of time.**

87091 (1) (a) In order to further the state policy of securing the maximum use and benefit of
87092 its scarce water resources, a person entitled to the use of water has a continuing obligation to
87093 place all of a water right to beneficial use.

87094 (b) The forfeiture of all or part of any right to use water for failure to place all or part of
87095 the water to beneficial use makes possible the allocation and use of water consistent with long
87096 established beneficial use concepts.

87097 (c) The provisions of Subsections (2) through (6) shall be construed to carry out the
87098 purposes and policies set forth in this Subsection (1).

87099 (2) As used in this section, "public water supply entity" means an entity that supplies
87100 water as a utility service or for irrigation purposes and is also:

87101 (a) a municipality, water conservancy district, metropolitan water district, irrigation
87102 district, or other public agency;

87103 (b) a water company regulated by the Public Service Commission; or

87104 (c) any other owner of a community water system.

87105 (3) (a) When an appropriator or the appropriator's successor in interest abandons or
87106 ceases to use all or a portion of a water right for a period of five years, the water right or the
87107 unused portion of that water right ceases and the water reverts to the public, unless, before the
87108 expiration of the five-year period, the appropriator or the appropriator's successor in interest
87109 files a verified nonuse application with the state engineer.

87110 (b) (i) A nonuse application may be filed on all or a portion of the water right, including
87111 water rights held by mutual irrigation companies.

87112 (ii) Public water supply entities that own stock in a mutual water company, after giving
87113 written notice to the water company, may file nonuse applications with the state engineer on the
87114 water represented by the stock.

87115 (c) (i) A water right or a portion of the water right may not be forfeited unless a judicial
87116 action to declare the right forfeited is commenced within 15 years from the end of the latest
87117 period of nonuse of at least five years.

87118 (ii) If forfeiture is asserted in an action for general determination of rights in
87119 conformance with the provisions of Chapter 4, Determination of Water Rights, the 15-year
87120 limitation period shall commence to run back in time from the date the state engineer's
87121 proposed determination of rights is served upon each claimant.

87122 (iii) A decree entered in an action for general determination of rights under Chapter 4,
87123 Determination of Water Rights, shall bar any claim of forfeiture for prior nonuse against any
87124 right determined to be valid in the decree, but shall not bar a claim for periods of nonuse that
87125 occur after the entry of the decree.

87126 (iv) A proposed determination by the state engineer in an action for general
87127 determination of rights under Chapter 4, Determination of Water Rights, shall bar any claim of
87128 forfeiture for prior nonuse against any right proposed to be valid, unless a timely objection has
87129 been filed within the time allowed in Chapter 4, Determination of Water Rights.

87130 (d) The extension of time to resume the use of that water may not exceed five years
87131 unless the time is further extended by the state engineer.

87132 (e) The provisions of this section are applicable whether the unused or abandoned water
87133 or a portion of the water is permitted to run to waste or is used by others without right with the
87134 knowledge of the water right holder, provided that the use of water pursuant to a lease or other
87135 agreement with the appropriator or the appropriator's successor shall be considered to
87136 constitute beneficial use.

87137 (f) The provisions of this section shall not apply:

87138 (i) to those periods of time when a surface water source fails to yield sufficient water to
87139 satisfy the water right, or when groundwater is not available because of a sustained drought;

87140 (ii) to water stored in reservoirs pursuant to an existing water right, where the stored
87141 water is being held in storage for present or future use; or

87142 (iii) when a water user has beneficially used substantially all of a water right within a
87143 five-year period, provided that this exemption shall not apply to the adjudication of a water right
87144 in a general determination of water rights under Chapter 4, Determination of Water Rights.

87145 (g) Groundwater rights used to supplement the quantity or quality of other water
87146 supplies may not be subject to loss or reduction under this section if not used during periods
87147 when the other water source delivers sufficient water so as to not require use of the
87148 supplemental groundwater.

87149 (4) (a) The state engineer shall furnish an application requiring the following
87150 information:

87151 (i) the name and address of the applicant;

87152 (ii) a description of the water right or a portion of the water right, including the point of
87153 diversion, place of use, and priority;

87154 (iii) the date the water was last diverted and placed to beneficial use;

87155 (iv) the quantity of water;

87156 (v) the period of use;

87157 (vi) the extension of time applied for;

87158 (vii) a statement of the reason for the nonuse of the water; and

87159 (viii) any other information that the state engineer requires.

87160 (b) Filing the application extends the time during which nonuse may continue until the
87161 state engineer issues [~~his~~] the state engineer's order on the nonuse application.

87162 (c) (i) Upon receipt of the application, the state engineer shall publish a notice of the
87163 application once a week for two successive weeks in a newspaper of general circulation in the
87164 county in which the source of the water supply is located and where the water is to be used.

87165 (ii) The notice shall:

- 87166 (A) state that an application has been made; and
- 87167 (B) specify where the interested party may obtain additional information relating to the
87168 application.
- 87169 (d) Any interested person may file a written protest with the state engineer against the
87170 granting of the application:
- 87171 (i) within 20 days after the notice is published, if the adjudicative proceeding is
87172 informal; and
- 87173 (ii) within 30 days after the notice is published, if the adjudicative proceeding is formal.
- 87174 (e) In any proceedings to determine whether the application for extension should be
87175 approved or rejected, the state engineer shall follow the procedures and requirements of [~~Title~~
87176 ~~63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.
- 87177 (f) After further investigation, the state engineer may approve or reject the application.
- 87178 (5) (a) Nonuse applications on all or a portion of a water right shall be granted by the
87179 state engineer for periods not exceeding five years each, upon a showing of reasonable cause for
87180 nonuse.
- 87181 (b) Reasonable causes for nonuse include:
- 87182 (i) demonstrable financial hardship or economic depression;
- 87183 (ii) the initiation of recognized water conservation or efficiency practices, or the
87184 operation of a groundwater recharge recovery program approved by the state engineer;
- 87185 (iii) operation of legal proceedings;
- 87186 (iv) the holding of a water right or stock in a mutual water company without use by any
87187 public water supply entity to meet the reasonable future requirements of the public;
- 87188 (v) situations where, in the opinion of the state engineer, the nonuse would assist in
87189 implementing an existing, approved water management plan;
- 87190 (vi) situations where all or part of the land on which water is used is contracted under
87191 an approved state agreement or federal conservation following program;
- 87192 (vii) the loss of capacity caused by deterioration of the water supply or delivery
87193 equipment if the applicant submits, with the application, a specific plan to resume full use of the

87194 water right by replacing, restoring, or improving the equipment; or

87195 (viii) any other reasonable cause.

87196 (6) (a) Sixty days before the expiration of any extension of time, the state engineer shall
87197 notify the applicant by mail or by any form of electronic communication through which receipt
87198 is verifiable, of the date when the extension period will expire.

87199 (b) Before the date of expiration, the applicant shall either:

87200 (i) file a verified statement with the state engineer setting forth the date on which use of
87201 the water was resumed, and whatever additional information is required by the state engineer; or

87202 (ii) apply for a further extension of time in which to resume use of the water according
87203 to the procedures and requirements of this section.

87204 (c) Upon receipt of the applicant's properly completed, verified statement, the state
87205 engineer shall conduct investigations necessary to verify that beneficial use has resumed and, if
87206 so, shall issue a certificate of resumption of use of the water as evidenced by the resumed
87207 beneficial use.

87208 (7) The appropriator's water right or a portion of the water right ceases and the water
87209 reverts to the public if the:

87210 (a) appropriator or the appropriator's successor in interest fails to apply for an
87211 extension of time;

87212 (b) state engineer denies the nonuse application; or

87213 (c) appropriator or the appropriator's successor in interest fails to apply for a further
87214 extension of time.

87215 Section 2139. Section **73-2-1** is amended to read:

87216 **73-2-1. State engineer -- Term -- Powers and duties -- Qualification for duties.**

87217 (1) There shall be a state engineer.

87218 (2) The state engineer shall:

87219 (a) be appointed by the governor with the consent of the Senate;

87220 (b) hold office for the term of four years and until a successor is appointed; and

87221 (c) have five years experience as a practical engineer or the theoretical knowledge,

87222 practical experience, and skill necessary for the position.

87223 (3) (a) The state engineer shall be responsible for the general administrative supervision
87224 of the waters of the state and the measurement, appropriation, apportionment, and distribution
87225 of those waters.

87226 (b) The state engineer may secure the equitable apportionment and distribution of the
87227 water according to the respective rights of appropriators.

87228 (4) The state engineer shall make rules, in accordance with [~~Title 63, Chapter 46a~~] Title
87229 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and
87230 provisions of this title, regarding:

87231 (a) reports of water right conveyances;

87232 (b) the construction of water wells and the licensing of water well drillers;

87233 (c) dam construction and safety;

87234 (d) the alteration of natural streams;

87235 (e) sewage effluent reuse;

87236 (f) geothermal resource conservation; and

87237 (g) enforcement orders and the imposition of fines and penalties.

87238 (5) The state engineer may make rules, in accordance with [~~Title 63, Chapter 46a~~] Title
87239 63G, Chapter 3, Utah Administrative Rulemaking Act, consistent with the purposes and
87240 provisions of this title, governing:

87241 (a) water distribution systems and water commissioners;

87242 (b) water measurement and reporting;

87243 (c) ground-water recharge and recovery;

87244 (d) the determination of water rights; and

87245 (e) the form and content of applications and related documents, maps, and reports.

87246 (6) The state engineer may bring suit in courts of competent jurisdiction to:

87247 (a) enjoin the unlawful appropriation, diversion, and use of surface and underground
87248 water without first seeking redress through the administrative process;

87249 (b) prevent theft, waste, loss, or pollution of those waters;

87250 (c) enable him to carry out the duties of ~~[his]~~ the state engineer's office; and
87251 (d) enforce administrative orders and collect fines and penalties.
87252 (7) The state engineer may:
87253 (a) upon request from the board of trustees of an irrigation district under Title 17B,
87254 Chapter 2a, Part 5, Irrigation District Act, or another local district under Title 17B, Limited
87255 Purpose Local Government Entities - Local Districts, or a special service district under Title
87256 17A, Chapter 2, Part 13, Utah Special Service District Act, that operates an irrigation water
87257 system, cause a water survey to be made of all lands proposed to be annexed to the district in
87258 order to determine and allot the maximum amount of water that could be beneficially used on
87259 the land, with a separate survey and allotment being made for each 40-acre or smaller tract in
87260 separate ownership; and
87261 (b) upon completion of the survey and allotment under Subsection (7)(a), file with the
87262 district board a return of the survey and report of the allotment.
87263 (8) (a) The state engineer may establish water distribution systems and define their
87264 boundaries.
87265 (b) The water distribution systems shall be formed in a manner that:
87266 (i) secures the best protection to the water claimants; and
87267 (ii) is the most economical for the state to supervise.
87268 Section 2140. Section **73-2-1.5** is amended to read:
87269 **73-2-1.5. Procedures -- Adjudicative proceedings.**
87270 Except as provided in Sections ~~[63-46-1]~~ 63G-4-102 and 73-2-25, the state engineer
87271 and the Division of Water Rights shall comply with the procedures and requirements of ~~[Title~~
87272 ~~63, Chapter 46]~~ Title 63G, Chapter 4, Administrative Procedures Act, in their adjudicative
87273 proceedings.
87274 Section 2141. Section **73-2-14** is amended to read:
87275 **73-2-14. Fees of state engineer -- Deposited as a dedicated credit.**
87276 (1) The state engineer shall charge fees pursuant to Section ~~[63-38-3.2]~~ 63J-1-303 for
87277 the following:

- 87278 (a) applications to appropriate water;
- 87279 (b) applications to temporarily appropriate water;
- 87280 (c) applications for permanent or temporary change;
- 87281 (d) applications for exchange;
- 87282 (e) applications for an extension of time in which to resume use of water;
- 87283 (f) applications to appropriate water, or make a permanent or temporary change, for
- 87284 use outside the state filed pursuant to Title 73, Chapter 3a, Water Exports;
- 87285 (g) groundwater recovery permits;
- 87286 (h) diligence claims for surface or underground water filed pursuant to Section 73-5-13;
- 87287 (i) republication of notice to water users after amendment of application where required
- 87288 by this title;
- 87289 (j) applications to segregate;
- 87290 (k) requests for an extension of time in which to submit proof of appropriation not to
- 87291 exceed 14 years after the date of approval of the application;
- 87292 (l) requests for an extension of time in which to submit proof of appropriation 14 years
- 87293 or more after the date of approval of the application;
- 87294 (m) groundwater recharge permits;
- 87295 (n) applications for a well driller's license, annual renewal of a well driller's license, and
- 87296 late annual renewal of a well driller's license;
- 87297 (o) certification of copies;
- 87298 (p) preparing copies of documents; and
- 87299 (q) reports of water right conveyance.
- 87300 (2) Fees for the services specified in Subsections (1)(a) through (i) shall be based upon
- 87301 the rate of flow or volume of water. If it is proposed to appropriate by both direct flow and
- 87302 storage, the fee shall be based upon either the rate of flow or annual volume of water stored,
- 87303 whichever fee is greater.
- 87304 (3) Fees collected under this section:
- 87305 (a) shall be deposited in the General Fund as a dedicated credit to be used by the

87306 Division of Water Rights; and

87307 (b) may only be used by the Division of Water Rights to:

87308 (i) meet the publication of notice requirements under this title; and

87309 (ii) process reports of water right conveyance.

87310 Section 2142. Section **73-2-25** is amended to read:

87311 **73-2-25. State engineer enforcement powers.**

87312 (1) For purposes of this section, "initial order" means one of the following issued by the
87313 state engineer:

87314 (a) a notice of violation; or

87315 (b) a cease and desist order.

87316 (2) (a) The state engineer may commence an enforcement action under this section if
87317 the state engineer finds that a person:

87318 (i) is diverting, impounding, or using water for which no water right has been
87319 established;

87320 (ii) is diverting, impounding, or using water in violation of an existing water right;

87321 (iii) violates Section 73-5-4;

87322 (iv) violates Section 73-5-9;

87323 (v) violates a written distribution order from the state engineer;

87324 (vi) violates an order issued under Section 73-3-29 regarding the alteration of the bed
87325 or bank of a natural stream channel; or

87326 (vii) violates a notice or order regarding dam safety issued under Chapter 5a, Dam
87327 Safety.

87328 (b) To commence an enforcement action under this section, the state engineer shall
87329 issue an initial order, which shall include:

87330 (i) a description of the violation;

87331 (ii) notice of any penalties to which a person may be subject under Section 73-2-26; and

87332 (iii) notice that the state engineer may treat each day's violation of the provisions listed
87333 in Subsection (2)(a) as a separate violation under Subsection 73-2-26(1)(d).

87334 (c) The state engineer's issuance and enforcement of an initial order is exempt from
87335 [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act.

87336 (3) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
87337 Administrative Rulemaking Act, the state engineer shall make rules necessary to enforce an
87338 initial order, which shall include:

87339 (a) provisions consistent with this section and Section 73-2-26 for enforcement of the
87340 initial order if a person to whom an initial order is issued fails to respond to the order or abate
87341 the violation;

87342 (b) the right to a hearing, upon request by a person against whom an initial order is
87343 issued; and

87344 (c) provisions for timely issuance of a final order after:

87345 (i) the person to whom the initial order is issued fails to respond to the order or abate
87346 the violation; or

87347 (ii) a hearing held under Subsection (3)(b).

87348 (4) A person may not intervene in an enforcement action commenced under this section.

87349 (5) After issuance of a final order under rules made pursuant to Subsection (3)(c), the
87350 state engineer shall serve a copy of the final order on the person against whom the order is
87351 issued by:

87352 (a) personal service under Utah Rules of Civil Procedure 5; or

87353 (b) certified mail.

87354 (6) (a) The state engineer's final order may be reviewed by trial de novo by the district
87355 court in:

87356 (i) Salt Lake County; or

87357 (ii) the county where the violation occurred.

87358 (b) A person shall file a petition for judicial review of the state engineer's final order
87359 issued under this section within 20 days from the day on which the final order was served on
87360 that person.

87361 (7) The state engineer may bring suit in a court of competent jurisdiction to enforce a

87362 final order issued under this section.

87363 (8) If the state engineer prevails in an action brought under Subsection (6)(b) or (7), the
87364 state may recover all court costs and a reasonable attorney fee.

87365 Section 2143. Section **73-3-14** is amended to read:

87366 **73-3-14. Judicial review -- State engineer as defendant.**

87367 (1) (a) Any person aggrieved by an order of the state engineer may obtain judicial
87368 review by following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G,
87369 Chapter 4, Administrative Procedures Act.

87370 (b) Venue for judicial review of informal adjudicative proceedings shall be in the county
87371 in which the stream or water source, or some part of it, is located.

87372 (2) The state engineer shall be joined as a defendant in all suits to review [~~his~~] the state
87373 engineer's decisions, but no judgment for costs or expenses of the litigation may be rendered
87374 against [~~him~~] the state engineer.

87375 Section 2144. Section **73-3-25** is amended to read:

87376 **73-3-25. Well driller's license -- Bond -- Revocation or suspension for**
87377 **noncompliance.**

87378 (1) (a) Every person that constructs a well in the state shall obtain a license from the
87379 state engineer.

87380 (b) The state engineer shall enact rules defining the form, the expiration date, and the
87381 renewal cycle of the application for a license.

87382 (c) Well drillers' licenses are not transferable. The state engineer shall enact rules for
87383 well construction according to the procedures and requirements of [~~Title 63, Chapter 46a~~] Title
87384 63G, Chapter 3, Utah Administrative Rulemaking Act.

87385 (2) (a) (i) A person who constructs a well in this state must first obtain a license as
87386 provided in this section.

87387 (ii) Before a well driller's license will be issued, the applicant must file a well driller
87388 bond with the state engineer.

87389 (iii) The bond shall be made payable to the Office of the State Engineer.

87390 (iv) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
87391 Administrative Rulemaking Act, the state engineer may make rules to set the amount, form, and
87392 general administrative requirements of a well driller bond. Proper compliance with the
87393 provisions of this section and the rules enacted under the authority of this section are required
87394 to obtain or renew a license.

87395 (b) (i) Well drillers shall comply with the rules enacted by the state engineer under this
87396 chapter.

87397 (ii) If the state engineer determines, following an investigation, that the licensee has
87398 failed to comply with these rules, the state engineer may revoke or suspend the license, and
87399 exact the bond and deposit the money as a nonlapsing dedicated credit.

87400 (iii) The state engineer may expend the funds to investigate or correct any deficiencies
87401 which could adversely affect the public interest resulting from noncompliance with the rules
87402 promulgated under this chapter by any well driller.

87403 (iv) The state engineer may refuse to issue a license to a well driller if it appears that
87404 there has been a violation of the rules or a failure to comply with Section 73-3-22.

87405 Section 2145. Section **73-3-29** is amended to read:

87406 **73-3-29. Relocation of natural streams -- Written permit required -- Emergency**
87407 **work -- Violations.**

87408 (1) Except as provided in Subsection (2), a state agency, county, city, corporation, or
87409 person may not relocate any natural stream channel or alter the beds and banks of any natural
87410 stream without first obtaining the written approval of the state engineer.

87411 (2) (a) The state engineer may issue an emergency permit or order to relocate a natural
87412 stream channel or alter the beds and banks of a natural stream as provided by this Subsection
87413 (2) and Section [~~63-46b-20~~] 63G-4-502.

87414 (b) If an emergency situation arises which involves immediate or actual flooding and
87415 threatens injury or damage to persons or property, steps reasonably necessary to alleviate or
87416 mitigate the threat may be taken before a written permit is issued subject to the requirements of
87417 this section.

87418 (c) (i) If the threat occurs during normal working hours, the state engineer or ~~his~~ the
87419 state engineer's representative must be notified immediately of the threat. After receiving
87420 notification of the threat, the state engineer or ~~his~~ the state engineer's representative may
87421 orally approve action to alleviate or mitigate the threat.

87422 (ii) If the threat does not occur during normal working hours, action may be taken to
87423 alleviate or mitigate the threat and the state engineer or ~~his~~ the state engineer's representative
87424 shall be notified of the action taken on the first working day following the work.

87425 (d) A written application outlining the action taken or the action proposed to be taken
87426 to alleviate or mitigate the threat shall be submitted to the state engineer within two working
87427 days following notification of the threat to the state engineer or ~~his~~ the state engineer's
87428 representative.

87429 (e) (i) The state engineer shall inspect in a timely manner the site where the emergency
87430 action was taken.

87431 (ii) After inspection, additional requirements, including mitigation measures, may be
87432 imposed.

87433 (f) Adjudicative proceedings following the emergency work shall be informal unless
87434 otherwise designated by the state engineer.

87435 (3) An application to relocate any natural stream channel or alter the beds and banks of
87436 any natural stream shall be in writing and shall contain the following:

87437 (a) the name and address of the applicant;

87438 (b) a complete and detailed statement of the location, nature, and type of relocation or
87439 alteration;

87440 (c) the methods to be employed;

87441 (d) the purposes of the application; and

87442 (e) any additional information that the state engineer considers necessary, including, but
87443 not limited to, plans and specifications of the proposed construction of works.

87444 (4) (a) The state engineer shall, without undue delay, conduct investigations that may
87445 be reasonably necessary to determine whether the proposed relocation or alteration will:

87446 (i) impair vested water rights;
87447 (ii) unreasonably or unnecessarily affect any recreational use or the natural stream
87448 environment;
87449 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or
87450 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high
87451 flows.

87452 (b) The application shall be approved unless the proposed relocation or alteration will:

87453 (i) impair vested water rights;
87454 (ii) unreasonably or unnecessarily adversely affect any public recreational use or the
87455 natural stream environment;
87456 (iii) unreasonably or unnecessarily endanger aquatic wildlife; or
87457 (iv) unreasonably or unnecessarily diminish the natural channel's ability to conduct high
87458 flows.

87459 (c) The state engineer may approve the application, in whole or in part, with any
87460 reasonable terms to protect vested water rights, any public recreational use, the natural stream
87461 environment, or aquatic wildlife.

87462 (5) No cost incurred by the applicant, including any cost incurred to comply with the
87463 terms imposed by the state engineer, is reimbursable by the Division of Water Rights.

87464 (6) Except as provided in Subsection (2), a person who knowingly or intentionally
87465 relocates any natural stream channel, or alters the bed or bank of any natural stream channel
87466 without first obtaining the written approval of the state engineer is guilty of a crime punishable
87467 under Section 73-2-27.

87468 Section 2146. Section **73-3a-104** is amended to read:

87469 **73-3a-104. Rulemaking power of state engineer.**

87470 In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative
87471 Rulemaking Act, the state engineer may make rules necessary to administer this chapter.

87472 Section 2147. Section **73-3a-105** is amended to read:

87473 **73-3a-105. Procedures -- Adjudicative proceedings.**

87474 (1) Except where inconsistent with the provisions of this chapter, the procedures to be
87475 followed by the state engineer in processing and considering applications filed under this
87476 chapter, and the rights and duties of the applicants, are the same as the procedures, rights, and
87477 duties specified in Title 73, Chapter 3, relating to appropriations of water or changes in the
87478 point of diversion, place of use, or purpose of use of water.

87479 (2) Adjudicative proceedings relating to applications made under this chapter shall be
87480 conducted in accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
87481 Procedures Act.

87482 Section 2148. Section **73-3b-104** is amended to read:

87483 **73-3b-104. Rulemaking power of state engineer.**

87484 The state engineer may make rules to administer this chapter in accordance with [~~Title~~
87485 ~~63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

87486 Section 2149. Section **73-3b-105** is amended to read:

87487 **73-3b-105. Administrative procedures.**

87488 The administrative procedures applicable to the issuance, modification, suspension, or
87489 revocation of recharge and recovery permits are those set forth in [~~Title 63, Chapter 46b~~] Title
87490 63G, Chapter 4, Administrative Procedures Act, and Sections 73-3-6, 73-3-7, 73-3-14, and
87491 73-3-15.

87492 Section 2150. Section **73-3b-201** is amended to read:

87493 **73-3b-201. Application for a recharge permit -- Required information -- Filing**
87494 **fee.**

87495 (1) The application for obtaining a groundwater recharge permit shall include the
87496 following information:

87497 (a) the name and mailing address of the applicant;

87498 (b) the name of the groundwater basin or groundwater sub-basin in which the applicant
87499 proposes to operate the project;

87500 (c) the name and mailing address of the owner of the land on which the applicant
87501 proposes to operate the project;

- 87502 (d) a legal description of the location of the proposed project;
- 87503 (e) the source and annual quantity of water proposed to be stored underground;
- 87504 (f) evidence of a water right or an agreement to use the water proposed to be stored
- 87505 underground;
- 87506 (g) the quality of the water proposed to be stored underground and the water quality of
- 87507 the receiving groundwater aquifer;
- 87508 (h) evidence that the applicant has applied for all applicable water quality permits;
- 87509 (i) a plan of operation for the proposed recharge and recovery project which shall
- 87510 include:
- 87511 (i) a description of the proposed project;
- 87512 (ii) its design capacity;
- 87513 (iii) a detailed monitoring program; and
- 87514 (iv) the proposed duration of the project;
- 87515 (j) a copy of a study demonstrating[?];
- 87516 (i) the area of hydrologic impact of the project;
- 87517 (ii) that the project is hydrologically feasible;
- 87518 (iii) that the project will not:
- 87519 (A) cause unreasonable harm to land; or
- 87520 (B) impair any existing water right within the area of hydrologic impact; and
- 87521 (iv) the percentage of anticipated recoverable water;
- 87522 (k) evidence of financial and technical capability; and
- 87523 (l) any other information that the state engineer requires.
- 87524 (2) (a) A filing fee must be submitted with the application.
- 87525 (b) The state engineer shall establish the filing fee in accordance with Section
- 87526 [~~63-38-3.2~~] 63J-1-303.
- 87527 Section 2151. Section **73-3b-204** is amended to read:
- 87528 **73-3b-204. Application for a recovery permit -- Required information.**
- 87529 (1) If a person intends to recharge and recover water, the recovery application and

87530 permit may be filed and processed with the groundwater recharge application and permit.

87531 (2) The application for obtaining a recovery permit shall include the following
87532 information:

87533 (a) the name and mailing address of the applicant;

87534 (b) a legal description of the location of the existing well or proposed new well from
87535 which the applicant intends to recover stored water;

87536 (c) a written consent from the owner of the recharge permit;

87537 (d) the name and mailing address of the owner of the land from which the applicant
87538 proposes to recover stored water;

87539 (e) the name or description of the artificially recharged groundwater aquifer which is
87540 the source of supply;

87541 (f) the purpose for which the stored water will be recovered;

87542 (g) the depth and diameter of the existing well or proposed new well;

87543 (h) a legal description of the area where the stored water is proposed to be used;

87544 (i) the design pumping capacity of the existing well or proposed new well; and

87545 (j) any other information including maps, drawings, and data that the state engineer
87546 requires.

87547 (3) (a) A filing fee must be submitted with the application.

87548 (b) The state engineer shall establish the filing fee in accordance with Section
87549 ~~[63-38-3.2]~~ 63J-1-303.

87550 Section 2152. Section **73-3b-302** is amended to read:

87551 **73-3b-302. Fee.**

87552 (1) The state engineer shall assess an annual fee, in accordance with Section
87553 ~~[63-38-3.2]~~ 63J-1-303, on each person who holds a groundwater recharge or recovery permit.

87554 (2) The fee shall reflect the division's costs to administer and monitor groundwater
87555 recharge and recovery projects.

87556 Section 2153. Section **73-3c-301** is amended to read:

87557 **73-3c-301. Application to the Water Quality Board.**

87558 (1) A public agency proposing a water reuse project shall apply to the Water Quality
87559 Board created by Section 19-1-106.

87560 (2) The Water Quality Board may make rules, in accordance with [~~Title 63, Chapter~~
87561 ~~46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, governing the consideration
87562 and approval of water reuse applications and administration of water reuse construction and
87563 operating permits.

87564 (3) Rules created under Subsection (2) shall require that water reuse meet standards
87565 and requirements for water quality set by the Water Quality Board in accordance with Title 19,
87566 Chapter 5, Water Quality Act.

87567 (4) The Water Quality Board shall issue a written decision for each water reuse
87568 application.

87569 Section 2154. Section **73-3c-302** is amended to read:

87570 **73-3c-302. Application to the state engineer.**

87571 (1) A public agency proposing water reuse shall apply to the state engineer.

87572 (2) An application for water reuse under Subsection (1) shall be made upon forms
87573 furnished by the state engineer and shall include:

87574 (a) the name of the applicant;

87575 (b) a description of the underlying water right;

87576 (c) an evaluation of the underlying water right's diversion, depletion, and return flow
87577 requirements;

87578 (d) the estimated quantity of water to be reused;

87579 (e) the location of the POTW;

87580 (f) the place, purpose, and extent of the proposed water reuse;

87581 (g) an evaluation of depletion from the hydrologic system caused by the water reuse;

87582 and

87583 (h) any other information consistent with this chapter that is requested by the state
87584 engineer.

87585 (3) An application under Subsection (1) shall include a copy of a reuse authorization

87586 contract for water reuse proposed by a public agency for any underlying water right not owned
 87587 by the public agency.

87588 (4) In considering an application for water reuse, the state engineer shall comply with:

87589 (a) Section 73-3-6;

87590 (b) Section 73-3-7;

87591 (c) Section 73-3-10; and

87592 (d) Section 73-3-14.

87593 (5) In determining whether a proposed water reuse is consistent with the underlying
 87594 water right, the state engineer shall conclude that a proposed water reuse is consistent with the
 87595 underlying water right if:

87596 (a) the use of the reuse water does not enlarge the underlying water right; and

87597 (b) any return flow requirement of the underlying water right is satisfied.

87598 (6) (a) The state engineer shall approve a water reuse application if the state engineer
 87599 concludes that the proposed water reuse is consistent with the underlying water right.

87600 (b) The state engineer may:

87601 (i) deny an application for water reuse if the proposed water reuse is inconsistent with
 87602 the underlying water right; or

87603 (ii) approve the application in part or with conditions to assure consistency with the
 87604 underlying water right.

87605 (7) A public agency with an approved reuse application shall submit a report, as
 87606 directed by the state engineer, concerning the ongoing water reuse operation.

87607 (8) The state engineer may make rules in accordance with [~~Title 63, Chapter 46a~~] Title
 87608 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement the provisions of this
 87609 chapter.

87610 Section 2155. Section **73-5-15** is amended to read:

87611 **73-5-15. Groundwater management plan.**

87612 (1) As used in this section:

87613 (a) "Critical management area" means a groundwater basin in which the groundwater

87614 withdrawals consistently exceed the safe yield.

87615 (b) "Safe yield" means the amount of groundwater that can be withdrawn from a
87616 groundwater basin over a period of time without exceeding the long-term recharge of the basin
87617 or unreasonably affecting the basin's physical and chemical integrity.

87618 (2) (a) The state engineer may regulate groundwater withdrawals within a specific
87619 groundwater basin by adopting a groundwater management plan in accordance with this section
87620 for any groundwater basin or aquifer or combination of hydrologically connected groundwater
87621 basins or aquifers.

87622 (b) The objectives of a groundwater management plan are to:

- 87623 (i) limit groundwater withdrawals to safe yield;
87624 (ii) protect the physical integrity of the aquifer; and
87625 (iii) protect water quality.

87626 (c) The state engineer shall adopt a groundwater management plan for a groundwater
87627 basin if more than 1/3 of the water right owners in the groundwater basin request that the state
87628 engineer adopt a groundwater management plan.

87629 (3) (a) In developing a groundwater management plan, the state engineer may consider:

- 87630 (i) the hydrology of the groundwater basin;
87631 (ii) the physical characteristics of the groundwater basin;
87632 (iii) the relationship between surface water and groundwater, including whether the
87633 groundwater should be managed in conjunction with hydrologically connected surface waters;
87634 (iv) the geographic spacing and location of groundwater withdrawals;
87635 (v) water quality;
87636 (vi) local well interference; and
87637 (vii) other relevant factors.

87638 (b) The state engineer shall base the provisions of a groundwater management plan on
87639 the principles of prior appropriation.

87640 (c) (i) The state engineer shall use the best available scientific method to determine safe
87641 yield.

87642 (ii) As hydrologic conditions change or additional information becomes available, safe
87643 yield determinations made by the state engineer may be revised by following the procedures
87644 listed in Subsection (5).

87645 (4) (a) (i) Except as provided in Subsection (4)(b), the withdrawal of water from a
87646 groundwater basin shall be limited to the basin's safe yield.

87647 (ii) Before limiting withdrawals in a groundwater basin to safe yield, the state engineer
87648 shall:

87649 (A) determine the groundwater basin's safe yield; and

87650 (B) adopt a groundwater management plan for the groundwater basin.

87651 (iii) If the state engineer determines that groundwater withdrawals in a groundwater
87652 basin exceed the safe yield, the state engineer shall regulate groundwater rights in that
87653 groundwater basin based on the priority date of the water rights under the groundwater
87654 management plan, unless a voluntary arrangement exists under Subsection (4)(c) that requires a
87655 different distribution.

87656 (b) When adopting a groundwater management plan for a critical management area, the
87657 state engineer shall, based on economic and other impacts to an individual water user or a local
87658 community caused by the implementation of safe yield limits on withdrawals, allow gradual
87659 implementation of the groundwater management plan.

87660 (c) (i) In consultation with the state engineer, water users in a groundwater basin may
87661 agree to participate in a voluntary arrangement for managing withdrawals at any time, either
87662 before or after a determination that groundwater withdrawals exceed the groundwater basin's
87663 safe yield.

87664 (ii) A voluntary arrangement under Subsection (4)(c)(i) shall be consistent with other
87665 law.

87666 (iii) The adoption of a voluntary arrangement under this Subsection (4)(c) by less than
87667 all of the water users in a groundwater basin does not affect the rights of water users who do
87668 not agree to the voluntary arrangement.

87669 (5) To adopt a groundwater management plan, the state engineer shall:

- 87670 (a) give notice as specified in Subsection (7) at least 30 days before the first public
87671 meeting held in accordance with Subsection (5)(b):
- 87672 (i) that the state engineer proposes to adopt a groundwater management plan;
87673 (ii) describing generally the land area proposed to be included in the groundwater
87674 management plan; and
- 87675 (iii) stating the location, date, and time of each public meeting to be held in accordance
87676 with Subsection (5)(b);
- 87677 (b) hold one or more public meetings in the geographic area proposed to be included
87678 within the groundwater management plan to:
- 87679 (i) address the need for a groundwater management plan;
87680 (ii) present any data, studies, or reports that the state engineer intends to consider in
87681 preparing the groundwater management plan;
87682 (iii) address safe yield and any other subject that may be included in the groundwater
87683 management plan;
- 87684 (iv) outline the estimated administrative costs, if any, that groundwater users are likely
87685 to incur if the plan is adopted; and
- 87686 (v) receive any public comments and other information presented at the public meeting,
87687 including comments from any of the entities listed in Subsection (7)(a)(iii);
- 87688 (c) receive and consider written comments concerning the proposed groundwater
87689 management plan from any person for a period determined by the state engineer of not less than
87690 60 days after the day on which the notice required by Subsection (5)(a) is given;
- 87691 (d) (i) at least 60 days prior to final adoption of the groundwater management plan,
87692 publish notice:
- 87693 (A) that a draft of the groundwater management plan has been proposed; and
87694 (B) specifying where a copy of the draft plan may be reviewed; and
- 87695 (ii) promptly provide a copy of the draft plan in printed or electronic form to each of the
87696 entities listed in Subsection (7)(a)(iii) that makes written request for a copy; and
- 87697 (e) provide notice of the adoption of the groundwater management plan.

87698 (6) A groundwater management plan shall become effective on the date notice of
87699 adoption is completed under Subsection (7), or on a later date if specified in the plan.

87700 (7) (a) A notice required by this section shall be:

87701 (i) published once a week for two successive weeks in a newspaper of general
87702 circulation in each county that encompasses a portion of the land area proposed to be included
87703 within the groundwater management plan;

87704 (ii) published conspicuously on the state engineer's Internet website; and

87705 (iii) mailed to each of the following that has within its boundaries a portion of the land
87706 area to be included within the proposed groundwater management plan:

87707 (A) county;

87708 (B) incorporated city or town;

87709 (C) improvement district under Title 17B, Chapter 2a, Part 4, Improvement District
87710 Act;

87711 (D) service area, under Title 17B, Chapter 2a, Part 9, Service Area Act;

87712 (E) drainage district, under Title 17B, Chapter 2a, Part 2, Drainage District Act;

87713 (F) irrigation district, under Title 17B, Chapter 2a, Part 5, Irrigation District Act;

87714 (G) metropolitan water district, under Title 17B, Chapter 2a, Part 6, Metropolitan
87715 Water District Act;

87716 (H) special service district providing water, sewer, drainage, or flood control services,
87717 under Title 17A, Chapter 2, Part 13, Utah Special Service District Act;

87718 (I) water conservancy district, under Title 17B, Chapter 2a, Part 10, Water
87719 Conservancy District Act; and

87720 (J) conservation district, under Title 17A, Chapter 3, Part 8, Conservation Districts.

87721 (b) A notice required by this section is effective upon substantial compliance with
87722 Subsections (7)(a)(i) through (iii).

87723 (8) A groundwater management plan may be amended in the same manner as a
87724 groundwater management plan may be adopted under this section.

87725 (9) The existence of a groundwater management plan does not preclude any otherwise

87726 eligible person from filing any application or challenging any decision made by the state engineer
87727 within the affected groundwater basin.

87728 (10) (a) A person aggrieved by a groundwater management plan may challenge any
87729 aspect of the groundwater management plan by filing a complaint within 60 days after the
87730 adoption of the groundwater management plan in the district court for any county in which the
87731 groundwater basin is found.

87732 (b) Notwithstanding Subsection (9), a person may challenge the components of a
87733 groundwater management plan only in the manner provided by Subsection (10)(a).

87734 (c) An action brought under this Subsection (10) is reviewed de novo by the district
87735 court.

87736 (d) A person challenging a groundwater management plan under this Subsection (10)
87737 shall join the state engineer as a defendant in the action challenging the groundwater
87738 management plan.

87739 (e) (i) Within 30 days after the day on which a person files an action challenging any
87740 aspect of a groundwater management plan under Subsection (10)(a), the person filing the action
87741 shall publish notice of the action in a newspaper of general circulation in the county in which the
87742 district court is located.

87743 (ii) The notice required by Subsection (10)(e)(i) shall be published once a week for two
87744 consecutive weeks.

87745 (iii) The notice required by Subsection (10)(e)(i) shall:

87746 (A) identify the groundwater management plan the person is challenging;

87747 (B) identify the case number assigned by the district court;

87748 (C) state that a person affected by the groundwater management plan may petition the
87749 district court to intervene in the action challenging the groundwater management plan; and

87750 (D) list the address for the clerk of the district court in which the action is filed.

87751 (iv) (A) Any person affected by the groundwater management plan may petition to
87752 intervene in the action within 60 days after the day on which notice is last published under
87753 Subsections (10)(e)(i) and (ii).

87754 (B) The district court's treatment of a petition to intervene under this Subsection
87755 (10)(e)(iv) is governed by the Utah Rules of Civil Procedure.

87756 (v) A district court in which an action is brought under Subsection (10)(a) shall
87757 consolidate all actions brought under that Subsection and include in the consolidated action any
87758 person whose petition to intervene is granted.

87759 (11) A groundwater management plan adopted or amended in accordance with this
87760 section is exempt from the requirements in [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
87761 Administrative Rulemaking Act.

87762 (12) Recharge and recovery projects permitted under Chapter 3b, Groundwater
87763 Recharge and Recovery Act, are exempted from this section.

87764 (13) Nothing in this section may be interpreted to require the development,
87765 implementation, or consideration of a groundwater management plan as a prerequisite or
87766 condition to the exercise of the state engineer's enforcement powers under other law, including
87767 powers granted under Section 73-2-25.

87768 (14) A groundwater management plan adopted in accordance with this section may not
87769 apply to the dewatering of a mine.

87770 (15) (a) A groundwater management plan adopted by the state engineer before May 1,
87771 2006, remains in force and has the same legal effect as it had on the day on which it was
87772 adopted by the state engineer.

87773 (b) If a groundwater management plan that existed before May 1, 2006, is amended on
87774 or after May 1, 2006, the amendment is subject to this section's provisions.

87775 Section 2156. Section **73-10-27** is amended to read:

87776 **73-10-27. Project priorities -- Considerations -- Determinations of feasibility --**
87777 **Bids and contracts -- Definitions -- Retainage.**

87778 (1) In considering the priorities for projects to be built with funds made available under
87779 Section 73-10-24, the board shall give preference to those projects which:

87780 (a) are sponsored by the state or a political subdivision of the state;

87781 (b) meet a critical local need;

87782 (c) have greater economic feasibility;

87783 (d) will yield revenue to the state within a reasonable time or will return a reasonable
87784 rate of interest, based on financial feasibility; and

87785 (e) meet other considerations deemed necessary by the board, including, but not limited
87786 to, wildlife management and recreational needs.

87787 (2) In determining the economic feasibility the board shall establish a benefit-to-cost
87788 ratio for each project, using a uniform standard of procedure for all projects. In considering
87789 whether a project should be built, the benefit-to-cost ratio for each project shall be weighted
87790 based on the relative cost of the project. A project, when considered in total with all other
87791 projects constructed under this chapter and still the subject of a repayment contract, may not
87792 cause the accumulative benefit-to-cost ratio of the projects to be less than one to one.

87793 (3) Under no circumstances may a project be built that is not in the public interest as
87794 determined by the Board of Water Resources, and no project may be built which is not
87795 adequately designed based on sound engineering and geologic considerations.

87796 (4) The board in the preparation of a project for construction shall comply with the
87797 following:

87798 (a) All flood control projects involving cities and counties costing in excess of \$35,000,
87799 and all contracts for the construction of a storage reservoir in excess of 100 acre-feet or for the
87800 construction of a hydroelectric generating facility, shall be awarded on the basis of competitive
87801 bid. Advertisement for competitive bids shall be published by the board at least once a week for
87802 three consecutive weeks in a newspaper with general circulation in the state. The advertisement
87803 shall indicate that the board will award the contract to the lowest responsible bidder but that it
87804 reserves to itself the right to reject any and all bids. The date of last publication shall appear at
87805 least five days before the scheduled bid opening.

87806 (b) If all initial bids on the project are rejected, the board shall readvertise the project in
87807 the manner specified in Subsection (4)(a). If no satisfactory bid is received by the board upon
87808 the readvertisement of the project, it may proceed to construct the project but only in
87809 accordance with the plans and specifications used to calculate the estimated cost of the project.

87810 (c) The board shall keep an accurate record of all facts and representations relied upon
87811 in preparing its estimated cost for any project which is subject to the competitive bidding
87812 requirements of this section.

87813 (d) For the purposes of this Subsection (4):

87814 (i) "Estimated cost" means the cost of all labor, material, and equipment necessary for
87815 construction of the contemplated project.

87816 (ii) "Lowest responsible bidder" means any licensed contractor who submits the lowest
87817 bid, whose bid is in compliance with the invitation for bids, whose bid meets the plans and
87818 specifications, and who furnishes bonds under Sections 14-1-18 and ~~[63-56-504]~~ 63G-6-505.

87819 (5) If any payment on a contract with a private contractor for construction of projects
87820 under this section is retained or withheld, it shall be retained or withheld and released as
87821 provided in Section 13-8-5.

87822 Section 2157. Section **73-10c-4.1** is amended to read:

87823 **73-10c-4.1. Wastewater projects -- Loan criteria and requirements -- Process for**
87824 **approval.**

87825 (1) The Water Quality Board shall review the plans and specifications for a wastewater
87826 project before approval of any loan and may condition approval on the availability of loan funds
87827 and on assurances that the Water Quality Board considers necessary to ensure that loan funds
87828 are used to pay the wastewater project costs and that the wastewater project is completed.

87829 (2) (a) Each loan shall specify the terms for repayment, with the term, interest rate or
87830 rates, including a variable rate, and security as determined by the Water Quality Board.

87831 (b) The loan may be evidenced by general obligation or revenue bonds or other
87832 obligations of the political subdivision.

87833 (c) Loan payments made by a political subdivision shall be deposited in the Water
87834 Quality Security Subaccount as described in Section 73-10c-5.

87835 (d) The loans are subject to the provisions of ~~[Title 63, Chapter 65]~~ Title 63B, Chapter
87836 1b, State Financing Consolidation Act.

87837 (3) In determining the priority for a wastewater project loan, the Water Quality Board

87838 shall consider:

87839 (a) the ability of the political subdivision to obtain monies for the wastewater project
87840 from other sources or to finance the project from its own resources;

87841 (b) the ability of the political subdivision to repay the loan;

87842 (c) whether or not a good faith effort to secure all or part of the services needed from
87843 the private sector of the economy has been made; and

87844 (d) whether or not the wastewater project:

87845 (i) meets a critical local or state need;

87846 (ii) is cost effective;

87847 (iii) will protect against present or potential health hazards;

87848 (iv) is needed to comply with minimum standards of the federal Water Pollution Control
87849 Act, Title 33, Chapter 26, United States Code, or any similar or successor statute;

87850 (v) is needed to comply with the minimum standards of Title 19, Chapter 5, Water
87851 Quality Act, or any similar or successor statute;

87852 (vi) is designed to reduce the pollution of the waters of this state; and

87853 (vii) meets any other consideration considered necessary by the Water Quality Board.

87854 (4) In determining the cost effectiveness of a wastewater project the Water Quality
87855 Board shall:

87856 (a) require the preparation of a cost-effective analysis of feasible wastewater treatment
87857 or conveyance alternatives capable of meeting state and federal water quality and public health
87858 requirements;

87859 (b) consider monetary costs, including the present worth or equivalent annual value of
87860 all capital costs and operation, maintenance, and replacement costs; and

87861 (c) ensure that the alternative selected is the most economical means of meeting
87862 applicable state and federal wastewater and water quality or public health requirements over the
87863 useful life of the facility while recognizing environmental and other nonmonetary considerations.

87864 (5) A loan may not be made for a wastewater project that is not in the public interest as
87865 determined by the Water Quality Board.

87866 Section 2158. Section **73-10c-4.2** is amended to read:

87867 **73-10c-4.2. Drinking water projects -- Loan criteria and requirements -- Process**
87868 **for approval.**

87869 (1) The Drinking Water Board shall review the plans and specifications for a drinking
87870 water project before approval of any loan and may condition approval on the availability of loan
87871 funds and on the assurances that the Drinking Water Board considers necessary to ensure that
87872 loan funds are used to pay the drinking water project costs and that the drinking water project is
87873 completed.

87874 (2) (a) Each loan shall specify the terms for repayment, with the term, interest rate or
87875 rates, including a variable rate, and security as determined by the Drinking Water Board.

87876 (b) The loan may be evidenced by general obligation or revenue bonds or other
87877 obligations of the political subdivision.

87878 (c) Loan payments made by a political subdivision shall be deposited in the Drinking
87879 Water Security Subaccount as described in Section 73-10c-5.

87880 (d) The loans are subject to the provisions of [~~Title 63, Chapter 65~~] Title 63B, Chapter
87881 1b, State Financing Consolidation Act.

87882 (3) In determining the priority for a drinking water project loan, the Drinking Water
87883 Board shall consider:

87884 (a) the ability of the political subdivision to obtain monies for the drinking water project
87885 from other sources or to finance such project from its own resources;

87886 (b) the ability of the political subdivision to repay the loan;

87887 (c) whether or not a good faith effort to secure all or part of the services needed from
87888 the private sector of the economy has been made; and

87889 (d) whether or not the drinking water project:

87890 (i) meets a critical local or state need;

87891 (ii) is cost effective;

87892 (iii) will protect against present or potential health hazards;

87893 (iv) is needed to comply with minimum standards of the federal Safe Drinking Water

87894 Act, or any similar or successor statute;

87895 (v) is needed to comply with the minimum standards of Title 19, Chapter 4, Safe
87896 Drinking Water Act, or any similar or successor statute; and

87897 (vi) meets any other consideration considered necessary by the Drinking Water Board.

87898 (4) In determining the cost effectiveness of a drinking water project the Drinking Water
87899 Board shall:

87900 (a) require the preparation of a cost-effective analysis of feasible drinking water
87901 projects;

87902 (b) consider monetary costs, including the present worth or equivalent annual value of
87903 all capital costs and operation, maintenance, and replacement cost; and

87904 (c) ensure that the alternative selected is the most economical means of meeting
87905 applicable water quality or public health requirements over the useful life of the facility while
87906 recognizing environmental and other nonmonetary considerations.

87907 (5) A loan may not be made for a drinking water project that is not in the public interest
87908 as determined by the Drinking Water Board.

87909 Section 2159. Section **73-10c-4.5** is amended to read:

87910 **73-10c-4.5. Nonpoint source project loans and grants -- Project objectives --**
87911 **Water Quality Board duties.**

87912 (1) The Water Quality Board may make a loan from the Utah Wastewater Loan
87913 Program Subaccount created in Subsection 73-10c-5(2)(a) or from the Utah State Revolving
87914 Fund for Wastewater Projects Subaccount created in Subsection 73-10c-5(2)(b) or a grant from
87915 the Hardship Grant Program for Wastewater Projects Subaccount created in Subsection
87916 73-10c-5(2)(c) to a political subdivision, individual, corporation, association, state or federal
87917 agency, or other private entity to acquire, construct, or implement a nonpoint source project.

87918 (2) The Water Quality Board may only award a loan or grant for a nonpoint source
87919 project that will achieve one or more of the following objectives:

87920 (a) abate or reduce raw sewage discharges;

87921 (b) repair or replace failing individual on-site wastewater disposal systems;

- 87922 (c) abate or reduce untreated or uncontrolled runoff;
- 87923 (d) improve critical aquatic habitat resources;
- 87924 (e) conserve soil, water, or other natural resources;
- 87925 (f) protect and improve ground water quality;
- 87926 (g) preserve and protect the beneficial uses of waters of the state;
- 87927 (h) reduce the number of water bodies not achieving water quality standards;
- 87928 (i) improve watershed management; or
- 87929 (j) prepare and implement total maximum daily load (TMDL) assessments.
- 87930 (3) The Water Quality Board shall:
 - 87931 (a) determine the amount, term, and interest rate for each loan made under this section;
 - 87932 (b) assure that adequate security is obtained for each loan;
 - 87933 (c) establish criteria and procedures for determining priority nonpoint source projects
 - 87934 and award loans in accordance with those priorities; and
 - 87935 (d) make rules to implement this section in accordance with [~~Title 63, Chapter 46a~~]
 - 87936 Title 63G, Chapter 3, Utah Administrative Rulemaking Act.
- 87937 Section 2160. Section **73-10c-8** is amended to read:
 - 87938 **73-10c-8. Rules.**
 - 87939 The board shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
 - 87940 Chapter 3, Utah Administrative Rulemaking Act, as necessary to administer this chapter,
 - 87941 including the application by political subdivisions for the securing of their drinking water or
 - 87942 wastewater project obligations, the approval of obligations to be secured, the verification of
 - 87943 notices with respect to inabilities of political subdivisions to pay principal and interest, and the
 - 87944 credit enhancement agreements with political subdivisions setting forth the terms and conditions
 - 87945 under which obligations may be secured under this chapter.
- 87946 Section 2161. Section **73-10c-10** is amended to read:
 - 87947 **73-10c-10. Origination fee.**
 - 87948 (1) The Drinking Water Board and the Water Quality Board may establish an
 - 87949 origination fee for a loan to fund the administration of the programs created by this chapter by

87950 following the procedures and requirements of Section [~~63-38-3.2~~] 63J-1-303.

87951 (2) The origination fee shall be part of the department fee schedule established under
87952 Section 19-1-201.

87953 (3) Notwithstanding Subsection [~~63-38-3.2~~] 63J-1-303(2)(e), the board shall deposit
87954 the fee in the origination fee subaccount created in Section 73-10c-5 and use the fee to
87955 administer this chapter.

87956 (4) The loan recipient may pay the origination fee from the loan proceeds.

87957 Section 2162. Section **73-18-4** is amended to read:

87958 **73-18-4. Board may promulgate rules and set fees.**

87959 (1) The board may promulgate rules:

87960 (a) creating a uniform waterway marking system which shall be obeyed by all vessel
87961 operators;

87962 (b) regulating the placement of waterway markers and other permanent or anchored
87963 objects on the waters of this state;

87964 (c) zoning certain waters of this state for the purpose of prohibiting the operation of
87965 vessels or motors for safety and health purposes only; and

87966 (d) regulating vessel operators who carry passengers for hire and outfitting companies.

87967 (2) (a) The board may set fees for licensing vessel operators who carry passengers for
87968 hire and registering outfitting companies in accordance with Section [~~63-38-3.2~~] 63J-1-303.

87969 (b) The license and registration fees imposed pursuant to Subsection (2)(a) shall be
87970 deposited into the Boating Account created in Section 73-18-22.

87971 Section 2163. Section **73-18-7** is amended to read:

87972 **73-18-7. Registration requirements -- Exemptions -- Fee -- Agents -- Records --**

87973 **Period of registration and renewal -- Expiration -- Notice of transfer of interest or change**
87974 **of address -- Duplicate registration card -- Invalid registration -- Powers of board.**

87975 (1) (a) Except as provided by Section 73-18-9, the owner of each motorboat and
87976 sailboat on the waters of this state shall register it with the division as provided in this chapter.

87977 (b) A person may not place, give permission for the placement of, operate, or give

87978 permission for the operation of a motorboat or sailboat on the waters of this state, unless the
87979 motorboat or sailboat is registered as provided in this chapter.

87980 (2) (a) The owner of a motorboat or sailboat required to be registered shall file an
87981 application for registration with the division on forms approved by the division.

87982 (b) The owner of the motorboat or sailboat shall sign the application and pay the fee set
87983 by the board in accordance with Section [~~63-38-3.2~~] 63J-1-303.

87984 (c) Before receiving a registration card and registration decals, the applicant shall
87985 provide the division with a certificate from the county assessor of the county in which the
87986 motorboat or sailboat has situs for taxation, stating that:

87987 (i) the property tax on the motorboat or sailboat for the current year has been paid;

87988 (ii) in the county assessor's opinion, the property tax is a lien on real property sufficient
87989 to secure the payment of the property tax; or

87990 (iii) the motorboat or sailboat is exempt by law from payment of property tax for the
87991 current year.

87992 (d) If the board modifies the fee under Subsection (2)(b), the modification shall take
87993 effect on the first day of the calendar quarter after 90 days from the day on which the board
87994 provides the State Tax Commission:

87995 (i) notice from the board stating that the board will modify the fee; and

87996 (ii) a copy of the fee modification.

87997 (3) (a) Upon receipt of the application in the approved form, the division shall record
87998 the receipt and issue to the applicant registration decals and a registration card that state the
87999 number assigned to the motorboat or sailboat and the name and address of the owner.

88000 (b) The registration card shall be available for inspection on the motorboat or sailboat
88001 for which it was issued, whenever that motorboat or sailboat is in operation.

88002 (4) The assigned number shall:

88003 (a) be painted or permanently attached to each side of the forward half of the motorboat
88004 or sailboat;

88005 (b) consist of plain vertical block characters not less than three inches in height;

88006 (c) contrast with the color of the background and be distinctly visible and legible;

88007 (d) have spaces or hyphens equal to the width of a letter between the letter and numeral
88008 groupings; and

88009 (e) read from left to right.

88010 (5) A motorboat or sailboat with a valid marine document issued by the United States
88011 Coast Guard is exempt from the number display requirements of Subsection (4).

88012 (6) The nonresident owner of any motorboat or sailboat already covered by a valid
88013 number that has been assigned to it according to federal law or a federally approved numbering
88014 system of the owner's resident state is exempt from registration while operating the motorboat
88015 or sailboat on the waters of this state unless the owner is operating in excess of the reciprocity
88016 period provided for in Subsection 73-18-9(1).

88017 (7) (a) If the ownership of a motorboat or sailboat changes, the new owner shall file a
88018 new application form and fee with the division, and the division shall issue a new registration
88019 card and registration decals in the same manner as provided for in Subsections (2) and (3).

88020 (b) The division shall reassign the current number assigned to the motorboat or sailboat
88021 to the new owner to display on the motorboat or sailboat.

88022 (8) If the United States Coast Guard has in force an overall system of identification
88023 numbering for motorboats or sailboats within the United States, the numbering system
88024 employed under this chapter by the board shall conform with that system.

88025 (9) (a) The division may authorize any person to act as its agent for the registration of
88026 motorboats and sailboats.

88027 (b) A number assigned, a registration card, and registration decals issued by an agent of
88028 the division in conformity with this chapter and rules of the board are valid.

88029 (10) (a) The Motor Vehicle Division shall classify all records of the division made or
88030 kept according to this section in the same manner that motor vehicle records are classified under
88031 Section 41-1a-116.

88032 (b) Division records are available for inspection in the same manner as motor vehicle
88033 records pursuant to Section 41-1a-116.

88034 (11) (a) (i) Each registration, registration card, and decal issued under this chapter shall
88035 continue in effect for 12 months, beginning with the first day of the calendar month of
88036 registration.

88037 (ii) A registration may be renewed by the owner in the same manner provided for in the
88038 initial application.

88039 (iii) The division shall reassign the current number assigned to the motorboat or sailboat
88040 when the registration is renewed.

88041 (b) Each registration, registration card, and registration decal expires the last day of the
88042 month in the year following the calendar month of registration.

88043 (c) If the last day of the registration period falls on a day in which the appropriate state
88044 or county offices are not open for business, the registration of the motorboat or sailboat is
88045 extended to 12 midnight of the next business day.

88046 (d) The division may receive applications for registration renewal and issue new
88047 registration cards at any time before the expiration of the registration, subject to the availability
88048 of renewal materials.

88049 (e) The new registration shall retain the same expiration month as recorded on the
88050 original registration even if the registration has expired.

88051 (f) The year of registration shall be changed to reflect the renewed registration period.

88052 (g) If the registration renewal application is an application generated by the division
88053 through its automated system, the owner is not required to surrender the last registration card
88054 or duplicate.

88055 (12) (a) An owner shall notify the division of:

88056 (i) the transfer of all or any part of the owner's interest, other than creation of a security
88057 interest, in a motorboat or sailboat registered in this state under Subsections (2) and (3); and

88058 (ii) the destruction or abandonment of the owner's motorboat or sailboat.

88059 (b) Notification must take place within 15 days of the transfer, destruction, or
88060 abandonment.

88061 (c) (i) The transfer, destruction, or abandonment of a motorboat or sailboat terminates

88062 its registration.

88063 (ii) Notwithstanding Subsection (12)(c)(i), a transfer of a part interest that does not
88064 affect the owner's right to operate a motorboat or sailboat does not terminate the registration.

88065 (13) (a) A registered owner shall notify the division within 15 days if the owner's
88066 address changes from the address appearing on the registration card and shall, as a part of this
88067 notification, furnish the division with ~~[his]~~ the owner's new address.

88068 (b) The board may provide in its rules for:

88069 (i) the surrender of the registration card bearing the former address; and

88070 (ii) (A) the replacement of the card with a new registration card bearing the new
88071 address; or

88072 (B) the alteration of an existing registration card to show the owner's new address.

88073 (14) (a) If a registration card is lost or stolen, the division may collect a fee of \$4 for
88074 the issuance of a duplicate card.

88075 (b) If a registration decal is lost or stolen, the division may collect a fee of \$3 for the
88076 issuance of a duplicate decal.

88077 (15) A number other than the number assigned to a motorboat or sailboat or a number
88078 for a motorboat or sailboat granted reciprocity under this chapter may not be painted, attached,
88079 or otherwise displayed on either side of the bow of a motorboat or sailboat.

88080 (16) A motorboat or sailboat registration and number are invalid if obtained by
88081 knowingly falsifying an application for registration.

88082 (17) The board may designate the suffix to assigned numbers, and by following the
88083 procedures and requirements of ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah
88084 Administrative Rulemaking Act, make rules for:

88085 (a) the display of registration decals;

88086 (b) the issuance and display of dealer numbers and registrations; and

88087 (c) the issuance and display of temporary registrations.

88088 Section 2164. Section **73-18-13.5** is amended to read:

88089 **73-18-13.5. Motorboat accidents -- Investigation and report of operator security**

88090 -- Agency action if no security -- Surrender of registration materials.

88091 (1) Upon request of a peace officer investigating an accident involving a motorboat as
88092 defined in Section 73-18c-102, the operator of the motorboat shall provide evidence of the
88093 owner's or operator's security required under Section 73-18c-301.

88094 (2) The peace officer shall record on a form approved by the division:

88095 (a) the information provided by the operator;

88096 (b) whether the operator provided insufficient or no information; and

88097 (c) whether the peace officer finds reasonable cause to believe that any information
88098 given is not correct.

88099 (3) The peace officer shall deposit all completed forms with the peace officer's agency,
88100 which shall forward the forms to the division no later than ten days after receipt.

88101 (4) (a) The division shall revoke the registration of a motorboat as defined in Section
88102 73-18c-102 involved in an accident unless the owner or operator can demonstrate to the
88103 division compliance with the owner's or operator's security requirement of Section 73-18c-301
88104 at the time of the accident.

88105 (b) Any registration revoked may not be renewed for a period of one year following the
88106 date of revocation.

88107 (5) A person may appeal a revocation issued under Subsection (4) in accordance with
88108 procedures established by the board by rule that are consistent with [~~Title 63, Chapter 46b~~] Title
88109 63G, Chapter 4, Administrative Procedures Act.

88110 (6) (a) Any person whose registration is revoked under Subsection (4) shall return the
88111 registration card and decals for the motorboat to the division.

88112 (b) If the person fails to return the registration materials as required, they shall be
88113 confiscated under Section 73-18-13.6.

88114 (7) The board may make rules for the enforcement of this section.

88115 (8) In this section, "evidence of owner's or operator's security" includes any one of the
88116 following:

88117 (a) the operator's:

- 88118 (i) insurance policy;
- 88119 (ii) binder notice;
- 88120 (iii) renewal notice; or
- 88121 (iv) card issued by an insurance company as evidence of insurance;
- 88122 (b) a copy of a surety bond, certified by the surety, which conforms to Section
- 88123 73-18c-102;
- 88124 (c) a certificate of the state treasurer issued under Section 73-18c-305; or
- 88125 (d) a certificate of self-funded coverage issued under Section 73-18c-306.
- 88126 Section 2165. Section **73-18-19** is amended to read:
- 88127 **73-18-19. Publication of rules and regulations.**
- 88128 The rules promulgated under this chapter shall be published as required by [~~Title 63;~~
- 88129 ~~Chapter 46a]~~ Title 63G, Chapter 3, the Utah Administrative Rulemaking Act.
- 88130 Section 2166. Section **73-18-25** is amended to read:
- 88131 **73-18-25. Fees to cover the costs of electronic payments.**
- 88132 (1) As used in this section:
- 88133 (a) "Electronic payment" has the same meaning as defined in Section 41-1a-1221.
- 88134 (b) "Electronic payment fee" has the same meaning as defined in Section 41-1a-1221.
- 88135 (2) (a) The Motor Vehicle Division may collect an electronic payment fee on all
- 88136 registrations and renewals of registration under Section 73-18-7.
- 88137 (b) The fee described under Subsection (2)(a) shall be imposed regardless of the method
- 88138 of payment for a particular transaction.
- 88139 (3) The Motor Vehicle Division shall establish the fee according to the procedures and
- 88140 requirements of Section [~~63-38-3.2]~~ 63J-1-303.
- 88141 (4) A fee imposed under this section:
- 88142 (a) shall be used by the Motor Vehicle Division as a dedicated credit to cover the costs
- 88143 of electronic payments;
- 88144 (b) is nonlapsing;
- 88145 (c) is not subject to Subsection [~~63-38a-104]~~ 63J-2-202(2); and

88146 (d) need not be separately identified from the fees imposed on registrations and
88147 renewals of registration under Section 73-18-7.

88148 Section 2167. Section **73-18a-4** is amended to read:

88149 **73-18a-4. Marine toilets -- Pollution control devices required -- Rules established**
88150 **by board.**

88151 (1) Every marine toilet on a vessel used or operated upon the waters of this state shall
88152 be equipped with an approved pollution control device in operative condition.

88153 (2) The board shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
88154 Chapter 3, Utah Administrative Rulemaking Act, as provided in this chapter, establishing
88155 criteria or standards for definition and approval of acceptable pollution control devices for
88156 vessels.

88157 Section 2168. Section **73-18a-5** is amended to read:

88158 **73-18a-5. Chemical treatment of marine toilet contents -- Rules established by**
88159 **board and Department of Environmental Quality.**

88160 The board shall establish by rule, in accordance with [~~Title 63, Chapter 46a~~] Title 63G,
88161 Chapter 3, Utah Administrative Rulemaking Act, with approval by the Department of
88162 Environmental Quality, as provided in this chapter, standards relating to chemical treatment of
88163 marine toilet contents.

88164 Section 2169. Section **73-18a-12** is amended to read:

88165 **73-18a-12. Rules promulgated by board -- Subject to approval by Department of**
88166 **Environmental Quality.**

88167 The board may promulgate rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
88168 Utah Administrative Rulemaking Act, which are necessary for the carrying out of duties,
88169 obligations, and powers conferred on the division by this chapter. These rules shall be subject
88170 to review and approval by the Department of Environmental Quality. This approval shall be
88171 recorded as part of the rules.

88172 Section 2170. Section **73-18c-201** is amended to read:

88173 **73-18c-201. Division to administer and enforce chapter -- Board may adopt**

88174 rules.

88175 (1) The division shall administer and enforce the provisions of this chapter.

88176 (2) The board may adopt rules as necessary for the administration of this chapter in
88177 accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking
88178 Act.

88179 Section 2171. Section **73-18c-306** is amended to read:

88180 **73-18c-306. Certificate of self-funded coverage as proof of owner's or operator's**
88181 **security.**

88182 (1) The division may, upon the application of any person, issue a certificate of
88183 self-funded coverage when it is satisfied that the person has:

88184 (a) more than 24 motorboats; and

88185 (b) on deposit, in a form approved by the division, cash or securities in an amount of
88186 \$200,000 plus \$100 for each motorboat up to and including 1,000 motorboats and \$50 for each
88187 motorboat over 1,000 motorboats.

88188 (2) Persons holding a certificate of self-funded coverage under this chapter shall pay
88189 benefits to persons injured from the self-funded person's operation, maintenance, and use of
88190 motorboats as would an insurer issuing a policy to the self-funded person containing the
88191 coverages under Sections 31A-22-1502 and 31A-22-1503.

88192 (3) In accordance with [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
88193 Procedures Act, the division may, upon reasonable grounds, cancel the certificate. Failure to
88194 pay any judgment up to the limit under Subsection 31A-22-1503(2) within 30 days after the
88195 judgment is final is a reasonable ground to cancel the certificate.

88196 (4) Any government entity with self-funded coverage for government-owned
88197 motorboats under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of
88198 Utah, meets the requirements of this section.

88199 Section 2172. Section **73-22-5** is amended to read:

88200 **73-22-5. Jurisdiction of division -- Hearings -- Subpoena power -- Restraining**
88201 **violations -- Actions for damages against violators unaffected.**

88202 (1) The division has jurisdiction and authority over all persons and property, public and
88203 private, necessary to enforce the provisions of this chapter and may enact, issue, and enforce
88204 necessary rules and orders to carry out the requirements of this chapter.

88205 (2) (a) Any affected person may apply for a hearing before the division, or the division
88206 may initiate proceedings upon any question relating to the administration of this chapter by
88207 following the procedures and requirements of [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4,
88208 Administrative Procedures Act.

88209 (b) The Division of Water Rights shall comply with the procedures and requirements of
88210 [~~Title 63, Chapter 46b,~~] Title 63G, Chapter 4, Administrative Procedures Act, in its adjudicative
88211 proceedings.

88212 (3) The division shall have the power to summon witnesses, to administer oaths, and to
88213 require the production of records, books, and documents for examination at any hearing or
88214 investigation conducted by it.

88215 (4) (a) If any person fails or refuses to comply with a subpoena issued by the division,
88216 or if any witness fails or refuses to testify about any matter regarding which [~~he~~] the witness
88217 may be interrogated, the division may petition any district court in the state to issue an order
88218 compelling the person to:

- 88219 (i) comply with the subpoena and attend before the division;
- 88220 (ii) produce any records, books, and documents covered by the subpoena; or
- 88221 (iii) to give testimony.

88222 (b) The court may punish failure to comply with the order as contempt.

88223 (5) (a) Whenever it appears that any person is violating or threatening to violate any
88224 provision of this chapter, or any rule or order made under this chapter, the division may file suit
88225 in the name of the state to restrain that person from continuing the violation or from carrying
88226 out the threat of violation.

88227 (b) Venue for the action is in the district court in the county where any defendant
88228 resides or in the county where the violation is alleged to have occurred.

88229 (6) (a) Nothing in this chapter, no suit by or against the division, and no violation

88230 charged or asserted against any person under this chapter, or any rule or order issued under it,
88231 shall impair, abridge, or delay any cause of action for damages that any person may have or
88232 assert against any person violating this chapter, or any rule or order issued under it.

88233 (b) Any person so damaged by the violation may sue for and recover whatever damages
88234 that ~~he~~ the person is otherwise entitled to receive.

88235 Section 2173. Section **73-23-3** is amended to read:

88236 **73-23-3. Duties and powers of Division of Water Resources.**

88237 For purposes of this chapter, the Division of Water Resources:

88238 (1) shall provide for the construction, operation, and maintenance of the West Desert
88239 Pumping Project;

88240 (2) may enter into agreements as necessary to provide for all or any portion of the West
88241 Desert Pumping Project, including any indemnification agreements required by the federal
88242 government;

88243 (3) may acquire land or any other property right by any lawful means, including eminent
88244 domain;

88245 (4) is exempt from ~~[Title 63, Chapter 56]~~ Title 63G, Chapter 6, the Utah Procurement
88246 Code; and

88247 (5) may proceed without obtaining water right approval from the state engineer.

88248 Section 2174. Section **73-26-402** is amended to read:

88249 **73-26-402. Rulemaking power of the board.**

88250 In accordance with ~~[Title 63, Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative
88251 Rulemaking Act, the board may make rules to:

88252 (1) determine water charges as provided in Section 73-26-506;

88253 (2) administer and operate the reservoirs and associated facilities constructed in
88254 accordance with Section 73-26-301;

88255 (3) establish procedures for reviewing offers to contract for the sale or lease of
88256 developed water; and

88257 (4) set the interest rate for repayment of construction and environmental mitigation

88258 costs.

88259 Section 2175. Section **73-26-403** is amended to read:

88260 **73-26-403. Immunity from suit -- Exception.**

88261 Activities engaged in under authority of this chapter are governmental functions. The
88262 state and its officers and employees are immune from suit for any injury or damage resulting
88263 from those activities, except as provided in Section [~~63-30d-301~~] 63G-7-301.

88264 Section 2176. Section **73-28-104** is amended to read:

88265 **73-28-104. Powers of the board.**

88266 (1) The board may contract with:

88267 (a) a district for the sale of developed water;

88268 (b) a qualified entity for the development or construction of the project; or

88269 (c) a district or other qualified entity for the operation, maintenance, repair, or
88270 replacement of the project.

88271 (2) By following the procedures and requirements of [~~Title 63, Chapter 46a~~] Title 63G,
88272 Chapter 3, Utah Administrative Rulemaking Act, the board may make rules to:

88273 (a) establish prices, in consultation with the committee and in accordance with Section
88274 73-28-403, for:

88275 (i) developed water sold to the districts; and

88276 (ii) electricity made available by the project;

88277 (b) establish procedures for reviewing offers to contract for the sale of developed water
88278 and electricity;

88279 (c) establish the interest rate for repayment of preconstruction and construction costs;

88280 (d) establish a reasonable time period for the districts to offer to purchase water; and

88281 (e) administer and operate the project.

88282 (3) The board may exercise eminent domain, as provided in Title 78, Chapter 34,
88283 Eminent Domain, to construct the project.

88284 Section 2177. Section **73-28-404** is amended to read:

88285 **73-28-404. Repayments returned to Water Resources Conservation and**

88286 **Development Fund -- Establishment of an enterprise fund.**

88287 (1) The board shall deposit, in accordance with Section 51-4-1, into the Water
88288 Resources Conservation and Development Fund:

- 88289 (a) repayments of preconstruction and construction costs; and
- 88290 (b) the interest charged.

88291 (2) (a) There is created an enterprise fund, as defined in Subsection 51-5-4(8), entitled
88292 the "Lake Powell Pipeline Project Operation and Maintenance Fund."

88293 (b) The fund consists of:

88294 (i) revenues received from the sale of developed water that is designated for project
88295 operation, maintenance, repair, and replacement costs;

88296 (ii) revenues received from the sale of electricity that are deposited in the fund in
88297 accordance with Subsection 73-28-203(3); and

88298 (iii) all interest earned by the fund.

88299 (3) (a) Any unexpended monies remaining in the fund at the end of the fiscal year are
88300 nonlapsing.

88301 (b) Notwithstanding Section [~~63-38-3.6~~] 63J-1-307, the Legislature may not
88302 appropriate any monies from the Lake Powell Pipeline Project Operation and Maintenance
88303 Fund.

88304 (4) The state treasurer shall:

88305 (a) invest the monies in the enterprise fund by following the procedures and
88306 requirements of Title 51, Chapter 7, State Money Management Act; and

88307 (b) deposit all interest or other earnings derived from those investments into the Lake
88308 Powell Pipeline Operation and Maintenance Fund.

88309 (5) The committee shall approve the expenditure of fund monies to cover the project
88310 operation, maintenance, repair, and replacement costs, subject to:

88311 (a) monies available in the fund; and

88312 (b) rules established by the board under Subsection 73-28-104(2).

88313 (6) If title to the project is transferred under Section 73-28-405, the agreement shall

88314 direct the disposition of the monies remaining in the fund.

88315 Section 2178. Section **75-2a-106** is amended to read:

88316 **75-2a-106. Emergency medical services -- Physician order to withhold life**
88317 **sustaining procedures.**

88318 (1) (a) The following persons may direct an emergency medical service provider
88319 licensed or certified under Title 26, Chapter 8a, Utah Emergency Medical Services System Act,
88320 who responds to a call to provide emergency medical services as defined in Section 26-8a-102,
88321 to withhold all life sustaining procedures:

88322 (i) an individual over the age of 18;

88323 (ii) an emancipated minor; or

88324 (iii) the following person, if the person has a physician's order to withhold life sustaining
88325 procedures that is issued in compliance with this section:

88326 (A) a parent or legal guardian of a minor;

88327 (B) a legal guardian appointed for an individual; or

88328 (C) a surrogate.

88329 (b) A person described in Subsection (1)(a)(iii) may direct an emergency service
88330 provider to withhold life sustaining procedures if the person has a physician's order:

88331 (i) made in compliance with Subsection (4); and

88332 (ii) if the physician's order applies to a minor, it must include a certification by two
88333 physicians that in their clinical judgment an order to withhold life sustaining treatment is in the
88334 best interest of the individual.

88335 (c) The physician order is binding upon emergency medical services providers only if
88336 the physician order is in compliance with Subsections (2) and (4).

88337 (2) (a) The Department of Health shall by administrative rule establish a uniform system
88338 to allow emergency medical service providers to readily identify persons who have obtained a
88339 physician order under this section.

88340 (b) The system may provide for:

88341 (i) personal, tamper-proof identifying bracelets;

- 88342 (ii) forms;
- 88343 (iii) the presence of the physician's orders on a form in compliance with Subsection (4)
- 88344 and approved by the Department of Health; or
- 88345 (iv) some other system approved by the Department of Health which clearly identifies
- 88346 the individual as one who has a continued intent to be readily identified as a person with a
- 88347 physician's order to withhold life sustaining procedures.
- 88348 (3) An emergency medical services provider is not bound to act in accordance with a
- 88349 physician order issued under this section unless the physician order complies with the
- 88350 administrative rules adopted by the Department of Health in accordance with this section.
- 88351 (4) A physician order made under this section shall be:
- 88352 (a) in writing and on a form approved by the Department of Health;
- 88353 (b) signed by:
- 88354 (i) the declarant;
- 88355 (ii) a person in the declarant's presence and by the declarant's expressed direction;
- 88356 (iii) the parent or legal guardian of a minor; or
- 88357 (iv) if the declarant does not have the ability to give current directions concerning the
- 88358 declarant's care and treatment, the surrogate or class of surrogates with the highest priority
- 88359 under Section 75-2a-111;
- 88360 (c) dated;
- 88361 (d) signed, completed, and certified by the declarant's licensed health care professional,
- 88362 acting within the scope of practice; and
- 88363 (e) if for a minor, in compliance with Subsection (1)(b).
- 88364 (5) A physician order made under this section takes precedence over a directive made
- 88365 under Section 75-2a-107, but only to the extent of a conflict.
- 88366 (6) An individual who wishes to revoke a physician order made under this section may
- 88367 do so by:
- 88368 (a) orally informing emergency service personnel;
- 88369 (b) writing "void" across the form, or burning, tearing, or otherwise destroying or

88370 defacing the document, bracelet, or other evidence of the physician order, or by asking another
88371 person to do the same on the individual's behalf;

88372 (c) signing or directing another person to sign a written revocation on the individual's
88373 behalf;

88374 (d) stating that the individual wishes to revoke the order in the presence of a witness
88375 who is age 18 or older; or

88376 (e) signing a new physician order.

88377 (7) (a) The Department of Health shall adopt rules in accordance with [~~Title 63;~~
88378 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to:

88379 (i) create the forms and systems required by Subsections (2) and (4); and

88380 (ii) develop uniform instructions for the form established in Section 75-2a-117.

88381 (b) The Department of Health may assist others with training of health care
88382 professionals regarding this chapter.

88383 Section 2179. Section ~~76-6-513~~ is amended to read:

88384 **76-6-513. Definitions -- Unlawful dealing of property by a fiduciary -- Penalties.**

88385 (1) As used in this section:

88386 (a) "Fiduciary" is as defined in Section 22-1-1.

88387 (b) "Financial institution" means "depository institution" and "trust company" as defined
88388 in Section 7-1-103.

88389 (c) "Governmental entity" is as defined in Section [~~63-30d-102]~~ 63G-7-102.

88390 (d) "Person" does not include a financial institution whose fiduciary functions are
88391 supervised by the Department of Financial Institutions or a federal regulatory agency.

88392 (e) "Property" is as defined in Section 76-6-401.

88393 (f) "Public monies" is as defined in Section 76-8-401.

88394 (2) A person is guilty of unlawfully dealing with property by a fiduciary if ~~he~~ the
88395 person deals with property that has been entrusted to him as a fiduciary, or property of a
88396 governmental entity, public monies, or of a financial institution, in a manner which ~~he~~ the
88397 person knows is a violation of ~~his~~ the person's duty and which involves substantial risk of loss

88398 or detriment to the owner or to a person for whose benefit the property was entrusted. A
88399 violation of this Subsection (2) is punishable under Section 76-6-412.

88400 (3) (a) A person acting as a fiduciary is guilty of a violation of this subsection if,
88401 without permission of the owner of the property or some other person with authority to give
88402 permission, [he] the person pledges as collateral for a personal loan, or as collateral for the
88403 benefit of some party, other than the owner or the person for whose benefit the property was
88404 entrusted, the property that has been entrusted to the fiduciary.

88405 (b) An offense under Subsection (3)(a) is punishable as:

88406 (i) a felony of the second degree if the value of the property wrongfully pledged is or
88407 exceeds \$5,000;

88408 (ii) a felony of the third degree if the value of the property wrongfully pledged is or
88409 exceeds \$1,000 but is less than \$5,000;

88410 (iii) a class A misdemeanor if the value of the property is or exceeds \$300, but is less
88411 than \$1,000 or the actor has been twice before convicted of theft, robbery, burglary with intent
88412 to commit theft, or unlawful dealing with property by a fiduciary; or

88413 (iv) a class B misdemeanor if the value of the property is less than \$300.

88414 Section 2180. Section **76-7-317.1** is amended to read:

88415 **76-7-317.1. Creation of Abortion Litigation Trust Account.**

88416 (1) (a) There is created in the General Fund a restricted account known as the Abortion
88417 Litigation Trust Account. All money received by the state from private sources for litigation
88418 expenses connected with the defense of Senate Bill 23, passed in the 1991 Annual General
88419 Session, shall be deposited in that account.

88420 (b) On behalf of the Abortion Litigation Trust Account, the Division of Finance may
88421 accept grants, gifts, bequests, or any money made available from any private sources to
88422 implement this section.

88423 (2) Money shall be appropriated by the Legislature from the account to the Office of the
88424 Attorney General under [~~Title 63, Chapter 38~~] Title 63J, Chapter 1, Budgetary Procedures Act.

88425 (3) The Abortion Litigation Trust Account may be used only for costs, expenses, and

88426 attorneys fees connected with the defense of the abortion law identified in Subsection (1).

88427 (4) Any funds remaining in the abortion litigation trust account after final appellate
88428 procedures shall revert to the General Fund, to be first used to offset the monies expended by
88429 the state in connection with litigation regarding Senate Bill 23.

88430 Section 2181. Section **76-8-311.3** is amended to read:

88431 **76-8-311.3. Items prohibited in correctional and mental health facilities --**

88432 **Penalties.**

88433 (1) As used in this section:

88434 (a) "Contraband" means any item not specifically prohibited for possession by offenders
88435 under this section or Title 58, Chapter 37, Utah Controlled Substances Act.

88436 (b) "Controlled substance" means any substance defined as a controlled substance under
88437 Title 58, Chapter 37, Utah Controlled Substances Act.

88438 (c) "Correctional facility" means:

88439 (i) any facility operated by or contracting with the Department of Corrections to house
88440 offenders in either a secure or nonsecure setting;

88441 (ii) any facility operated by a municipality or a county to house or detain criminal
88442 offenders;

88443 (iii) any juvenile detention facility; and

88444 (iv) any building or grounds appurtenant to the facility or lands granted to the state,
88445 municipality, or county for use as a correctional facility.

88446 (d) "Medicine" means any prescription drug as defined in Title 58, Chapter 17b,
88447 Pharmacy Practice Act, but does not include any controlled substances as defined in Title 58,
88448 Chapter 37, Utah Controlled Substances Act.

88449 (e) "Mental health facility" has the same meaning as defined in Section 62A-15-602.

88450 (f) "Offender" means a person in custody at a correctional facility.

88451 (g) "Secure area" has the same meaning as provided in Section 76-8-311.1.

88452 (2) Notwithstanding Section 76-10-500, a correctional or mental health facility may
88453 provide by rule that no firearm, ammunition, dangerous weapon, implement of escape,

88454 explosive, controlled substance, spirituous or fermented liquor, medicine, or poison in any
88455 quantity may be:

- 88456 (a) transported to or upon a correctional or mental health facility;
- 88457 (b) sold or given away at any correctional or mental health facility;
- 88458 (c) given to or used by any offender at a correctional or mental health facility; or
- 88459 (d) knowingly or intentionally possessed at a correctional or mental health facility.

88460 (3) It is a defense to any prosecution under this section if the accused in committing the
88461 act made criminal by this section:

88462 (a) with respect to a correctional facility operated by the Department of Corrections,
88463 acted in conformity with departmental rule or policy;

88464 (b) with respect to a correctional facility operated by a municipality, acted in conformity
88465 with the policy of the municipality;

88466 (c) with respect to a correctional facility operated by a county, acted in conformity with
88467 the policy of the county; or

88468 (d) with respect to a mental health facility, acted in conformity with the policy of the
88469 mental health facility.

88470 (4) (a) Any person who transports to or upon a correctional facility, or into a secure
88471 area of a mental health facility, any firearm, ammunition, dangerous weapon, or implement of
88472 escape with intent to provide or sell it to any offender, is guilty of a second degree felony.

88473 (b) Any person who provides or sells to any offender at a correctional facility, or any
88474 detainee at a secure area of a mental health facility, any firearm, ammunition, dangerous
88475 weapon, or implement of escape is guilty of a second degree felony.

88476 (c) Any offender who possesses at a correctional facility, or any detainee who possesses
88477 at a secure area of a mental health facility, any firearm, ammunition, dangerous weapon, or
88478 implement of escape is guilty of a second degree felony.

88479 (d) Any person who, without the permission of the authority operating the correctional
88480 facility or the secure area of a mental health facility, knowingly possesses at a correctional
88481 facility or a secure area of a mental health facility any firearm, ammunition, dangerous weapon,

88482 or implement of escape is guilty of a third degree felony.

88483 (e) Any person violates Section 76-10-306 who knowingly or intentionally transports,
88484 possesses, distributes, or sells any explosive in a correctional facility or mental health facility.

88485 (5) (a) A person is guilty of a third degree felony who, without the permission of the
88486 authority operating the correctional facility or secure area of a mental health facility, knowingly
88487 transports to or upon a correctional facility or into a secure area of a mental health facility any:

88488 (i) spirituous or fermented liquor;

88489 (ii) medicine, whether or not lawfully prescribed for the offender; or

88490 (iii) poison in any quantity.

88491 (b) A person is guilty of a third degree felony who knowingly violates correctional or
88492 mental health facility policy or rule by providing or selling to any offender at a correctional
88493 facility or detainee within a secure area of a mental health facility any:

88494 (i) spirituous or fermented liquor;

88495 (ii) medicine, whether or not lawfully prescribed for the offender; or

88496 (iii) poison in any quantity.

88497 (c) An inmate is guilty of a third degree felony who, in violation of correctional or
88498 mental health facility policy or rule, possesses at a correctional facility or in a secure area of a
88499 mental health facility any:

88500 (i) spirituous or fermented liquor;

88501 (ii) medicine, other than medicine provided by the facility's health care providers in
88502 compliance with facility policy; or

88503 (iii) poison in any quantity.

88504 (d) A person is guilty of a class A misdemeanor who, with the intent to directly or
88505 indirectly provide or sell any tobacco product to an offender, directly or indirectly:

88506 (i) transports, delivers, or distributes any tobacco product to an offender or on the
88507 grounds of any correctional facility;

88508 (ii) solicits, requests, commands, coerces, encourages, or intentionally aids another
88509 person to transport any tobacco product to an offender or on any correctional facility, if the

88510 person is acting with the mental state required for the commission of an offense; or

88511 (iii) facilitates, arranges, or causes the transport of any tobacco product in violation of
88512 this section to an offender or on the grounds of any correctional facility.

88513 (e) A person is guilty of a class A misdemeanor who, without the permission of the
88514 authority operating the correctional or mental health facility, fails to declare or knowingly
88515 possesses at a correctional facility or in a secure area of a mental health facility any:

88516 (i) spirituous or fermented liquor;

88517 (ii) medicine; or

88518 (iii) poison in any quantity.

88519 (f) A person is guilty of a class B misdemeanor who, without the permission of the
88520 authority operating the correctional facility, knowingly engages in any activity that would
88521 facilitate the possession of any contraband by an offender in a correctional facility. The
88522 provisions of Subsection (5)(d) regarding any tobacco product take precedence over this
88523 Subsection (5)(f).

88524 (g) Exemptions may be granted for worship for Native American inmates pursuant to
88525 Section 64-13-40.

88526 (6) The possession, distribution, or use of a controlled substance at a correctional
88527 facility or in a secure area of a mental health facility shall be prosecuted in accordance with Title
88528 58, Chapter 37, Utah Controlled Substances Act.

88529 (7) The department shall make rules under [~~Title 63, Chapter 46a~~] Title 63G, Chapter
88530 3, Utah Administrative Rulemaking Act, to establish guidelines for providing written notice to
88531 visitors that providing any tobacco product to offenders is a class A misdemeanor.

88532 Section 2182. Section **76-8-317** is amended to read:

88533 **76-8-317. Refusal to comply with order to evacuate or other orders issued in a**
88534 **local or state emergency -- Penalties.**

88535 (1) A person may not refuse to comply with an order to evacuate issued under this
88536 chapter or refuse to comply with any other order issued by the governor in a state of an
88537 emergency or by a chief executive officer in a local emergency under Sections [~~63-5a-3~~]

88538 63K-4-201 or [~~63-5a-4~~] 63K-4-202, if notice of the order has been given to that person.

88539 (2) A person who violates this section is guilty of a class B misdemeanor.

88540 Section 2183. Section **76-8-1101** is amended to read:

88541 **76-8-1101. Criminal offenses and penalties relating to revenue and taxation --**

88542 **Rulemaking authority -- Statute of limitations.**

88543 (1) (a) As provided in Section 59-1-401, criminal offenses and penalties are as provided
88544 in Subsections (1)(b) through (e).

88545 (b) (i) Any person who is required by Title 59, Revenue and Taxation, or any laws the
88546 State Tax Commission administers or regulates to register with or obtain a license or permit
88547 from the State Tax Commission, who operates without having registered or secured a license or
88548 permit, or who operates when the registration, license, or permit is expired or not current, is
88549 guilty of a class B misdemeanor.

88550 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(b)(i), the
88551 penalty may not:

88552 (A) be less than \$500; or

88553 (B) exceed \$1,000.

88554 (c) (i) Any person who, with intent to evade any tax or requirement of Title 59,
88555 Revenue and Taxation, or any lawful requirement of the State Tax Commission, fails to make,
88556 render, sign, or verify any return or to supply any information within the time required by law,
88557 or who makes, renders, signs, or verifies any false or fraudulent return or statement, or who
88558 supplies any false or fraudulent information, is guilty of a third degree felony.

88559 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(c)(i), the penalty
88560 may not:

88561 (A) be less than \$1,000; or

88562 (B) exceed \$5,000.

88563 (d) (i) Any person who intentionally or willfully attempts to evade or defeat any tax or
88564 the payment of a tax is, in addition to other penalties provided by law, guilty of a second degree
88565 felony.

88566 (ii) Notwithstanding Section 76-3-301, for purposes of Subsection (1)(d)(i), the penalty
88567 may not:

- 88568 (A) be less than \$1,500; or
- 88569 (B) exceed \$25,000.

88570 (e) (i) A person is guilty of a second degree felony if that person commits an act:

- 88571 (A) described in Subsection (1)(e)(ii) with respect to one or more of the following
88572 documents:

 - 88573 (I) a return;
 - 88574 (II) an affidavit;
 - 88575 (III) a claim; or
 - 88576 (IV) a document similar to Subsections (1)(e)(i)(A)(I) through (III); and
 - 88577 (B) subject to Subsection (1)(e)(iii), with knowledge that the document described in
88578 Subsection (1)(e)(i)(A):

 - 88579 (I) is false or fraudulent as to any material matter; and
 - 88580 (II) could be used in connection with any material matter administered by the State Tax
88581 Commission.

88582 (ii) The following acts apply to Subsection (1)(e)(i):

- 88583 (A) preparing any portion of a document described in Subsection (1)(e)(i)(A);
- 88584 (B) presenting any portion of a document described in Subsection (1)(e)(i)(A);
- 88585 (C) procuring any portion of a document described in Subsection (1)(e)(i)(A);
- 88586 (D) advising in the preparation or presentation of any portion of a document described
88587 in Subsection (1)(e)(i)(A);
- 88588 (E) aiding in the preparation or presentation of any portion of a document described in
88589 Subsection (1)(e)(i)(A);
- 88590 (F) assisting in the preparation or presentation of any portion of a document described
88591 in Subsection (1)(e)(i)(A); or
- 88592 (G) counseling in the preparation or presentation of any portion of a document
88593 described in Subsection (1)(e)(i)(A).

88594 (iii) This Subsection (1)(e) applies:
88595 (A) regardless of whether the person for which the document described in Subsection
88596 (1)(e)(i)(A) is prepared or presented:
88597 (I) knew of the falsity of the document described in Subsection (1)(e)(i)(A); or
88598 (II) consented to the falsity of the document described in Subsection (1)(e)(i)(A); and
88599 (B) in addition to any other penalty provided by law.
88600 (iv) Notwithstanding Section 76-3-301, for purposes of this Subsection (1)(e), the
88601 penalty may not:
88602 (A) be less than \$1,500; or
88603 (B) exceed \$25,000.
88604 (v) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
88605 Administrative Rulemaking Act, the State Tax Commission may make rules prescribing the
88606 documents that are similar to Subsections (1)(e)(i)(A)(I) through (III).
88607 (2) The statute of limitations for prosecution for a violation of this section is the later of
88608 six years:
88609 (a) from the date the tax should have been remitted; or
88610 (b) after the day on which the person commits the criminal offense.
88611 Section 2184. Section **76-10-526** is amended to read:
88612 **76-10-526. Criminal background check prior to purchase of a firearm -- Fee --**
88613 **Exemption for concealed firearm permit holders.**
88614 (1) For purposes of this section, "valid permit to carry a concealed firearm" does not
88615 include a temporary permit issued pursuant to Section 53-5-705.
88616 (2) To establish personal identification and residence in this state for purposes of this
88617 part, a dealer shall require an individual receiving a firearm to present one photo identification
88618 on a form issued by a governmental agency of the state.
88619 (3) A criminal history background check is required for the sale of a firearm by a
88620 licensed firearm dealer in the state.
88621 (4) (a) An individual, except a dealer, purchasing a firearm from a dealer shall consent

88622 in writing to a criminal background check, on a form provided by the division.

88623 (b) The form shall contain the following information:

88624 (i) the dealer identification number;

88625 (ii) the name and address of the individual receiving the firearm;

88626 (iii) the date of birth, height, weight, eye color, and hair color of the individual receiving
88627 the firearm; and

88628 (iv) the Social Security number or any other identification number of the individual
88629 receiving the firearm.

88630 (5) (a) The dealer shall send the form required by Subsection (4) to the division
88631 immediately upon its completion.

88632 (b) No dealer shall sell or transfer any firearm to an individual until the dealer has
88633 provided the division with the information in Subsection (4) and has received approval from the
88634 division under Subsection (7).

88635 (6) The dealer shall make a request for criminal history background information by
88636 telephone or other electronic means to the division and shall receive approval or denial of the
88637 inquiry by telephone or other electronic means.

88638 (7) When the dealer calls for or requests a criminal history background check, the
88639 division shall:

88640 (a) review the criminal history files, including juvenile court records, to determine if the
88641 individual is prohibited from purchasing, possessing, or transferring a firearm by state or federal
88642 law;

88643 (b) inform the dealer that:

88644 (i) the records indicate the individual is so prohibited; or

88645 (ii) the individual is approved for purchasing, possessing, or transferring a firearm;

88646 (c) provide the dealer with a unique transaction number for that inquiry; and

88647 (d) provide a response to the requesting dealer during the call for a criminal
88648 background, or by return call, or other electronic means, without delay, except in case of
88649 electronic failure or other circumstances beyond the control of the division, the division shall

88650 advise the dealer of the reason for the delay and give the dealer an estimate of the length of the
88651 delay.

88652 (8) (a) The division shall not maintain any records of the criminal history background
88653 check longer than 20 days from the date of the dealer's request if the division determines that
88654 the individual receiving the gun is not prohibited from purchasing, possessing, or transferring
88655 the firearm under state or federal law.

88656 (b) However, the division shall maintain a log of requests containing the dealer's federal
88657 firearms number, the transaction number, and the transaction date for a period of 12 months.

88658 (9) If the criminal history background check discloses information indicating that the
88659 individual attempting to purchase the firearm is prohibited from purchasing, possessing, or
88660 transferring a firearm, the division shall inform the law enforcement agency in the jurisdiction
88661 where the person resides.

88662 (10) If an individual is denied the right to purchase a firearm under this section, the
88663 individual may review ~~[his]~~ the individual's criminal history information and may challenge or
88664 amend the information as provided in Section 53-10-108.

88665 (11) The division shall make rules as provided in ~~[Title 63, Chapter 46a]~~ Title 63G,
88666 Chapter 3, Utah Administrative Rulemaking Act, to ensure the identity, confidentiality, and
88667 security of all records provided by the division pursuant to this part are in conformance with the
88668 requirements of the Brady Handgun Violence Prevention Act, Pub. L. No. 103-159, 107 Stat.
88669 1536 (1993).

88670 (12) (a) (i) All dealers shall collect a criminal history background check fee which is
88671 \$7.50.

88672 (ii) This fee remains in effect until changed by the division through the process under
88673 Section ~~[63-38-3.2]~~ 63J-1-303.

88674 (b) (i) The dealer shall forward at one time all fees collected for criminal history
88675 background checks performed during the month to the division by the last day of the month
88676 following the sale of a firearm.

88677 (ii) The division shall deposit the fees in the General Fund as dedicated credits to cover

88678 the cost of administering and conducting the criminal history background check program.

88679 (13) An individual with a concealed firearm permit issued pursuant to Title 53, Chapter
88680 5, Part 7, Concealed Weapon Act, shall be exempt from the background check and
88681 corresponding fee required in this section for the purchase of a firearm if:

88682 (a) the individual presents [~~his~~] the individual's concealed firearm permit to the dealer
88683 prior to purchase of the firearm; and

88684 (b) the dealer verifies with the division that the individual's concealed firearm permit is
88685 valid.

88686 Section 2185. Section **76-10-1209** is amended to read:

88687 **76-10-1209. Injunctive relief -- Jurisdiction -- Consent to be sued -- Service of**
88688 **process.**

88689 (1) The district courts of this state shall have full power, authority, and jurisdiction,
88690 upon application by any county attorney or city attorney within their respective jurisdictions or
88691 the attorney general, to issue any and all proper restraining orders, preliminary and permanent
88692 injunctions, and any other writs and processes appropriate to carry out and enforce the
88693 provisions of this part. No restraining order or injunction, however, shall issue except upon
88694 notice to the person sought to be enjoined. That person shall be entitled to a trial of the issues
88695 commencing within three days after filing of an answer to the complaint and a decision shall be
88696 rendered by the court within two days after the conclusion of the trial. If a final order or
88697 judgment of injunction is entered against the person sought to be enjoined, this final order or
88698 judgment shall contain a provision directing the person to surrender to the sheriff of the county
88699 in which the action was brought any pornographic material in [~~his~~] the person's possession
88700 which is subject to the injunction; and the sheriff shall be directed to seize and destroy this
88701 material.

88702 (2) Any person not qualified to do business in the state who sends or brings any
88703 pornographic material into the state with the intent to distribute or exhibit it to others in this
88704 state thereby consents that [~~he~~] the person may be sued in any proceedings commenced under
88705 this section and therefor appoints the director of the Division of Corporations and Commercial

88706 Code to be the agent upon whom may be served all legal process against that person. Service of
88707 process shall be made by serving a copy of same upon the director of the Division of
88708 Corporations and Commercial Code or by filing the copy in that office, together with payment
88709 of a fee determined by the division pursuant to Section [~~63-38-3.2~~] 63J-1-303. This service
88710 shall be sufficient service upon the defendant if:

88711 (a) notice of the service and a copy of the process are within ten days thereafter sent by
88712 mail by the prosecuting attorney to the defendant at the address of the defendant that appears
88713 on any material exhibited or distributed, and if no address appears, then the last known address
88714 of the defendant; and

88715 (b) the prosecuting attorney's affidavit of compliance with the provisions of this
88716 subsection are attached to the summons. The Division of Corporations and Commercial Code
88717 shall keep a record of all the process served upon it under this section, showing the day and
88718 hour of the service. Nothing in this subsection shall be construed to limit the operation of Rule
88719 17(e) of the Utah Rules of Civil Procedure.

88720 (3) This section shall not be construed in any way to limit the district courts in the
88721 exercise of their jurisdiction under any other provision of law.

88722 Section 2186. Section **76-10-1231** is amended to read:

88723 **76-10-1231. Data service providers -- Internet content harmful to minors.**

88724 (1) (a) Upon request by a consumer, a service provider shall filter content to prevent
88725 the transmission of material harmful to minors to the consumer.

88726 (b) A service provider complies with Subsection (1)(a) if it uses a generally accepted
88727 and commercially reasonable method of filtering.

88728 (2) At the time of a consumer's subscription to a service provider's service, or at the
88729 time this section takes effect if the consumer subscribes to the service provider's service at the
88730 time this section takes effect, the service provider shall notify the consumer in a conspicuous
88731 manner that the consumer may request to have material harmful to minors blocked under
88732 Subsection (1).

88733 (3) (a) A service provider may comply with Subsection (1) by:

88734 (i) providing in-network filtering to prevent receipt of material harmful to minors,
88735 provided that the filtering does not affect or interfere with access to Internet content for
88736 consumers who do not request filtering under Subsection (1); or

88737 (ii) providing software, or engaging a third party to provide software, for
88738 contemporaneous installation on the consumer's computer that blocks, in an easy-to-enable and
88739 commercially reasonable manner, receipt of material harmful to minors.

88740 (b) A service provider may charge a consumer for providing filtering under Subsection
88741 (3)(a).

88742 (4) If the attorney general determines that a service provider violates Subsection (1) or
88743 (2), the attorney general shall:

88744 (a) notify the service provider that the service provider is in violation of Subsection (1)
88745 or (2); and

88746 (b) notify the service provider that the service provider has 30 days to comply with the
88747 provision being violated or be subject to Subsection (5).

88748 (5) A service provider that violates Subsection (1) or (2) is:

88749 (a) subject to a civil fine of \$2,500 for each separate violation of Subsection (1) or (2),
88750 up to \$10,000 per day; and

88751 (b) guilty of a class A misdemeanor if:

88752 (i) the service provider knowingly or intentionally fails to comply with Subsection (1);
88753 or

88754 (ii) the service provider fails to provide the notice required by Subsection (2).

88755 (6) A proceeding to impose a civil fine under Subsection (5)(a) may only be brought by
88756 the attorney general in a court of competent jurisdiction.

88757 (7) (a) The Division of Consumer Protection within the Department of Commerce shall,
88758 in consultation with other entities as the Division of Consumer Protection considers appropriate,
88759 test the effectiveness of a service provider's system for blocking material harmful to minors
88760 under Subsection (1) at least annually.

88761 (b) The results of testing by the Division of Consumer Protection under Subsection

88762 (7)(a) shall be made available to:

88763 (i) the service provider that is the subject of the test; and

88764 (ii) the public.

88765 (c) The Division of Consumer Protection shall make rules in accordance with [~~Title 63,~~

88766 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to fulfil its duties

88767 under this section.

88768 Section 2187. Section **76-10-1234** is amended to read:

88769 **76-10-1234. Rulemaking authority.**

88770 The Division of Consumer Protection shall make rules in accordance with [~~Title 63,~~

88771 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to establish

88772 acceptable rating methods to be implemented by a content provider under Subsection

88773 76-10-1233(1).

88774 Section 2188. Section **76-10-1311** is amended to read:

88775 **76-10-1311. Mandatory testing -- Retention of offender medical file -- Civil**
88776 **liability.**

88777 (1) A person who has entered a plea of guilty, a plea of no contest, a plea of guilty and
88778 mentally ill, or been found guilty for violation of Section 76-10-1302, 76-10-1303, or
88779 76-10-1313 shall be required to submit to a mandatory test to determine if the offender is an
88780 HIV positive individual. The mandatory test shall be required and conducted prior to
88781 sentencing.

88782 (2) If the mandatory test has not been conducted prior to sentencing, and the convicted
88783 offender is already confined in a county jail or state prison, such person shall be tested while in
88784 confinement.

88785 (3) The local law enforcement agency shall cause the blood specimen of the offender as
88786 defined in Subsection (1) confined in county jail to be taken and tested.

88787 (4) The Department of Corrections shall cause the blood specimen of the offender
88788 defined in Subsection (1) confined in any state prison to be taken and tested.

88789 (5) The local law enforcement agency shall collect and retain in the offender's medical

88790 file the following data:

88791 (a) the HIV infection test results;

88792 (b) a copy of the written notice as provided in Section 76-10-1312;

88793 (c) photographic identification; and

88794 (d) fingerprint identification.

88795 (6) The local law enforcement agency shall classify the medical file as a private record

88796 pursuant to Subsection [~~63-2-302~~] 63G-2-302(1)(b) or a controlled record pursuant to Section

88797 [~~63-2-303~~] 63G-2-304.

88798 (7) The person tested shall be responsible for the costs of testing, unless the person is

88799 indigent. The costs will then be paid by the local law enforcement agency or the Department of

88800 Corrections from the General Fund.

88801 (8) (a) The laboratory performing testing shall report test results to only designated

88802 officials in the Department of Corrections, the Department of Health, and the local law

88803 enforcement agency submitting the blood specimen.

88804 (b) Each department or agency shall designate those officials by written policy.

88805 (c) Designated officials may release information identifying an offender under Section

88806 76-10-1302, 76-10-1303, or 76-10-1313 who has tested HIV positive as provided under

88807 Subsection [~~63-2-202~~] 63G-2-202(1) and for purposes of prosecution pursuant to Section

88808 76-10-1309.

88809 (9) (a) An employee of the local law enforcement agency, the Department of

88810 Corrections, or the Department of Health who discloses the HIV test results under this section

88811 is not civilly liable except when disclosure constitutes fraud or willful misconduct as provided in

88812 Section [~~63-30d-202~~] 63G-7-202.

88813 (b) An employee of the local law enforcement agency, the Department of Corrections,

88814 or the Department of Health who discloses the HIV test results under this section is not civilly

88815 or criminally liable, except when disclosure constitutes a knowing violation of Section

88816 [~~63-2-801~~] 63G-2-801.

88817 (10) When the medical file is released as provided in Section [~~63-2-803~~] 63G-2-803,

88818 the local law enforcement agency, the Department of Corrections, or the Department of Health
88819 or its officers or employees are not liable for damages for release of the medical file.

88820 Section 2189. Section **76-10-1602** is amended to read:

88821 **76-10-1602. Definitions.**

88822 As used in this part:

88823 (1) "Enterprise" means any individual, sole proprietorship, partnership, corporation,
88824 business trust, association, or other legal entity, and any union or group of individuals
88825 associated in fact although not a legal entity, and includes illicit as well as licit entities.

88826 (2) "Pattern of unlawful activity" means engaging in conduct which constitutes the
88827 commission of at least three episodes of unlawful activity, which episodes are not isolated, but
88828 have the same or similar purposes, results, participants, victims, or methods of commission, or
88829 otherwise are interrelated by distinguishing characteristics. Taken together, the episodes shall
88830 demonstrate continuing unlawful conduct and be related either to each other or to the
88831 enterprise. At least one of the episodes comprising a pattern of unlawful activity shall have
88832 occurred after July 31, 1981. The most recent act constituting part of a pattern of unlawful
88833 activity as defined by this part shall have occurred within five years of the commission of the
88834 next preceding act alleged as part of the pattern.

88835 (3) "Person" includes any individual or entity capable of holding a legal or beneficial
88836 interest in property, including state, county, and local governmental entities.

88837 (4) "Unlawful activity" means to directly engage in conduct or to solicit, request,
88838 command, encourage, or intentionally aid another person to engage in conduct which would
88839 constitute any offense described by the following crimes or categories of crimes, or to attempt
88840 or conspire to engage in an act which would constitute any of those offenses, regardless of
88841 whether the act is in fact charged or indicted by any authority or is classified as a misdemeanor
88842 or a felony:

88843 (a) any act prohibited by the criminal provisions of Title 13, Chapter 10, Unauthorized
88844 Recording Practices Act;

88845 (b) any act prohibited by the criminal provisions of Title 19, Environmental Quality

- 88846 Code, Sections 19-1-101 through 19-7-109;
- 88847 (c) taking, destroying, or possessing wildlife or parts of wildlife for the primary purpose
- 88848 of sale, trade, or other pecuniary gain, in violation of Title 23, Chapter 13, Wildlife Resources
- 88849 Code of Utah, or Section 23-20-4;
- 88850 (d) false claims for medical benefits, kickbacks, and any other act prohibited by False
- 88851 Claims Act, Sections 26-20-1 through 26-20-12;
- 88852 (e) any act prohibited by the criminal provisions of Title 32A, Chapter 12, Criminal
- 88853 Offenses;
- 88854 (f) any act prohibited by the criminal provisions of Title 57, Chapter 11, Utah Uniform
- 88855 Land Sales Practices Act;
- 88856 (g) any act prohibited by the criminal provisions of Title 58, Chapter 37, Utah
- 88857 Controlled Substances Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, Title
- 88858 58, Chapter 37c, Utah Controlled Substance Precursor Act, or Title 58, Chapter 37d,
- 88859 Clandestine Drug Lab Act;
- 88860 (h) any act prohibited by the criminal provisions of Title 61, Chapter 1, Utah Uniform
- 88861 Securities Act;
- 88862 (i) any act prohibited by the criminal provisions of [~~Title 63, Chapter 56~~] Title 63G,
- 88863 Chapter 6, Utah Procurement Code;
- 88864 (j) assault or aggravated assault, Sections 76-5-102 and 76-5-103;
- 88865 (k) a terroristic threat, Section 76-5-107;
- 88866 (l) criminal homicide, Sections 76-5-201, 76-5-202, and 76-5-203;
- 88867 (m) kidnapping or aggravated kidnapping, Sections 76-5-301 and 76-5-302;
- 88868 (n) sexual exploitation of a minor, Section 76-5a-3;
- 88869 (o) arson or aggravated arson, Sections 76-6-102 and 76-6-103;
- 88870 (p) causing a catastrophe, Section 76-6-105;
- 88871 (q) burglary or aggravated burglary, Sections 76-6-202 and 76-6-203;
- 88872 (r) burglary of a vehicle, Section 76-6-204;
- 88873 (s) manufacture or possession of an instrument for burglary or theft, Section 76-6-205;

- 88874 (t) robbery or aggravated robbery, Sections 76-6-301 and 76-6-302;
- 88875 (u) theft, Section 76-6-404;
- 88876 (v) theft by deception, Section 76-6-405;
- 88877 (w) theft by extortion, Section 76-6-406;
- 88878 (x) receiving stolen property, Section 76-6-408;
- 88879 (y) theft of services, Section 76-6-409;
- 88880 (z) forgery, Section 76-6-501;
- 88881 (aa) fraudulent use of a credit card, Sections 76-6-506.1, 76-6-506.2, and 76-6-506.4;
- 88882 (bb) deceptive business practices, Section 76-6-507;
- 88883 (cc) bribery or receiving bribe by person in the business of selection, appraisal, or
- 88884 criticism of goods, Section 76-6-508;
- 88885 (dd) bribery of a labor official, Section 76-6-509;
- 88886 (ee) defrauding creditors, Section 76-6-511;
- 88887 (ff) acceptance of deposit by insolvent financial institution, Section 76-6-512;
- 88888 (gg) unlawful dealing with property by fiduciary, Section 76-6-513;
- 88889 (hh) bribery or threat to influence contest, Section 76-6-514;
- 88890 (ii) making a false credit report, Section 76-6-517;
- 88891 (jj) criminal simulation, Section 76-6-518;
- 88892 (kk) criminal usury, Section 76-6-520;
- 88893 (ll) fraudulent insurance act, Section 76-6-521;
- 88894 (mm) retail theft, Section 76-6-602;
- 88895 (nn) computer crimes, Section 76-6-703;
- 88896 (oo) identity fraud, Section 76-6-1102;
- 88897 (pp) sale of a child, Section 76-7-203;
- 88898 (qq) bribery to influence official or political actions, Section 76-8-103;
- 88899 (rr) threats to influence official or political action, Section 76-8-104;
- 88900 (ss) receiving bribe or bribery by public servant, Section 76-8-105;
- 88901 (tt) receiving bribe or bribery for endorsement of person as public servant, Section

- 88902 76-8-106;
- 88903 (uu) official misconduct, Sections 76-8-201 and 76-8-202;
- 88904 (vv) obstruction of justice, Section 76-8-306;
- 88905 (ww) acceptance of bribe or bribery to prevent criminal prosecution, Section 76-8-308;
- 88906 (xx) false or inconsistent material statements, Section 76-8-502;
- 88907 (yy) false or inconsistent statements, Section 76-8-503;
- 88908 (zz) written false statements, Section 76-8-504;
- 88909 (aaa) tampering with a witness or soliciting or receiving a bribe, Section 76-8-508;
- 88910 (bbb) retaliation against a witness, victim, or informant, Section 76-8-508.3;
- 88911 (ccc) extortion or bribery to dismiss criminal proceeding, Section 76-8-509;
- 88912 (ddd) public assistance fraud in violation of Section 76-8-1203, 76-8-1204, or
- 88913 76-8-1205;
- 88914 (eee) unemployment insurance fraud, Section 76-8-1301;
- 88915 (fff) intentionally or knowingly causing one animal to fight with another, Subsection
- 88916 76-9-301(1)(f);
- 88917 (ggg) possession, use, or removal of explosives, chemical, or incendiary devices or
- 88918 parts, Section 76-10-306;
- 88919 (hhh) delivery to common carrier, mailing, or placement on premises of an incendiary
- 88920 device, Section 76-10-307;
- 88921 (iii) possession of a deadly weapon with intent to assault, Section 76-10-507;
- 88922 (jjj) unlawful marking of pistol or revolver, Section 76-10-521;
- 88923 (kkk) alteration of number or mark on pistol or revolver, Section 76-10-522;
- 88924 (lll) forging or counterfeiting trademarks, trade name, or trade device, Section
- 88925 76-10-1002;
- 88926 (mmm) selling goods under counterfeited trademark, trade name, or trade devices,
- 88927 Section 76-10-1003;
- 88928 (nnn) sales in containers bearing registered trademark of substituted articles, Section
- 88929 76-10-1004;

88930 (ooo) selling or dealing with article bearing registered trademark or service mark with
88931 intent to defraud, Section 76-10-1006;
88932 (ppp) gambling, Section 76-10-1102;
88933 (qqq) gambling fraud, Section 76-10-1103;
88934 (rrr) gambling promotion, Section 76-10-1104;
88935 (sss) possessing a gambling device or record, Section 76-10-1105;
88936 (ttt) confidence game, Section 76-10-1109;
88937 (uuu) distributing pornographic material, Section 76-10-1204;
88938 (vvv) inducing acceptance of pornographic material, Section 76-10-1205;
88939 (www) dealing in harmful material to a minor, Section 76-10-1206;
88940 (xxx) distribution of pornographic films, Section 76-10-1222;
88941 (yyy) indecent public displays, Section 76-10-1228;
88942 (zzz) prostitution, Section 76-10-1302;
88943 (aaaa) aiding prostitution, Section 76-10-1304;
88944 (bbbb) exploiting prostitution, Section 76-10-1305;
88945 (cccc) aggravated exploitation of prostitution, Section 76-10-1306;
88946 (dddd) communications fraud, Section 76-10-1801;
88947 (eeee) any act prohibited by the criminal provisions of Title 76, Chapter 10, Part 19,
88948 Money Laundering and Currency Transaction Reporting Act;
88949 (ffff) any act prohibited by the criminal provisions of the laws governing taxation in this
88950 state; and
88951 (gggg) any act illegal under the laws of the United States and enumerated in Title 18,
88952 Section 1961 (1)(B), (C), and (D) of the United States Code.
88953 Section 2190. Section **77-2-4.2** is amended to read:
88954 **77-2-4.2. Compromise of traffic charges -- Limitations.**
88955 (1) As used in this section:
88956 (a) "Compromise" means referral of a person charged with a traffic violation to traffic
88957 school or other school, class, or remedial or rehabilitative program.

88958 (b) "Traffic violation" means any charge for which bail may be forfeited in lieu of
88959 appearance, by citation or information, of a violation of:

88960 (i) Title 41, Chapter 6a, Traffic Code, amounting to:

88961 (A) a class B misdemeanor;

88962 (B) a class C misdemeanor; or

88963 (C) an infraction; or

88964 (ii) any local traffic ordinance.

88965 (2) Any compromise of a traffic violation shall be done pursuant to a plea in abeyance
88966 agreement as provided in Title 77, Chapter 2a, Pleas in Abeyance, except:

88967 (a) when the criminal prosecution is dismissed pursuant to Section 77-2-4; or

88968 (b) when there is a plea by the defendant to and entry of a judgment by a court for the
88969 offense originally charged or for an amended charge.

88970 (3) In all cases which are compromised pursuant to the provisions of Subsection (2):

88971 (a) the court, taking into consideration the offense charged, shall collect a plea in
88972 abeyance fee which shall:

88973 (i) be subject to the same surcharge as if imposed on a criminal fine;

88974 (ii) be allocated subject to the surcharge as if paid as a criminal fine under Section
88975 78-3-14.5 and a surcharge under [~~Title 63, Chapter 63a~~] Title 51, Chapter 9, Part 4, Crime
88976 Victim Reparation Trust, Public Safety Support Funds, Substance Abuse Prevention Account,
88977 and Services for Victims of Domestic Violence Account; and

88978 (iii) be not more than \$25 greater than the bail designated in the Uniform Bail Schedule;

88979 or

88980 (b) if no plea in abeyance fee is collected, a surcharge on the fee charged for the traffic
88981 school or other school, class, or rehabilitative program shall be collected, which surcharge shall:

88982 (i) be computed, assessed, collected, and remitted in the same manner as if the traffic
88983 school fee and surcharge had been imposed as a criminal fine and surcharge; and

88984 (ii) be subject to the financial requirements contained in [~~Title 63, Chapter 63a~~] Title
88985 51, Chapter 9, Part 4, Crime Victim Reparation Trust, Public Safety Support Funds, Substance

88986 Abuse Prevention Account, and Services for Victims of Domestic Violence Account.

88987 (4) If a written plea in abeyance agreement is provided, or the defendant requests a
88988 written accounting, an itemized statement of all amounts assessed by the court shall be
88989 provided, including:

88990 (a) the Uniform Bail Schedule amount;

88991 (b) the amount of any surcharges being assessed; and

88992 (c) the amount of the plea in abeyance fee.

88993 Section 2191. Section **77-2a-3** is amended to read:

88994 **77-2a-3. Manner of entry of plea -- Powers of court.**

88995 (1) (a) Acceptance of any plea in anticipation of a plea in abeyance agreement shall be
88996 done in full compliance with the provisions of Rule 11, Utah Rules of Criminal Procedure.

88997 (b) In cases charging offenses for which bail may be forfeited, a plea in abeyance
88998 agreement may be entered into without a personal appearance before a magistrate.

88999 (2) A plea in abeyance agreement may provide that the court may, upon finding that the
89000 defendant has successfully completed the terms of the agreement:

89001 (a) reduce the degree of the offense and enter judgment of conviction and impose
89002 sentence for a lower degree of offense; or

89003 (b) allow withdrawal of defendant's plea and order the dismissal of the case.

89004 (3) Upon finding that a defendant has successfully completed the terms of a plea in
89005 abeyance agreement, the court may reduce the degree of the offense or dismiss the case only as
89006 provided in the plea in abeyance agreement or as agreed to by all parties. Upon sentencing a
89007 defendant for any lesser offense pursuant to a plea in abeyance agreement, the court may not
89008 invoke Section 76-3-402 to further reduce the degree of the offense.

89009 (4) The court may require the Department of Corrections to assist in the administration
89010 of the plea in abeyance agreement as if the defendant were on probation to the court under
89011 Section 77-18-1.

89012 (5) The terms of a plea in abeyance agreement may include:

89013 (a) an order that the defendant pay a nonrefundable plea in abeyance fee, with a

89014 surcharge based on the amount of the plea in abeyance fee, both of which shall be allocated in
89015 the same manner as if paid as a fine for a criminal conviction under Section 78-3-14.5 and a
89016 surcharge under [~~Title 63, Chapter 63a~~] Title 51, Chapter 9, Part 4, Crime Victim Reparation
89017 Trust, Public Safety Support Funds, Substance Abuse Prevention Account, and Services for
89018 Victims of Domestic Violence Account, and which may not exceed in amount the maximum fine
89019 and surcharge which could have been imposed upon conviction and sentencing for the same
89020 offense;

89021 (b) an order that the defendant pay restitution to the victims of [~~his~~] the defendant's
89022 actions as provided in Title 77, Chapter 38a, Crime Victims Restitution Act;

89023 (c) an order that the defendant pay the costs of any remedial or rehabilitative program
89024 required by the terms of the agreement; and

89025 (d) an order that the defendant comply with any other conditions which could have been
89026 imposed as conditions of probation upon conviction and sentencing for the same offense.

89027 (6) A court may not hold a plea in abeyance without the consent of both the
89028 prosecuting attorney and the defendant. A decision by a prosecuting attorney not to agree to a
89029 plea in abeyance is final.

89030 (7) No plea may be held in abeyance in any case involving a sexual offense against a
89031 victim who is under the age of 14.

89032 (8) Beginning on July 1, 2008, no plea may be held in abeyance in any case involving a
89033 driving under the influence violation under Section 41-6a-502.

89034 Section 2192. Section **77-10a-5** is amended to read:

89035 **77-10a-5. Grand jurors -- Qualification and selection -- Limits on disclosure.**

89036 (1) Grand jurors shall meet the qualifications provided for jurors generally in Title 78,
89037 Chapter 46, Jury Selection and Service Act. Grand jurors shall be selected from the qualified
89038 jury list as provided in Section 78-46-12.

89039 (2) The names of grand jurors are classified as protected records under [~~Title 63,~~
89040 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records and Access Management Act.

89041 Section 2193. Section **77-18-1** is amended to read:

89042 **77-18-1. Suspension of sentence -- Pleas held in abeyance -- Probation --**
89043 **Supervision -- Presentence investigation -- Standards -- Confidentiality -- Terms and**
89044 **conditions -- Termination, revocation, modification, or extension -- Hearings -- Electronic**
89045 **monitoring.**

89046 (1) On a plea of guilty or no contest entered by a defendant in conjunction with a plea
89047 in abeyance agreement, the court may hold the plea in abeyance as provided in Title 77, Chapter
89048 2a, Pleas in Abeyance, and under the terms of the plea in abeyance agreement.

89049 (2) (a) On a plea of guilty, guilty and mentally ill, no contest, or conviction of any crime
89050 or offense, the court may, after imposing sentence, suspend the execution of the sentence and
89051 place the defendant on probation. The court may place the defendant:

89052 (i) on probation under the supervision of the Department of Corrections except in cases
89053 of class C misdemeanors or infractions;

89054 (ii) on probation with an agency of local government or with a private organization; or

89055 (iii) on bench probation under the jurisdiction of the sentencing court.

89056 (b) (i) The legal custody of all probationers under the supervision of the department is
89057 with the department.

89058 (ii) The legal custody of all probationers under the jurisdiction of the sentencing court is
89059 vested as ordered by the court.

89060 (iii) The court has continuing jurisdiction over all probationers.

89061 (3) (a) The department shall establish supervision and presentence investigation
89062 standards for all individuals referred to the department. These standards shall be based on:

89063 (i) the type of offense;

89064 (ii) the demand for services;

89065 (iii) the availability of agency resources;

89066 (iv) the public safety; and

89067 (v) other criteria established by the department to determine what level of services shall
89068 be provided.

89069 (b) Proposed supervision and investigation standards shall be submitted to the Judicial

89070 Council and the Board of Pardons and Parole on an annual basis for review and comment prior
89071 to adoption by the department.

89072 (c) The Judicial Council and the department shall establish procedures to implement the
89073 supervision and investigation standards.

89074 (d) The Judicial Council and the department shall annually consider modifications to the
89075 standards based upon criteria in Subsection (3)(a) and other criteria as they consider
89076 appropriate.

89077 (e) The Judicial Council and the department shall annually prepare an impact report and
89078 submit it to the appropriate legislative appropriations subcommittee.

89079 (4) Notwithstanding other provisions of law, the department is not required to
89080 supervise the probation of persons convicted of class B or C misdemeanors or infractions or to
89081 conduct presentence investigation reports on class C misdemeanors or infractions. However,
89082 the department may supervise the probation of class B misdemeanants in accordance with
89083 department standards.

89084 (5) (a) Prior to the imposition of any sentence, the court may, with the concurrence of
89085 the defendant, continue the date for the imposition of sentence for a reasonable period of time
89086 for the purpose of obtaining a presentence investigation report from the department or
89087 information from other sources about the defendant.

89088 (b) The presentence investigation report shall include a victim impact statement
89089 according to guidelines set in Section 77-38a-203 describing the effect of the crime on the
89090 victim and the victim's family.

89091 (c) The presentence investigation report shall include a specific statement of pecuniary
89092 damages, accompanied by a recommendation from the department regarding the payment of
89093 restitution with interest by the defendant in accordance with Title 77, Chapter 38a, Crime
89094 Victims Restitution Act.

89095 (d) The presentence investigation report shall include:

89096 (i) findings from any screening and any assessment of the offender conducted under
89097 Section 77-18-1.1; and

- 89098 (ii) recommendations for treatment of the offender.
- 89099 (e) The contents of the presentence investigation report, including any diagnostic
89100 evaluation report ordered by the court under Section 76-3-404, are protected and are not
89101 available except by court order for purposes of sentencing as provided by rule of the Judicial
89102 Council or for use by the department.
- 89103 (6) (a) The department shall provide the presentence investigation report to the
89104 defendant's attorney, or the defendant if not represented by counsel, the prosecutor, and the
89105 court for review, three working days prior to sentencing. Any alleged inaccuracies in the
89106 presentence investigation report, which have not been resolved by the parties and the
89107 department prior to sentencing, shall be brought to the attention of the sentencing judge, and
89108 the judge may grant an additional ten working days to resolve the alleged inaccuracies of the
89109 report with the department. If after ten working days the inaccuracies cannot be resolved, the
89110 court shall make a determination of relevance and accuracy on the record.
- 89111 (b) If a party fails to challenge the accuracy of the presentence investigation report at
89112 the time of sentencing, that matter shall be considered to be waived.
- 89113 (7) At the time of sentence, the court shall receive any testimony, evidence, or
89114 information the defendant or the prosecuting attorney desires to present concerning the
89115 appropriate sentence. This testimony, evidence, or information shall be presented in open court
89116 on record and in the presence of the defendant.
- 89117 (8) While on probation, and as a condition of probation, the court may require that the
89118 defendant:
- 89119 (a) perform any or all of the following:
- 89120 (i) pay, in one or several sums, any fine imposed at the time of being placed on
89121 probation;
- 89122 (ii) pay amounts required under Title 77, Chapter 32a, Defense Costs;
- 89123 (iii) provide for the support of others for whose support ~~he~~ the defendant is legally
89124 liable;
- 89125 (iv) participate in available treatment programs, including any treatment program in

89126 which the defendant is currently participating, if the program is acceptable to the court;

89127 (v) serve a period of time, not to exceed one year, in a county jail designated by the
89128 department, after considering any recommendation by the court as to which jail the court finds
89129 most appropriate;

89130 (vi) serve a term of home confinement, which may include the use of electronic
89131 monitoring;

89132 (vii) participate in compensatory service restitution programs, including the
89133 compensatory service program provided in Section 78-11-20.7;

89134 (viii) pay for the costs of investigation, probation, and treatment services;

89135 (ix) make restitution or reparation to the victim or victims with interest in accordance
89136 with Title 77, Chapter 38a, Crime Victims Restitution Act; and

89137 (x) comply with other terms and conditions the court considers appropriate; and

89138 (b) if convicted on or after May 5, 1997:

89139 (i) complete high school classwork and obtain a high school graduation diploma, a GED
89140 certificate, or a vocational certificate at the defendant's own expense if the defendant has not
89141 received the diploma, GED certificate, or vocational certificate prior to being placed on
89142 probation; or

89143 (ii) provide documentation of the inability to obtain one of the items listed in Subsection
89144 (8)(b)(i) because of:

89145 (A) a diagnosed learning disability; or

89146 (B) other justified cause.

89147 (9) The department shall collect and disburse the account receivable as defined by
89148 Section 76-3-201.1, with interest and any other costs assessed under Section 64-13-21 during:

89149 (a) the parole period and any extension of that period in accordance with Subsection
89150 77-27-6(4); and

89151 (b) the probation period in cases for which the court orders supervised probation and
89152 any extension of that period by the department in accordance with Subsection (10).

89153 (10) (a) (i) Probation may be terminated at any time at the discretion of the court or

89154 upon completion without violation of 36 months probation in felony or class A misdemeanor
89155 cases, or 12 months in cases of class B or C misdemeanors or infractions.

89156 (ii) (A) If, upon expiration or termination of the probation period under Subsection
89157 (10)(a)(i), there remains an unpaid balance upon the account receivable as defined in Section
89158 76-3-201.1, the court may retain jurisdiction of the case and continue the defendant on bench
89159 probation for the limited purpose of enforcing the payment of the account receivable.

89160 (B) In accordance with Section 77-18-6, the court shall record in the registry of civil
89161 judgments any unpaid balance not already recorded and immediately transfer responsibility to
89162 collect the account to the Office of State Debt Collection.

89163 (iii) Upon motion of the Office of State Debt Collection, prosecutor, victim, or upon its
89164 own motion, the court may require the defendant to show cause why ~~[his]~~ the defendant's
89165 failure to pay should not be treated as contempt of court.

89166 (b) (i) The department shall notify the sentencing court, the Office of State Debt
89167 Collection, and the prosecuting attorney in writing in advance in all cases when termination of
89168 supervised probation will occur by law.

89169 (ii) The notification shall include a probation progress report and complete report of
89170 details on outstanding accounts receivable.

89171 (11) (a) (i) Any time served by a probationer outside of confinement after having been
89172 charged with a probation violation and prior to a hearing to revoke probation does not
89173 constitute service of time toward the total probation term unless the probationer is exonerated
89174 at a hearing to revoke the probation.

89175 (ii) Any time served in confinement awaiting a hearing or decision concerning
89176 revocation of probation does not constitute service of time toward the total probation term
89177 unless the probationer is exonerated at the hearing.

89178 (b) The running of the probation period is tolled upon the filing of a violation report
89179 with the court alleging a violation of the terms and conditions of probation or upon the issuance
89180 of an order to show cause or warrant by the court.

89181 (12) (a) (i) Probation may not be modified or extended except upon waiver of a hearing

89182 by the probationer or upon a hearing and a finding in court that the probationer has violated the
89183 conditions of probation.

89184 (ii) Probation may not be revoked except upon a hearing in court and a finding that the
89185 conditions of probation have been violated.

89186 (b) (i) Upon the filing of an affidavit alleging with particularity facts asserted to
89187 constitute violation of the conditions of probation, the court that authorized probation shall
89188 determine if the affidavit establishes probable cause to believe that revocation, modification, or
89189 extension of probation is justified.

89190 (ii) If the court determines there is probable cause, it shall cause to be served on the
89191 defendant a warrant for [~~his~~] the defendant's arrest or a copy of the affidavit and an order to
89192 show cause why [~~his~~] the defendant's probation should not be revoked, modified, or extended.

89193 (c) (i) The order to show cause shall specify a time and place for the hearing and shall
89194 be served upon the defendant at least five days prior to the hearing.

89195 (ii) The defendant shall show good cause for a continuance.

89196 (iii) The order to show cause shall inform the defendant of a right to be represented by
89197 counsel at the hearing and to have counsel appointed for him if [~~he~~] the defendant is indigent.

89198 (iv) The order shall also inform the defendant of a right to present evidence.

89199 (d) (i) At the hearing, the defendant shall admit or deny the allegations of the affidavit.

89200 (ii) If the defendant denies the allegations of the affidavit, the prosecuting attorney shall
89201 present evidence on the allegations.

89202 (iii) The persons who have given adverse information on which the allegations are based
89203 shall be presented as witnesses subject to questioning by the defendant unless the court for good
89204 cause otherwise orders.

89205 (iv) The defendant may call witnesses, appear and speak in [~~his~~] the defendant's own
89206 behalf, and present evidence.

89207 (e) (i) After the hearing the court shall make findings of fact.

89208 (ii) Upon a finding that the defendant violated the conditions of probation, the court
89209 may order the probation revoked, modified, continued, or that the entire probation term

89210 commence anew.

89211 (iii) If probation is revoked, the defendant shall be sentenced or the sentence previously
89212 imposed shall be executed.

89213 (13) The court may order the defendant to commit himself to the custody of the
89214 Division of Substance Abuse and Mental Health for treatment at the Utah State Hospital as a
89215 condition of probation or stay of sentence, only after the superintendent of the Utah State
89216 Hospital or ~~his~~ the superintendent's designee has certified to the court that:

89217 (a) the defendant is appropriate for and can benefit from treatment at the state hospital;

89218 (b) treatment space at the hospital is available for the defendant; and

89219 (c) persons described in Subsection 62A-15-610(2)(g) are receiving priority for
89220 treatment over the defendants described in this Subsection (13).

89221 (14) Presentence investigation reports, including presentence diagnostic evaluations, are
89222 classified protected in accordance with ~~[Title 63, Chapter 2]~~ Title 63G, Chapter 2, Government
89223 Records Access and Management Act. Notwithstanding Sections ~~[63-2-403]~~ 63G-2-403 and
89224 ~~[63-2-404]~~ 63G-2-404, the State Records Committee may not order the disclosure of a
89225 presentence investigation report. Except for disclosure at the time of sentencing pursuant to
89226 this section, the department may disclose the presentence investigation only when:

89227 (a) ordered by the court pursuant to Subsection ~~[63-2-202]~~ 63G-2-202(7);

89228 (b) requested by a law enforcement agency or other agency approved by the department
89229 for purposes of supervision, confinement, and treatment of the offender;

89230 (c) requested by the Board of Pardons and Parole;

89231 (d) requested by the subject of the presentence investigation report or the subject's
89232 authorized representative; or

89233 (e) requested by the victim of the crime discussed in the presentence investigation
89234 report or the victim's authorized representative, provided that the disclosure to the victim shall
89235 include only information relating to statements or materials provided by the victim, to the
89236 circumstances of the crime including statements by the defendant, or to the impact of the crime
89237 on the victim or the victim's household.

89238 (15) (a) The court shall consider home confinement as a condition of probation under
89239 the supervision of the department, except as provided in Sections 76-3-406 and 76-5-406.5.

89240 (b) The department shall establish procedures and standards for home confinement,
89241 including electronic monitoring, for all individuals referred to the department in accordance with
89242 Subsection (16).

89243 (16) (a) If the court places the defendant on probation under this section, it may order
89244 the defendant to participate in home confinement through the use of electronic monitoring as
89245 described in this section until further order of the court.

89246 (b) The electronic monitoring shall alert the department and the appropriate law
89247 enforcement unit of the defendant's whereabouts.

89248 (c) The electronic monitoring device shall be used under conditions which require:

89249 (i) the defendant to wear an electronic monitoring device at all times; and

89250 (ii) that a device be placed in the home of the defendant, so that the defendant's
89251 compliance with the court's order may be monitored.

89252 (d) If a court orders a defendant to participate in home confinement through electronic
89253 monitoring as a condition of probation under this section, it shall:

89254 (i) place the defendant on probation under the supervision of the Department of
89255 Corrections;

89256 (ii) order the department to place an electronic monitoring device on the defendant and
89257 install electronic monitoring equipment in the residence of the defendant; and

89258 (iii) order the defendant to pay the costs associated with home confinement to the
89259 department or the program provider.

89260 (e) The department shall pay the costs of home confinement through electronic
89261 monitoring only for those persons who have been determined to be indigent by the court.

89262 (f) The department may provide the electronic monitoring described in this section
89263 either directly or by contract with a private provider.

89264 Section 2194. Section **77-18-11** is amended to read:

89265 **77-18-11. Petition -- Expungement of conviction -- Certificate of eligibility -- Fee**

89266 -- **Notice -- Written evaluation -- Objections -- Hearing.**

89267 (1) A person convicted of a crime may petition the convicting court for an expungement
89268 of the record of conviction.

89269 (2) (a) The court shall require receipt of a certificate of eligibility issued by the division
89270 under Section 77-18-12.

89271 (b) The fee for each certificate of eligibility is \$25. This fee remains in effect until
89272 changed by the division through the process under Section [~~63-38-3.2~~] 63J-1-303.

89273 (c) Funds generated under Subsection (2)(b) shall be deposited in the General Fund as a
89274 dedicated credit by the department to cover the costs incurred in providing the information.

89275 (3) The petition and certificate of eligibility shall be filed with the court and served upon
89276 the prosecuting attorney and the Department of Corrections.

89277 (4) A victim shall receive notice of a petition for expungement if, prior to the entry of
89278 an expungement order, the victim or, in the case of a minor or a person who is incapacitated or
89279 deceased, the victim's next of kin or authorized representative, submits a written and signed
89280 request for notice to the office of the Department of Corrections in the judicial district in which
89281 the crime occurred or judgment was entered.

89282 (5) The Department of Corrections shall serve notice of the expungement request by
89283 first-class mail to the victim at the most recent address of record on file with the department.
89284 The notice shall include a copy of the petition, certificate of eligibility, and statutes and rules
89285 applicable to the petition.

89286 (6) The court in its discretion may request a written evaluation by Adult Parole and
89287 Probation of the Department of Corrections.

89288 (a) The evaluation shall include a recommendation concerning the petition for
89289 expungement.

89290 (b) If expungement is recommended, the evaluation shall include certification that the
89291 petitioner has completed all requirements of sentencing and probation or parole and state any
89292 rationale that would support or refute consideration for expungement.

89293 (c) The conclusions and recommendations contained in the evaluation shall be provided

89294 to the petitioner and the prosecuting attorney.

89295 (7) If the prosecuting attorney or a victim submits a written objection to the court
89296 concerning the petition within 30 days after service of the notice, or if the petitioner objects to
89297 the conclusions and recommendations in the evaluation within 15 days after receipt of the
89298 conclusions and recommendations, the court shall set a date for a hearing and notify the
89299 prosecuting attorney for the jurisdiction, the petitioner, and the victim of the date set for the
89300 hearing.

89301 (8) Any person who has relevant information about the petitioner may testify at the
89302 hearing.

89303 (9) The prosecuting attorney may respond to the court with a recommendation or
89304 objection within 30 days.

89305 (10) If an objection is not received under Subsection (7), the expungement may be
89306 granted without a hearing.

89307 (11) A court may not expunge a conviction of:

89308 (a) a capital felony;

89309 (b) a first degree felony;

89310 (c) a second degree forcible felony;

89311 (d) any sexual act against a minor; or

89312 (e) an offense for which a certificate of eligibility may not be issued under Section
89313 77-18-12.

89314 Section 2195. Section **77-18-15** is amended to read:

89315 **77-18-15. Retention of expunged records -- Agencies.**

89316 (1) The division shall keep, index, and maintain all expunged records of arrests and
89317 convictions.

89318 (2) Employees of the division may not divulge any information contained in its index to
89319 any person or agency without a court order, except to the following:

89320 (a) the Board of Pardons and Parole;

89321 (b) the Peace Officer Standards and Training;

- 89322 (c) federal authorities, unless prohibited by federal law;
- 89323 (d) the Division of Occupational and Professional Licensing; and
- 89324 (e) the State Office of Education.
- 89325 (3) The division may also use the information in its index for the purpose of establishing
- 89326 good character for issuance of a concealed firearm permit as provided in Section 53-5-704.
- 89327 (4) A person whose records are released under Subsection (2) shall be given a
- 89328 reasonable opportunity by the recipient agency to challenge and explain any information in the
- 89329 records and to challenge the relevancy of that information before a final determination is made
- 89330 by the agency.
- 89331 (5) A court may permit inspection or release of an expunged record only upon petition
- 89332 by the person who is the subject of the record and only to the persons named in the petition.
- 89333 (6) (a) For judicial sentencing, a court may order any records sealed under this section
- 89334 to be opened and admitted into evidence.
- 89335 (b) The records are confidential and are available for inspection only by the court,
- 89336 parties, counsel for the parties, and any other person who is authorized by the court to inspect
- 89337 them.
- 89338 (c) At the end of the action or proceeding, the court shall order the records sealed
- 89339 again.
- 89340 (7) Records released under this section are classified as protected under Section
- 89341 ~~[63-2-304]~~ 63G-2-305 and are accessible only as provided under ~~[Title 63, Chapter 2]~~ Title
- 89342 63G, Chapter 2, Part 2, Access to Records.
- 89343 Section 2196. Section **77-19-6** is amended to read:
- 89344 **77-19-6. Judgment of death -- Warrant -- Delivery of warrant -- Determination of**
- 89345 **execution time.**
- 89346 (1) (a) When judgment of death is rendered, a warrant, signed by the judge and attested
- 89347 by the clerk under the seal of the court, shall be drawn and delivered to the sheriff of the county
- 89348 where the conviction is had.
- 89349 (b) The sheriff shall deliver the warrant and a certified copy of the judgment to the

89350 executive director of the Department of Corrections or [his] the executive director's designee at
89351 the time of delivering the defendant to the custody of the Department of Corrections.

89352 (2) The warrant shall state the conviction, the judgment, the method of execution, and
89353 the appointed day the judgment is to be executed, which may not be fewer than 30 days nor
89354 more than 60 days from the date of issuance of the warrant, and may not be a Sunday, Monday,
89355 or a legal holiday, as defined in Section [~~63-13-2~~] 63G-1-301.

89356 (3) The Department of Corrections shall determine the hour, within the appointed day,
89357 at which the judgment is to be executed.

89358 Section 2197. Section **77-19-9** is amended to read:

89359 **77-19-9. Judgment of death not executed -- Order for execution.**

89360 (1) If for any reason a judgment of death has not been executed and remains in force,
89361 the court where the conviction was had, on application of the prosecuting attorney, shall order
89362 the defendant to be brought before it or, if [~~he~~] the defendant is at large, issue a warrant for
89363 [his] the defendant's apprehension.

89364 (2) When the defendant is brought before the court, it shall inquire into the facts and, if
89365 no legal reason exists against the execution of judgment, the court shall make an order requiring
89366 the executive director of the Department of Corrections or [his] the executive director's
89367 designee to ensure that the judgment is executed on a specified day, which may not be fewer
89368 than 30 nor more than 60 days after the court's order, and may not be a Sunday, Monday, or a
89369 legal holiday, as defined in Section [~~63-13-2~~] 63G-1-301. The court shall also draw and have
89370 delivered another warrant under Section 77-19-6.

89371 (3) The Department of Corrections shall determine the hour, within the appointed day,
89372 at which the judgment is to be executed.

89373 Section 2198. Section **77-19-202** is amended to read:

89374 **77-19-202. Incompetency or pregnancy of person sentenced to death --**

89375 **Procedures.**

89376 (1) If, after judgment of death, the executive director of the Department of Corrections
89377 has good reason to believe that an inmate sentenced to death is pregnant, or has good reason to

89378 believe that an inmate's competency to be executed under this chapter should be addressed by a
89379 court, the executive director of the Department of Corrections or ~~his~~ the executive director's
89380 designee shall immediately give written notice to the court in which the judgment of death was
89381 rendered, to the prosecuting attorney, and counsel for the inmate. The judgment shall be stayed
89382 pending further order of the court.

89383 (2) (a) On receipt of the notice under Subsection (1) of good reason for the court to
89384 address an inmate's competency to be executed, the court shall order that the mental condition
89385 of the inmate shall be examined under the provisions of Section 77-19-204.

89386 (b) If the inmate is found incompetent, the court shall immediately transmit a certificate
89387 of the findings to the Board of Pardons and Parole and continue the stay of execution pending
89388 further order of the court.

89389 (c) If the inmate is subsequently found competent at any time, the judge shall
89390 immediately transmit a certificate of the findings to the Board of Pardons and Parole, and shall
89391 draw and have delivered another warrant under Section 77-19-6, together with a copy of the
89392 certificate of the findings. The warrant shall state an appointed day on which the judgment is to
89393 be executed, which may not be fewer than 30 nor more than 60 days from the date of the
89394 drawing of the warrant, and which may not be a Sunday, Monday, or a legal holiday, as defined
89395 in Section ~~[63-13-2]~~ 63G-1-301.

89396 (3) (a) If the court finds the inmate is pregnant, it shall immediately transmit a certificate
89397 of the finding to the Board of Pardons and Parole and to the executive director of the
89398 Department of Corrections or ~~his~~ the executive director's designee, and the court shall issue an
89399 order staying the execution of the judgment of death during the pregnancy.

89400 (b) When the court determines the inmate is no longer pregnant, it shall immediately
89401 transmit a certificate of the finding to the Board of Pardons and Parole and draw and have
89402 delivered another warrant under Section 77-19-6, with a copy of the certificate of the finding.
89403 The warrant shall state an appointed day on which the judgment is to be executed, which may
89404 not be fewer than 30 nor more than 60 days from the date of the drawing of the warrant, and
89405 which may not be a Sunday, Monday, or a legal holiday, as defined in Section ~~[63-13-2]~~

89406 63G-1-301.

89407 (4) The Department of Corrections shall determine the hour, within the appointed day,
89408 at which the judgment is to be executed.

89409 Section 2199. Section **77-22-2** is amended to read:

89410 **77-22-2. Investigations -- Right to subpoena witnesses and require production of**
89411 **evidence -- Contents of subpoena -- Rights of witnesses -- Interrogation before closed**
89412 **court -- Disclosure of information.**

89413 (1) As used in this section, "prosecutor" means the attorney general, county attorney, or
89414 district attorney.

89415 (2) (a) In any matter involving the investigation of a crime or malfeasance in office, or
89416 any criminal conspiracy or activity, the prosecutor may, upon application and approval of the
89417 district court and for good cause shown, conduct a criminal investigation.

89418 (b) The application and statement of good cause shall state whether or not any other
89419 investigative order related to the investigation at issue has been filed in another court.

89420 (3) (a) Subject to the conditions established in Subsection (3)(b), the prosecutor may:

89421 (i) subpoena witnesses;

89422 (ii) compel their attendance and testimony under oath to be recorded by a suitable
89423 electronic recording device or to be given before any certified court reporter; and

89424 (iii) require the production of books, papers, documents, recordings, and any other
89425 items that constitute evidence or may be relevant to the investigation.

89426 (b) The prosecutor shall:

89427 (i) apply to the district court for each subpoena; and

89428 (ii) show that the requested information is reasonably related to the criminal
89429 investigation authorized by the court.

89430 (4) (a) The prosecutor shall state in each subpoena:

89431 (i) the time and place of the examination;

89432 (ii) that the subpoena is issued in aid of a criminal investigation; and

89433 (iii) the right of the person subpoenaed to have counsel present.

- 89434 (b) The examination may be conducted anywhere within the jurisdiction of the
89435 prosecutor issuing the subpoena.
- 89436 (c) The subpoena need not disclose the names of possible defendants.
- 89437 (d) Witness fees and expenses shall be paid as in a civil action.
- 89438 (5) (a) At the beginning of each compelled interrogation, the prosecutor shall personally
89439 inform each witness:
- 89440 (i) of the general subject matter of the investigation;
- 89441 (ii) of the privilege to, at any time during the proceeding, refuse to answer any question
89442 or produce any evidence of a communicative nature that may result in self-incrimination;
- 89443 (iii) that any information provided may be used against the witness in a subsequent
89444 criminal proceeding; and
- 89445 (iv) of the right to have counsel present.
- 89446 (b) If the prosecutor has substantial evidence that the subpoenaed witness has
89447 committed a crime that is under investigation, the prosecutor shall:
- 89448 (i) inform the witness in person before interrogation of that witness's target status; and
89449 (ii) inform the witness of the nature of the charges under consideration against the
89450 witness.
- 89451 (6) (a) (i) The prosecutor may make written application to any district court showing a
89452 reasonable likelihood that publicly releasing information about the identity of a witness or the
89453 substance of the evidence resulting from a subpoena or interrogation would pose a threat of
89454 harm to a person or otherwise impede the investigation.
- 89455 (ii) Upon a finding of reasonable likelihood, the court may order the:
- 89456 (A) interrogation of a witness be held in secret;
- 89457 (B) occurrence of the interrogation and other subpoenaing of evidence, the identity of
89458 the person subpoenaed, and the substance of the evidence obtained be kept secret; and
- 89459 (C) record of testimony and other subpoenaed evidence be kept secret unless the court
89460 for good cause otherwise orders.
- 89461 (b) After application, the court may by order exclude from any investigative hearing or

89462 proceeding any persons except:

89463 (i) the attorneys representing the state and members of their staffs;

89464 (ii) persons who, in the judgment of the attorneys representing the state, are reasonably
89465 necessary to assist in the investigative process;

89466 (iii) the court reporter or operator of the electronic recording device; and

89467 (iv) the attorney for the witness.

89468 (c) This chapter does not prevent attorneys representing the state or members of their
89469 staff from disclosing information obtained pursuant to this chapter for the purpose of furthering
89470 any official governmental investigation.

89471 (d) (i) If a secrecy order has been granted by the court regarding the interrogation or
89472 disclosure of evidence by a witness under this subsection, and if the court finds a further
89473 restriction on the witness is appropriate, the court may order the witness not to disclose the
89474 substance of the witness's testimony or evidence given by the witness to others.

89475 (ii) Any order to not disclose made under this subsection shall be served with the
89476 subpoena.

89477 (iii) In an appropriate circumstance the court may order that the witness not disclose the
89478 existence of the investigation to others.

89479 (iv) Any order under this Subsection (6)(d) must be based upon a finding by the court
89480 that one or more of the following risks exist:

89481 (A) disclosure by the witness would cause destruction of evidence;

89482 (B) disclosure by the witness would taint the evidence provided by other witnesses;

89483 (C) disclosure by the witness to a target of the investigation would result in flight or
89484 other conduct to avoid prosecution;

89485 (D) disclosure by the witness would damage a person's reputation; or

89486 (E) disclosure by the witness would cause a threat of harm to any person.

89487 (e) (i) If the court imposes an order under Subsection (6)(d) authorizing an instruction
89488 to a witness not to disclose the substance of testimony or evidence provided and the prosecuting
89489 agency proves by a preponderance of the evidence that a witness has violated that order, the

89490 court may hold the witness in contempt.

89491 (ii) An order of secrecy imposed on a witness under this Subsection (6)(e) may not
89492 infringe on the attorney-client relationship between the witness and [his] the witness's attorney
89493 or on any other legally recognized privileged relationship.

89494 (7) (a) (i) The prosecutor may submit to any district court a separate written request
89495 that the application, statement of good cause, and the court's order authorizing the investigation
89496 be kept secret.

89497 (ii) The request for secrecy is a public record under [~~Title 63, Chapter 2~~] Title 63G,
89498 Chapter 2, Government Records Access and Management Act, but need not contain any
89499 information that would compromise any of the interest listed in Subsection (7)(c).

89500 (b) With the court's permission, the prosecutor may submit to the court, in camera, any
89501 additional information to support the request for secrecy if necessary to avoid compromising the
89502 interests listed in Subsection (7)(c).

89503 (c) The court shall consider all information in the application and order authorizing the
89504 investigation and any information received in camera and shall order that all information be
89505 placed in the public file except information that, if disclosed, would pose:

- 89506 (i) a substantial risk of harm to a person's safety;
- 89507 (ii) a clearly unwarranted invasion of or harm to a person's reputation or privacy; or
- 89508 (iii) a serious impediment to the investigation.

89509 (d) Before granting an order keeping secret documents and other information received
89510 under this section, the court shall narrow the secrecy order as much as reasonably possible in
89511 order to preserve the openness of court records while protecting the interests listed in
89512 Subsection (7)(c).

89513 Section 2200. Section ~~77-27-7~~ is amended to read:

89514 **77-27-7. Parole or hearing dates -- Interview -- Hearings -- Report of alienists --**
89515 **Mental competency.**

89516 (1) The Board of Pardons and Parole shall determine within six months after the date of
89517 an offender's commitment to the custody of the Department of Corrections, for serving a

89518 sentence upon conviction of a felony or class A misdemeanor offense, a date upon which the
89519 offender shall be afforded a hearing to establish a date of release or a date for a rehearing, and
89520 shall promptly notify the offender of the date.

89521 (2) Before reaching a final decision to release any offender under this chapter, the chair
89522 shall cause the offender to appear before the board, its panel, or any appointed hearing officer,
89523 who shall personally interview the offender to consider [~~his~~] the offender's fitness for release
89524 and verify as far as possible information furnished from other sources. Any offender may waive
89525 a personal appearance before the board. Any offender outside of the state shall, if ordered by
89526 the board, submit to a courtesy hearing to be held by the appropriate authority in the jurisdiction
89527 in which the offender is housed in lieu of an appearance before the board. The offender shall be
89528 promptly notified in writing of the board's decision.

89529 (3) (a) In the case of an offender convicted of violating or attempting to violate any of
89530 the provisions of Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section 76-5-402,
89531 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404, 76-5-404.1, or
89532 76-5-405, the chair may appoint one or more alienists who shall examine the offender within six
89533 months prior to a hearing at which an original parole date is granted on any offense listed in this
89534 Subsection (3).

89535 (b) The alienists shall report in writing the results of the examination to the board prior
89536 to the hearing. The report of the appointed alienists shall specifically address the question of the
89537 offender's current mental condition and attitudes as they relate to any danger the offender may
89538 pose to children or others if the offender is released on parole.

89539 (4) The parolee may petition the board for termination of lifetime parole as provided in
89540 Section 76-3-202 in the case of a person convicted of a first degree felony violation or
89541 convicted of attempting to violate Section 76-5-301.1, Subsection 76-5-302(1)(b)(vi), Section
89542 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403, 76-5-403.1, 76-5-404.1, or
89543 76-5-405.

89544 (5) In any case where an offender's mental competency is questioned by the board, the
89545 chair may appoint one or more alienists to examine the offender and report in writing to the

89546 board, specifically addressing the issue of competency.

89547 (6) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah

89548 Administrative Rulemaking Act, the board shall make rules governing:

89549 (a) the hearing process;

89550 (b) alienist examination; and

89551 (c) parolee petitions for termination of parole.

89552 Section 2201. Section **77-27-9** is amended to read:

89553 **77-27-9. Parole proceedings.**

89554 (1) (a) The Board of Pardons and Parole may pardon or parole any offender or
89555 commute or terminate the sentence of any offender committed to a penal or correctional facility
89556 under the jurisdiction of the Department of Corrections for a felony or class A misdemeanor
89557 except as provided in Subsection (2).

89558 (b) The board may not release any offender before the minimum term has been served
89559 unless the board finds mitigating circumstances which justify the release and unless the board
89560 has granted a full hearing, in open session, after previous notice of the time and place of the
89561 hearing, and recorded the proceedings and decisions of the board.

89562 (c) The board may not pardon or parole any offender or commute or terminate the
89563 sentence of any offender unless the board has granted a full hearing, in open session, after
89564 previous notice of the time and place of the hearing, and recorded the proceedings and decisions
89565 of the board.

89566 (d) The release of an offender shall be at the initiative of the board, which shall consider
89567 each case as the offender becomes eligible. However, a prisoner may submit [~~his~~] the prisoner's
89568 own application, subject to the rules of the board promulgated in accordance with [~~Title 63,~~
89569 ~~Chapter 46a~~] Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

89570 (2) (a) A person sentenced to prison prior to April 29, 1996, for a first degree felony
89571 involving child kidnapping, a violation of Section 76-5-301.1; aggravated kidnapping, a
89572 violation of Section 76-5-302; rape of a child, a violation of Section 76-5-402.1; object rape of
89573 a child, a violation of Section 76-5-402.3; sodomy upon a child, a violation of Section

89574 76-5-403.1; aggravated sexual abuse of a child, a violation of Subsection 76-5-404.1(4);
89575 aggravated sexual assault, a violation of Section 76-5-405; or a prior offense as described in
89576 Section 76-3-407, may not be eligible for release on parole by the Board of Pardons and Parole
89577 until the offender has fully completed serving the minimum mandatory sentence imposed by the
89578 court. This Subsection (2)(a) supersedes any other provision of law.

89579 (b) The board may not parole any offender or commute or terminate the sentence of any
89580 offender before the offender has served the minimum term for the offense, if the offender was
89581 sentenced prior to April 29, 1996, and if:

89582 (i) the offender was convicted of forcible sexual abuse, forcible sodomy, rape,
89583 aggravated assault, kidnapping, aggravated kidnapping, or aggravated sexual assault as defined
89584 in Title 76, Chapter 5, Offenses Against the Person; and

89585 (ii) the victim of the offense was under 18 years of age at the time the offense was
89586 committed.

89587 (c) For a crime committed on or after April 29, 1996, the board may parole any
89588 offender under Subsections (2)(b)(i) and (ii) for lifetime parole as provided in this section.

89589 (d) The board may not pardon or parole any offender or commute or terminate the
89590 sentence of any offender who is sentenced to life in prison without parole except as provided in
89591 Subsection (6).

89592 (e) On or after April 27, 1992, the board may commute a sentence of death only to a
89593 sentence of life in prison without parole.

89594 (f) The restrictions imposed in Subsections(2)(d) and (e) apply to all cases that come
89595 before the Board of Pardons and Parole on or after April 27, 1992.

89596 (g) (i) As used in this Subsection (2)(g):

89597 (A) "Assessment" has the same meaning as in Section 41-6a-501.

89598 (B) "Screening" has the same meaning as in Section 41-6a-501.

89599 (C) "Substance abuse treatment" has the same meaning as in Section 77-18-1.1.

89600 (ii) Except as provided in Subsection (2)(g)(iii), the board may not parole any offender
89601 who has not:

89602 (A) participated in a screening within six months prior to the parole date; and
89603 (B) participated in an assessment within six months prior to the parole date, if an
89604 assessment is indicated to be appropriate by the screening.

89605 (iii) The board may parole an offender who has not met the requirements of Subsection
89606 (2)(g)(ii) upon the condition that the offender, within 45 days of being paroled:

89607 (A) participates in a screening; and
89608 (B) participates in an assessment if it is indicated to be appropriate by the screening.

89609 (iv) When the board grants an offender parole, it shall order as a condition of parole
89610 that the offender participate in substance abuse treatment if:

89611 (A) the assessment conducted under this Subsection (2)(g) indicates substance abuse
89612 treatment is appropriate; and
89613 (B) the board finds the offender to be an appropriate candidate for community-based
89614 supervision.

89615 (v) Moneys appropriated by the Legislature for the funding of the screening,
89616 assessment, and substance abuse treatment provided under this section are not subject to any
89617 requirement regarding matching funds from a state or local governmental entity.

89618 (3) (a) The board may issue subpoenas to compel the attendance of witnesses and the
89619 production of evidence, to administer oaths, and to take testimony for the purpose of any
89620 investigation by the board or any of its members or by a designated hearing examiner in the
89621 performance of its duties.

89622 (b) A person who willfully disobeys a properly served subpoena issued by the board is
89623 guilty of a class B misdemeanor.

89624 (4) (a) The board may adopt rules consistent with law for its government, meetings and
89625 hearings, the conduct of proceedings before it, the parole and pardon of offenders, the
89626 commutation and termination of sentences, and the general conditions under which parole may
89627 be granted and revoked.

89628 (b) The rules shall ensure an adequate opportunity for victims to participate at hearings
89629 held under this chapter, as provided in Section 77-27-9.5.

89630 (c) The rules may allow the board to establish reasonable and equitable time limits on
89631 the presentations by all participants in hearings held under this chapter.

89632 (5) The board does not provide counseling or therapy for victims as a part of their
89633 participation in any hearing under this chapter.

89634 (6) The board may parole a person sentenced to life in prison without parole if the
89635 board finds by clear and convincing evidence that the person is permanently incapable of being a
89636 threat to the safety of society.

89637 Section 2202. Section **77-27-10** is amended to read:

89638 **77-27-10. Conditions of parole -- Rulemaking -- Intensive early release parole**
89639 **program.**

89640 (1) (a) When the Board of Pardons and Parole releases an offender on parole, it shall
89641 issue to the parolee a certificate setting forth the conditions of parole which [~~he~~] the offender
89642 shall accept and agree to as evidenced by [~~his~~] the offender's signature affixed to the agreement.

89643 (b) A copy of the agreement shall be delivered to the Department of Corrections and a
89644 copy shall be given to the parolee. The original shall remain with the board's file.

89645 (2) If an offender convicted of violating or attempting to violate Section 76-5-301.1,
89646 Subsection 76-5-302(1), Section 76-5-402, 76-5-402.1, 76-5-402.2, 76-5-402.3, 76-5-403,
89647 76-5-403.1, 76-5-404, 76-5-404.1, or 76-5-405, is released on parole, the board shall order
89648 outpatient mental health counseling and treatment as a condition of parole. The board shall
89649 develop standards and conditions of parole under this subsection in accordance with [~~Title 63,~~
89650 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act. This subsection does
89651 not apply to intensive early release parole.

89652 (3) (a) In addition to the conditions set out in Subsection (1), the board may place
89653 offenders in an intensive early release parole program. The board shall determine the conditions
89654 of parole which are reasonably necessary to protect the community as well as to protect the
89655 interests of the offender and to assist the offender to lead a law-abiding life.

89656 (b) The offender is eligible for this program only if [~~he~~] the offender:

89657 (i) has not been convicted of a sexual offense; or

- 89658 (ii) has not been sentenced pursuant to Section 76-3-406.
- 89659 (c) The department shall:
- 89660 (i) promulgate rules in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
- 89661 Utah Administrative Rulemaking Act, for operation of the program;
- 89662 (ii) adopt and implement internal management policies for operation of the program;
- 89663 (iii) determine whether or not to refer an offender into this program within 120 days
- 89664 from the date the offender is committed to prison by the sentencing court; and
- 89665 (iv) make the final recommendation to the board regarding the placement of an offender
- 89666 into the program.
- 89667 (d) The department shall not consider credit for time served in a county jail awaiting
- 89668 trial or sentencing when calculating the 120 day period.
- 89669 (e) The prosecuting attorney or sentencing court may refer an offender for
- 89670 consideration by the department for participation in the program.
- 89671 (f) The board shall determine whether or not to place an offender into this program
- 89672 within 30 days of receiving the department's recommendation.
- 89673 (4) This program shall be implemented by the department within the existing budget.
- 89674 (5) During the time the offender is on parole, the department shall collect from the
- 89675 offender the monthly supervision fee authorized by Section 64-13-21.
- 89676 Section 2203. Section **77-27-21.5** is amended to read:
- 89677 **77-27-21.5. Sex offender registration -- Information system -- Law enforcement**
- 89678 **and courts to report -- Registration -- Penalty -- Effect of expungement.**
- 89679 (1) As used in this section:
- 89680 (a) "Department" means the Department of Corrections.
- 89681 (b) "Division" means the Division of Juvenile Justice Services.
- 89682 (c) "Employed" or "carries on a vocation" includes employment that is full time or part
- 89683 time, whether financially compensated, volunteered, or for the purpose of government or
- 89684 educational benefit.
- 89685 (d) "Notification" means a person's acquisition of information from the department

89686 about a sex offender, including [his] the sex offender's place of habitation, physical description,
89687 and other information as provided in Subsections (12) and (13).

89688 (e) "Register" means to comply with the rules of the department made under this
89689 section.

89690 (f) "Sex offender" means any person:

89691 (i) convicted by this state of:

89692 (A) a felony or class A misdemeanor violation of Section 76-4-401, enticing a minor
89693 over the Internet;

89694 (B) Section 76-5-301.1, kidnapping of a child;

89695 (C) a felony violation of Section 76-5-401, unlawful sexual activity with a minor;

89696 (D) Section 76-5-401.1, sexual abuse of a minor;

89697 (E) Section 76-5-401.2, unlawful sexual conduct with a 16 or 17 year old;

89698 (F) Section 76-5-402, rape;

89699 (G) Section 76-5-402.1, rape of a child;

89700 (H) Section 76-5-402.2, object rape;

89701 (I) Section 76-5-402.3, object rape of a child;

89702 (J) a felony violation of Section 76-5-403, forcible sodomy;

89703 (K) Section 76-5-403.1, sodomy on a child;

89704 (L) Section 76-5-404, forcible sexual abuse;

89705 (M) Section 76-5-404.1, sexual abuse of a child or aggravated sexual abuse of a child;

89706 (N) Section 76-5-405, aggravated sexual assault;

89707 (O) Section 76-5a-3, sexual exploitation of a minor;

89708 (P) Section 76-7-102, incest;

89709 (Q) Section 76-9-702.5, lewdness involving a child;

89710 (R) Section 76-10-1306, aggravated exploitation of prostitution; or

89711 (S) attempting, soliciting, or conspiring to commit any felony offense listed in

89712 Subsection (1)(f)(i);

89713 (ii) who has been convicted of any crime, or an attempt, solicitation, or conspiracy to

89714 commit a crime in another state or by the United States government that is substantially
89715 equivalent to the offenses listed in Subsection (1)(f)(i) and who is:

89716 (A) a Utah resident; or

89717 (B) not a Utah resident, but who is in the state for ten days, regardless of whether or
89718 not the offender intends to permanently reside in this state;

89719 (iii) who is required to register as a sex offender in any other state or United States
89720 territory, is not a Utah resident, but who is in the state for ten days, regardless of whether or not
89721 the offender intends to permanently reside in this state;

89722 (iv) who is a nonresident regularly employed, working, or a student in this state and
89723 was convicted of one or more offenses listed in Subsection (1)(f)(i), or any substantially
89724 equivalent offense in another state or by the United States government, and as a result of the
89725 conviction, is required to register in the person's state of residence;

89726 (v) who is found not guilty by reason of insanity in this state, any other state, or by the
89727 United States government of one or more offenses listed in Subsection (1)(f)(i); or

89728 (vi) who is adjudicated delinquent based on one or more offenses listed in Subsection
89729 (1)(f)(i) and who has been committed to the division for secure confinement and remains in the
89730 division's custody 30 days prior to the person's 21st birthday.

89731 (2) The department, to assist in investigating sex-related crimes and in apprehending
89732 offenders, shall:

89733 (a) develop and operate a system to collect, analyze, maintain, and disseminate
89734 information on sex offenders and sex offenses; and

89735 (b) make information collected and developed under this section available to the public.

89736 (3) Any law enforcement agency shall, in the manner prescribed by the department,
89737 inform the department of:

89738 (a) the receipt of a report or complaint of an offense listed in Subsection (1)(f), within
89739 three working days; and

89740 (b) the arrest of a person suspected of any of the offenses listed in Subsection (1)(f),
89741 within five working days.

89742 (4) Upon convicting a person of any of the offenses listed in Subsection (1)(f), the
89743 convicting court shall within three working days forward a copy of the judgment and sentence
89744 to the department.

89745 (5) A sex offender in the custody of the department shall be registered by agents of the
89746 department upon:

89747 (a) being placed on probation;

89748 (b) commitment to a secure correctional facility operated by or under contract to the
89749 department;

89750 (c) release from confinement to parole status, termination or expiration of sentence, or
89751 escape;

89752 (d) entrance to and release from any community-based residential program operated by
89753 or under contract to the department; or

89754 (e) termination of probation or parole.

89755 (6) A sex offender not in the custody of the department and who is confined in a
89756 correctional facility not operated by or under contract to the department shall be registered with
89757 the department by the sheriff of the county in which the offender is confined upon:

89758 (a) commitment to the correctional facility; and

89759 (b) release from confinement.

89760 (7) A sex offender in the custody of the division shall be registered with the department
89761 by the division prior to release from custody.

89762 (8) A sex offender committed to a state mental hospital shall be registered with the
89763 department by the hospital upon admission and upon discharge.

89764 (9) A sex offender convicted by any other state or by the United States government is
89765 required to register under Subsection (1)(f)(ii) and shall register with the department within ten
89766 days of entering the state, regardless of the length of stay.

89767 (10) (a) Except as provided in Subsections (10)(b), (c), and (d), a sex offender shall, for
89768 the duration of the sentence and for ten years after termination of sentence or custody of the
89769 division, register annually during the month of the offender's birth and again within five days of

89770 every change of ~~his~~ the sex offender's place of habitation, vehicle information, or educational
89771 information required to be submitted under Subsection (12).

89772 (b) Except as provided Subsections (10)(c) and (d), a sex offender who is convicted of
89773 an offense listed in Subsection (1)(f)(i) by another state shall register for the time period
89774 required by the state where the offender was convicted if the state's registration period for the
89775 offense that the offender was convicted of is in excess of the ten years from completion of the
89776 sentence registration period that is required under Subsection (10)(a).

89777 (c) (i) A sex offender convicted as an adult of any of the offenses listed in Subsection
89778 (10)(c)(ii) shall, for the offender's lifetime, register annually during the month of the offender's
89779 birth and again within five days of every change of the offender's place of habitation, vehicle
89780 information, or educational information required to be submitted under Subsection (12). This
89781 registration requirement is not subject to exemptions and may not be terminated or altered
89782 during the offender's lifetime.

89783 (ii) Offenses referred to in Subsection (10)(c)(i) are:

89784 (A) any offense listed in Subsection (1)(f) if, at the time of the conviction, the offender
89785 has previously been convicted of an offense listed in Subsection (1)(f) or has previously been
89786 required to register as a sex offender for an offense committed as a juvenile;

89787 (B) Section 76-4-401, enticing a minor over the Internet, if the offense is a class A or
89788 felony violation;

89789 (C) Section 76-5-301.1, child kidnapping;

89790 (D) Section 76-5-402, rape;

89791 (E) Section 76-5-402.1, rape of a child;

89792 (F) Section 76-5-402.2, object rape;

89793 (G) Section 76-5-402.3, object rape of a child;

89794 (H) Section 76-5-403, forcible sodomy;

89795 (I) Section 76-5-403.1, sodomy on a child;

89796 (J) Section 76-5-404.1, sexual abuse of a child;

89797 (K) Subsection 76-5-404.1(4), aggravated sexual abuse of a child;

- 89798 (L) Section 76-5-405, aggravated sexual assault;
- 89799 (M) Section 76-5a-3, sexual exploitation of a minor; or
- 89800 (N) Section 76-7-102, incest.
- 89801 (d) Notwithstanding Subsections (10)(a), (b), and (c), a sex offender who is confined in
- 89802 a secure facility or in a state mental hospital is not required to register annually.
- 89803 (e) A sex offender that is required to register annually under this Subsection (10) shall
- 89804 surrender the sex offender's license certificate or identification card as required under
- 89805 Subsection 53-3-216(3) or 53-3-807(4) and may apply for a license certificate or identification
- 89806 card as provided under Section 53-3-205 or 53-3-804.
- 89807 (11) An agency in the state that registers a sex offender on probation, a sex offender
- 89808 who has been released from confinement to parole status or termination, or a sex offender
- 89809 whose sentence has expired shall inform the offender of the duty to comply with:
- 89810 (a) the continuing registration requirements of this section during the period of
- 89811 registration required in Subsection (10), including:
- 89812 (i) notification to the state agencies in the states where the registrant presently resides
- 89813 and plans to reside when moving across state lines;
- 89814 (ii) verification of address at least every 60 days pursuant to a parole agreement for
- 89815 lifetime parolees; and
- 89816 (iii) notification to the out-of-state agency where the offender is living, whether or not
- 89817 the offender is a resident of that state; and
- 89818 (b) the driver license certificate or identification card surrender requirement under
- 89819 Subsection 53-3-216(3) or 53-3-807(4) and application provisions under Section 53-3-205 or
- 89820 53-3-804.
- 89821 (12) A sex offender shall provide the department with the following information:
- 89822 (a) all names or aliases the sex offender is or has been known by;
- 89823 (b) the sex offender's name and residential address;
- 89824 (c) a physical description, including the sex offender's age, height, weight, eye and hair
- 89825 color;

89826 (d) the type of vehicle or vehicles the sex offender drives;
89827 (e) a current photograph of the sex offender; and
89828 (f) each educational institution in Utah at which the sex offender is employed, carries on
89829 a vocation, or is a student, and any change of enrollment or employment status of the sex
89830 offender at any educational institution.

89831 (13) The department shall:

89832 (a) provide the following additional information when available:

89833 (i) the crimes the sex offender was convicted of or adjudicated delinquent for; and

89834 (ii) a description of the sex offender's primary and secondary targets; and

89835 (b) ensure that the registration information collected regarding a sex offender's
89836 enrollment or employment at an educational institution is:

89837 (i) (A) promptly made available to any law enforcement agency that has jurisdiction
89838 where the institution is located if the educational institution is an institution of higher education;
89839 or

89840 (B) promptly made available to the district superintendent of the school district where
89841 the offender is enrolled if the educational institution is an institution of primary education; and

89842 (ii) entered into the appropriate state records or data system.

89843 (14) (a) A sex offender who knowingly fails to register under this section is guilty of:

89844 (i) a third degree felony and shall be sentenced to serve a term of incarceration for not
89845 less than 90 days and also at least one year of probation if:

89846 (A) the sex offender is required to register for a felony conviction of an offense listed in
89847 Subsection (1)(f)(i); or

89848 (B) the sex offender is required to register for the offender's lifetime under Subsection
89849 (10)(c); or

89850 (ii) a class A misdemeanor and shall be sentenced to serve a term of incarceration for
89851 not fewer than 90 days and also at least one year of probation if the sex offender is required to
89852 register for a misdemeanor conviction of an offense listed in Subsection (1)(f)(i).

89853 (b) Neither the court nor the Board of Pardons and Parole may release a person who

89854 violates this section from serving the term required under Subsection (14)(a). This Subsection
89855 (14)(b) supersedes any other provision of the law contrary to this section.

89856 (15) Notwithstanding [~~Title 63, Chapter 2~~] Title 63G, Chapter 2, Government Records
89857 Access and Management Act, information in Subsections (12) and (13) collected and released
89858 under this section is public information.

89859 (16) (a) If a sex offender is to be temporarily sent outside a secure facility in which [~~he~~]
89860 the sex offender is confined on any assignment, including, without limitation, firefighting or
89861 disaster control, the official who has custody of the offender shall, within a reasonable time
89862 prior to removal from the secure facility, notify the local law enforcement agencies where the
89863 assignment is to be filled.

89864 (b) This Subsection (16) does not apply to any person temporarily released under guard
89865 from the institution in which [~~he~~] the person is confined.

89866 (17) Notwithstanding Sections 77-18-9 through 77-18-14 regarding expungement, a
89867 person convicted of any offense listed in Subsection (1)(f) is not relieved from the responsibility
89868 to register as required under this section.

89869 (18) Notwithstanding Section 42-1-1, a sex offender:

89870 (a) may not change [~~his~~] the sex offender's name:

89871 (i) while under the jurisdiction of the department; and

89872 (ii) until the registration requirements of this statute have expired; or

89873 (b) may not change [~~his~~] the sex offender's name at any time, if registration is under
89874 Subsection (10)(c).

89875 (19) The department may make rules necessary to implement this section, including:

89876 (a) the method for dissemination of the information; and

89877 (b) instructions to the public regarding the use of the information.

89878 (20) Any information regarding the identity or location of a victim shall be redacted by
89879 the department from information provided under Subsections (12) and (13).

89880 (21) Nothing in this section shall be construed to create or impose any duty on any
89881 person to request or obtain information regarding any sex offender from the department.

89882 (22) The department shall post registry information on the Internet, and the website
89883 shall contain a disclaimer informing the public of the following:

89884 (a) the information contained on the site is obtained from sex offenders and the
89885 department does not guarantee its accuracy;

89886 (b) members of the public are not allowed to use the information to harass or threaten
89887 sex offenders or members of their families; and

89888 (c) harassment, stalking, or threats against sex offenders or their families are prohibited
89889 and doing so may violate Utah criminal laws.

89890 (23) The website shall be indexed by both the surname of the offender and by postal
89891 codes.

89892 (24) The department shall construct the website so that users, before accessing registry
89893 information, must indicate that they have read the disclaimer, understand it, and agree to comply
89894 with its terms.

89895 (25) The department, its personnel, and any individual or entity acting at the request or
89896 upon the direction of the department are immune from civil liability for damages for good faith
89897 compliance with this section and will be presumed to have acted in good faith by reporting
89898 information.

89899 (26) The department shall redact information that, if disclosed, could reasonably
89900 identify a victim.

89901 (27) (a) Each sex offender required to register under Subsection (10), who is not
89902 currently under the jurisdiction of the Department of Corrections, shall pay to the department an
89903 annual fee of \$75 each year the sex offender is subject to the registration requirements.

89904 (b) The department shall deposit fees under this Subsection (27) in the General Fund as
89905 a dedicated credit, to be used by the department for maintaining the sex offender registry under
89906 this section and monitoring sex offender registration compliance, including the costs of:

89907 (i) data entry;

89908 (ii) processing registration packets;

89909 (iii) updating registry information;

89910 (iv) ensuring sex offender compliance with registration requirements under this section;
89911 and

89912 (v) apprehending offenders who are in violation of the sex offender registration
89913 requirements under this section.

89914 Section 2204. Section **77-28c-104** is amended to read:

89915 **77-28c-104. Definitions -- Compact transfer application fee.**

89916 (1) As used in this section:

89917 (a) "Department" means the Department of Corrections.

89918 (b) "Offender" has the same meaning as provided in Section 77-28c-103, Article
89919 II(a)(9).

89920 (2) (a) Offenders desiring a transfer of supervision to another state under the Interstate
89921 Compact for Adult Offender Supervision shall apply to the department for transfer.

89922 (b) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
89923 Administrative Rulemaking Act, the department shall make rules governing the transfer of
89924 supervision of an offender.

89925 (3) The department shall collect a fee of \$50 from each offender applying for transfer of
89926 supervision to another state under the Interstate Compact for Adult Offender Supervision.

89927 Section 2205. Section **77-37-3** is amended to read:

89928 **77-37-3. Bill of Rights.**

89929 (1) The bill of rights for victims and witnesses is:

89930 (a) Victims and witnesses have a right to be informed as to the level of protection from
89931 intimidation and harm available to them, and from what sources, as they participate in criminal
89932 justice proceedings as designated by Section 76-8-508, regarding witness tampering, and
89933 Section 76-8-509, regarding threats against a victim. Law enforcement, prosecution, and
89934 corrections personnel have the duty to timely provide this information in a form that is useful to
89935 the victim.

89936 (b) Victims and witnesses, including children and their guardians, have a right to be
89937 informed and assisted as to their role in the criminal justice process. All criminal justice

89938 agencies have the duty to provide this information and assistance.

89939 (c) Victims and witnesses have a right to clear explanations regarding relevant legal
89940 proceedings; these explanations shall be appropriate to the age of child victims and witnesses.

89941 All criminal justice agencies have the duty to provide these explanations.

89942 (d) Victims and witnesses should have a secure waiting area that does not require them
89943 to be in close proximity to defendants or the family and friends of defendants. Agencies
89944 controlling facilities shall, whenever possible, provide this area.

89945 (e) Victims are entitled to restitution or reparations, including medical costs, as
89946 provided in [~~Title 63, Chapter 25a~~] Title 63M, Chapter 7, Criminal Justice and Substance
89947 Abuse, and Sections 62A-7-109, 77-38a-302, and 77-27-6. State and local government
89948 agencies that serve victims have the duty to have a functional knowledge of the procedures
89949 established by the Utah Crime Victims' Reparations Board and to inform victims of these
89950 procedures.

89951 (f) Victims and witnesses have a right to have any personal property returned as
89952 provided in Sections 77-24-1 through 77-24-5. Criminal justice agencies shall expeditiously
89953 return the property when it is no longer needed for court law enforcement or prosecution
89954 purposes.

89955 (g) Victims and witnesses have the right to reasonable employer intercession services,
89956 including pursuing employer cooperation in minimizing employees' loss of pay and other
89957 benefits resulting from their participation in the criminal justice process. Officers of the court
89958 shall provide these services and shall consider victims' and witnesses' schedules so that activities
89959 which conflict can be avoided. Where conflicts cannot be avoided, the victim may request that
89960 the responsible agency intercede with employers or other parties.

89961 (h) Victims and witnesses, particularly children, should have a speedy disposition of the
89962 entire criminal justice process. All involved public agencies shall establish policies and
89963 procedures to encourage speedy disposition of criminal cases.

89964 (i) Victims and witnesses have the right to timely notice of judicial proceedings they are
89965 to attend and timely notice of cancellation of any proceedings. Criminal justice agencies have

89966 the duty to provide these notifications. Defense counsel and others have the duty to provide
89967 timely notice to prosecution of any continuances or other changes that may be required.

89968 (j) Victims of sexual offenses have a right to be informed of their right to request
89969 voluntary testing for themselves for HIV infection as provided in Section 76-5-503 and to
89970 request mandatory testing of the convicted sexual offender for HIV infection as provided in
89971 Section 76-5-502. The law enforcement office where the sexual offense is reported shall have
89972 the responsibility to inform victims of this right.

89973 (2) Informational rights of the victim under this chapter are based upon the victim
89974 providing [~~his~~] the victim's current address and telephone number to the criminal justice
89975 agencies involved in the case.

89976 Section 2206. Section **77-37-5** is amended to read:

89977 **77-37-5. Remedies -- Victims' Rights Committee.**

89978 (1) In each judicial district, the presiding district court judge shall appoint a person who
89979 shall establish and chair a victims' rights committee consisting of:

- 89980 (a) a county attorney or district attorney;
- 89981 (b) a sheriff;
- 89982 (c) a corrections field services administrator;
- 89983 (d) an appointed victim advocate;
- 89984 (e) a municipal attorney;
- 89985 (f) a municipal chief of police; and
- 89986 (g) other representatives as appropriate.

89987 (2) The committee shall meet at least semiannually to review progress and problems
89988 related to this chapter, Title 77, Chapter 38, Rights of Crime Victims Act, and Utah
89989 Constitution Article I, Section 28. Victims and other interested parties may submit matters of
89990 concern to the victims' rights committee. The committee may hold a hearing open to the public
89991 on any appropriate matter of concern and may publish its findings. These matters shall also be
89992 considered at the meetings of the victims' rights committee. The committee shall forward
89993 minutes of all meetings to the Commission on Criminal and Juvenile Justice and the Office of

89994 Crime Victim Reparations for review and other appropriate action.

89995 (3) If a victims' rights committee is unable to resolve a complaint, it may refer the
89996 complaint to the Utah Council on Victims of Crime, established in Section [~~63-25a-601~~
89997 63M-7-601], for further consideration.

89998 (4) The Office of Crime Victim Reparations shall provide materials to local law
89999 enforcement to inform every victim of a sexual offense of the right to request testing of the
90000 convicted sexual offender and of the victim as provided in Section 76-5-502.

90001 (5) If a person acting under color of state law willfully or wantonly fails to perform
90002 duties so that the rights in this chapter are not provided, an action for injunctive relief may be
90003 brought against the individual and the government entity that employs the individual. The
90004 failure to provide the rights in this chapter or Title 77, Chapter 38, Rights of Crime Victims Act,
90005 does not constitute cause for a judgment against the state or any government entity, or any
90006 individual employed by the state or any government entity, for monetary damages, attorney's
90007 fees, or the costs of exercising any rights under this chapter.

90008 (6) The person accused of and subject to prosecution for the crime or the act which
90009 would be a crime if committed by a competent adult, has no standing to make a claim
90010 concerning any violation of the provisions of this chapter.

90011 Section 2207. Section **77-38-3** is amended to read:

90012 **77-38-3. Notification to victims -- Initial notice, election to receive subsequent**
90013 **notices -- Form of notice -- Protected victim information.**

90014 (1) Within seven days of the filing of felony criminal charges against a defendant, the
90015 prosecuting agency shall provide an initial notice to reasonably identifiable and locatable victims
90016 of the crime contained in the charges, except as otherwise provided in this chapter.

90017 (2) The initial notice to the victim of a crime shall provide information about electing to
90018 receive notice of subsequent important criminal justice hearings listed in Subsections
90019 77-38-2(5)(a) through (f) and rights under this chapter.

90020 (3) The prosecuting agency shall provide notice to a victim of a crime for the important
90021 criminal justice hearings, provided in Subsections 77-38-2(5)(a) through (f) which the victim

90022 has requested.

90023 (4) (a) The responsible prosecuting agency may provide initial and subsequent notices
90024 in any reasonable manner, including telephonically, electronically, orally, or by means of a letter
90025 or form prepared for this purpose.

90026 (b) In the event of an unforeseen important criminal justice hearing, listed in
90027 Subsections 77-38-2(5)(a) through (f) for which a victim has requested notice, a good faith
90028 attempt to contact the victim by telephone shall be considered sufficient notice, provided that
90029 the prosecuting agency subsequently notifies the victim of the result of the proceeding.

90030 (5) (a) The court shall take reasonable measures to ensure that its scheduling practices
90031 for the proceedings provided in Subsections 77-38-2(5)(a) through (f) permit an opportunity for
90032 victims of crimes to be notified.

90033 (b) The court shall also consider whether any notification system that it might use to
90034 provide notice of judicial proceedings to defendants could be used to provide notice of those
90035 same proceedings to victims of crimes.

90036 (6) A defendant or, if it is the moving party, Adult Probation and Parole, shall give
90037 notice to the responsible prosecuting agency of any motion for modification of any
90038 determination made at any of the important criminal justice hearings provided in Subsections
90039 77-38-2(5)(a) through (f) in advance of any requested court hearing or action so that the
90040 prosecuting agency may comply with its notification obligation.

90041 (7) (a) Notice to a victim of a crime shall be provided by the Board of Pardons and
90042 Parole for the important criminal justice hearing provided in Subsection 77-38-2(5)(g).

90043 (b) The board may provide notice in any reasonable manner, including telephonically,
90044 electronically, orally, or by means of a letter or form prepared for this purpose.

90045 (8) Prosecuting agencies and the Board of Pardons and Parole are required to give
90046 notice to a victim of a crime for the proceedings provided in Subsections 77-38-2(5)(a) through
90047 (f) only where the victim has responded to the initial notice, requested notice of subsequent
90048 proceedings, and provided a current address and telephone number if applicable.

90049 (9) (a) Law enforcement and criminal justice agencies shall refer any requests for notice

90050 or information about crime victim rights from victims to the responsible prosecuting agency.

90051 (b) In a case in which the Board of Pardons and Parole is involved, the responsible
90052 prosecuting agency shall forward any request for notice that it has received from a victim to the
90053 Board of Pardons and Parole.

90054 (10) In all cases where the number of victims exceeds ten, the responsible prosecuting
90055 agency may send any notices required under this chapter in its discretion to a representative
90056 sample of the victims.

90057 (11) (a) A victim's address, telephone number, and victim impact statement maintained
90058 by a peace officer, prosecuting agency, Youth Parole Authority, Division of Juvenile Justice
90059 Services, Department of Corrections, and Board of Pardons and Parole, for purposes of
90060 providing notice under this section, is classified as protected as provided in Subsection
90061 ~~[63-2-304]~~ 63G-2-305(10).

90062 (b) The victim's address, telephone number, and victim impact statement is available
90063 only to the following persons or entities in the performance of their duties:

90064 (i) a law enforcement agency, including the prosecuting agency;

90065 (ii) a victims' right committee as provided in Section 77-37-5;

90066 (iii) a governmentally sponsored victim or witness program;

90067 (iv) the Department of Corrections;

90068 (v) Office of Crime Victims' Reparations;

90069 (vi) Commission on Criminal and Juvenile Justice; and

90070 (vii) the Board of Pardons and Parole.

90071 (12) The notice provisions as provided in this section do not apply to misdemeanors as
90072 provided in Section 77-38-5 and to important juvenile justice hearings as provided in Section
90073 77-38-2.

90074 Section 2208. Section **77-38a-401** is amended to read:

90075 **77-38a-401. Entry of judgment -- Interest -- Civil actions -- Lien.**

90076 (1) Upon the court determining that a defendant owes restitution, the clerk of the court
90077 shall enter an order of complete restitution as defined in Section 77-38a-302 on the civil

90078 judgment docket and provide notice of the order to the parties.

90079 (2) The order shall be considered a legal judgment, enforceable under the Utah Rules of
90080 Civil Procedure. In addition, the department may, on behalf of the person in whose favor the
90081 restitution order is entered, enforce the restitution order as judgment creditor under the Utah
90082 Rules of Civil Procedure.

90083 (3) If the defendant fails to obey a court order for payment of restitution and the victim
90084 or department elects to pursue collection of the order by civil process, the victim shall be
90085 entitled to recover reasonable attorney's fees.

90086 (4) A judgment ordering restitution when recorded in a registry of judgments docket
90087 shall have the same affect and is subject to the same rules as a judgment in a civil action.
90088 Interest shall accrue on the amount ordered from the time of sentencing, including prejudgment
90089 interest.

90090 (5) The department shall make rules permitting the restitution payments to be credited
90091 to principal first and the remainder of payments credited to interest in accordance with [~~Title 63,~~
90092 ~~Chapter 46a]~~ Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

90093 Section 2209. Section **78-2-2** is amended to read:

90094 **78-2-2. Supreme Court jurisdiction.**

90095 (1) The Supreme Court has original jurisdiction to answer questions of state law
90096 certified by a court of the United States.

90097 (2) The Supreme Court has original jurisdiction to issue all extraordinary writs and
90098 authority to issue all writs and process necessary to carry into effect its orders, judgments, and
90099 decrees or in aid of its jurisdiction.

90100 (3) The Supreme Court has appellate jurisdiction, including jurisdiction of interlocutory
90101 appeals, over:

90102 (a) a judgment of the Court of Appeals;

90103 (b) cases certified to the Supreme Court by the Court of Appeals prior to final judgment
90104 by the Court of Appeals;

90105 (c) discipline of lawyers;

- 90106 (d) final orders of the Judicial Conduct Commission;
- 90107 (e) final orders and decrees in formal adjudicative proceedings originating with:
 - 90108 (i) the Public Service Commission;
 - 90109 (ii) the State Tax Commission;
 - 90110 (iii) the School and Institutional Trust Lands Board of Trustees;
 - 90111 (iv) the Board of Oil, Gas, and Mining;
 - 90112 (v) the state engineer; or
 - 90113 (vi) the executive director of the Department of Natural Resources reviewing actions of
 - 90114 the Division of Forestry, Fire and State Lands;
- 90115 (f) final orders and decrees of the district court review of informal adjudicative
- 90116 proceedings of agencies under Subsection (3)(e);
- 90117 (g) a final judgment or decree of any court of record holding a statute of the United
- 90118 States or this state unconstitutional on its face under the Constitution of the United States or the
- 90119 Utah Constitution;
- 90120 (h) interlocutory appeals from any court of record involving a charge of a first degree
- 90121 or capital felony;
- 90122 (i) appeals from the district court involving a conviction or charge of a first degree
- 90123 felony or capital felony;
- 90124 (j) orders, judgments, and decrees of any court of record over which the Court of
- 90125 Appeals does not have original appellate jurisdiction; and
- 90126 (k) appeals from the district court of orders, judgments, or decrees ruling on legislative
- 90127 subpoenas.
- 90128 (4) The Supreme Court may transfer to the Court of Appeals any of the matters over
- 90129 which the Supreme Court has original appellate jurisdiction, except:
 - 90130 (a) capital felony convictions or an appeal of an interlocutory order of a court of record
 - 90131 involving a charge of a capital felony;
 - 90132 (b) election and voting contests;
 - 90133 (c) reapportionment of election districts;

- 90134 (d) retention or removal of public officers;
- 90135 (e) matters involving legislative subpoenas; and
- 90136 (f) those matters described in Subsections (3)(a) through (d).
- 90137 (5) The Supreme Court has sole discretion in granting or denying a petition for writ of
- 90138 certiorari for the review of a Court of Appeals adjudication, but the Supreme Court shall review
- 90139 those cases certified to it by the Court of Appeals under Subsection (3)(b).

90140 (6) The Supreme Court shall comply with the requirements of [~~Title 63, Chapter 46b~~]

90141 Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative

90142 proceedings.

90143 Section 2210. Section **78-2a-3** is amended to read:

90144 **78-2a-3. Court of Appeals jurisdiction.**

90145 (1) The Court of Appeals has jurisdiction to issue all extraordinary writs and to issue all

90146 writs and process necessary:

- 90147 (a) to carry into effect its judgments, orders, and decrees; or
- 90148 (b) in aid of its jurisdiction.

90149 (2) The Court of Appeals has appellate jurisdiction, including jurisdiction of

90150 interlocutory appeals, over:

90151 (a) the final orders and decrees resulting from formal adjudicative proceedings of state

90152 agencies or appeals from the district court review of informal adjudicative proceedings of the

90153 agencies, except the Public Service Commission, State Tax Commission, School and

90154 Institutional Trust Lands Board of Trustees, Division of Forestry, Fire and State Lands actions

90155 reviewed by the executive director of the Department of Natural Resources, Board of Oil, Gas,

90156 and Mining, and the state engineer;

90157 (b) appeals from the district court review of:

90158 (i) adjudicative proceedings of agencies of political subdivisions of the state or other

90159 local agencies; and

90160 (ii) a challenge to agency action under Section [~~63-46a-12.1~~] 63G-3-602;

90161 (c) appeals from the juvenile courts;

90162 (d) interlocutory appeals from any court of record in criminal cases, except those
90163 involving a charge of a first degree or capital felony;

90164 (e) appeals from a court of record in criminal cases, except those involving a conviction
90165 or charge of a first degree felony or capital felony;

90166 (f) appeals from orders on petitions for extraordinary writs sought by persons who are
90167 incarcerated or serving any other criminal sentence, except petitions constituting a challenge to
90168 a conviction of or the sentence for a first degree or capital felony;

90169 (g) appeals from the orders on petitions for extraordinary writs challenging the
90170 decisions of the Board of Pardons and Parole except in cases involving a first degree or capital
90171 felony;

90172 (h) appeals from district court involving domestic relations cases, including, but not
90173 limited to, divorce, annulment, property division, child custody, support, parent-time, visitation,
90174 adoption, and paternity;

90175 (i) appeals from the Utah Military Court; and

90176 (j) cases transferred to the Court of Appeals from the Supreme Court.

90177 (3) The Court of Appeals upon its own motion only and by the vote of four judges of
90178 the court may certify to the Supreme Court for original appellate review and determination any
90179 matter over which the Court of Appeals has original appellate jurisdiction.

90180 (4) The Court of Appeals shall comply with the requirements of [~~Title 63, Chapter 46b~~]
90181 Title 63G, Chapter 4, Administrative Procedures Act, in its review of agency adjudicative
90182 proceedings.

90183 Section 2211. Section **78-2a-6** is amended to read:

90184 **78-2a-6. Appellate Mediation Office -- Protected records and information --**
90185 **Governmental immunity.**

90186 (1) Unless a more restrictive rule of court is adopted pursuant to Subsection [~~63-2-201~~]
90187 63G-2-201(3)(b), information and records relating to any matter on appeal received or
90188 generated by the Chief Appellate Mediator or other staff of the Appellate Mediation Office as a
90189 result of any party's participation or lack of participation in the settlement program shall be

90190 maintained as protected records pursuant to Subsections [~~63-2-304~~] 63G-2-305(16), (17), (18),
90191 and (33).

90192 (2) In addition to the access restrictions on protected records provided in Section
90193 [~~63-2-202~~] 63G-2-202, the information and records may not be disclosed to judges, staff, or
90194 employees of any court of this state.

90195 (3) The Chief Appellate Mediator may disclose statistical and other demographic
90196 information as may be necessary and useful to report on the status and to allow supervision and
90197 oversight of the Appellate Mediation Office.

90198 (4) When acting as mediators, the Chief Appellate Mediator and other professional staff
90199 of the Appellate Mediation Office shall be immune from liability pursuant to [~~Title 63, Chapter~~
90200 ~~30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

90201 (5) Pursuant to Utah Constitution, Article VIII, Section 4, the Supreme Court may
90202 exercise overall supervision of the Appellate Mediation Office as part of the appellate process.

90203 Section 2212. Section ~~78-3-4~~ is amended to read:

90204 **78-3-4. Jurisdiction -- Appeals.**

90205 (1) The district court has original jurisdiction in all matters civil and criminal, not
90206 excepted in the Utah Constitution and not prohibited by law.

90207 (2) The district court judges may issue all extraordinary writs and other writs necessary
90208 to carry into effect their orders, judgments, and decrees.

90209 (3) The district court has jurisdiction over matters of lawyer discipline consistent with
90210 the rules of the Supreme Court.

90211 (4) The district court has jurisdiction over all matters properly filed in the circuit court
90212 prior to July 1, 1996.

90213 (5) The district court has appellate jurisdiction to adjudicate trials de novo of the
90214 judgments of the justice court and of the small claims department of the district court.

90215 (6) Appeals from the final orders, judgments, and decrees of the district court are under
90216 Sections 78-2-2 and 78-2a-3.

90217 (7) The district court has jurisdiction to review:

90218 (a) agency adjudicative proceedings as set forth in [~~Title 63, Chapter 46b~~] Title 63G,
90219 Chapter 4, Administrative Procedures Act, and shall comply with the requirements of that
90220 chapter, in its review of agency adjudicative proceedings; and

90221 (b) municipal administrative proceedings in accordance with Section 10-3-703.7.

90222 (8) Notwithstanding Subsection (1), the district court has subject matter jurisdiction in
90223 class B misdemeanors, class C misdemeanors, infractions, and violations of ordinances only if:

90224 (a) there is no justice court with territorial jurisdiction;

90225 (b) the matter was properly filed in the circuit court prior to July 1, 1996;

90226 (c) the offense occurred within the boundaries of the municipality in which the district
90227 courthouse is located and that municipality has not formed a justice court; or

90228 (d) they are included in an indictment or information covering a single criminal episode
90229 alleging the commission of a felony or a class A misdemeanor.

90230 (9) The district court has jurisdiction of actions under Title 78, Chapter 3h, Child
90231 Protective Orders, if the juvenile court transfers the case to the district court.

90232 Section 2213. Section **78-3-24.1** is amended to read:

90233 **78-3-24.1. Grants to nonprofit legal assistance organization.**

90234 Subject to legislative appropriation, the state court administrator shall, in accordance
90235 with [~~Title 63, Chapter 56~~] Title 63G, Chapter 6, Utah Procurement Code, solicit requests for
90236 proposals and award grants to nonprofit legal assistance providers to provide legal assistance
90237 throughout the state to:

90238 (1) low to moderate income victims of domestic violence; and

90239 (2) low to moderate income individuals in family law matters.

90240 Section 2214. Section **78-3a-104** is amended to read:

90241 **78-3a-104. Jurisdiction of juvenile court -- Original -- Exclusive.**

90242 (1) Except as otherwise provided by law, the juvenile court has exclusive original
90243 jurisdiction in proceedings concerning:

90244 (a) a child who has violated any federal, state, or local law or municipal ordinance or a
90245 person younger than 21 years of age who has violated any law or ordinance before becoming 18

90246 years of age, regardless of where the violation occurred, excluding traffic laws and boating and
90247 ordinances;

90248 (b) a person 21 years of age or older who has failed or refused to comply with an order
90249 of the juvenile court to pay a fine or restitution, if the order was imposed prior to the person's
90250 21st birthday; however, the continuing jurisdiction is limited to causing compliance with existing
90251 orders;

90252 (c) a child who is an abused child, neglected child, or dependent child, as those terms
90253 are defined in Section 78-3a-103;

90254 (d) a protective order for a child pursuant to the provisions of Title 78, Chapter 3h,
90255 Child Protective Orders, which the juvenile court may transfer to the district court if the juvenile
90256 court has entered an ex parte protective order and finds that:

90257 (i) the petitioner and the respondent are the natural parent, adoptive parent, or step
90258 parent of the child who is the object of the petition;

90259 (ii) the district court has a petition pending or an order related to custody or
90260 parent-time entered under Title 30, Chapter 3, Divorce, Title 30, Chapter 6, Cohabitant Abuse
90261 Act, or Title 78, Chapter 45g, Utah Uniform Parentage Act, in which the petitioner and the
90262 respondent are parties; and

90263 (iii) the best interests of the child will be better served in the district court;

90264 (e) appointment of a guardian of the person or other guardian of a minor who comes
90265 within the court's jurisdiction under other provisions of this section;

90266 (f) the emancipation of a minor in accordance with Part 10, Emancipation;

90267 (g) the termination of the legal parent-child relationship in accordance with Part 4,
90268 Termination of Parental Rights Act, including termination of residual parental rights and duties;

90269 (h) the treatment or commitment of a mentally retarded minor;

90270 (i) a minor who is a habitual truant from school;

90271 (j) the judicial consent to the marriage of a child under age 16 upon a determination of
90272 voluntariness or where otherwise required by law, employment, or enlistment of a child when
90273 consent is required by law;

90274 (k) any parent or parents of a child committed to a secure youth corrections facility, to
90275 order, at the discretion of the court and on the recommendation of a secure facility, the parent
90276 or parents of a child committed to a secure facility for a custodial term, to undergo group
90277 rehabilitation therapy under the direction of a secure facility therapist, who has supervision of
90278 that parent's or parents' child, or any other therapist the court may direct, for a period directed
90279 by the court as recommended by a secure facility;

90280 (l) a minor under Title 55, Chapter 12, Interstate Compact for Juveniles;

90281 (m) the treatment or commitment of a mentally ill child. The court may commit a child
90282 to the physical custody of a local mental health authority in accordance with the procedures and
90283 requirements of Title 62A, Chapter 15, Part 7, Commitment of Persons Under Age 18 to
90284 Division of Substance Abuse and Mental Health. The court may not commit a child directly to
90285 the Utah State Hospital;

90286 (n) the commitment of a child in accordance with Section 62A-15-301;

90287 (o) de novo review of final agency actions resulting from an informal adjudicative
90288 proceeding as provided in Section ~~[63-46b-15]~~ 63G-4-402; and

90289 (p) adoptions conducted in accordance with the procedures described in Title 78,
90290 Chapter 30, Adoption, when the juvenile court has previously entered an order terminating the
90291 rights of a parent and finds that adoption is in the best interest of the child.

90292 (2) In addition to the provisions of Subsection (1)(a) the juvenile court has exclusive
90293 jurisdiction over any traffic or boating offense committed by a person under 16 years of age and
90294 concurrent jurisdiction over all other traffic or boating offenses committed by a person 16 years
90295 of age or older, except that the court shall have exclusive jurisdiction over the following
90296 offenses committed by a child:

90297 (a) Section 76-5-207, automobile homicide;

90298 (b) Section 41-6a-502, operating a vehicle while under the influence of alcohol or
90299 drugs;

90300 (c) Section 41-6a-528, reckless driving or Section 73-18-12, reckless operation;

90301 (d) Section 41-1a-1314, unauthorized control over a motor vehicle, trailer, or

90302 semitrailer for an extended period of time; and

90303 (e) Section 41-6a-210 or 73-18-20, fleeing a peace officer.

90304 (3) The court also has jurisdiction over traffic and boating offenses that are part of a
90305 single criminal episode filed in a petition that contains an offense over which the court has
90306 jurisdiction.

90307 (4) The juvenile court has jurisdiction over an ungovernable or runaway child who is
90308 referred to it by the Division of Child and Family Services or by public or private agencies that
90309 contract with the division to provide services to that child where, despite earnest and persistent
90310 efforts by the division or agency, the child has demonstrated that the child:

90311 (a) is beyond the control of the child's parent, guardian, lawful custodian, or school
90312 authorities to the extent that the child's behavior or condition endangers the child's own welfare
90313 or the welfare of others; or

90314 (b) has run away from home.

90315 (5) This section does not restrict the right of access to the juvenile court by private
90316 agencies or other persons.

90317 (6) The juvenile court has jurisdiction of all magistrate functions relative to cases arising
90318 under Section 78-3a-602.

90319 (7) The juvenile court has jurisdiction to make a finding of substantiated,
90320 unsubstantiated, or without merit, in accordance with Section 78-3a-320.

90321 Section 2215. Section **78-3a-113** is amended to read:

90322 **78-3a-113. Minor taken into custody by peace officer, private citizen, or**
90323 **probation officer -- Grounds -- Notice requirements -- Release or detention -- Grounds**
90324 **for peace officer to take adult into custody.**

90325 (1) A minor may be taken into custody by a peace officer without order of the court if:

90326 (a) in the presence of the officer the minor has violated a state law, federal law, local
90327 law, or municipal ordinance;

90328 (b) there are reasonable grounds to believe the minor has committed an act which if
90329 committed by an adult would be a felony;

90330 (c) the minor:

90331 (i) (A) is seriously endangered in the minor's surroundings; or

90332 (B) seriously endangers others; and

90333 (ii) immediate removal appears to be necessary for the minor's protection or the

90334 protection of others;

90335 (d) there are reasonable grounds to believe the minor has run away or escaped from the

90336 minor's parents, guardian, or custodian; or

90337 (e) there is reason to believe that the minor is:

90338 (i) subject to the state's compulsory education law; and

90339 (ii) absent from school without legitimate or valid excuse, subject to Section

90340 53A-11-105.

90341 (2) (a) A private citizen or a probation officer may take a minor into custody if under

90342 the circumstances he could make a citizen's arrest if the minor was an adult.

90343 (b) A probation officer may also take a minor into custody under Subsection (1) or if

90344 the minor has violated the conditions of probation, if the minor is under the continuing

90345 jurisdiction of the juvenile court or in emergency situations in which a peace officer is not

90346 immediately available.

90347 (3) (a) (i) If an officer or other person takes a minor into temporary custody, he shall

90348 without unnecessary delay notify the parents, guardian, or custodian.

90349 (ii) The minor shall then be released to the care of the minor's parent or other

90350 responsible adult, unless the minor's immediate welfare or the protection of the community

90351 requires the minor's detention.

90352 (b) If the minor is taken into custody or detention for a violent felony, as defined in

90353 Section 76-3-203.5, or an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the

90354 officer or other law enforcement agent taking the minor into custody shall, as soon as

90355 practicable or as established under Subsection 53A-11-1001(2), notify the school

90356 superintendent of the district in which the minor resides or attends school for the purposes of

90357 the minor's supervision and student safety.

- 90358 (i) The notice shall disclose only:
- 90359 (A) the name of the minor;
- 90360 (B) the offense for which the minor was taken into custody or detention; and
- 90361 (C) if available, the name of the victim, if the victim:
- 90362 (I) resides in the same school district as the minor; or
- 90363 (II) attends the same school as the minor.
- 90364 (ii) The notice shall be classified as a protected record under Section [~~63-2-304~~
- 90365 63G-2-305.
- 90366 (iii) All other records disclosures are governed by [~~Title 63, Chapter 2~~] Title 63G,
- 90367 Chapter 2, Government Records Access and Management Act and the Federal Family
- 90368 Educational Rights and Privacy Act.
- 90369 (c) Employees of a governmental agency are immune from any criminal liability for
- 90370 providing or failing to provide the information required by this section unless the person acts or
- 90371 fails to act due to malice, gross negligence, or deliberate indifference to the consequences.
- 90372 (d) Before the minor is released, the parent or other person to whom the minor is
- 90373 released shall be required to sign a written promise on forms supplied by the court to bring the
- 90374 minor to the court at a time set or to be set by the court.
- 90375 (4) (a) A child may not be held in temporary custody by law enforcement any longer
- 90376 than is reasonably necessary to obtain the child's name, age, residence, and other necessary
- 90377 information and to contact the child's parents, guardian, or custodian.
- 90378 (b) If the minor is not released under Subsection (3), the minor shall be taken to a place
- 90379 of detention or shelter without unnecessary delay.
- 90380 (5) (a) The person who takes a minor to a detention or shelter facility shall promptly file
- 90381 with the detention or shelter facility a written report on a form provided by the division stating
- 90382 the details of the presently alleged offense, the facts which bring the minor within the
- 90383 jurisdiction of the juvenile court, and the reason the minor was not released by law enforcement.
- 90384 (b) (i) The designated youth corrections facility staff person shall immediately review
- 90385 the form and determine, based on the guidelines for detention admissions established by the

90386 Division of Juvenile Justice Services under Section 62A-7-202, whether to admit the minor to
90387 secure detention, admit the minor to home detention, place the minor in a placement other than
90388 detention, or return the minor home upon written promise to bring the minor to the court at a
90389 time set, or without restriction.

90390 (ii) If the designated youth corrections facility staff person determines to admit the
90391 minor to home detention, that staff person shall notify the juvenile court of that determination.
90392 The court shall order that notice be provided to the designated persons in the local law
90393 enforcement agency and the school or transferee school, if applicable, which the minor attends
90394 of the home detention. The designated persons may receive the information for purposes of the
90395 minor's supervision and student safety.

90396 (iii) Any employee of the local law enforcement agency and the school which the minor
90397 attends who discloses the notification of home detention is not:

90398 (A) civilly liable except when disclosure constitutes fraud or willful misconduct as
90399 provided in Section [~~63-30d-202~~] 63G-7-202; and

90400 (B) civilly or criminally liable except when disclosure constitutes a knowing violation of
90401 Section [~~63-2-801~~] 63G-2-801.

90402 (c) A minor may not be admitted to detention unless the minor is detainable based on
90403 the guidelines or the minor has been brought to detention pursuant to a judicial order or division
90404 warrant pursuant to Section 62A-7-504.

90405 (d) If a minor taken to detention does not qualify for admission under the guidelines
90406 established by the division under Section 62A-7-104, detention staff shall arrange appropriate
90407 placement.

90408 (e) If a minor is taken into custody and admitted to a secure detention or shelter facility,
90409 facility staff shall:

90410 (i) immediately notify the minor's parents, guardian, or custodian; and

90411 (ii) promptly notify the court of the placement.

90412 (f) If the minor is admitted to a secure detention or shelter facility outside the county of
90413 the minor's residence and it is determined in the hearing held under Subsection 78-3a-114(3)

90414 that detention shall continue, the judge or commissioner shall direct the sheriff of the county of
90415 the minor's residence to transport the minor to a detention or shelter facility as provided in this
90416 section.

90417 (6) A person may be taken into custody by a peace officer without a court order if the
90418 person is in apparent violation of a protective order or if there is reason to believe that a child is
90419 being abused by the person and any of the situations outlined in Section 77-7-2 exist.

90420 Section 2216. Section **78-3a-114** is amended to read:

90421 **78-3a-114. Placement of minor in detention or shelter facility -- Grounds --**
90422 **Detention hearings -- Period of detention -- Notice -- Confinement for criminal**
90423 **proceedings -- Bail laws inapplicable, exception.**

90424 (1) (a) A minor may not be placed or kept in a secure detention facility pending court
90425 proceedings unless it is unsafe for the public to leave the minor with the minor's parents,
90426 guardian, or custodian and the minor is detainable based on guidelines promulgated by the
90427 Division of Juvenile Justice Services.

90428 (b) A child who must be taken from the child's home but who does not require physical
90429 restriction shall be given temporary care in a shelter facility and may not be placed in a detention
90430 facility.

90431 (c) A child may not be placed or kept in a shelter facility pending court proceedings
90432 unless it is unsafe to leave the child with the child's parents, guardian, or custodian.

90433 (2) After admission of a child to a detention facility pursuant to the guidelines
90434 established by the Division of Juvenile Justice Services and immediate investigation by an
90435 authorized officer of the court, the judge or the officer shall order the release of the child to the
90436 child's parents, guardian, or custodian if it is found the child can be safely returned to their care,
90437 either upon written promise to bring the child to the court at a time set or without restriction.

90438 (a) If a child's parent, guardian, or custodian fails to retrieve the child from a facility
90439 within 24 hours after notification of release, the parent, guardian, or custodian is responsible for
90440 the cost of care for the time the child remains in the facility.

90441 (b) The facility shall determine the cost of care.

90442 (c) Any money collected under this Subsection (2) shall be retained by the Division of
90443 Juvenile Justice Services to recover the cost of care for the time the child remains in the facility.

90444 (3) (a) When a child is detained in a detention or shelter facility, the parents or guardian
90445 shall be informed by the person in charge of the facility that they have the right to a prompt
90446 hearing in court to determine whether the child is to be further detained or released.

90447 (b) When a minor is detained in a detention facility, the minor shall be informed by the
90448 person in charge of the facility that the minor has the right to a prompt hearing in court to
90449 determine whether the minor is to be further detained or released.

90450 (c) Detention hearings shall be held by the judge or by a commissioner.

90451 (d) The court may, at any time, order the release of the minor, whether a detention
90452 hearing is held or not.

90453 (e) If a child is released, and the child remains in the facility, because the parents,
90454 guardian, or custodian fails to retrieve the child, the parents, guardian, or custodian shall be
90455 responsible for the cost of care as provided in Subsections (2)(a), (b), and (c).

90456 (4) (a) A minor may not be held in a detention facility longer than 48 hours prior to a
90457 detention hearing, excluding weekends and holidays, unless the court has entered an order for
90458 continued detention.

90459 (b) A child may not be held in a shelter facility longer than 48 hours prior to a shelter
90460 hearing, excluding weekends and holidays, unless a court order for extended shelter has been
90461 entered by the court after notice to all parties described in Section 78-3a-306.

90462 (c) A hearing for detention or shelter may not be waived. Detention staff shall provide
90463 the court with all information received from the person who brought the minor to the detention
90464 facility.

90465 (d) If the court finds at a detention hearing that it is not safe to release the minor, the
90466 judge or commissioner may order the minor to be held in the facility or be placed in another
90467 appropriate facility, subject to further order of the court.

90468 (e) (i) After a detention hearing has been held, only the court may release a minor from
90469 detention. If a minor remains in a detention facility, periodic reviews shall be held pursuant to

90470 the Utah State Juvenile Court Rules of Practice and Procedure to ensure that continued
90471 detention is necessary.

90472 (ii) After a detention hearing for a violent felony, as defined in Section 76-3-203.5, or
90473 an offense in violation of Title 76, Chapter 10, Part 5, Weapons, the court shall direct that
90474 notice of its decision, including any disposition, order, or no contact orders, be provided to
90475 designated persons in the appropriate local law enforcement agency and district superintendent
90476 or the school or transferee school, if applicable, that the minor attends. The designated persons
90477 may receive the information for purposes of the minor's supervision and student safety.

90478 (iii) Any employee of the local law enforcement agency, school district, and the school
90479 that the minor attends who discloses the court's order of probation is not:

90480 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
90481 provided in Section [~~63-30d-202~~] 63G-7-202; and

90482 (B) civilly or criminally liable except when disclosure constitutes a knowing violation of
90483 Section [~~63-2-801~~] 63G-2-801.

90484 (5) A minor may not be held in a detention facility, following a dispositional order of
90485 the court for nonsecure substitute care as defined in Section 62A-4a-101, or for
90486 community-based placement under Section 62A-7-101 for longer than 72 hours, excluding
90487 weekends and holidays. The period of detention may be extended by the court for one period of
90488 seven calendar days if:

90489 (a) the Division of Juvenile Justice Services or another agency responsible for
90490 placement files a written petition with the court requesting the extension and setting forth good
90491 cause; and

90492 (b) the court enters a written finding that it is in the best interests of both the minor and
90493 the community to extend the period of detention.

90494 (6) The agency requesting an extension shall promptly notify the detention facility that a
90495 written petition has been filed.

90496 (7) The court shall promptly notify the detention facility regarding its initial disposition
90497 and any ruling on a petition for an extension, whether granted or denied.

90498 (8) (a) A child under 16 years of age may not be held in a jail, lockup, or other place for
90499 adult detention except as provided by Section 62A-7-201 or unless certified as an adult
90500 pursuant to Section 78-3a-603. The provisions of Section 62A-7-201 regarding confinement
90501 facilities apply to this Subsection (8).

90502 (b) A child 16 years of age or older whose conduct or condition endangers the safety or
90503 welfare of others in the detention facility for children may, by court order that specifies the
90504 reasons, be detained in another place of confinement considered appropriate by the court,
90505 including a jail or other place of confinement for adults. However, a secure youth corrections
90506 facility is not an appropriate place of confinement for detention purposes under this section.

90507 (9) A sheriff, warden, or other official in charge of a jail or other facility for the
90508 detention of adult offenders or persons charged with crime shall immediately notify the juvenile
90509 court when a person who is or appears to be under 18 years of age is received at the facility and
90510 shall make arrangements for the transfer of the person to a detention facility, unless otherwise
90511 ordered by the juvenile court.

90512 (10) This section does not apply to a minor who is brought to the adult facility under
90513 charges pursuant to Section 78-3a-602 or by order of the juvenile court to be held for criminal
90514 proceedings in the district court under Section 78-3a-603.

90515 (11) A minor held for criminal proceedings under Section 78-3a-602 or 78-3a-603 may
90516 be detained in a jail or other place of detention used for adults charged with crime.

90517 (12) Provisions of law regarding bail are not applicable to minors detained or taken into
90518 custody under this chapter, except that bail may be allowed:

90519 (a) if a minor who need not be detained lives outside this state; or

90520 (b) when a minor who need not be detained comes within one of the classes in
90521 Subsection 78-3a-503(11).

90522 (13) Section 76-8-418 is applicable to a child who willfully and intentionally commits an
90523 act against a jail or other place of confinement, including a Division of Juvenile Justice Services
90524 detention, shelter, or secure confinement facility which would be a third degree felony if
90525 committed by an adult.

90526 Section 2217. Section **78-3a-116** is amended to read:

90527 **78-3a-116. Hearings -- Record -- County attorney or district attorney**
90528 **responsibilities -- Attorney general responsibilities -- Disclosure -- Admissibility of**
90529 **evidence.**

90530 (1) (a) A verbatim record of the proceedings shall be taken by an official court reporter
90531 or by means of a mechanical recording device in all cases that might result in deprivation of
90532 custody as defined in this chapter. In all other cases a verbatim record shall also be made unless
90533 dispensed with by the court.

90534 (b) (i) Notwithstanding any other provision, including [~~Title 63, Chapter 2~~] Title 63G,
90535 Chapter 2, Government Records Access and Management Act, a record of a proceeding made
90536 under Subsection (1)(a) shall be released by the court to any person upon a finding on the
90537 record for good cause.

90538 (ii) Following a petition for a record of a proceeding made under Subsection (1)(a), the
90539 court shall:

90540 (A) provide notice to all subjects of the record that a request for release of the record
90541 has been made; and

90542 (B) allow sufficient time for the subjects of the record to respond before making a
90543 finding on the petition.

90544 (iii) A record of a proceeding may not be released under this Subsection (1)(b) if the
90545 court's jurisdiction over the subjects of the proceeding ended more than 12 months prior to the
90546 request.

90547 (iv) For purposes of this Subsection (1)(b):

90548 (A) "record of a proceeding" does not include documentary materials of any type
90549 submitted to the court as part of the proceeding, including items submitted under Subsection
90550 (4)(a); and

90551 (B) "subjects of the record" includes the child's guardian ad litem, the child's legal
90552 guardian, the Division of Child and Family Services, and any other party to the proceeding.

90553 (v) This Subsection (1)(b) applies:

90554 (A) to records of proceedings made on or after November 1, 2003 in districts selected
90555 by the Judicial Council as pilot districts under Subsection 78-3-21(15)(a); and

90556 (B) to records of proceedings made on or after July 1, 2004 in all other districts.

90557 (2) (a) Except as provided in Subsection (2)(b), the county attorney or, if within a
90558 prosecution district, the district attorney shall represent the state in any proceeding in a minor's
90559 case.

90560 (b) The attorney general shall enforce all provisions of Title 62A, Chapter 4a, Child and
90561 Family Services, and Title 78, Chapter 3a, Juvenile Court Act of 1996, relating to:

90562 (i) protection or custody of an abused, neglected, or dependent child; and

90563 (ii) petitions for termination of parental rights.

90564 (c) The attorney general shall represent the Division of Child and Family Services in
90565 actions involving a minor who is not adjudicated as abused or neglected, but who is otherwise
90566 committed to the custody of that division by the juvenile court, and who is classified in the
90567 division's management information system as having been placed in custody primarily on the
90568 basis of delinquent behavior or a status offense. Nothing in this Subsection (2)(c) may be
90569 construed to affect the responsibility of the county attorney or district attorney to represent the
90570 state in those matters, in accordance with the provisions of Subsection (2)(a).

90571 (3) The board may adopt special rules of procedure to govern proceedings involving
90572 violations of traffic laws or ordinances, fish and game laws, and boating laws. However,
90573 proceedings involving offenses under Section 78-3a-506 are governed by that section regarding
90574 suspension of driving privileges.

90575 (4) (a) For the purposes of determining proper disposition of the minor in dispositional
90576 hearings and establishing the fact of abuse, neglect, or dependency in adjudication hearings and
90577 in hearings upon petitions for termination of parental rights, written reports and other material
90578 relating to the minor's mental, physical, and social history and condition may be received in
90579 evidence and may be considered by the court along with other evidence. The court may require
90580 that the person who wrote the report or prepared the material appear as a witness if the person
90581 is reasonably available.

90582 (b) For the purpose of determining proper disposition of a minor alleged to be or
90583 adjudicated as abused, neglected, or dependent, dispositional reports prepared by Foster Care
90584 Citizen Review Boards pursuant to Section 78-3g-103 may be received in evidence and may be
90585 considered by the court along with other evidence. The court may require any person who
90586 participated in preparing the dispositional report to appear as a witness, if the person is
90587 reasonably available.

90588 (5) (a) In an abuse, neglect, or dependency proceeding occurring after the
90589 commencement of a shelter hearing under Section 78-3a-306 or the filing of a petition under
90590 Section 78-3a-305, each party to the proceeding shall provide in writing to the other parties or
90591 their counsel any information which the party:

90592 (i) plans to report to the court at the proceeding; or

90593 (ii) could reasonably expect would be requested of the party by the court at the
90594 proceeding.

90595 (b) The disclosure required under Subsection (5)(a) shall be made:

90596 (i) for dispositional hearings under Sections 78-3a-310 and 78-3a-311, no less than five
90597 days before the proceeding;

90598 (ii) for proceedings under Title 78, Chapter 3a, Part 4, Termination of Parental Rights
90599 Act, in accordance with Utah Rules of Civil Procedure; and

90600 (iii) for all other proceedings, no less than five days before the proceeding.

90601 (c) If a party to a proceeding obtains information after the deadline in Subsection (5)(b),
90602 the information is exempt from the disclosure required under Subsection (5)(a) if the party
90603 certifies to the court that the information was obtained after the deadline.

90604 (d) Subsection (5)(a) does not apply to:

90605 (i) pretrial hearings; and

90606 (ii) the frequent, periodic review hearings held in a dependency drug court case to
90607 assess and promote the parent's progress in substance abuse treatment.

90608 (6) For the purpose of establishing the fact of abuse, neglect, or dependency, the court
90609 may, in its discretion, consider evidence of statements made by a child under eight years of age

90610 to a person in a trust relationship.

90611 Section 2218. Section **78-3a-118** is amended to read:

90612 **78-3a-118. Adjudication of jurisdiction of juvenile court -- Disposition of cases --**
90613 **Enumeration of possible court orders -- Considerations of court -- Obtaining DNA**
90614 **sample.**

90615 (1) (a) When a minor is found to come within the provisions of Section 78-3a-104, the
90616 court shall so adjudicate. The court shall make a finding of the facts upon which it bases its
90617 jurisdiction over the minor. However, in cases within the provisions of Subsection
90618 78-3a-104(1), findings of fact are not necessary.

90619 (b) If the court adjudicates a minor for a crime of violence or an offense in violation of
90620 Title 76, Chapter 10, Part 5, Weapons, it shall order that notice of the adjudication be provided
90621 to the school superintendent of the district in which the minor resides or attends school. Notice
90622 shall be made to the district superintendent within three days of the adjudication and shall
90623 include:

90624 (i) the specific offenses for which the minor was adjudicated; and

90625 (ii) if available, if the victim:

90626 (A) resides in the same school district as the minor; or

90627 (B) attends the same school as the minor.

90628 (2) Upon adjudication the court may make the following dispositions by court order:

90629 (a) (i) The court may place the minor on probation or under protective supervision in
90630 the minor's own home and upon conditions determined by the court, including compensatory
90631 service as provided in Section 78-11-20.7.

90632 (ii) The court may place the minor in state supervision with the probation department of
90633 the court, under the legal custody of:

90634 (A) the minor's parent or guardian;

90635 (B) the Division of Juvenile Justice Services; or

90636 (C) the Division of Child and Family Services.

90637 (iii) If the court orders probation or state supervision, the court shall direct that notice

90638 of its order be provided to designated persons in the local law enforcement agency and the
90639 school or transferee school, if applicable, that the minor attends. The designated persons may
90640 receive the information for purposes of the minor's supervision and student safety.

90641 (iv) Any employee of the local law enforcement agency and the school that the minor
90642 attends who discloses the court's order of probation is not:

90643 (A) civilly liable except when the disclosure constitutes fraud or willful misconduct as
90644 provided in Section [~~63-30d-202~~] 63G-7-202; and

90645 (B) civilly or criminally liable except when the disclosure constitutes a knowing
90646 violation of Section [~~63-2-801~~] 63G-2-801.

90647 (b) The court may place the minor in the legal custody of a relative or other suitable
90648 person, with or without probation or protective supervision, but the juvenile court may not
90649 assume the function of developing foster home services.

90650 (c) (i) The court may:

90651 (A) vest legal custody of the minor in the Division of Child and Family Services,
90652 Division of Juvenile Justice Services, or the Division of Substance Abuse and Mental Health;
90653 and

90654 (B) order the Department of Human Services to provide dispositional recommendations
90655 and services.

90656 (ii) For minors who may qualify for services from two or more divisions within the
90657 Department of Human Services, the court may vest legal custody with the department.

90658 (iii) (A) A minor who is committed to the custody of the Division of Child and Family
90659 Services on grounds other than abuse or neglect is subject to the provisions of Title 78, Chapter
90660 3a, Part 3A, Minors in Custody on Grounds Other Than Abuse or Neglect, and Title 62A,
90661 Chapter 4a, Part 2A, Minors in Custody on Grounds Other Than Abuse or Neglect.

90662 (B) Prior to the court entering an order to place a minor in the custody of the Division
90663 of Child and Family Services on grounds other than abuse or neglect, the court shall provide the
90664 division with notice of the hearing no later than five days before the time specified for the
90665 hearing so the division may attend the hearing.

90666 (C) Prior to committing a child to the custody of the Division of Child and Family
90667 Services, the court shall make a finding as to what reasonable efforts have been attempted to
90668 prevent the child's removal from the child's home.

90669 (d) (i) The court may commit a minor to the Division of Juvenile Justice Services for
90670 secure confinement.

90671 (ii) A minor under the jurisdiction of the court solely on the ground of abuse, neglect,
90672 or dependency under Subsection 78-3a-104(1)(c) may not be committed to the Division of
90673 Juvenile Justice Services.

90674 (e) The court may commit a minor, subject to the court retaining continuing jurisdiction
90675 over the minor, to the temporary custody of the Division of Juvenile Justice Services for
90676 observation and evaluation for a period not to exceed 45 days, which period may be extended
90677 up to 15 days at the request of the director of the Division of Juvenile Justice Services.

90678 (f) (i) The court may commit a minor to a place of detention or an alternative to
90679 detention for a period not to exceed 30 days subject to the court retaining continuing
90680 jurisdiction over the minor. This commitment may be stayed or suspended upon conditions
90681 ordered by the court.

90682 (ii) This Subsection (2)(f) applies only to a minor adjudicated for:

90683 (A) an act which if committed by an adult would be a criminal offense; or

90684 (B) contempt of court under Section 78-3a-901.

90685 (g) The court may vest legal custody of an abused, neglected, or dependent minor in the
90686 Division of Child and Family Services or any other appropriate person in accordance with the
90687 requirements and procedures of Title 78, Chapter 3a, Part 3, Abuse, Neglect, and Dependency
90688 Proceedings.

90689 (h) The court may place a minor on a ranch or forestry camp, or similar facility for care
90690 and also for work, if possible, if the person, agency, or association operating the facility has
90691 been approved or has otherwise complied with all applicable state and local laws. A minor
90692 placed in a forestry camp or similar facility may be required to work on fire prevention,
90693 forestation and reforestation, recreational works, forest roads, and on other works on or off the

90694 grounds of the facility and may be paid wages, subject to the approval of and under conditions
90695 set by the court.

90696 (i) (i) The court may order a minor to repair, replace, or otherwise make restitution for
90697 damage or loss caused by the minor's wrongful act, including costs of treatment as stated in
90698 Section 78-3a-318 and impose fines in limited amounts.

90699 (ii) The court may also require a minor to reimburse an individual, entity, or
90700 governmental agency who offered and paid a reward to a person or persons for providing
90701 information resulting in a court adjudication that the minor is within the jurisdiction of the
90702 juvenile court due to the commission of a criminal offense.

90703 (iii) If a minor is returned to this state under the Interstate Compact on Juveniles, the
90704 court may order the minor to make restitution for costs expended by any governmental entity
90705 for the return.

90706 (j) The court may issue orders necessary for the collection of restitution and fines
90707 ordered by the court, including garnishments, wage withholdings, and executions.

90708 (k) (i) The court may through its probation department encourage the development of
90709 employment or work programs to enable minors to fulfill their obligations under Subsection
90710 (2)(i) and for other purposes considered desirable by the court.

90711 (ii) Consistent with the order of the court, the probation officer may permit a minor
90712 found to be within the jurisdiction of the court to participate in a program of work restitution or
90713 compensatory service in lieu of paying part or all of the fine imposed by the court.

90714 (l) (i) In violations of traffic laws within the court's jurisdiction, the court may, in
90715 addition to any other disposition authorized by this section:

90716 (A) restrain the minor from driving for periods of time the court considers necessary;
90717 and

90718 (B) take possession of the minor's driver license.

90719 (ii) The court may enter any other disposition under Subsection (2)(l)(i); however, the
90720 suspension of driving privileges for an offense under Section 78-3a-506 are governed only by
90721 Section 78-3a-506.

90722 (m) (i) When a minor is found within the jurisdiction of the juvenile court under Section
90723 78-3a-104 because of violating Section 58-37-8, Title 58, Chapter 37a, Utah Drug
90724 Paraphernalia Act, or Title 58, Chapter 37b, Imitation Controlled Substances Act, the court
90725 shall, in addition to any fines or fees otherwise imposed, order that the minor perform a
90726 minimum of 20 hours, but no more than 100 hours, of compensatory service. Satisfactory
90727 completion of an approved substance abuse prevention or treatment program may be credited
90728 by the court as compensatory service hours.

90729 (ii) When a minor is found within the jurisdiction of the juvenile court under Section
90730 78-3a-104 because of a violation of Section 32A-12-209 or Subsection 76-9-701(1), the court
90731 may, upon the first adjudication, and shall, upon a second or subsequent adjudication, order that
90732 the minor perform a minimum of 20 hours, but no more than 100 hours of compensatory
90733 service, in addition to any fines or fees otherwise imposed. Satisfactory completion of an
90734 approved substance abuse prevention or treatment program may be credited by the court as
90735 compensatory service hours.

90736 (n) (i) Subject to Subsection (2)(n)(iii), the court may order that a minor:

90737 (A) be examined or treated by a physician, surgeon, psychiatrist, or psychologist; or

90738 (B) receive other special care.

90739 (ii) For purposes of receiving the examination, treatment, or care described in
90740 Subsection (2)(n)(i), the court may place the minor in a hospital or other suitable facility.

90741 (iii) In determining whether to order the examination, treatment, or care described in
90742 Subsection (2)(n)(i), the court shall consider:

90743 (A) the desires of the minor;

90744 (B) if the minor is under the age of 18, the desires of the parents or guardian of the
90745 minor; and

90746 (C) whether the potential benefits of the examination, treatment, or care outweigh the
90747 potential risks and side-effects, including behavioral disturbances, suicidal ideation, brain
90748 function impairment, or emotional or physical harm resulting from the compulsory nature of the
90749 examination, treatment, or care.

90750 (o) (i) The court may appoint a guardian for the minor if it appears necessary in the
90751 interest of the minor, and may appoint as guardian a public or private institution or agency in
90752 which legal custody of the minor is vested.

90753 (ii) In placing a minor under the guardianship or legal custody of an individual or of a
90754 private agency or institution, the court shall give primary consideration to the welfare of the
90755 minor. When practicable, the court may take into consideration the religious preferences of the
90756 minor and of a child's parents.

90757 (p) (i) In support of a decree under Section 78-3a-104, the court may order reasonable
90758 conditions to be complied with by a minor's parents or guardian, a minor, a minor's custodian,
90759 or any other person who has been made a party to the proceedings. Conditions may include:

90760 (A) parent-time by the parents or one parent;

90761 (B) restrictions on the minor's associates;

90762 (C) restrictions on the minor's occupation and other activities; and

90763 (D) requirements to be observed by the parents or custodian.

90764 (ii) A minor whose parents or guardians successfully complete a family or other
90765 counseling program may be credited by the court for detention, confinement, or probation time.

90766 (q) The court may order the child to be committed to the physical custody of a local
90767 mental health authority, in accordance with the procedures and requirements of Title 62A,
90768 Chapter 15, Part 7, Commitment of Persons Under Age 18 to Division of Substance Abuse and
90769 Mental Health.

90770 (r) (i) The court may make an order committing a minor within the court's jurisdiction
90771 to the Utah State Developmental Center if the minor has mental retardation in accordance with
90772 the provisions of Title 62A, Chapter 5, Part 3, Admission to Mental Retardation Facility.

90773 (ii) The court shall follow the procedure applicable in the district courts with respect to
90774 judicial commitments to the Utah State Developmental Center when ordering a commitment
90775 under Subsection (2)(r)(i).

90776 (s) The court may terminate all parental rights upon a finding of compliance with the
90777 provisions of Title 78, Chapter 3a, Part 4, Termination of Parental Rights Act.

90778 (t) The court may make any other reasonable orders for the best interest of the minor or
90779 as required for the protection of the public, except that a child may not be committed to jail or
90780 prison.

90781 (u) The court may combine the dispositions listed in this section if they are compatible.

90782 (v) Before depriving any parent of custody, the court shall give due consideration to the
90783 rights of parents concerning their child. The court may transfer custody of a minor to another
90784 person, agency, or institution in accordance with the requirements and procedures of Title 78,
90785 Chapter 3a, Part 3, Abuse, Neglect, and Dependency Proceedings.

90786 (w) Except as provided in Subsection (2)(y)(i), an order under this section for probation
90787 or placement of a minor with an individual or an agency shall include a date certain for a review
90788 of the case by the court. A new date shall be set upon each review.

90789 (x) In reviewing foster home placements, special attention shall be given to making
90790 adoptable children available for adoption without delay.

90791 (y) (i) The juvenile court may enter an order of permanent custody and guardianship
90792 with an individual or relative of a child where the court has previously acquired jurisdiction as a
90793 result of an adjudication of abuse, neglect, or dependency. The juvenile court may enter an
90794 order for child support on behalf of the child against the natural or adoptive parents of the child.

90795 (ii) Orders under Subsection (2)(y)(i):

90796 (A) shall remain in effect until the child reaches majority;

90797 (B) are not subject to review under Section 78-3a-119; and

90798 (C) may be modified by petition or motion as provided in Section 78-3a-903.

90799 (iii) Orders permanently terminating the rights of a parent, guardian, or custodian and
90800 permanent orders of custody and guardianship do not expire with a termination of jurisdiction of
90801 the juvenile court.

90802 (3) In addition to the dispositions described in Subsection (2), when a minor comes
90803 within the court's jurisdiction, the minor may be given a choice by the court to serve in the
90804 National Guard in lieu of other sanctions, provided:

90805 (a) the minor meets the current entrance qualifications for service in the National Guard

90806 as determined by a recruiter, whose determination is final;

90807 (b) the minor is not under the jurisdiction of the court for any act that:

90808 (i) would be a felony if committed by an adult;

90809 (ii) is a violation of Title 58, Chapter 37, Utah Controlled Substances Act; or

90810 (iii) was committed with a weapon; and

90811 (c) the court retains jurisdiction over the minor under conditions set by the court and

90812 agreed upon by the recruiter or the unit commander to which the minor is eventually assigned.

90813 (4) (a) A DNA specimen shall be obtained from a minor who is under the jurisdiction of

90814 the court as described in Subsection 53-10-403(3). The specimen shall be obtained by

90815 designated employees of the court or, if the minor is in the legal custody of the Division of

90816 Juvenile Justice Services, then by designated employees of the division under Subsection

90817 53-10-404(5)(b).

90818 (b) The responsible agency shall ensure that employees designated to collect the saliva

90819 DNA specimens receive appropriate training and that the specimens are obtained in accordance

90820 with accepted protocol.

90821 (c) Reimbursements paid under Subsection 53-10-404(2)(a) shall be placed in the DNA

90822 Specimen Restricted Account created in Section 53-10-407.

90823 (d) Payment of the reimbursement is second in priority to payments the minor is

90824 ordered to make for restitution under this section and treatment under Section 78-3a-318.

90825 Section 2219. Section **78-3a-504** is amended to read:

90826 **78-3a-504. Minor held in detention -- Credit for good behavior.**

90827 (1) The judge may order whether a minor held in detention under Subsection

90828 78-3a-118(2)(f) or 78-3a-901(3) is eligible to receive credit for good behavior against the

90829 period of detention. The rate of credit is one day for every three days served. The Division of

90830 Juvenile Justice Services shall, in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,

90831 Utah Administrative Rulemaking Act, establish rules describing good behavior for which credit

90832 may be earned.

90833 (2) Any disposition including detention under Subsection 78-3a-118(2)(f) or

90834 78-3a-901(3) shall be concurrent with any other order of detention.

90835 Section 2220. Section **78-3a-505** is amended to read:

90836 **78-3a-505. Dispositional report required in minor's cases -- Exceptions.**

90837 (1) The probation department or other agency designated by the court shall make a
90838 dispositional report in writing in all minor's cases in which a petition has been filed, except that
90839 the court may dispense with the study and report in cases involving violations of traffic laws or
90840 ordinances, violations of fish and game laws, boating laws, and other minor cases.

90841 (2) When preparing a dispositional report and recommendation in a delinquency action,
90842 the probation department or other agency designated by the court shall consider the juvenile
90843 sentencing guidelines developed in accordance with Section [~~63-25a-304~~] 63M-7-404 and any
90844 aggravating or mitigating circumstances.

90845 (3) Where the allegations of a petition filed under Subsection 78-3a-104(1) are denied,
90846 the investigation may not be made until the court has made an adjudication.

90847 Section 2221. Section **78-3a-904** is amended to read:

90848 **78-3a-904. When photographs, fingerprints, or HIV infection tests may be taken**
90849 **-- Distribution -- Expungement.**

90850 (1) Photographs may be taken of a minor 14 years of age or older who:

90851 (a) is taken into custody for the alleged commission of an offense under Sections
90852 78-3a-104, 78-3a-601, and 78-3a-602 that would also be an offense if the minor were 18 years
90853 of age or older; or

90854 (b) has been determined to be a serious habitual offender for tracking under Section
90855 [~~63-92-2~~] 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the
90856 Division of Juvenile Justice Services.

90857 (2) (a) Fingerprints may be taken of a minor 14 years of age or older who:

90858 (i) is taken into custody for the alleged commission of an offense that would be a felony
90859 if the minor were 18 years of age or older;

90860 (ii) has been determined to be a serious habitual offender for tracking under Section
90861 [~~63-92-2~~] 63M-10-201 and is under the continuing jurisdiction of the Juvenile Court or the

90862 Division of Juvenile Justice Services; or

90863 (iii) is required to provide a DNA specimen under Section 53-10-403.

90864 (b) Fingerprints shall be forwarded to the Bureau of Criminal Identification and may be
90865 stored by electronic medium.

90866 (3) HIV testing may be conducted on a minor who is taken into custody after having
90867 been adjudicated to have violated state law prohibiting a sexual offense under Title 76, Chapter
90868 5, Part 4, Sexual Offenses, upon the request of the victim or the parent or guardian of a child
90869 victim.

90870 (4) HIV tests, photographs, and fingerprints may not be taken of a child younger than
90871 14 years of age without the consent of the court.

90872 (5) (a) Photographs may be distributed or disbursed to individuals or agencies other
90873 than state or local law enforcement agencies only when a minor 14 years of age or older is
90874 charged with an offense which would be a felony if committed by an adult.

90875 (b) Fingerprints may be distributed or disbursed to individuals or agencies other than
90876 state or local law enforcement agencies.

90877 (6) When a minor's juvenile record is expunged, all photographs and other records as
90878 ordered shall upon court order be destroyed by the law enforcement agency. Fingerprint records
90879 may not be destroyed.

90880 Section 2222. Section **78-3a-912** is amended to read:

90881 **78-3a-912. Appointment of attorney guardian ad litem -- Right of refusal --**
90882 **Duties and responsibilities -- Training -- Trained staff and court-appointed special**
90883 **advocate volunteers -- Costs -- Immunity -- Annual report.**

90884 (1) (a) The court:

90885 (i) may appoint an attorney guardian ad litem to represent the best interest of a minor
90886 involved in any case before the court; and

90887 (ii) shall consider the best interest of a minor, consistent with the provisions of Section
90888 62A-4a-201, in determining whether to appoint a guardian ad litem.

90889 (b) In all cases where an attorney guardian ad litem is appointed, the court shall make a

90890 finding that establishes the necessity of the appointment.

90891 (2) An attorney guardian ad litem shall represent the best interest of each child who may
90892 become the subject of a petition alleging abuse, neglect, or dependency, from the earlier of the
90893 day that:

90894 (a) the child is removed from the child's home by the division; or

90895 (b) the petition is filed.

90896 (3) The Office of the Guardian Ad Litem Director, through an attorney guardian ad
90897 litem, shall:

90898 (a) represent the best interest of the minor in all proceedings;

90899 (b) prior to representing any minor before the court, be trained in:

90900 (i) applicable statutory, regulatory, and case law; and

90901 (ii) accordance with the United States Department of Justice National Court Appointed
90902 Special Advocate Association guidelines;

90903 (c) conduct or supervise an independent investigation in order to obtain first-hand, a
90904 clear understanding of the situation and needs of the minor;

90905 (d) (i) personally meet with the minor;

90906 (ii) personally interview the minor if the minor is old enough to communicate;

90907 (iii) determine the minor's goals and concerns regarding placement; and

90908 (iv) personally assess or supervise an assessment of the appropriateness and safety of
90909 the minor's environment in each placement;

90910 (e) file written motions, responses, or objections at all stages of a proceeding when
90911 necessary to protect the best interest of a minor;

90912 (f) personally or through a trained volunteer, paralegal, or other trained staff, attend all
90913 administrative and foster care citizen review board hearings pertaining to the minor's case;

90914 (g) participate in all appeals unless excused by order of the court;

90915 (h) be familiar with local experts who can provide consultation and testimony regarding
90916 the reasonableness and appropriateness of efforts made by the Division of Child and Family
90917 Services to:

- 90918 (i) maintain a minor in the minor's home; or
- 90919 (ii) reunify a child with the child's parent;
- 90920 (i) to the extent possible, and unless it would be detrimental to the minor, personally or
- 90921 through a trained volunteer, paralegal, or other trained staff, keep the minor advised of:
- 90922 (i) the status of the minor's case;
- 90923 (ii) all court and administrative proceedings;
- 90924 (iii) discussions with, and proposals made by, other parties;
- 90925 (iv) court action; and
- 90926 (v) the psychiatric, medical, or other treatment or diagnostic services that are to be
- 90927 provided to the minor;
- 90928 (j) review proposed orders for, and as requested by the court;
- 90929 (k) prepare proposed orders with clear and specific directions regarding services,
- 90930 treatment, evaluation, assessment, and protection of the minor and the minor's family; and
- 90931 (l) personally or through a trained volunteer, paralegal, or other trained staff, monitor
- 90932 implementation of a minor's child and family plan and any dispositional orders to:
- 90933 (i) determine whether services ordered by the court:
- 90934 (A) are actually provided; and
- 90935 (B) are provided in a timely manner; and
- 90936 (ii) attempt to assess whether services ordered by the court are accomplishing the
- 90937 intended goal of the services.
- 90938 (4) (a) Consistent with this Subsection (4), an attorney guardian ad litem may use
- 90939 trained volunteers, in accordance with Title 67, Chapter 20, Volunteer Government Workers
- 90940 Act, trained paralegals, and other trained staff to assist in investigation and preparation of
- 90941 information regarding the cases of individual minors before the court.
- 90942 (b) The attorney guardian ad litem described in Subsection (4)(a) may not delegate the
- 90943 attorney's responsibilities described in Subsection (3).
- 90944 (c) All volunteers, paralegals, and staff utilized pursuant to this section shall be trained
- 90945 in and follow, at a minimum, the guidelines established by the United States Department of

90946 Justice Court Appointed Special Advocate Association.

90947 (d) The court may use volunteers trained in accordance with the requirements of
90948 Subsection (4)(c) to assist in investigation and preparation of information regarding the cases of
90949 individual minors within the jurisdiction.

90950 (e) When possible and appropriate, the court may use a volunteer who is a peer of the
90951 minor appearing before the court, in order to provide assistance to that minor, under the
90952 supervision of an attorney guardian ad litem or the attorney's trained volunteer, paralegal, or
90953 other trained staff.

90954 (5) The attorney guardian ad litem shall continue to represent the best interest of the
90955 minor until released from that duty by the court.

90956 (6) (a) Consistent with Subsection (6)(b), the juvenile court is responsible for:

- 90957 (i) all costs resulting from the appointment of an attorney guardian ad litem; and
- 90958 (ii) the costs of volunteer, paralegal, and other staff appointment and training.

90959 (b) The court shall use funds appropriated by the Legislature for the guardian ad litem
90960 program to cover the costs described in Subsection (6)(a).

90961 (c) (i) When the court appoints an attorney guardian ad litem under this section, the
90962 court may assess all or part of the attorney's fees, court costs, and paralegal, staff, and volunteer
90963 expenses against the child's parents, parent, or legal guardian in a proportion that the court
90964 determines to be just and appropriate.

90965 (ii) The court may not assess those fees or costs against:

- 90966 (A) a legal guardian, when that guardian is the state; or
- 90967 (B) consistent with Subsection (6)(d), a parent who is found to be impecunious.

90968 (d) For purposes of Subsection (6)(c)(ii)(B), if a person claims to be impecunious, the
90969 court shall:

90970 (i) require that person to submit an affidavit of impecuniosity as provided in Section
90971 78-7-36; and

90972 (ii) follow the procedures and make the determinations as provided in Section 78-7-37.

90973 (7) An attorney guardian ad litem appointed under this section, when serving in the

90974 scope of the attorney guardian ad litem's duties as guardian ad litem is considered an employee
90975 of the state for purposes of indemnification under [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7,
90976 Governmental Immunity Act of Utah.

90977 (8) (a) An attorney guardian ad litem shall represent the best interest of a minor.

90978 (b) If the minor's wishes differ from the attorney's determination of the minor's best
90979 interest, the attorney guardian ad litem shall communicate the minor's wishes to the court in
90980 addition to presenting the attorney's determination of the minor's best interest.

90981 (c) A difference between the minor's wishes and the attorney's determination of best
90982 interest may not be considered a conflict of interest for the attorney.

90983 (d) The court may appoint one attorney guardian ad litem to represent the best interests
90984 of more than one child of a marriage.

90985 (9) An attorney guardian ad litem shall be provided access to all Division of Child and
90986 Family Services records regarding the minor at issue and the minor's family.

90987 (10) An attorney guardian ad litem shall maintain current and accurate records
90988 regarding:

90989 (a) the number of times the attorney has had contact with each minor; and

90990 (b) the actions the attorney has taken in representation of the minor's best interest.

90991 (11) (a) Except as provided in Subsection (11)(b), all records of an attorney guardian
90992 ad litem are confidential and may not be released or made public upon subpoena, search
90993 warrant, discovery proceedings, or otherwise. This subsection supersedes [~~Title 63, Chapter 2~~]
90994 Title 63G, Chapter 2, Government Records Access and Management Act.

90995 (b) Consistent with Subsection (11)(d), all records of an attorney guardian ad litem:

90996 (i) are subject to legislative subpoena, under Title 36, Chapter 14, Legislative Subpoena
90997 Powers; and

90998 (ii) shall be released to the Legislature.

90999 (c) (i) Except as provided in Subsection (11)(c)(ii), records released in accordance with
91000 Subsection (11)(b) shall be maintained as confidential by the Legislature.

91001 (ii) Notwithstanding Subsection (11)(c)(i), the Office of the Legislative Auditor General

91002 may include summary data and nonidentifying information in its audits and reports to the
91003 Legislature.

91004 (d) (i) Subsection (11)(b) constitutes an exception to Rules of Professional Conduct,
91005 Rule 1.6, as provided by Rule 1.6(b)(4), because of:

91006 (A) the unique role of an attorney guardian ad litem described in Subsection (8); and

91007 (B) the state's role and responsibility:

91008 (I) to provide a guardian ad litem program; and

91009 (II) as parens patriae, to protect minors.

91010 (ii) A claim of attorney-client privilege does not bar access to the records of an attorney
91011 guardian ad litem by the Legislature, through legislative subpoena.

91012 (e) The Office of the Guardian Ad Litem shall present an annual report to the Child
91013 Welfare Legislative Oversight Panel detailing:

91014 (i) the development, policy, and management of the statewide guardian ad litem
91015 program;

91016 (ii) the training and evaluation of attorney guardians ad litem and volunteers; and

91017 (iii) the number of minors served by the Office of the Guardian Ad Litem.

91018 Section 2223. Section **78-3g-102** is amended to read:

91019 **78-3g-102. Foster Care Citizen Review Board Steering Committee -- Membership**
91020 **-- Chair -- Compensation -- Duties.**

91021 (1) There is created within state government the Foster Care Citizen Review Board
91022 Steering Committee composed of the following members:

91023 (a) a member of the Board of Child and Family Services, within the Department of
91024 Human Services, appointed by the chair of that board;

91025 (b) the director of the division, or his designee;

91026 (c) a juvenile court judge, appointed by the presiding officer of the Judicial Council;

91027 (d) a juvenile court administrator, appointed by the administrator of the courts;

91028 (e) a representative of the Utah Foster Parents Association, appointed by the president
91029 of that organization;

91030 (f) a representative of a statewide advocacy organization for children, appointed by the
91031 chair of the committee;

91032 (g) a representative of an agency or organization that provides services to children who
91033 have been adjudicated to be under the jurisdiction of the juvenile court, appointed by the chair
91034 of the committee;

91035 (h) the guardian ad litem director, appointed pursuant to Section 78-3a-911, or the
91036 director's designee;

91037 (i) the director or chief of the child protection unit within the Office of the Attorney
91038 General, or his designee;

91039 (j) one person from each region who is a member of a board, appointed by the chair of
91040 the committee; and

91041 (k) a private citizen, appointed by the chair of the committee.

91042 (2) The persons described in Subsection (1) shall annually elect a chair of the committee
91043 from among themselves.

91044 (3) A majority of the members of the committee constitutes a quorum. The action of
91045 the majority of a quorum represents the action of the committee.

91046 (4) (a) Members of the committee who are not government employees shall receive no
91047 compensation or benefits for their services, but may receive per diem and expenses incurred in
91048 the performance of the member's official duties at the rates established by the Division of
91049 Finance under Sections 63A-3-106 and 63A-3-107.

91050 (b) State government officer and employee members who do not receive salary, per
91051 diem, or expenses from their agency for their service may receive per diem and expenses
91052 incurred in the performance of their official duties from the board at the rates established by the
91053 Division of Finance under Sections 63A-3-106 and 63A-3-107.

91054 (c) Local government members who do not receive salary, per diem, or expenses from
91055 the entity that they represent for their service may receive per diem and expenses incurred in the
91056 performance of their official duties at the rates established by the Division of Finance under
91057 Sections 63A-3-106 and 63A-3-107.

91058 (d) Members of the committee may decline to receive per diem and expenses for their
91059 services.

91060 (5) The committee shall:

91061 (a) within appropriations from the Legislature, appoint members of boards in each
91062 juvenile court district;

91063 (b) supervise the recruitment, training, and retention of board members;

91064 (c) supervise and evaluate the boards;

91065 (d) establish and approve policies for the boards; and

91066 (e) submit a report detailing the results of the boards to the Child Welfare Legislative
91067 Oversight Panel, the Judiciary Interim Committee, and the Board of Juvenile Court Judges on or
91068 before December 31 of each year.

91069 (6) (a) The Department of Human Services shall provide fiscal management services,
91070 including payroll and accounting services, to the committee.

91071 (b) Within appropriations from the Legislature, the committee may hire professional and
91072 clerical staff as it considers necessary and appropriate.

91073 (7) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
91074 Administrative Rulemaking Act, the committee may make rules necessary for:

91075 (a) recruitment, appointment, and training of board members;

91076 (b) supervision and evaluation of boards; and

91077 (c) establishment of policy for boards.

91078 (8) The committee may receive gifts, grants, devises, and donations. If the donor
91079 designates a specific purpose or use for the gift, grant, devise, or donation, it shall be used
91080 solely for that purpose. Undesignated gifts, grants, devises, and donations shall be used for
91081 foster care citizen review boards in accordance with the requirements and provisions of this
91082 chapter.

91083 Section 2224. Section **78-5-116** is amended to read:

91084 **78-5-116. Disposition of fines.**

91085 (1) Except as otherwise specified by this section, fines and forfeitures collected by a

91086 justice court shall be remitted, 1/2 to the treasurer of the local government responsible for the
91087 court and 1/2 to the treasurer of the local government which prosecutes or which would
91088 prosecute the violation.

91089 (2) (a) For violation of Title 23, the court shall allocate 85% to the Division of Wildlife
91090 Resources and 15% to the general fund of the city or county government responsible for the
91091 justice court.

91092 (b) For violation of Title 41, Chapter 22, Off-highway Vehicles, or Title 73, Chapter
91093 18, State Boating Act, the court shall allocate 85% to the Division of Parks and Recreation and
91094 15% to the general fund of the city or county government responsible for the justice court.

91095 (3) The surcharge established by Section [~~63-63a-1~~] 51-9-401 shall be paid to the state
91096 treasurer.

91097 (4) Fines, fees, court costs, and forfeitures collected by a municipal or county justice
91098 court for a violation of Section 72-7-404 or 72-7-406 regarding maximum weight limitations
91099 and overweight permits, minus court costs not to exceed the schedule adopted by the Judicial
91100 Council, shall be paid to the state treasurer and distributed to the class B and C road account.

91101 (5) Revenue deposited in the class B and C road account pursuant to Subsection (4) is
91102 supplemental to the money appropriated under Section 72-2-107 but shall be expended in the
91103 same manner as other class B and C road funds.

91104 (6) Until July 1, 2007, fines and forfeitures collected by the court for a violation of
91105 Subsection 41-1a-1303(2) related to registration of vehicles after establishing residency shall be
91106 remitted:

91107 (a) 50% to the state or local governmental entity which issued the citation for a
91108 violation to be used for law enforcement purposes; and

91109 (b) 50% in accordance with Subsection (1).

91110 Section 2225. Section **78-5-116.5** is amended to read:

91111 **78-5-116.5. Security surcharge -- Application -- Deposit in restricted accounts.**

91112 (1) In addition to any fine, penalty, forfeiture, or other surcharge, a security surcharge
91113 of \$32 shall be assessed on all convictions for offenses listed in the uniform bail schedule

91114 adopted by the Judicial Council and moving traffic violations.

91115 (2) The security surcharge shall be collected and distributed pro rata with any fine
91116 collected. A fine that would otherwise have been charged may not be reduced due to the
91117 imposition of the security surcharge.

91118 (3) The security surcharge shall be allocated as follows:

91119 (a) the assessing court shall retain 20% of the amount collected for deposit into the
91120 general fund of the governmental entity; and

91121 (b) 80% shall be remitted to the state treasurer to be distributed as follows:

91122 (i) 62.5% to the treasurer of the county in which the justice court which remitted the
91123 amount is located;

91124 (ii) 25% to the Court Security Account created in Section 63-63c-102; and

91125 (iii) 12.5% to the Justice Court Technology, Security, and Training Account created in
91126 Section 78-5-116.7.

91127 (4) The court shall remit money collected in accordance with Title 51, Chapter 7, State
91128 Money Management Act.

91129 Section 2226. Section **78-6-14** is amended to read:

91130 **78-6-14. Civil filing fees.**

91131 (1) Except as provided in this section, the fees for a small claims action in justice court
91132 shall be the same as provided in Section 78-7-35.

91133 (2) Fees collected in small claims actions filed in municipal justice court are remitted to
91134 the municipal treasurer. Fees collected in small claims actions filed in a county justice court are
91135 remitted to the county treasurer.

91136 (3) (a) Seven dollars and 50 cents shall be withheld from the fee for the small claims
91137 affidavit and allocated to the Judges' Retirement Trust Fund. Five dollars shall be withheld from
91138 the fee for a small claims counter affidavit and allocated to the Judges' Retirement Trust Fund.

91139 (b) Two dollars withheld from the civil filing fee in a court of record as provided in
91140 Subsection [~~63-63a-8~~] 51-9-408(4)(b) shall not apply to the fees collected for small claims
91141 actions in justice court.

91142 (4) The fee in the justice court for filing a notice of appeal for trial de novo in a court of
91143 record is \$10. The fee covers all services of the justice court on appeal but does not satisfy the
91144 trial de novo filing fee in the court of record.

91145 Section 2227. Section **78-7-35** is amended to read:

91146 **78-7-35. Civil fees of the courts of record -- Courts complex design.**

91147 (1) (a) The fee for filing any civil complaint or petition invoking the jurisdiction of a
91148 court of record not governed by another subsection is \$155.

91149 (b) The fee for filing a complaint or petition is:

91150 (i) \$50 if the claim for damages or amount in interpleader exclusive of court costs,
91151 interest, and attorney fees is \$2,000 or less;

91152 (ii) \$95 if the claim for damages or amount in interpleader exclusive of court costs,
91153 interest, and attorney fees is greater than \$2,000 and less than \$10,000;

91154 (iii) \$155 if the claim for damages or amount in interpleader is \$10,000 or more;

91155 (iv) \$155 if the petition is filed under Title 30, Chapter 3, Divorce, or Title 30, Chapter
91156 4, Separate Maintenance; and

91157 (v) \$25 for a motion for temporary separation order filed under Section 30-3-4.5.

91158 (c) The fee for filing a small claims affidavit is:

91159 (i) \$45 if the claim for damages or amount in interpleader exclusive of court costs,
91160 interest, and attorney fees is \$2,000 or less; and

91161 (ii) \$70 if the claim for damages or amount in interpleader exclusive of court costs,
91162 interest, and attorney fees is greater than \$2,000.

91163 (d) The fee for filing a counter claim, cross claim, complaint in intervention, third party
91164 complaint, or other claim for relief against an existing or joined party other than the original
91165 complaint or petition is:

91166 (i) \$45 if the claim for relief exclusive of court costs, interest, and attorney fees is
91167 \$2,000 or less;

91168 (ii) \$75 if the claim for relief exclusive of court costs, interest, and attorney fees is
91169 greater than \$2,000 and less than \$10,000;

91170 (iii) \$105 if the original petition is filed under Subsection (1)(a), the claim for relief is
91171 \$10,000 or more, or the party seeks relief other than monetary damages; and

91172 (iv) \$85 if the original petition is filed under Title 30, Chapter 3, Divorce, or Title 30,
91173 Chapter 4, Separate Maintenance.

91174 (e) The fee for filing a small claims counter affidavit is:

91175 (i) \$35 if the claim for relief exclusive of court costs, interest, and attorney fees is
91176 \$2,000 or less; and

91177 (ii) \$50 if the claim for relief exclusive of court costs, interest, and attorney fees is
91178 greater than \$2,000.

91179 (f) The fee for depositing funds under Section 57-1-29 when not associated with an
91180 action already before the court is determined under Subsection (1)(b) based on the amount
91181 deposited.

91182 (g) The fee for filing a petition is:

91183 (i) \$75 for trial de novo of an adjudication of the justice court or of the small claims
91184 department; and

91185 (ii) \$55 for an appeal of a municipal administrative determination in accordance with
91186 Section 10-3-703.7.

91187 (h) The fee for filing a notice of appeal, petition for appeal of an interlocutory order, or
91188 petition for writ of certiorari is \$205.

91189 (i) (i) Except for a petition filed under Subsection 77-18-10(2), the fee for filing a
91190 petition for expungement is \$65.

91191 (ii) There is no fee for a petition filed under Subsection 77-18-10(2).

91192 (j) (i) Fifteen dollars of the fees established by Subsections (1)(a) through (i) shall be
91193 allocated to and between the Judges' Contributory Retirement Trust Fund and the Judges'
91194 Noncontributory Retirement Trust Fund, as provided in Title 49, Chapter 17, Judges'
91195 Contributory Retirement Act, and Title 49, Chapter 18, Judges' Noncontributory Retirement
91196 Act.

91197 (ii) Four dollars of the fees established by Subsections (1)(a) through (i) shall be

91198 allocated by the state treasurer to be deposited in the restricted account, Children's Legal
91199 Defense Account, as provided in Section [~~63-63a-8~~] 51-9-408.

91200 (iii) Three dollars of the fees established under Subsections (1)(a) through (e), (1)(g),
91201 and (1)(r) shall be allocated to and deposited with the Dispute Resolution Fund as provided in
91202 Section 78-31b-9.

91203 (iv) Fifteen dollars of the fees established by Subsections (1)(a), (1)(b)(iii) and (iv),
91204 (1)(d)(iii) and (iv), (1)(g)(ii), (1)(h), and (1)(i) shall be allocated by the state treasurer to be
91205 deposited in the restricted account, Court Security Account, as provided in Section 63-63c-102.

91206 (v) Five dollars of the fees established by Subsections (1)(b)(i) and (ii), (1)(d)(ii) and
91207 (1)(g)(i) shall be allocated by the state treasurer to be deposited in the restricted account, Court
91208 Security Account, as provided in Section 63-63c-102.

91209 (k) The fee for filing a judgment, order, or decree of a court of another state or of the
91210 United States is \$25.

91211 (l) The fee for filing probate or child custody documents from another state is \$25.

91212 (m) (i) The fee for filing an abstract or transcript of judgment, order, or decree of the
91213 Utah State Tax Commission is \$30.

91214 (ii) The fee for filing an abstract or transcript of judgment of a court of law of this state
91215 or a judgment, order, or decree of an administrative agency, commission, board, council, or
91216 hearing officer of this state or of its political subdivisions other than the Utah State Tax
91217 Commission, is \$40.

91218 (n) The fee for filing a judgment by confession without action under Section 78-22-3 is
91219 \$25.

91220 (o) The fee for filing an award of arbitration for confirmation, modification, or vacation
91221 under Title 78, Chapter 31a, Utah Uniform Arbitration Act, that is not part of an action before
91222 the court is \$25.

91223 (p) The fee for filing a petition or counter-petition to modify a decree of divorce is \$40.

91224 (q) The fee for filing any accounting required by law is:

91225 (i) \$10 for an estate valued at \$50,000 or less;

- 91226 (ii) \$20 for an estate valued at \$75,000 or less but more than \$50,000;
- 91227 (iii) \$40 for an estate valued at \$112,000 or less but more than \$75,000;
- 91228 (iv) \$80 for an estate valued at \$168,000 or less but more than \$112,000; and
- 91229 (v) \$150 for an estate valued at more than \$168,000.
- 91230 (r) The fee for filing a demand for a civil jury is \$75.
- 91231 (s) The fee for filing a notice of deposition in this state concerning an action pending in
- 91232 another state under Utah Rule of Civil Procedure 26 is \$25.
- 91233 (t) The fee for filing documents that require judicial approval but are not part of an
- 91234 action before the court is \$25.
- 91235 (u) The fee for a petition to open a sealed record is \$25.
- 91236 (v) The fee for a writ of replevin, attachment, execution, or garnishment is \$35 in
- 91237 addition to any fee for a complaint or petition.
- 91238 (w) (i) The fee for a petition for authorization for a minor to marry required by Section
- 91239 30-1-9 is \$5.
- 91240 (ii) The fee for a petition for emancipation of a minor provided in Title 78, Chapter 3a,
- 91241 Part 10, Emancipation, is \$50.
- 91242 (x) The fee for a certificate issued under Section 26-2-25 is \$2.
- 91243 (y) The fee for a certified copy of a document is \$4 per document plus 50 cents per
- 91244 page.
- 91245 (z) The fee for an exemplified copy of a document is \$6 per document plus 50 cents per
- 91246 page.
- 91247 (aa) The Judicial Council shall by rule establish a schedule of fees for copies of
- 91248 documents and forms and for the search and retrieval of records under [~~Title 63, Chapter 2~~
- 91249 Title 63G, Chapter 2, Government Records Access and Management Act. Fees under this
- 91250 Subsection (1)(aa) shall be credited to the court as a reimbursement of expenditures.
- 91251 (bb) There is no fee for services or the filing of documents not listed in this section or
- 91252 otherwise provided by law.
- 91253 (cc) Except as provided in this section, all fees collected under this section are paid to

91254 the General Fund. Except as provided in this section, all fees shall be paid at the time the clerk
91255 accepts the pleading for filing or performs the requested service.

91256 (dd) The filing fees under this section may not be charged to the state, its agencies, or
91257 political subdivisions filing or defending any action. In judgments awarded in favor of the state,
91258 its agencies, or political subdivisions, except the Office of Recovery Services, the court shall
91259 order the filing fees and collection costs to be paid by the judgment debtor. The sums collected
91260 under this Subsection (1)(dd) shall be applied to the fees after credit to the judgment, order,
91261 fine, tax, lien, or other penalty and costs permitted by law.

91262 (2) (a) (i) From March 17, 1994 until June 30, 1998, the administrator of the courts
91263 shall transfer all revenues representing the difference between the fees in effect after May 2,
91264 1994, and the fees in effect before February 1, 1994, as dedicated credits to the Division of
91265 Facilities Construction and Management Capital Projects Fund.

91266 (ii) (A) Except as provided in Subsection (2)(a)(ii)(B), the Division of Facilities
91267 Construction and Management shall use up to \$3,750,000 of the revenue deposited in the
91268 Capital Projects Fund under this Subsection (2)(a) to design and take other actions necessary to
91269 initiate the development of a courts complex in Salt Lake City.

91270 (B) If the Legislature approves funding for construction of a courts complex in Salt
91271 Lake City in the 1995 Annual General Session, the Division of Facilities Construction and
91272 Management shall use the revenue deposited in the Capital Projects Fund under this Subsection
91273 (2)(a)(ii) to construct a courts complex in Salt Lake City.

91274 (C) After the courts complex is completed and all bills connected with its construction
91275 have been paid, the Division of Facilities Construction and Management shall use any monies
91276 remaining in the Capital Projects Fund under this Subsection (2)(a)(ii) to fund the Vernal
91277 District Court building.

91278 (iii) The Division of Facilities Construction and Management may enter into agreements
91279 and make expenditures related to this project before the receipt of revenues provided for under
91280 this Subsection (2)(a)(iii).

91281 (iv) The Division of Facilities Construction and Management shall:

91282 (A) make those expenditures from unexpended and unencumbered building funds
91283 already appropriated to the Capital Projects Fund; and

91284 (B) reimburse the Capital Projects Fund upon receipt of the revenues provided for
91285 under this Subsection (2).

91286 (b) After June 30, 1998, the administrator of the courts shall ensure that all revenues
91287 representing the difference between the fees in effect after May 2, 1994, and the fees in effect
91288 before February 1, 1994, are transferred to the Division of Finance for deposit in the restricted
91289 account.

91290 (c) The Division of Finance shall deposit all revenues received from the court
91291 administrator into the restricted account created by this section.

91292 (d) (i) From May 1, 1995 until June 30, 1998, the administrator of the courts shall
91293 transfer \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor
91294 Vehicles, in a court of record to the Division of Facilities Construction and Management Capital
91295 Projects Fund. The division of money pursuant to Section 78-3-14.5 shall be calculated on the
91296 balance of the fine or bail forfeiture paid.

91297 (ii) After June 30, 1998, the administrator of the courts or a municipality shall transfer
91298 \$7 of the amount of a fine or bail forfeiture paid for a violation of Title 41, Motor Vehicles, in a
91299 court of record to the Division of Finance for deposit in the restricted account created by this
91300 section. The division of money pursuant to Section 78-3-14.5 shall be calculated on the balance
91301 of the fine or bail forfeiture paid.

91302 (3) (a) There is created within the General Fund a restricted account known as the State
91303 Courts Complex Account.

91304 (b) The Legislature may appropriate monies from the restricted account to the
91305 administrator of the courts for the following purposes only:

91306 (i) to repay costs associated with the construction of the court complex that were
91307 funded from sources other than revenues provided for under this Subsection (3)(b)(i); and

91308 (ii) to cover operations and maintenance costs on the court complex.

91309 Section 2228. Section **78-8-107** is amended to read:

91310 **78-8-107. Authority of Judicial Conduct Commission -- Disclosure of criminal**
91311 **misconduct or information -- Procedure for reprimand, censure, suspension, removal, or**
91312 **involuntary retirement -- Certain orders made public.**

91313 (1) (a) The commission shall receive and investigate any complaint against a judge.

91314 (b) (i) If the commission receives a complaint that alleges conduct that may be a
91315 misdemeanor or felony under state or federal law, it shall, unless the allegation is plainly
91316 frivolous, immediately refer the allegation of criminal misconduct and any information relevant
91317 to the potential criminal violation to the local prosecuting attorney having jurisdiction to
91318 investigate and prosecute the crime.

91319 (ii) If the local prosecuting attorney receiving the allegation of criminal misconduct of a
91320 judge practices before that judge on a regular basis, or has a conflict of interest in investigating
91321 the crime, the local prosecuting attorney shall refer this allegation of criminal misconduct to
91322 another local or state prosecutor who would not have that same disability or conflict.

91323 (iii) The commission may concurrently proceed with its investigation of the complaint
91324 without waiting for the resolution of the criminal investigation by the prosecuting attorney.

91325 (2) During the course of any investigation, the commission:

91326 (a) shall refer any information relating to the criminal conduct alleged and any evidence
91327 which relates to the allegation to which the judge has been accused, unless plainly frivolous, to
91328 the local prosecuting attorney as provided in Subsection (1)(b); and

91329 (b) may order a hearing to be held concerning the reprimand, censure, suspension,
91330 removal, or involuntary retirement of a judge.

91331 (3) The commission shall provide the judge with all information necessary to prepare an
91332 adequate response or defense, which may include the identity of the complainant.

91333 (4) (a) A hearing may be conducted before a quorum of the commission.

91334 (b) Any finding or order shall be made upon a majority vote of the quorum.

91335 (5) Alternatively, the commission may appoint three special masters, who are judges of
91336 courts of record, to hear and take evidence in the matter and to report to the commission.

91337 (6) (a) After the hearing or after considering the record and report of the masters, if the

91338 commission finds by a preponderance of the evidence that misconduct occurred, it shall order
91339 the reprimand, censure, suspension, removal, or involuntary retirement of the judge.

91340 (b) When a commission order is sent to the Supreme Court, it shall also be:

91341 (i) publicly disclosed; and

91342 (ii) sent to the entity that appointed the judge.

91343 (7) When the commission issues any order, including a stipulated order, that is sent to
91344 the Supreme Court, the record shall include:

91345 (a) the original complaint and any other information regarding violations, or potential
91346 violations, of the Code of Judicial Conduct;

91347 (b) the charges;

91348 (c) all correspondence and other documents which passed between the commission and
91349 the judge;

91350 (d) all letters which may explain the charges;

91351 (e) all affidavits, subpoenas, and testimony of witnesses;

91352 (f) the commission's findings of fact and conclusions of law;

91353 (g) a transcript of any proceedings, including hearings on motions;

91354 (h) a copy of each exhibit admitted into evidence;

91355 (i) a summary of all the complaints dismissed by the commission against the judge
91356 which contained allegations or information similar in nature to the misconduct under review by
91357 the Supreme Court;

91358 (j) a summary of all the orders implemented, rejected, or modified by the Supreme
91359 Court against the judge; and

91360 (k) all information in the commission's files on any informal resolution, including any
91361 letter of admonition, comment, or caution, that the commission issued against the judge prior to
91362 May 1, 2000.

91363 (8) (a) Before the implementation, rejection, or modification of any commission order
91364 the Supreme Court shall:

91365 (i) review the commission's proceedings as to both law and fact and may permit the

91366 introduction of additional evidence; and

91367 (ii) consider the number and nature of previous orders issued by the Supreme Court and
91368 may increase the severity of the order based on a pattern or practice of misconduct or for any
91369 other reason that the Supreme Court finds just and proper.

91370 (b) In recommending any order, including stipulated orders, the commission may not
91371 place, or attempt to place, any condition or limitation upon the Supreme Court's constitutional
91372 power to:

91373 (i) review the commission's proceedings as to both law and fact; or

91374 (ii) implement, reject, or modify a commission order.

91375 (c) After briefs have been submitted and any oral argument made, the Supreme Court
91376 shall, within 90 days, issue its order implementing, rejecting, or modifying the commission's
91377 order.

91378 (9) (a) Upon an order for involuntary retirement, the judge shall retire with the same
91379 rights and privileges as if the judge retired pursuant to statute.

91380 (b) Upon an order for removal, the judge shall be removed from office and his salary or
91381 compensation ceases from the date of the order.

91382 (c) Upon an order for suspension from office, the judge may not perform any judicial
91383 functions and may not receive a salary for the period of suspension.

91384 (10) (a) The transmission, production, or disclosure of any complaints, papers, or
91385 testimony in the course of proceedings before the commission, the masters appointed under
91386 Subsection (5), or the Supreme Court may not be introduced in any civil action.

91387 (b) The transmission, production, or disclosure of any complaints, papers, or testimony
91388 in the course of proceedings before the commission or the masters appointed under Subsection
91389 (5) may be introduced in any criminal action, consistent with the Utah Rules of Evidence. This
91390 information shall be shared with the prosecutor conducting a criminal investigation or
91391 prosecution of a judge as provided in Subsections (1) and (2).

91392 (c) Complaints, papers, testimony, or the record of the commission's confidential
91393 hearing may not be disclosed by the commission, masters, or any court until the Supreme Court

91394 has entered its final order in accordance with this section, except:

91395 (i) upon order of the Supreme Court;

91396 (ii) upon the request of the judge who is the subject of the complaint;

91397 (iii) as provided in Subsection (10)(d);

91398 (iv) to aid in a criminal investigation or prosecution as provided in Subsections (1) and

91399 (2); or

91400 (v) this information is subject to audit by the Office of Legislative Auditor General, and

91401 any records released to the Office of Legislative Auditor General shall be maintained as

91402 confidential, except:

91403 (A) for information that has already been made public; and

91404 (B) the final written and oral audit report of the Legislative Auditor General may

91405 present information about the commission as long as it contains no specific information that

91406 would easily identify a judge, witness, or complainant.

91407 (d) Upon the dismissal of a complaint or allegation against a judge, the dismissal shall

91408 be disclosed without consent of the judge to the person who filed the complaint.

91409 (11) The commission shall make rules in accordance with [~~Title 63, Chapter 46a~~] Title

91410 63G, Chapter 3, Utah Administrative Rulemaking Act, outlining its procedures and the

91411 appointment of masters.

91412 (12) A judge who is a member of the commission or the Supreme Court may not

91413 participate in any proceedings involving the judge's own removal or retirement.

91414 (13) Retirement for involuntary retirement as provided in this chapter shall be processed

91415 through the Utah State Retirement Office, and the judge retiring shall meet the requirements for

91416 retirement as specified in this chapter.

91417 Section 2229. Section **78-12-29** is amended to read:

91418 **78-12-29. Within one year.**

91419 An action may be brought within one year:

91420 (1) for liability created by the statutes of a foreign state;

91421 (2) upon a statute for a penalty or forfeiture where the action is given to an individual,

91422 or to an individual and the state, except when the statute imposing it prescribes a different
91423 limitation;

91424 (3) upon a statute, or upon an undertaking in a criminal action, for a forfeiture or
91425 penalty to the state;

91426 (4) for libel, slander, false imprisonment, or seduction;

91427 (5) against a sheriff or other officer for the escape of a prisoner arrested or imprisoned
91428 upon either civil or criminal process;

91429 (6) against a municipal corporation for damages or injuries to property caused by a mob
91430 or riot;

91431 (7) on a claim for relief or a cause of action under the following sections of Title 25,
91432 Chapter 6, Uniform Fraudulent Transfer Act:

91433 (a) Subsection 25-6-5(1)(a), which in specific situations limits the time for action to
91434 four years, under Section 25-6-10; or

91435 (b) Subsection 25-6-6(2);

91436 (8) except as otherwise expressly provided by statute, against a county legislative body
91437 or a county executive to challenge a decision of the county legislative body or county executive,
91438 respectively; or

91439 (9) on a claim for relief or a cause of action under [~~Title 63, Chapter 90b~~] Title 63L,
91440 Chapter 5, Utah Religious Land Use Act.

91441 Section 2230. Section **78-14-12** is amended to read:

91442 **78-14-12. Division to provide panel -- Exemption -- Procedures -- Statute of**
91443 **limitations tolled -- Composition of panel -- Expenses -- Division authorized to set license**
91444 **fees.**

91445 (1) (a) The division shall provide a hearing panel in alleged medical liability cases
91446 against health care providers as defined in Section 78-14-3, except dentists.

91447 (b) (i) The division shall establish procedures for prelitigation consideration of medical
91448 liability claims for damages arising out of the provision of or alleged failure to provide health
91449 care.

91450 (ii) The division may establish rules necessary to administer the process and procedures
91451 related to prelitigation hearings and the conduct of prelitigation hearings in accordance with
91452 Sections 78-14-12 through 78-14-16.

91453 (c) The proceedings are informal, nonbinding, and are not subject to [~~Title 63, Chapter~~
91454 ~~46b~~] Title 63G, Chapter 4, Administrative Procedures Act, but are compulsory as a condition
91455 precedent to commencing litigation.

91456 (d) Proceedings conducted under authority of this section are confidential, privileged,
91457 and immune from civil process.

91458 (2) (a) The party initiating a medical liability action shall file a request for prelitigation
91459 panel review with the division within 60 days after the service of a statutory notice of intent to
91460 commence action under Section 78-14-8.

91461 (b) The request shall include a copy of the notice of intent to commence action. The
91462 request shall be mailed to all health care providers named in the notice and request.

91463 (3) (a) The filing of a request for prelitigation panel review under this section tolls the
91464 applicable statute of limitations until the earlier of 60 days following the division's issuance of an
91465 opinion by the prelitigation panel, or 60 days following the termination of jurisdiction by the
91466 division as provided in this subsection. The division shall send any opinion issued by the panel
91467 to all parties by regular mail.

91468 (b) (i) The division shall complete a prelitigation hearing under this section within 180
91469 days after the filing of the request for prelitigation panel review, or within any longer period as
91470 agreed upon in writing by all parties to the review.

91471 (ii) If the prelitigation hearing has not been completed within the time limits established
91472 in Subsection (3)(b)(i), the division has no further jurisdiction over the matter subject to review
91473 and the claimant is considered to have complied with all conditions precedent required under
91474 this section prior to the commencement of litigation.

91475 (c) (i) The claimant and any respondent may agree by written stipulation that no useful
91476 purpose would be served by convening a prelitigation panel under this section.

91477 (ii) When the stipulation is filed with the division, the division shall within ten days after

91478 receipt enter an order divesting itself of jurisdiction over the claim, as it concerns the stipulating
91479 respondent, and stating that the claimant has complied with all conditions precedent to the
91480 commencement of litigation regarding the claim.

91481 (4) The division shall provide for and appoint an appropriate panel or panels to hear
91482 complaints of medical liability and damages, made by or on behalf of any patient who is an
91483 alleged victim of medical liability. The panels are composed of:

91484 (a) one member who is a resident lawyer currently licensed and in good standing to
91485 practice law in this state and who shall serve as chairman of the panel, who is appointed by the
91486 division from among qualified individuals who have registered with the division indicating a
91487 willingness to serve as panel members, and a willingness to comply with the rules of
91488 professional conduct governing lawyers in the state of Utah, and who has completed division
91489 training regarding conduct of panel hearings;

91490 (b) (i) one member who is a licensed health care provider listed under Section 78-14-3,
91491 who is practicing and knowledgeable in the same specialty as the proposed defendant, and who
91492 is appointed by the division in accordance with Subsection (5); or

91493 (ii) in claims against only hospitals or their employees, one member who is an individual
91494 currently serving in a hospital administration position directly related to hospital operations or
91495 conduct that includes responsibility for the area of practice that is the subject of the liability
91496 claim, and who is appointed by the division; and

91497 (c) a lay panelist who is not a lawyer, doctor, hospital employee, or other health care
91498 provider, and who is a responsible citizen of the state, selected and appointed by the division
91499 from among individuals who have completed division training with respect to panel hearings.

91500 (5) (a) Each person listed as a health care provider in Section 78-14-3 and practicing
91501 under a license issued by the state, is obligated as a condition of holding that license to
91502 participate as a member of a medical liability prelitigation panel at reasonable times, places, and
91503 intervals, upon issuance, with advance notice given in a reasonable time frame, by the division
91504 of an Order to Participate as a Medical Liability Prelitigation Panel Member.

91505 (b) A licensee may be excused from appearance and participation as a panel member

91506 upon the division finding participation by the licensee will create an unreasonable burden or
91507 hardship upon the licensee.

91508 (c) A licensee whom the division finds failed to appear and participate as a panel
91509 member when so ordered, without adequate explanation or justification and without being
91510 excused for cause by the division, may be assessed an administrative fine not to exceed \$5,000.

91511 (d) A licensee whom the division finds intentionally or repeatedly failed to appear and
91512 participate as a panel member when so ordered, without adequate explanation or justification
91513 and without being excused for cause by the division, may be assessed an administrative fine not
91514 to exceed \$5,000, and is guilty of unprofessional conduct.

91515 (e) All fines collected under Subsections (5)(c) and (d) shall be deposited in the
91516 Physicians Education Fund created in Section 58-67a-1.

91517 (6) Each person selected as a panel member shall certify, under oath, that he has no bias
91518 or conflict of interest with respect to any matter under consideration.

91519 (7) Members of the prelitigation hearing panels shall receive per diem compensation and
91520 travel expenses for attending panel hearings as established by rules of the division.

91521 (8) (a) In addition to the actual cost of administering the licensure of health care
91522 providers, the division may set license fees of health care providers within the limits established
91523 by law equal to their proportionate costs of administering prelitigation panels.

91524 (b) The claimant bears none of the costs of administering the prelitigation panel except
91525 under Section 78-14-16.

91526 Section 2231. Section **78-17-3** is amended to read:

91527 **78-17-3. Liability imposed and limitations -- Defenses -- Limitations on damages.**

91528 (1) Except as provided in this section, any person who owns, holds under license,
91529 transports, ships, stores, or disposes of nuclear material is liable, without regard to the conduct
91530 of any other person, for harm from nuclear incidents arising in connection with or resulting from
91531 such ownership, transportation, shipping, storage, or disposal.

91532 (2) Except as provided in this section, any person who owns, designs, constructs,
91533 operates, or maintains facilities, structures, vehicles, or equipment used for handling,

91534 transportation, shipment, storage, or disposal of nuclear material is liable, without regard to the
91535 conduct of any other person, for harm from nuclear incidents arising in connection with or
91536 resulting from such ownership, design, construction, operation, and maintenance.

91537 (3) Liability established by this chapter shall only be imposed if a court of competent
91538 jurisdiction finds that:

91539 (a) the nuclear incident which is the basis for the suit is covered by existing financial
91540 protection undertaken pursuant to 42 U.S.C. Sec. 2210; and

91541 (b) a person who is liable under this chapter is a person indemnified as defined in 42
91542 U.S.C. Sec. 2014.

91543 (4) Immunity of the state, its political subdivisions, or the agencies of either from suit
91544 are only waived with respect to a suit arising from a nuclear incident:

91545 (a) in accordance with [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental
91546 Immunity Act of Utah; or

91547 (b) when brought by a person suffering harm.

91548 (5) The conduct of the person suffering harm is not a defense to liability, except that
91549 this section does not preclude any defense based on:

91550 (a) the claimant's knowing failure to mitigate damages related to any injury or damage
91551 to the claimant or the claimant's property; or

91552 (b) an incident involving nuclear material that is knowingly and wrongfully caused by
91553 the claimant.

91554 (6) No person may collect punitive or exemplary damages under this chapter.

91555 Section 2232. Section **78-19-1** is amended to read:

91556 **78-19-1. Definitions.**

91557 As used in this chapter:

91558 (1) "Damage or injury" includes physical, nonphysical, economic, and noneconomic
91559 damage.

91560 (2) "Financially secure source of recovery" means that, at the time of the incident, a
91561 nonprofit organization:

91562 (a) has an insurance policy in effect that covers the activities of the volunteer and has an
91563 insurance limit of not less than the limits established under the Governmental Immunity Act of
91564 Utah in Section [~~63-30d-604~~] 63G-7-604; or

91565 (b) has established a qualified trust with a value not less than the combined limits for
91566 property damage and single occurrence liability established under the Governmental Immunity
91567 Act of Utah in Section [~~63-30d-604~~] 63G-7-604.

91568 (3) "Nonprofit organization" means any organization, other than a public entity,
91569 described in Section 501 (c) of the Internal Revenue Code of 1986 and exempt from tax under
91570 Section 501 (a) of that code.

91571 (4) "Public entity" has the same meaning as defined in Section [~~63-30b-1~~] 63G-8-102.

91572 (5) "Qualified trust" means a trust held for the purpose of compensating claims for
91573 damages or injury in a trust company licensed to do business in this state under the provisions of
91574 Title 7, Chapter 5, Trust Business.

91575 (6) "Reimbursements" means, with respect to each nonprofit organization:

91576 (a) compensation or honoraria totaling less than \$300 per calendar year; and

91577 (b) payment of expenses actually incurred.

91578 (7) (a) "Volunteer" means an individual performing services for a nonprofit organization
91579 who does not receive anything of value from that nonprofit organization for those services
91580 except reimbursements.

91581 (b) "Volunteer" includes a volunteer serving as a director, officer, trustee, or direct
91582 service volunteer.

91583 (c) "Volunteer" does not include an individual performing services for a public entity to
91584 the extent the services are within the scope of [~~Title 63, Chapter 30b~~] Title 63G, Chapter 8,
91585 Immunity for Persons Performing Voluntary Services or Title 67, Chapter 20, Volunteer
91586 Government Workers Act.

91587 Section 2233. Section **78-27-37** is amended to read:

91588 **78-27-37. Definitions.**

91589 As used in Section 78-27-37 through Section 78-27-43:

91590 (1) "Defendant" means a person, other than a person immune from suit as defined in
91591 Subsection (3), who is claimed to be liable because of fault to any person seeking recovery.

91592 (2) "Fault" means any actionable breach of legal duty, act, or omission proximately
91593 causing or contributing to injury or damages sustained by a person seeking recovery, including
91594 negligence in all its degrees, comparative negligence, assumption of risk, strict liability, breach
91595 of express or implied warranty of a product, products liability, and misuse, modification, or
91596 abuse of a product.

91597 (3) "Person immune from suit" means:

91598 (a) an employer immune from suit under Title 34A, Chapter 2, Workers' Compensation
91599 Act, or Chapter 3, Utah Occupational Disease Act; and

91600 (b) a governmental entity or governmental employee immune from suit pursuant to
91601 [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah.

91602 (4) "Person seeking recovery" means any person seeking damages or reimbursement on
91603 its own behalf, or on behalf of another for whom it is authorized to act as legal representative.

91604 Section 2234. Section **78-27-43** is amended to read:

91605 **78-27-43. Effect on immunity, exclusive remedy, indemnity, contribution.**

91606 Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any common law or
91607 statutory immunity from liability, including, but not limited to, governmental immunity as
91608 provided in [~~Title 63, Chapter 30d~~] Title 63G, Chapter 7, Governmental Immunity Act of Utah,
91609 and the exclusive remedy provisions of Title 34A, Chapter 2, Workers' Compensation Act.

91610 Nothing in Sections 78-27-37 through 78-27-42 affects or impairs any right to indemnity or
91611 contribution arising from statute, contract, or agreement.

91612 Section 2235. Section **78-27a-6** is amended to read:

91613 **78-27a-6. Payment of expenses awarded -- Statement required in agency's**
91614 **budget.**

91615 Expenses awarded under this act shall be paid from funds in the regular operating
91616 budget of the state entity. If sufficient funds are not available in the budget of the entity, the
91617 expenses shall be considered a claim governed by the provisions of [~~Title 63, Chapter 6~~] Title

91618 63G, Chapter 9, Board of Examiners Act. Every state entity against which litigation expenses
91619 have been awarded under this act shall, at the time of submission of its proposed budget, submit
91620 a report to the governmental body which appropriates its funds in which the amount of expenses
91621 awarded and paid under this act during the fiscal year is stated.

91622 Section 2236. Section **78-31b-8** is amended to read:

91623 **78-31b-8. Confidentiality.**

91624 (1) ADR proceedings shall be conducted in a manner that encourages informal and
91625 confidential exchange among the persons present to facilitate resolution of the dispute or a part
91626 of the dispute. ADR proceedings shall be closed unless the parties agree that the proceedings
91627 be open. ADR proceedings shall not be recorded.

91628 (2) No evidence concerning the fact, conduct, or result of an ADR proceeding may be
91629 subject to discovery or admissible at any subsequent trial of the same case or same issues
91630 between the same parties.

91631 (3) No party to the case may introduce as evidence information obtained during an
91632 ADR proceeding unless the information was discovered from a source independent of the ADR
91633 proceeding.

91634 (4) Unless all parties and the neutral agree, no person attending an ADR proceeding,
91635 including the ADR provider or ADR organization, may disclose or be required to disclose any
91636 information obtained in the course of an ADR proceeding, including any memoranda, notes,
91637 records, or work product.

91638 (5) Except as provided, an ADR provider or ADR organization may not disclose or
91639 discuss any information about any ADR proceeding to anyone outside the proceeding, including
91640 the judge or judges to whom the case may be assigned. An ADR provider or an ADR
91641 organization may communicate information about an ADR proceeding with the director for the
91642 purposes of training, program management, or program evaluation and when consulting with a
91643 peer. In making those communications, the ADR provider or ADR organization shall render
91644 anonymous all identifying information.

91645 (6) Nothing in this section limits or affects the responsibility to report child abuse or

91646 neglect in accordance with Section 62A-4a-403.

91647 (7) No records of ADR proceedings under this act or under Title 78, Chapter 31a, Utah
91648 Uniform Arbitration Act, shall be subject to [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
91649 Government Records Access and Management Act, except settlement agreements filed with the
91650 court after conclusion of an ADR proceeding or awards filed with the court after the period for
91651 filing a demand for trial de novo has expired.

91652 Section 2237. Section **78-31c-106** is amended to read:

91653 **78-31c-106. Exceptions to privilege.**

91654 (1) There is no privilege under Section 78-31c-104 for a mediation communication that
91655 is:

91656 (a) in an agreement evidenced by a record signed by all parties to the agreement;

91657 (b) available to the public under [~~Title 63, Chapter 2~~] Title 63G, Chapter 2,
91658 Government Records Access and Management Act, or made during a mediation session which
91659 is open, or is required by law to be open, to the public;

91660 (c) a threat or statement of a plan to inflict bodily injury or commit a crime of violence;

91661 (d) intentionally used to plan a crime, attempt to commit or commit a crime, or to
91662 conceal an ongoing crime or ongoing criminal activity;

91663 (e) sought or offered to prove or disprove a claim or complaint of professional
91664 misconduct or malpractice filed against a mediator;

91665 (f) except as otherwise provided in Subsection (3), sought or offered to prove or
91666 disprove a claim or complaint of professional misconduct or malpractice filed against a
91667 mediation party, nonparty participant, or representative of a party based on conduct occurring
91668 during a mediation; or

91669 (g) subject to the reporting requirements in Section 62A-3-305 or 62A-4a-403.

91670 (2) There is no privilege under Section 78-31c-104 if a court, administrative agency, or
91671 arbitrator finds, after a hearing in camera, that the party seeking discovery or the proponent of
91672 the evidence has shown that:

91673 (a) the evidence is not otherwise available;

91674 (b) there is a need for the evidence that substantially outweighs the interest in protecting
91675 confidentiality; and

91676 (c) the mediation communication is sought or offered in:

91677 (i) a court proceeding involving a felony or misdemeanor; or

91678 (ii) except as otherwise provided in Subsection (3), a proceeding to prove a claim to
91679 rescind or reform or a defense to avoid liability on a contract arising out of the mediation.

91680 (3) A mediator may not be compelled to provide evidence of a mediation
91681 communication referred to in Subsection (1)(f) or (2)(c)(ii).

91682 (4) If a mediation communication is not privileged under Subsection (1) or (2), only the
91683 portion of the communication necessary for the application of the exception from nondisclosure
91684 may be admitted. Admission of evidence under Subsection (1) or (2) does not render the
91685 evidence, or any other mediation communication, discoverable or admissible for any other
91686 purpose.

91687 Section 2238. Section **78-31c-108** is amended to read:

91688 **78-31c-108. Confidentiality.**

91689 Unless subject to Title 52, Chapter 4, Open and Public Meetings Act, and [~~Title 63,~~
91690 ~~Chapter 2~~] Title 63G, Chapter 2, Government Records Access and Management Act, mediation
91691 communications are confidential to the extent agreed by the parties or provided by other law or
91692 rule of this state.

91693 Section 2239. Section **78-32-17** is amended to read:

91694 **78-32-17. Noncompliance with child support order.**

91695 (1) When a court of competent jurisdiction, or the Office of Recovery Services pursuant
91696 to an action under [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative Procedures Act,
91697 makes an order requiring a parent to furnish support or necessary food, clothing, shelter,
91698 medical care, or other remedial care for his child, and the parent fails to do so, proof of
91699 noncompliance shall be prima facie evidence of contempt of court.

91700 (2) Proof of noncompliance may be demonstrated by showing that:

91701 (a) the order was made, and filed with the district court; and

- 91702 (b) the parent knew of the order because:
- 91703 (i) the order was mailed to the parent at his last-known address as shown on the court
- 91704 records;
- 91705 (ii) the parent was present in court at the time the order was pronounced;
- 91706 (iii) the parent entered into a written stipulation and the parent or counsel for the parent
- 91707 was sent a copy of the order;
- 91708 (iv) counsel was present in court and entered into a stipulation which was accepted and
- 91709 the order based upon the stipulation was then sent to counsel for the parent; or
- 91710 (v) the parent was properly served and failed to answer.
- 91711 (3) Upon establishment of a prima facie case of contempt under Subsection (2), the
- 91712 obligor under the child support order has the burden of proving inability to comply with the
- 91713 child support order.
- 91714 (4) A court may, in addition to other available sanctions, withhold, suspend, or restrict
- 91715 the use of driver's licenses, professional and occupational licenses, and recreational licenses and
- 91716 impose conditions for reinstatement upon a finding that:
- 91717 (a) an obligor has:
- 91718 (i) made no payment for 60 days on a current obligation of support as set forth in an
- 91719 administrative or court order and, thereafter, has failed to make a good faith effort under the
- 91720 circumstances to make payment on the support obligation in accordance with the order; or
- 91721 (ii) made no payment for 60 days on an arrearage obligation of support as set forth in a
- 91722 payment schedule, written agreement with the Office of Recovery Services, or an administrative
- 91723 or judicial order and, thereafter, has failed to make a good faith effort under the circumstances
- 91724 to make payment on the arrearage obligation in accordance with the payment schedule,
- 91725 agreement, or order; and
- 91726 (iii) not obtained a judicial order staying enforcement of the support or arrearage
- 91727 obligation for which the obligor would be otherwise delinquent;
- 91728 (b) a custodial parent has:
- 91729 (i) violated a parent-time order by denying contact for 60 days between a noncustodial

91730 parent and a child and, thereafter, has failed to make a good faith effort under the circumstances
91731 to comply with a parent-time order; and

91732 (ii) not obtained a judicial order staying enforcement of the parent-time order; or

91733 (c) an obligor or obligee, after receiving appropriate notice, has failed to comply with a
91734 subpoena or order relating to a paternity or child support proceeding.

91735 Section 2240. Section **78-35a-202** is amended to read:

91736 **78-35a-202. Appointment and payment of counsel in death penalty cases.**

91737 (1) A person who has been sentenced to death and whose conviction and sentence has
91738 been affirmed on appeal shall be advised in open court, on the record, in a hearing scheduled no
91739 less than 30 days prior to the signing of the death warrant, of the provisions of this chapter
91740 allowing challenges to the conviction and death sentence and the appointment of counsel for
91741 indigent defendants.

91742 (2) (a) If a defendant requests the court to appoint counsel, the court shall determine
91743 whether the defendant is indigent and make findings on the record regarding the defendant's
91744 indigency. If the court finds that the defendant is indigent, it shall promptly appoint counsel
91745 who is qualified to represent defendants in death penalty cases as required by Rule 8 of the Utah
91746 Rules of Criminal Procedure.

91747 (b) A defendant who wishes to reject the offer of counsel shall be advised on the record
91748 by the court of the consequences of the rejection before the court may accept the rejection.

91749 (c) Costs of counsel and other reasonable litigation expenses incurred in providing the
91750 representation provided for in this section shall be paid from state funds by the Division of
91751 Finance according to rules established pursuant to [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3,
91752 Utah Administrative Rulemaking Act.

91753 Section 2241. Section **78-45-7.3** is amended to read:

91754 **78-45-7.3. Procedure -- Documentation -- Stipulation.**

91755 (1) In any matter in which child support is ordered, the moving party shall submit:

91756 (a) a completed child support worksheet;

91757 (b) the financial verification required by Subsection 78-45-7.5(5);

91758 (c) a written statement indicating whether or not the amount of child support requested
91759 is consistent with the guidelines; and

91760 (d) the information required under Subsection (3).

91761 (2) (a) If the documentation of income required under Subsection (1) is not available, a
91762 verified representation of the other party's income by the moving party, based on the best
91763 evidence available, may be submitted.

91764 (b) The evidence shall be in affidavit form and may only be offered after a copy has
91765 been provided to the other party in accordance with Utah Rules of Civil Procedure or [~~Title 63,~~
91766 ~~Chapter 46b]~~ Title 63G, Chapter 4, Administrative Procedures Act, in an administrative
91767 proceeding.

91768 (3) Upon the entry of an order in a proceeding to establish paternity or to establish,
91769 modify, or enforce a support order, each party shall file identifying information and shall update
91770 that information as changes occur with the court that conducted the proceeding.

91771 (a) The required identifying information shall include the person's social security
91772 number, driver's license number, residential and mailing addresses, telephone numbers, the
91773 name, address and telephone number of employers, and any other data required by the United
91774 States Secretary of Health and Human Services.

91775 (b) Attorneys representing the office in child support services cases are not required to
91776 file the identifying information required by Subsection (3)(a).

91777 (4) A stipulated amount for child support or combined child support and alimony is
91778 adequate under the guidelines if the stipulated child support amount or combined amount equals
91779 or exceeds the base child support award required by the guidelines.

91780 Section 2242. Section ~~78-45g-104~~ is amended to read:

91781 **~~78-45g-104. Adjudication -- Jurisdiction.~~**

91782 (1) The district court, the juvenile court, and the Office of Recovery Services in
91783 accordance with Section 62A-11-304.2 and [~~Title 63, Chapter 46b]~~ Title 63G, Chapter 4,
91784 Administrative Procedures Act, are authorized to adjudicate parentage under Parts 1 through 6,
91785 and Part 9 of this chapter.

91786 (2) The district court and the juvenile court have jurisdiction over proceedings under
91787 Parts 7 and 8.

91788 Section 2243. Section **78-45g-313** is amended to read:

91789 **78-45g-313. Adoption of rules.**

91790 The Office of Vital Records may adopt rules in accordance with [~~Title 63, Chapter 46a~~]
91791 Title 63G, Chapter 3, Utah Administrative Rulemaking Act, to implement this part.

91792 Section 2244. Section **78-45g-407** is amended to read:

91793 **78-45g-407. Removal of registration.**

91794 The Office of Vital Records may remove a registration in accordance with rules adopted
91795 by the office in accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
91796 Administrative Rulemaking Act.

91797 Section 2245. Section **78-45g-511** is amended to read:

91798 **78-45g-511. Confidentiality of genetic testing.**

91799 Release of the report of genetic testing for parentage is controlled by [~~Title 63, Chapter~~
91800 2] Title 63G, Chapter 2, Government Records Access and Management Act.

91801 Section 2246. Section **78-45g-601** is amended to read:

91802 **78-45g-601. Proceeding authorized -- Definition.**

91803 (1) An adjudicative proceeding may be maintained to determine the parentage of a
91804 child. A judicial proceeding is governed by the rules of civil procedure. An administrative
91805 proceeding is governed by [~~Title 63, Chapter 46b~~] Title 63G, Chapter 4, Administrative
91806 Procedures Act.

91807 (2) For the purposes of this part, "divorce" also includes an annulment.

91808 Section 2247. Section **78-57-108** is amended to read:

91809 **78-57-108. Youth Court Board -- Membership -- Responsibilities.**

91810 (1) The Utah attorney general's office shall provide staff support and assistance to a
91811 Youth Court Board comprised of the following:

91812 (a) the Utah attorney general or his designee;

91813 (b) one member of the Utah Prosecution Council;

- 91814 (c) one member from the Board of Juvenile Court Judges;
 - 91815 (d) the juvenile court administrator or his designee;
 - 91816 (e) one person from the Office of Juvenile Justice and Delinquency Prevention;
 - 91817 (f) the state superintendent of education or his designee;
 - 91818 (g) two representatives from Youth Courts based primarily in schools;
 - 91819 (h) two representatives from Youth Courts based primarily in communities;
 - 91820 (i) one member from the law enforcement community; and
 - 91821 (j) one member from the community at large.
- 91822 (2) The members selected to fill the positions in Subsections (1)(a) through (f) shall
- 91823 jointly select the members to fill the positions in Subsections (1)(g) through (j).
- 91824 (3) Members shall serve two-year staggered terms beginning July 1, 1999, except the
- 91825 initial terms of the members designated by Subsections (1)(a), (c), (e), and (i), and one of the
- 91826 members from Subsections (1)(g) and (h) shall serve one-year terms, but may be reappointed
- 91827 for a full two-year term upon the expiration of their initial term.
- 91828 (4) The Youth Court Board shall meet at least quarterly to:
- 91829 (a) set minimum standards for the establishment of Youth Courts, including an
- 91830 application process, membership and training requirements, and the qualifications for the adult
- 91831 coordinator;
- 91832 (b) review certification applications; and
- 91833 (c) provide for a process to recertify each Youth Court every three years.
- 91834 (5) In accordance with [~~Title 63, Chapter 46a~~] Title 63G, Chapter 3, Utah
- 91835 Administrative Rulemaking Act, the Youth Court Board shall make rules to accomplish the
- 91836 requirements of Subsection (3).
- 91837 (6) The Youth Court Board may deny certification or recertification, or withdraw the
- 91838 certification of any Youth Court for failure to comply with program requirements.
- 91839 (7) (a) Members shall receive no compensation or benefits for their services, but may
- 91840 receive per diem and expenses incurred in the performance of the member's official duties at the
- 91841 rates established by the Division of Finance under Sections 63A-3-106 and 63A-3-107.

91842 (b) Members may decline to receive per diem and expenses for their service.

91843 (8) The Youth Court Board shall provide a list of certified Youth Courts to the Board
91844 of Juvenile Court Judges, all law enforcement agencies in the state, all school districts, and the
91845 Utah Prosecution Council by December 31 of each year.

91846 Section 2248. Section **78-61-101** is amended to read:

91847 **78-61-101. Definitions.**

91848 As used in this chapter:

91849 (1) "Conviction" means an adjudication by a federal or state court resulting from a trial
91850 or plea, including a plea of no contest, nolo contendere, a finding of not guilty due to insanity,
91851 or not guilty but mentally ill regardless of whether the sentence was imposed or suspended.

91852 (2) "Fund" means the Crime Victim Reparation Fund created in Section [~~63-63a-4~~]
91853 51-9-404.

91854 (3) "Memorabilia" means any tangible property of a person convicted of a first degree
91855 or capital felony, the value of which is enhanced by the notoriety gained from the conviction.

91856 (4) "Profit" means any income or benefit over and above the fair market value of the
91857 property that is received upon the sale or transfer of memorabilia.

91858 Section 2249. **Repealer.**

91859 This bill repeals:

91860 Section **63-46a-17, Electronic records and conversion of written records by**
91861 **governmental agencies.**

91862 Section **63-97-101, Title.**